2019 IL App (1st) 180154-U
Order filed: May 17, 2019

FIRST DISTRICT
Fifth Division

No. 1-18-0154

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF JOEL KAPLAN, a Disabled Person (Wolin & Rosen, Ltd., Petitioner-Appellee, v. Mark Kaplan and Brian Kaplan, as Co-Guardians of the Estate and Person of Joel Kaplan, Respondents-Appellants).	)	Appeal from the Circuit Court of Cook County. No. 16 P 001240 Honorable Shauna L. Boliker, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We dismiss this appeal for lack of appellate jurisdiction, where the trial court did not fix absolutely and finally the parties' rights with respect to a petition for attorney fees.

¶ 2 Respondents-appellants, Mark Kaplan and Brian Kaplan, as co-guardians of the estate and person of Joel Kaplan, appeal from a written order approving a fee petition filed by petitioner-appellee, Wolin & Rosen, Ltd. (Wolin). For the following reasons, we dismiss this appeal for a lack of appellate jurisdiction.[1]

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1,

¶ 3 I. BACKGROUND

¶ 4 On February 29, 2016, a petition was filed pursuant to section 11a-3 of the Probate Act of 1975 (Act) (755 ILCS 5/11a-3 (West 2016)), seeking to have Mark and Brian Kaplan appointed as plenary co-guardians of the person and estate of their father, Joel. Mark and Joel also filed, pursuant to section 11a-4 of the Act (755 ILCS 5/11a-4 (West 2016)), a separate petition seeking their appointment as temporary co-guardians of the person and estate of Joel. On the day the two petitions were filed, the trial court appointed attorney Michael Delaney to serve as guardian *ad litem* (GAL). On March 1, 2016, Joel retained Wolin to represent him in the matter.

¶ 5 Also on March 1, 2016, a hearing on the petition for temporary guardianship was held by the trial court. At the conclusion of the hearing, the trial court appointed petitioners temporary co-guardians of Joel's person and estate. The parties thereafter engaged in significant discovery practice, and the matter proceeded to a bench trial on the petition for plenary guardianship in December 2016. In a written order entered on January 27, 2017, the trial court granted the petition filed by Mark and Brian, and appointed them as plenary co-guardians of respondent's person and estate. Joel timely appealed, and this court affirmed the trial court's decision in an order entered on June 29, 2018. *In re Estate of Kaplan*, 2018 IL App (1st) 170540-U. During the course of the appellate proceedings, Wolin continued to represent Joel pursuant to an order entered by the trial court.

¶ 6 Invoices prepared by Wolin with respect to its representation of Joel in this matter were regularly prepared and paid by the co-guardians from March through November, 2016. However, two invoices prepared by Wolin for services provided from November 30, 2016, to January 30, 2017, were not immediately paid. Thereafter, Wolin filed a fee petition on February 14, 2017,

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2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

seeking to recover $83,632.20, comprised of $82,556.00 in attorney time and $1,076.20 in costs. Two invoices attached to the February fee petition (the two referenced above)) reflect work performed on Joel's behalf by four different attorneys billed at various rates ranging from $395 to $450 per hour. The petition asked the trial court to approve the fees and order the co-guardians to pay Wolin the approved fees.

¶ 7 In an order entered on May 12, 2017, the trial court: (1) granted the February fee petition in full, albeit at an hourly rate reduced to $325 per hour for all of Wolin's attorneys, (2) calculated the final resulting amount awarded to Wolin, reflecting that rate reduction, to be $63,374.95, and (3) ordered the co-guardians to pay Wolin that final, calculated amount "forthwith."

¶ 8 Two additional invoices were prepared and submitted by Wolin for services provided to Joel from February 28, 2017, to April 27, 2017. When those invoices were not paid, Wolin filed a fee petition on June 16, 2017 (June fee petition). Attached to that petition was a "proforma" that outlined the fees claimed by Wolin for services provided from February 28, 2017, to June 7, 2017; effectively, a three-month period that included the two-month period contained in the two unpaid invoices. The proforma and June petition reflect that Wolin sought payment of $30,622.79, comprised of $29,530.75 in attorney time (billed at various rates ranging from $395 to $450 per hour) and $1,092.04 in costs.

¶ 9 On June 30, 2017, Wolin filed a motion to withdraw the June fee petition, wherein it asserted that the June petition: "erroneously attached a 'PROFORMA BILL' instead of the monthly invoices rendered by Wolin & Rosen in this matter. The PROFORMA BILL is a preliminary internal review document to which adjustments are frequently made before the actual Invoice is generated. The actual monthly invoices should have been attached to Wolin &

Rosen's fee petition. The PROFORMA BILL should not have been attached to Wolin & Rosen's fee petition."

