FILED
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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 23-0300

DA 23-0300

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 50

IN THE MATTER OF THE ESTATE OF

REBEKAH GRACE BARSOTTI,

Deceased.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DP-22-127
Honorable Jason Marks, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Quentin M. Rhoades, Rhoades & Erickson PLLC, Missoula, Montana

For Appellee:

Julie R. Sirrs, Shelby K. Towe, Boone Karlberg P.C., Missoula, Montana

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Submitted on Briefs: December 6, 2023

Decided: March 12, 2024

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Angela Mastrovito (Mastrovito) appeals the order of the Fourth Judicial District Court, Missoula County, which denied her petition for allowance of her claim for reimbursement from the Estate of Rebekah Barsotti (the Estate) of costs assertedly incurred during Mastrovito's tenure as court-appointed guardian of Rebekah Barsotti (Rebekah). We affirm the District Court's denial of the claim.

¶2 *Did the District Court err by denying Mastrovito's claim for reimbursement?*

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Mastrovito is the mother of Rebekah, who tragically went missing in the Alberton, Montana area, in early July 2021. After an initial investigation, law enforcement concluded, based on the circumstances surrounding Rebakah's disappearance, that Rebekah likely perished in an accident in the Clark Fork River, which runs near Alberton. Law enforcement did not initially locate Rebekah, and expected that her body would not be found until spring of 2022. Mastrovito disagreed with this assessment, and moved to Montana from Virginia to facilitate her search for Rebekah.

¶4 On February 2, 2022, David Barsotti, Rebekah's husband, was appointed conservator of Rebekah's Estate by the District Court.[1] Prior to Rebekah's disappearance, David had been charged with, and acquitted of, Partner or Family Member Assault that arose from an incident in which David allegedly threatened to "blow off [Rebekah's]

[1] At that time of David's appointment, the estate consisted of Rebekah's vehicle, her interest in the house she owned jointly with David, bank accounts with balances of about $1,000, and various personal items.

hands" with a firearm. The issue of domestic abuse, including this charge and other allegations against David, was a significant point of contention in the relationship between David and Mastrovito, who blamed David for Rebekah's disappearance.

¶5 Mastrovito petitioned the District Court for appointment as guardian for Rebekah, as a protected person, representing that she was primarily motivated "to have greater ability to investigate Rebekah's disappearance" and that she would not target David. David acquiesced to Mastrovito's petition, and the District Court appointed Mastrovito as Rebekah's full guardian, stating "[t]his guardianship is expected to last until Rebekah is found." A couple months later, Mastrovito sued David for alleged verbal assault, and during her tenure as Rebekah's guardian, expended considerable time and resources in "an effort to raise domestic violence awareness." The District Court found that Mastrovito engaged in fundraising efforts as part of this effort, "including a GoFundMe site which raised over $24,000."

¶6 Rebekah's body was found along the shore of the Clark Fork River on May 17, 2022, and it was determined that she died from drowning. The District Court found that "[n]o action that Ms. Mastrovito took as Rebekah's guardian contributed to the recovery of her body." David was appointed as Personal Representative of Rebekah's estate the following day. In October 2022, Mastrovito filed a Creditor's Claim seeking compensation from the Estate for $140,688.45 that she claimed was expenses "associated with [her] service as guardian of the deceased." Mastrovito provided the following list of claimed costs:

ITEM	AMOUNT
Rental	$8,714.00
Utilities	$2,189.54
Legal Fees	$52,898.51
Professional Fees (SAR/ Private Investigators/ Forensic Pathologist)	$30,493.94
Parking Fees	$161.18
Storage Fees	$689.71
Meals/Travel/Lodging	$22, 832.96
Car Rental	$3,481.95
Vigil/Awareness of that Rebekah was missing	$1,089.97
Miscellaneous	$9,181.93
Computer purchase (My laptop died while in MT)	$990.00
Office Supplies	$1,929.76
Moving Expenses (shipping boxes home to VA)	$1,303.47
Blink Security Cameras for trailer in Missoula, MT	$350.00
USAA Renter's Insurance	$46.08
Verizon	$172.19
Utilities	$441.34
Rent	$1,034.00
Credit Card debt	$695.95
Toyota Financial Services	$1,121.64
Storage Unit	$1,121.64
Miscellaneous (Car fax)	$39.99
Overdraft on Rebekah's account	$88.24

Mastrovito did not provide dates, receipts, or any other information documenting these costs and, as the District Court noted, the claim "[did] not reflect the application of any funds from Ms. Mastrovito's involvement in separate fundraising efforts." David, as personal representative, opposed the petition.

