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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Conservatorship of the Person and Estate of KATHERINE B. IRELAND.	B276915 (Los Angeles County Super. Ct. No. BP159211)
JOHN IRELAND, Petitioner, Objector, and Respondent, v. DANA IRELAND, as Conservator, etc., Petitioner, Objector, and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Lesley C. Green, Judge. Reversed.

Borden Law Office and Alex R. Borden for Defendant and Appellant Dana Ireland.

Peninsula Law and Beti Tsai Bergman for Plaintiff and Respondent John Ireland.

Appellant Dana Ireland and respondent John Ireland each filed a petition for conservatorship of their mother, Katherine B. Ireland. The court named Dana[1] conservator of the person and estate of Katherine, but ordered the estate to pay attorney's fees and costs to John to reimburse him for the expenses of filing his petition. We reverse the probate court's order regarding attorney's fees and costs. Although Probate Code section 2640.1[2] requires courts to award attorney fees and costs to unsuccessful good-faith petitioners for conservatorships, these fees and costs are reimbursable only to the extent they "facilitate the appointment of a conservator." (§ 2640.1, subds. (c)(1) and (c)(2).) In this case, it is clear that John's competing petition for conservatorship did not facilitate the appointment of a conservator, but only drained Katherine's estate of resources.

FACTS AND PROCEEDINGS BELOW

Katherine is 93 years old and has suffered from dementia since at least 2013. She has three sons: Dana and John, who are parties to this appeal, and Lewis. In 1992, Katherine and her husband established a revocable living trust. Initially, the trust provided that, upon the death of Katherine and her husband, the trust assets would be divided equally among the three children.

In 2006, after Katherine's husband died, the trust was amended to exclude Dana as a beneficiary. According to John, Katherine disinherited Dana because of debts Dana incurred using Katherine's property as collateral. Dana acknowledged that he borrowed around $150,000 from his parents, using a home equity line of credit based on his parents' house in Manhattan Beach, and that he borrowed additional funds

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[1] For the sake of clarity, this opinion refers to the members of the Ireland family by their first names. No disrespect is intended.

[2] Unless otherwise specified, subsequent statutory references are to the Probate Code.

secured by his parents' stocks. He claimed, however, that he repaid most of what he borrowed, and signed a promissory note in 2008, agreeing to pay the estate the remaining $64,800 upon Katherine's death. Dana claimed that he voluntarily relinquished his status as beneficiary in 2006 to allow his brother Lewis, who has special needs, to be provided for.

At some point between 2003 and 2012, Lewis and his wife Linda moved into Katherine's house. As Katherine's health declined, Lewis and Linda helped take care of her. According to John, Lewis is mentally disabled and functions at the level of a third-grader. According to Dana, Katherine and her husband meant to make sure that Lewis would be cared for after they died.

In the summer of 2013, under circumstances that both Dana and John regard as suspicious, Katherine executed a series of documents amending the terms of the trust. First, in June, she signed documents granting Lewis durable power of attorney and designating Lewis as the successor trustee in her living trust. John found out about these documents and sought out the services of an attorney to draw up new documents. In July 2013, John drove Katherine to an attorney's office, where Katherine signed documents appointing John as trustee and granting him durable power of attorney. Nine days later, Katherine signed new documents revoking these amendments and reinstating Lewis as successor trustee and attorney-in-fact.

Around the same time, Katherine also filed a petition for an elder abuse restraining order against John, alleging that John had abused her financially. At the hearing on the restraining order in December 2013, Katherine could not recall what year it was or who was the president of the United States. She also had no memory of signing the papers amending her trust. After Katherine testified in the hearing on the restraining order, the commissioner presiding over the hearing expressed doubts about

Katherine's competency and urged the parties to appoint a conservator over Katherine's person and estate.

Approximately one year later, Katherine sold her home in Manhattan Beach. Both Dana and John believe the house was sold for a price substantially below its market value, and that Katherine either did not understand the significance of the documents she signed selling the house, or that Katherine's signatures were forged. Lewis and Linda drove Katherine to their new home in Arizona without telling Dana or John, who found out only when a neighbor called John to tell him that a U-Haul truck had pulled up to the house. Dana hired a private investigator, who was able to locate the address of the house in Flagstaff that Katherine had bought using some of the proceeds from the sale of the Manhattan Beach house. Dana drove to visit Katherine as soon as he found out where she was and, after becoming concerned for her health and well-being, he brought her back to California. Dana was able to recover approximately $328,000 from Katherine's bank accounts, which he kept in the form of cashier's checks. He placed Katherine in an assisted living facility in Hermosa Beach.

Dana filed a conservatorship petition in January 2015, alleging that dementia had left Katherine unable to care for herself. The probate court named Dana temporary conservator of Katherine pending a hearing, and John then filed a competing conservatorship petition. John contended that Dana was not suitable to serve as conservator because he had previously taken advantage of Katherine financially. John was also suspicious of Dana's intentions with respect to the funds he had recovered from Katherine's bank accounts.

