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2018 IL App (3d) 170049-U

Order filed January 30, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> THE ESTATE OF A.M., a Minor)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
(Patrick Nowatzki and Brenda Nowatzki,)	Will County, Illinois.
)	
Petitioners-Appellants,)	Appeal No. 3-17-0049
)	Circuit Nos. 16-OP-660, 16-P-257
v.)	
)	
Meaghan Murphy,)	Honorable
)	Jeffrey J. Allen,
Respondent-Appellee).)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* It was an abuse of discretion to order sanctions against grandparents in a guardianship proceeding because the false allegation in prior order of protection pleading was inconsequential to the granting of the order of protection and the guardianship pleading did not contain the same allegation.

¶ 2 Paternal grandparents appealed the grant of sanctions in favor of their granddaughter's mother in an action involving an emergency order of protection and temporary guardianship of the granddaughter.

¶ 3 FACTS

¶ 4 On April 4, 2016, one of the petitioners, Brenda Nowatzki, filed an emergency petition for guardianship of A.M., alleging that A.M.'s mother, the respondent, could not care for A.M. because the mother was suicidal (case number 16-P-0257, the guardianship case). Brenda, A.M.'s paternal grandmother, requested that she and her husband, the other petitioner, Patrick Nowatzki, be appointed A.M.'s guardians. Before the guardianship petition was ruled upon, on April 8, 2016, Patrick filed an emergency petition for an order of protection against the mother, alleging that the mother attempted suicide in front of A.M. and that the mother was being released from the hospital that day and was planning to pick up A.M. from the Nowatzkis' home.

¶ 5 At the hearing on the petition for an emergency order of protection, held on April 8, 2016, Patrick testified that the mother had attempted suicide in the past, but this time A.M. was in the care of the Nowatzkis and was not present for the suicide attempt. A.M.'s father also testified. He testified that the mother had attempted suicide four times since October 2015, and had slit her wrists in front of A.M. at least once. A.M.'s father testified that the mother's other daughter was present for this suicide attempt. The circuit court granted the emergency order of protection, based on the totality of the circumstances, on the same day, ordering the mother to stay away from Patrick and A.M. until April 29, 2016 (case number 16-OP-660, the order of protection case). On the emergency order of protection, under "Caution Indicators," the box in front of "suicidal" was checked. There was no other written description in the order of protection.

¶ 6 On April 13, 2016, the parties were in probate court for a hearing on the guardianship petition. A guardian ad litem (GAL) was appointed. After talking with all of the parties, the GAL reported to the probate court that the mother was not ready, willing, and able to parent at that time and recommended the appointment of a guardian. The GAL reported that the mother was undergoing treatment following her hospitalization and there was an open DCFS investigation. The GAL thought that A.M. had been placed with her paternal grandparents by DCFS under a safety plan, based on consistent reports from all of the parties, but she had not confirmed that with DCFS. The parties indicated to the probate court that there was nothing in writing yet from DCFS. In any event, the GAL reported that DCFS was aware of A.M.'s placement with her paternal grandparents and there was an on-going DCFS investigation. The probate court found that it was in the best interests of A.M. to appoint a guardian, and the Nowatzkis were appointed plenary guardians of A.M. without prejudice. The probate court consolidated the order of protection and the guardianship proceedings and struck the April 29th date, extending the plenary orders to May 4, 2016.

¶ 7 On April 19, 2016, the mother filed a motion to vacate the order of protection, and on April 20, 2016, a petition to vacate A.M.'s guardianship. Pursuant to an agreement between the parties, the order of protection was voluntarily dismissed on April 22, 2016, and the parties agreed on a supervised visitation schedule.

¶ 8 On May 3, 2016, A.M.'s maternal grandparents filed an emergency counter-petition to be appointed the guardian of A.M., alleging that the mother was still unable to care for A.M., but requesting guardianship so that A.M. could live in the same home as her sister. The probate court conducted a pretrial on May 4, 2016, and entered an order appointing the maternal grandparents of A.M. as her plenary guardians and revoking the guardianship letters of the paternal

grandparents. Thereafter, on May 10, 2016, A.M.'s father filed a motion to vacate the guardianship of A.M, alleging that he was ready, willing, and able to parent A.M.

¶ 9 At the May 24, 2016, status hearing, the GAL reported that there was an on-going DCFS investigation pertaining to A.M.'s mother, but there had never been a safety plan. The probate court vacated the guardianship of A.M., concluding that it lacked jurisdiction under section 11-5 of the Probate Act of 1975 (755 ILCS 5/11-5 (West 2014)). On July 22, 2016, the guardianship proceeding was dismissed without prejudice.

¶ 10 GAL fees were approved in the amount of \$1,685. Payments were applied toward the balance: \$500 by the Nowatzkis, \$250 by the maternal grandparents, and \$277.50 by the mother. The remaining balance of \$657.50 was yet to be allocated. The mother requested the return of her \$277.50 and requested that amount and the unallocated amount to be paid by the two sets of grandparents who petitioned for guardianship. The probate court ordered the Nowatzkis to pay \$935, which was the unallocated balance of \$657.50 in addition to the \$277.50 to be returned to the mother.

