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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RUTH B. ALBRECHT, an
Incompetent Person, etc.,

Plaintiff,

v.

JOYCE J. PEARSON,

Defendant and Respondent;

ROBERT J. ALBRECHT, as
Guardian Ad Litem, etc.,

Appellant.

B281720

(Los Angeles County
Super. Ct. No. PS018854)

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

Robert J. Albrecht, in pro. per., for Appellant Robert J.
Albrecht, as Guardian Ad Litem, etc.

Pearson Law Corporation, Stephen W. Holohan; Richard P.
Curtin Law Corporation, and Richard P. Curtin for Defendant
and Respondent Joyce J. Pearson.

No appearance by Plaintiff Ruth B. Albrecht, an
Incompetent Person, etc.

Robert J. Albrecht (Albrecht) filed a request for elder abuse restraining order seeking protection for his 92-year-old mother, Ruth B. Albrecht (Ruth) from Joyce Pearson (Pearson).¹ Although Albrecht signed the request both as Ruth’s attorney and as the “person filling out [the] request,” the court later appointed him as Ruth’s guardian ad litem. Two months after granting a temporary restraining order, the court denied the request for a permanent restraining order, and, finding Pearson to be the prevailing party, ordered Albrecht to pay Pearson’s attorney’s fees and costs. Albrecht contends, *inter alia*, that, because he appeared in the proceeding as Ruth’s guardian ad litem, the court had no authority to order him to pay fees and costs.² We agree and reverse the order.

FACTUAL AND PROCEDURAL BACKGROUND

We discuss the facts only briefly as necessary to the opinion. Albrecht filed on Ruth’s behalf a request for elder or dependent adult abuse restraining orders. (Welf. & Inst. Code, § 15657.03.)³ The request sought protection from Pearson.

¹ Because Ruth and Robert Albrecht share a common surname, we refer to Ruth by her first name to avoid confusion. We intend no disrespect.

² Albrecht also challenges the fee award on the ground it is not authorized by the statutes cited in the trial court’s order. Because we conclude that the court had no authority to order him to pay the prevailing party’s attorney’s fees, we need not reach this issue.

³ Further statutory references are to the Welfare and Institutions Code.

Section 15657.03 provides in pertinent part:

“(a)(1) An elder or dependent adult who has suffered abuse, as defined in Section 15610.07, may seek protective orders as provided in this section.

Albrecht asserted that Pearson, an attorney, and her friend, Mary Mackay, had abused Albrecht's 92-year-old mother, Ruth, through fraud and undue influence by replacing Albrecht with Pearson as the co-trustee of Ruth's trust, with knowledge that Ruth lacked the mental capacity to act. After the court issued a temporary restraining order, Pearson correctly complained that Albrecht had no standing to request the protective order because he was not one of the persons listed in the operative statute. (§ 15657.03, subd. (a)(2).) Thereafter, on Albrecht's motion, the court appointed Albrecht as Ruth's guardian ad litem, a person who did have standing to prosecute the action, and the matter proceeded.

“(2) A petition may be brought on behalf of an abused elder or dependent adult by a conservator or a trustee of the elder or dependent adult, an attorney-in-fact of an elder or dependent adult who acts within the authority of a power of attorney, a person appointed as a guardian ad litem for the elder or dependent adult, or other person legally authorized to seek the relief.

“[¶] . . . [¶]

“(b) For purposes of this section:

“[¶] . . . [¶]

“(3) ‘Petitioner’ means the elder . . . to be protected by the protective orders and, if the court grants the petition, the protected person.

“[¶] . . . [¶]

“(t) The prevailing party in an action brought under this section may be awarded court costs and attorney's fees, if any.”

Section 15610.07 includes “[f]inancial abuse,” which, pursuant to section 15610.30, occurs when a person or entity takes, secretes, appropriates, obtains, or retains real or personal property of an elder for a wrongful use or with intent to defraud or by undue influence or when the elder is deprived of any property right, including by means of testamentary bequest.

Ultimately, after a hearing on the issuance of a permanent restraining order, the court rejected Albrecht's request and awarded Pearson, as the prevailing party, attorney's fees and costs "to be paid . . . by Petitioner Robert Albrecht."⁴

A notice of appeal signed by Albrecht on Ruth's behalf was timely filed on March 15, 2017.⁵

⁴ Appended as an exhibit to Pearson's respondent's brief is a document entitled "Joyce J. Pearson's supplement to reply [regarding] motion for attorney fees and costs," bearing a file stamp of January 18, 2017. The document is not included in the appellant's appendix prepared by Albrecht. Pearson has also filed a motion to augment the record to include a copy of a January 18, 2017 email communication from Pearson to Albrecht, attaching a copy of the aforementioned document, which Albrecht contends was not served upon him. Neither of these documents is material to the appeal. The motion to augment is therefore denied.

⁵ The notice of appeal specifies that Albrecht is appealing from the order made on December 9, 2016, denying the request for a restraining order, and the order made on February 17, 2017, directing Albrecht to pay Pearson's attorney's fees and costs. Ruth passed away shortly after Albrecht filed the notice of appeal, which is apparently why Albrecht's opening brief does not challenge the December 9 order; thus, we deem that issue abandoned. Nonetheless, Pearson has moved to dismiss the appeal as to the December 9 ruling on the ground that Albrecht has not filed a brief in connection with that issue. We deny the motion as moot in light of our ruling.

DISCUSSION

Albrecht contends that, because he was acting as Ruth's guardian ad litem, the court lacked authority to order him to pay attorney's fees and costs to Pearson. We agree. Section 15657.03, which authorizes an action seeking elder abuse protection, provides that "[t]he prevailing party in an action brought under this section may be awarded court costs and attorney's fees, if any." (§ 15657.03, subd. (t).) As a general rule, and unless otherwise provided by statute, a prevailing party's attorney's fees may be awarded against the opposing or losing party only. It follows that, because a guardian ad litem is not a party to an action, a judgment may not be rendered for or against him or her. (*First Security Bank of Cal. v. Paquet* (2002) 98 Cal.App.4th 468, 475.)

Pearson argues, however, that in light of the court's finding that there was no evidence that Ruth consented to participate as a party, the court ordered Albrecht, as the "petitioning party," to pay Pearson's attorney's fees and costs on the ground that he had prosecuted the case as an individual. We disagree. First, the finding that Ruth did not authorize the action is irrelevant because the subject of an order appointing a guardian ad litem need not consent to bringing an action on his or her behalf. Indeed, "a guardian ad litem is appointed specifically to 'prosecute or defend' a suit." (*J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 964.) Second, by the court's own order, the court allowed Albrecht to prosecute the action as Ruth's guardian ad litem. And because a guardian ad litem is not a party to an action which he or she brings on behalf of the subject of the guardianship, the court was not authorized to award attorney's fees and costs against Albrecht.

DISPOSITION

The trial court order is reversed. Appellant Robert Albrecht is awarded his costs on appeal.

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ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.