After a hearing, the court named Dana conservator, finding that he had business acumen and a specific plan to recover assets lost in the sale of the Manhattan Beach house. The court also found that the potential for a conflict of interest was limited because Dana forswore any interest in regaining his

status as a beneficiary of the trust. The court stated, "I do believe that [Dana] . . . as everyone here does, has his mother's best interest at heart."

John filed a petition seeking reimbursement of $77,707.13 in attorney fees and costs for his competing petition for conservatorship. Dana objected, contending that the court should deny John attorney fees on the grounds that John's conservatorship petition had not benefitted Katherine, and that the fees were excessive and unreasonable. After a hearing, the probate court ordered Dana to pay John and his attorneys $39,966.63 in attorney fees and costs from the conservatorship estate.

DISCUSSION

Dana contends that the probate court erred by awarding attorney fees and costs to John. We agree. We conclude that the probate court abused its discretion by applying the wrong legal standard to John's motion. (See *Conservatorship of Becerra* (2009) 175 Cal.App.4th 1474, 1482.) According to the facts that the probate court reasonably found, John is not entitled to an award of attorney fees and costs because his unsuccessful petition did not "facilitate the appointment of a conservator." (§ 2640.1, subd. (c)(1) & (2).)

The Probate Code contains several provisions allowing for conservators to recover the costs and attorney fees they incur. (See, e.g., §§ 2640, 2641, 2642.) In the case of conservators, the compensation must be "just and reasonable" (§§ 2640, subd. (c)(1), 2641, subd. (b)), and in the case of attorneys, the court must determine that the requested fees are "reasonable." (§§ 2640, subd. (c)(2), 2642, subd. (b).) Courts have interpreted these sections as allowing reimbursement of costs and fees only to the extent that "the conservator believed [the expenses] were necessary to benefit the conservatee and that belief was

objectively reasonable." (*Conservatorship of Cornelius* (2011) 200 Cal.App.4th 1198, 1205 (*Cornelius*).)

Section 2640.1 establishes similar rules for cases in which a person petitioned for conservatorship, but while that person's petition was pending, someone else was appointed conservator. As is the case with payment to conservators and their attorneys, the payments to reimburse unsuccessful petitioners must be "just and reasonable." (§ 2640.1, subd. (c)(1) & (2).) Additionally, in order to award compensation to an unsuccessful petitioner, "the court [must] determine[] that the petition was filed in the best interests of the conservatee." (§ 2640.1, subd. (a).) Section 2640.1, however, contains an additional restriction on the award of attorney fees not found in the sections pertaining to reimbursement of conservators: Unsuccessful petitioners and their attorneys are allowed compensation and reimbursement of costs only to the extent that their services were "rendered in connection with and to facilitate the appointment of a conservator." (§ 2640.1, subd. (c)(1) & (2).)

In this case, John, as an unsuccessful petitioner, filed a motion for reimbursement of fees pursuant to section 2640.1. In its order granting the motion, the court stated that it was "hard pressed to find that John's petition benefited [Katherine]. It increased the cost of the litigation, likely increased the hostility within the family—to [Katherine]'s dismay—and did not change the outcome: a conservatorship in place to protect the conservatee with Dana as [c]onservator." The court reasoned that John was nevertheless entitled to reimbursement of attorney fees on the grounds that John believed his actions would be of benefit, and that his belief was objectively reasonable. According to the court, "[t]here has been no evidence submitted that John did not believe he could serve his mother better than Dana as conservator. And there were objective bases for this belief, including the facts that the conservatee had seen fit at one point

to disinherit Dana and she had nominated others [to serve as trustee] in various estate planning documents."

In reaching its conclusion, the probate court cited case law not directly applicable to unsuccessful petitioners. The primary criterion the court applied was that a conservator is "entitled to compensation for expenses that the conservator believed were necessary to benefit the conservatee [so long as] that belief was objectively reasonable." (*Cornelius*, *supra*, 200 Cal.App.4th at p. 1205, citing *Conservatorship of Lefkowitz* (1996) 50 Cal.App.4th 1310, 1314 (*Lefkowitz*).) But both *Cornelius* and *Lefkowitz* involved petitions to compensate someone who actually served as conservator; neither case required the interpretation of section 2640.1. (See *Cornelius*, *supra*, 200 Cal.App.4th at p. 1203 [petition filed under §§ 2641, 2642]; *Lefkowitz*, *supra*, 50 Cal.App.4th at p. 1313 [analyzing a conservator's petition under §§ 2640, 2641].) Although we agree that the criteria cited in *Cornelius* and *Lefkowitz* are useful in evaluating whether an unsuccessful "petition was filed in the best interests of the conservatee" (§ 2640.1, subd. (a)), this analysis alone is insufficient to determine whether an unsuccessful petitioner is eligible for reimbursement under section 2640.1.