¶ 10 On July 18, 2017, the co-guardians filed a response opposing Wolin's motion to withdraw the June fee petition, in which they essentially asserted that discrepancies between the proforma and the unpaid invoices submitted by Wolin reflected that Wolin had engaged in intentional and fraudulent alterations with respect to the time billed for services provided to Joel. The co-guardians asked the trial court to deny the motion to withdraw the June fee petition, discharge Wolin from its representation of Joel, and impose sanctions.

¶ 11 On July 19, 2017, the trial court entered a written order reflecting that: (1) the co-guardians' response to the motion to withdraw the June fee petition was itself withdrawn, without prejudice, (2) Wolin was granted leave to file an amended fee petition, (3) both the co-guardians and the GAL were invited to respond to the amended petition, (4) the matter was set for a hearing on the amended petition.

¶ 12 Wolin's amended petition was filed on August 2, 2017. Attached to the amended petition were three invoices outlining the fees claimed by Wolin for services provided from February 28, 2017, to May 30, 2017; effectively, a three month period which included the period contained in the two unpaid invoices previously provided by Wolin and a new, third invoice covering the period ending May 30, 2017. The invoices and amended petition reflect that Wolin sought payment of $33,150.04, comprised of $32,058.00 in attorney time (billed at various rates ranging from $395 to $450 per hour) and $1,092.04 in costs.

¶ 13 After the parties filed briefs with respect to the amended fee petition, and the GAL filed a supplemental report on his investigation into the discrepancies between the proforma and the invoices provided by Wolin, the trial court held an evidentiary hearing on September 6, 2017. In

addition to receiving documentary evidence, the trial court heard testimony from the GAL and one of Wolin's attorneys, Mr. Michael Pildes. At the hearing, Mr. Pildes specifically testified that the proforma was preliminary, "inaccurate" and should not have been attached to the June fee petition. Mr. Pildes also testified that the three invoices attached the amended petition actually represented the accurate amount of Wolin's fees.

¶ 14 On November 30, 2017, the trial court entered a written order with respect to Wolin's amended fee petition. In that order, the trial court largely accepted Mr. Pildes testimony and explanation of the mistake with respect to the proforma attached to the June fee petition, and further found the purported evidence of fraud or manipulation speculative and unfounded. In the the final, operative paragraph of the trial court's written order granting Wolin's amended fee petition, the trial court found as follows:

> "Therefore[,] the Court is essentially left with two dollar numbers. The original Proforma number is $30,622.79 and the Amended Petition which is $33,150.04. The dollar amounts being $2,527.25 apart. It is therefore this Court's Opinion that the original Proforma Amount shall be approved with the attorney hourly rate reduced to $325.00 per hour."

¶ 15 The co-guardians filed a notice of appeal from this written opinion on December 22, 2017.

¶ 16 II. ANALYSIS

¶ 17 On appeal, the co-guardians contend that the trial court erred in granting Wolin's amended petition for fees. However, and despite the fact that the issue has not been raised by the parties, we that find we are without jurisdiction to address the co-guardians' appeal. *Cangemi v.*

Advocate South Suburban Hospital, 364 Ill. App. 3d 446, 453 (2006) (court has a duty to *sua sponte* determine whether it has jurisdiction to decide the issues presented).

¶ 18 Except as specifically provided by Illinois Supreme Court Rule 301, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb.1, 1994), *et seq*.; *Almgren v. Rush–Presbyterian—St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is 'final' if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy." *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997). To be a final judgment, the determination by the court on the issues presented by the pleadings must ascertain and fix absolutely and finally the rights of the parties. *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 232–33 (2005). A judgment is final if it determines the litigation on the merits so that, if affirmed, nothing remains for the trial court to do but to proceed with its execution. *Id*. at 233. "It is not necessary that a final order resolve all matters in the estate (or similar proceeding), but it must resolve all matters on the particular issue." *In re Miller*, 396 Ill. App. 3d 910, 915 (2009).

¶ 19 However, a final judgment or order is not necessarily immediately appealable. Illinois Supreme Court Rule 304(a) (eff. March 8, 2016) provides that:

> "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. *** In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to

revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties."

¶ 20 In turn, Rule 304(b) provides that a number of specified "judgments and orders are appealable without the finding required for appeals under paragraph (a)." Ill. S. Ct. R. 304(b) (eff. March 8, 2016). Of relevance here is Illinois Supreme Court Rule 304(b)(1) (eff. March 8, 2016), which provides for the immediate appeal of a "judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party," without an express written finding as to enforcement or appeal. It is pursuant to Rule 304(b)(1) that the co-guardians contend we have jurisdiction over this appeal.

¶ 21 The committee comments to this provision explain that "[s]ubparagraph (1) applies to orders that are final in character although entered in comprehensive proceedings that include other matters. Examples are an order admitting or refusing to admit a will to probate, appointing or removing an executor, or *allowing or disallowing a claim*." (Emphasis added.) Ill. S. Ct. R. 304, Committee Comments (rev. Sept. 1988). It has long been recognized that a request for attorney fees is generally considered a separate "claim" for purposes of determining appealability, where multiple claims for relief are involved in an action. *Tressler, LLP v. Schwartz*, 2019 IL App (1st) 172367, ¶¶ 18-19; *Brown & Kerr, Inc. v. American Stores Properties, Inc.*, 306 Ill. App. 3d 1023, 1028 (1999); *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 983 (1994).