¶ 11 On August 18, 2016, the mother filed a motion for sanctions against the Nowatzkis pursuant to Illinois Supreme Court Rule 137, alleging that the emergency petition for guardianship and the emergency petition for an order of protection both contained untrue allegations. At the hearing on the motion for sanctions, Patrick testified that the order of protection petition, which stated that A.M. was present when the mother attempted suicide, was printed wrong by an employee at the court and that he never alleged that the mother attempted suicide in front of A.M. The judge who issued the order of protection was informed of the inaccuracy before he issued the order of protection.

¶ 12 The GAL testified that she was made aware of the order of protection at the emergency guardianship proceedings and that she was told by Brenda that the mother had attempted suicide in front of the children. The mother, however, told the GAL that she had not attempted suicide. The maternal grandparents told the GAL that they were seeking guardianship because it was the mother's second suicide attempt; the GAL did not ask them if the children were present. The GAL testified that she was not told that the petition for the order of protection was inaccurate. She did not recall what paperwork she saw: the petition for the order of protection or the actual order of protection.

¶ 13 Brenda testified that, when she filled out the paperwork, she believed that the mother was suicidal. She told the GAL that the other daughter was present for the suicide attempt and that A.M. had been present for past attempts. A.M.'s father testified that he was with Patrick when the petition for the order of protection was filed. A.M.'s father knew that A.M. was not present for the suicide attempt, but the other daughter was. Patrick attempted to relay that to the clerk who was typing the petition, but that information was misunderstood by the clerk.

¶ 14 The probate court granted the motion for sanctions based on the inaccurate information in the verified pleadings in the order of protection proceeding, which then led to the guardianship, awarding sanctions to the mother and against the Nowatzkis in the amount of \$8,000. The Nowatzkis appealed.

¶ 15 ANALYSIS

¶ 16 As an initial matter, the Nowatzkis argue that the probate court did not have jurisdiction to consider the motion for sanctions. They argue that the order of protection petition was dismissed on April 22, 2016, but the motion for sanctions was not filed until August 18, 2016. See Ill. S. Ct. R. 137 (eff. July 1, 2013) (motion for sanctions has to be filed within 30 days of

the entry of final judgment). The mother argues that the motion for sanctions was timely because the guardianship petition was consolidated with the order of protection and the guardianship petition was not dismissed until July 22, 2016, with the motion for sanctions being filed within 30 days of that decision, on August 18, 2016.

¶ 17 For convenience, a trial court has the discretion to consolidate actions pending in the same court. 735 ILCS 5/2-1006 (West 2014). There are three types of consolidations:

“(1) where several actions are pending involving substantially the same subject matter, the court may stay proceedings in all but one and see whether the disposition of the one action may settle the others thereby avoiding multiple trials on the same issue; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tried together, but with separate docket entries, verdicts and judgments, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be disposed of as one suit.” *Shannon v. Stookey*, 59 Ill. App. 3d 573, 577 (1978).

¶ 18 In the instant case, the record is clear that this consolidation was of the second form; i.e., the order of protection proceedings and the guardianship proceedings involved the same general event, but were only consolidated for convenience. Each action had its own docket entries and separate judgments were entered in each case. See *In re Marriage of Harnack and Fanady*, 2014 IL App (1st) 121424, ¶ 41. Thus, any motion for sanctions in the order of protection proceedings was untimely, filed more than 30 days after the final judgment. As a result, we limit our discussion of the propriety of sanctions to the guardianship case.

¶ 19 The Nowatzkis argue that the probate court erred in awarding sanctions based upon misrepresentations made to the GAL, rather than written pleadings. The Nowatzkis also contend that the sanction order was insufficient because it did not contain specific findings of fact and there was no hearing on the reasonableness of the fees awarded. The mother argues that the probate court properly exercised its discretion in ordering sanctions because the order of protection and later order granting guardianship were entered based on false allegations.

¶ 20 Sanctions may be granted under Illinois Supreme Court Rule 137 (eff. July 1, 2013) when a pleading, motion, or other paper: (1) is not well-ground in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, or (2) is filed with the intent to harass, cause unnecessary delay, or needless increase in the cost of litigation. See *Patton v. Lee*, 406 Ill. App. 3d 195, 202 (2010). The standard for evaluating a party's conduct under Rule 137 is one of reasonableness under the circumstances at the time of the filing. *Patton*, 406 Ill. App. 3d at 202. Since the rule is penal in nature, courts should construe it strictly and reserve sanctions for the most egregious cases. *Id.*

¶ 21 In this case, the petition for the order of protection alleged that the mother attempted suicide in front of A.M., although the order of protection was granted with the knowledge that allegation was not true, making the false statement inconsequential to the order of protection. See *id.* (denial of sanctions was not an abuse of discretion where false statements were not the primary factual allegations in the petition and were inconsequential to the overall issue of whether an order of protection should be issued). However, the statement that the suicide attempt was in A.M.'s presence was consequential to the granting of the guardianship of A.M. The guardianship pleading, though, only alleges that the mother attempted suicide; it does not contain the allegation that the attempt was in A.M.'s presence. The probate court found that the false