In particular, the *Cornelius* and *Lefkowitz* analysis falls short because it does not take into account whether the petitioner's actions "facilitate[d] the appointment of a conservator." (§ 2640.1, subd. (c)(1) & (2).) We interpret this language as allowing reimbursement for costs and fees only to the extent that the unsuccessful petitioner's actions actually "help[ed] bring about" the appointment of a conservator. (Merriam Webster's Collegiate Dictionary (10th ed. 1995) p. 415 [defining "facilitate"]; see also *People v. One 1959 Porsche Coupe* (1967) 252 Cal.App.2d 1044, 1050 [defining "facilitate" for purposes of a criminal statute as "to forward the accomplishment of a purpose"].) In other words, under section 2640.1, good

intentions are not enough. To be eligible for reimbursement of costs and fees, the unsuccessful petitioner must help bring about the appointment of a conservatee.

The paradigmatic example of how an unsuccessful petitioner may meet this standard occurs when the petitioner is the first person to call attention to the need for a conservator. This was the case in *Estate of Moore* (1968) 258 Cal.App.2d 458, the first case in which the court awarded attorney fees to an unsuccessful petitioner. In that case, a doctor petitioned to be appointed as guardian of one of his patients, a woman who was in her late eighties and had recently suffered a stroke. (*Id.* at p. 460.) Although the probate court appointed two of the patient's friends as conservators rather than the doctor, it awarded the doctor reimbursement for his costs and attorney fees, and the Court of Appeal affirmed the award. (*Id.* at pp. 460, 464.) The court noted that "it was as a consequence of [the doctor's] initiative that a conservator was appointed," and as a result, "substantial benefits accrued to" the conservatee. (*Id.* at p. 461.) Apparently, the conservatee turned against her doctor after he suggested the need for a guardianship. (*Ibid.*) The court pointed out that "[t]he individual who first suggests the need for a caretaker, like a lightning rod, often attracts to his person the lasting wrath and suspicion of the supposed incompetent, who even if later reconciled to the need for a caretaker, will never consent to the appointment of the original petitioner." (*Ibid.*)

John argues that *Estate of Moore* is no longer good law because it predates the 1995 enactment of section 2640.1. We disagree. Nothing in the text of section 2640.1 suggests that the legislature intended to overrule *Estate of Moore*. For his part, Dana argues that unsuccessful petitioners are entitled to reimbursement under section 2640.1 *only* if they initiated conservatorship proceedings. The text of the statute does not

support this limitation, and we need not interpret the statute accordingly in order to decide this case.

It is clear from the record and from the probate court's findings that John did not facilitate the appointment of a conservator by his petition. At the time John filed his petition, Dana had already been appointed temporary conservator. We have already quoted the probate court's view of John's petition: The court was "hard pressed to find that John's petition benefited [Katherine]. It increased the cost of the litigation, likely increased the hostility within the family—to [Katherine]'s dismay—and did not change the outcome: a conservatorship in place to protect the conservatee with Dana as [c]onservator." John contends that his petition facilitated the appointment of a conservator because it allowed the court to evaluate whether Dana had too great a self-interest in the estate to serve as petitioner. The probate court apparently disagreed with this assessment, most likely because the court had appointed an attorney from the probate court volunteer panel to represent Katherine's interests.[3]

The high cost to the estate of this litigation is apparent in the record. Dana incurred $38,261 in reimbursable legal expenses on behalf of the estate in litigation against John, and the probate court awarded John $39,966.63 in costs and fees.[4] If we were to affirm the probate court's award to John, the

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[3] The record on appeal does not contain the court's order appointing the attorney, but the court acted within its authority under section 1470, subdivision (a) to "appoint private legal counsel for . . . a proposed conservatee . . . if the court determines the person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests."

[4] In fact, John petitioned the court for reimbursement of $77,707.13. If the probate court had awarded him the full amount he requested, the total expenses of litigation would have been over 35 percent of the estate's available assets.

combined cost of litigation would consume almost 24 percent of the $328,000 in liquid assets that Dana was able to recover on behalf of the estate. This loss of assets could have serious consequences. At the time of the hearing, the estate was paying approximately $2,800 per month for Katherine's care in an assisted living facility, and the remaining funds were intended primarily to ensure that Lewis's needs were met. There was also a looming possibility of substantial additional expenses from litigation to recoup damages suffered in the sale of the Manhattan Beach house—litigation that Dana and John agreed was worth pursuing.

As against this substantial cost, the value of the conservatorship litigation to the estate was—as the probate court found—nil. Dana would have been named conservator with or without John's intervention. Although we do not question the probate court's conclusion that John acted with his mother's best interests in mind, it is impossible to conclude that his petition facilitated the appointment of a conservator or achieved any other benefit. To interpret section 2640.1 as John urges would contradict the plain text of the statute and would encourage parties to engage in expensive litigation funded by the resources of the estate they claim to protect.

DISPOSITION

The probate court's order is reversed. Appellant is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.