¶ 22 More specifically, it has been recognized that Rule 304(b)(1) specifically authorizes an immediate appeal from the grant or denial of a petition for attorney fees entered in the administration of an estate, guardianship, or similar proceeding, even where multiple claims for relief are involved in such an action and there has been no finding as is required for appeals

under Rule 304(a). *Kanfer v. Busey Trust Co.*, 2013 IL App (4th) 121144, ¶ 74; *In re Trusts of Strange ex rel. Whitney*, 324 Ill. App. 3d 37, 41-42 (2001); *Lampe v. Pawlarczyk*, 314 Ill. App. 3d 455, 472-733 (2000); *In re Estate of Kime*, 95 Ill. App. 3d 262, 268 (1981). Nevertheless, the order granting or denying a petition for attorney fees entered in such a proceeding must be truly *final* to permit an appeal under Rule 304(b)(1). We find that the written order entered by the trial court with respect to Wolin's amended petition for fees is not, in fact, final.

¶ 23 As noted above, the final, operative paragraph of the trial court's written order granting Wolin's amended fee petition states as follows:

> "Therefore[,] the Court is essentially left with two dollar numbers. The original Proforma number is $30,622.79 and the Amended Petition which is $33,150.04. The dollar amounts being $2,527.25 apart. It is therefore this Court's Opinion that the original Proforma Amount shall be approved with the attorney hourly rate reduced to $325.00 per hour."

¶ 24 As an initial matter, we note that in its amended fee petition, Wolin expressly stated that the proforma was a preliminary document that should not have been the basis for its June fee petition, and further indicated that the three invoices attached to the amended petition represented the accurate amount of its fees. At the hearing on the amended fee petition, a Wolin attorney, Mr. Pildes, specifically testified that the proforma was preliminary, "inaccurate" and should not have been attached to the June fee petition. Mr. Pildes also testified that the three invoices attached to the amended petition actually represented the accurate amount of Wolin's fees. In the analysis portion of its written order, the trial court largely accepted Mr. Pildes testimony and explanation of the mistake, but the court then concluded "that the original Proforma Amount shall be approved." Because we do not reach the merits of this appeal, we

need not further address any apparent contradiction between the evidence, the trial court's own analysis, and the trial court's ultimate conclusion. Still, these initial observations do add to this court's uncertainly as to exactly what fees the trial court actually did, or actually intended, to award.

¶ 25 Those initial observations aside, the record *is clear* that in the proforma, Wolin sought approval of $30,622.79 in fees and costs, which included — *inter alia* — work performed on Joel's behalf by four different attorneys billed at various rates ranging from $395 to $450 per hour. While the written order indicates that the fees and costs itemized in the proforma "shall be approved," it also indicates that the hourly rate charged in the proforma must be reduced to $325. The resulting amount due to Wolin was not actually calculated and specified in the written order from which the co-guardians have appealed, nor in any other order contained in the record on appeal. The written order therefore did not ascertain and fix absolutely and finally the rights of the parties with respect to Wolin's amended fee petition, nor did it decide the amended fee petition on the merits so that, if affirmed, nothing remains for the circuit court to do but to proceed with its execution. *Big Sky Excavating, Inc.*, 217 Ill. 2d at 232–33. The actual, final amount owed to Wolin remains to be calculated.

¶ 26 The amended fee petition also specifically asked the trial court to "authorize and direct" the co-guardians to pay Wolin "for services rendered *** *instanter*." See 755 ILCS 5/11a-18(a) (West 2016) ("The guardian may make disbursement of his ward's funds and estate directly to the ward or other distributee or in such other manner and in such amounts as the court directs.") However, the written order contains no language responsive to this request. As such, the written order did not render a final determination on *all* of the issues presented by the amended fee petition. *Id.*; *In re Miller*, 396 Ill. App. 3d at 915.

¶ 27 For all the above reasons, we find that the trial court's written order ruling upon Wolin's amended fee petition was not a final order.[2] It was therefore not appealable pursuant to Rule 304(b)(1), and we must therefore dismiss this appeal for a lack of appellate jurisdiction.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.

¶ 30 Appeal dismissed.

[2] The written order on appeal can be compared with the trial court's May 2017 written order with respect to Wolin's February 2017 fee petition. Therein, the trial court: (1) granted the petition in full, albeit at an hourly rate reduced to $325 per hour, (2) actually calculated the final resulting amount awarded to Wolin with that reduction, and (3) ordered the co-guardians to pay Wolin that final, calculated amount "forthwith."