¶7 Following an initial conference with the parties, the District Court ordered Mastrovito and David to submit briefing regarding the validity of Mastrovito's claimed expenses. The brief subsequently submitted by Mastrovito did not address the validity of

her claim or provide any supporting information about her asserted expenses, and instead argued only that she was entitled to a scheduling conference under the Montana Rules of Civil Procedure.

¶8 On May 4, 2023, the District Court entered an order denying the claim on three separate and dispositive reasons: 1) Mastovito's appointment as Rebekah's guardian was "retroactively improper" because it occurred after Rebekah's death; 2) the expenditures were not "reasonable under the circumstances" because many of them, such as Mastovito's "advocacy activities," were not necessary for the protection of Rebekah, nor did they directly benefit her; and 3) the Claim lacked "sufficient support and substantiation" because Mastrovito did not provide "dates, specific itemization, or explanation" for any of the claimed expenses. Mastrovito appeals.

STANDARD OF REVIEW

¶9 "We review a district court's findings of fact to determine whether they are clearly erroneous and its conclusions of law for correctness." *In re Guardianship & Conservatorship of A.M.M.*, 2016 MT 213, ¶ 10, 384 Mont. 413, 380 P.3d 736. "A finding is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if our review of the record convinces us that the district court made a mistake." *Patton v. Patton*, 2015 MT 7, ¶ 18, 378 Mont. 22, 340 P.3d 1242. Additionally, "[w]e exercise de novo review to determine whether the court correctly interpreted and applied the relevant statutes." *In re Estate of: M.D.*, 2017 MT 22, ¶ 9, 386 Mont. 234, 388 P.3d 954.

DISCUSSION

¶10 *Did the District Court err by denying Mastrovito's claim for reimbursement?*

¶11 Mastrovito contends the District Court erred by reasoning that, because Rebekah had already died at the time of her appointment as Rebekah's guardian, the appointment was "retroactively improper." She argues that at the time of her appointment in February 2022, Rebekah had not yet been declared or determined to be deceased, which did not occur until after her body was located in May 2022. Citing § 72-1-108(1), MCA ("[d]eath occurs when an individual is determined to be dead" pursuant to statutory process), Mastrovito argues her appointment was not improper and therefore, she was entitled to "full reimbursement of her reasonable and necessary costs as guardian." She also argues the District Court deprived her of her right to an evidentiary hearing wherein she would have "the opportunity to present evidence in support of her claim."

¶12 Mastrovito's argument that Montana law permits appointment of a guardian or conservator for a missing person to assist in the management of that person's affairs, and is not *void ab initio* as a matter of law if the person is later found to have been deceased during that time, is not without merit. However, there are other dispositive issues in this case that alleviate the need to address that issue here. As the District Court further observed in its Order, "in the hypothetical scenario where the guardianship was proper, plus the costs incurred were necessary and reasonable, Ms. Mastrovito still would have had to present the costs in her Creditor's Claim to the satisfaction of the Court. She did not do so."

¶13 A guardian is to act "only as necessary to promote and protect the well-being of the person." Section 72-5-306, MCA. Section 72-5-321(4), MCA, provides that a guardian

"is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances." We have held that "a guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust" provided that they have managed the estate "frugally and without waste." *Grauman v. Chambers*, 122 Mont. 31, 36, 198 P.2d 629, 632 (1948).

¶14 Mastrovito submitted the abovementioned list of costs, claiming immoderate amounts with only generalized descriptions, such as $2,189.54 for "utilities," $22,832.96 for meals and travel, $695.95 for "credit card debt," $52,898.51 for "legal fees," and $9,181.93 for "miscellaneous." Following this submission, the District Court provided a further opportunity for Mastrovito to provide support for her claim but, in the words of the District Court, "[s]he did not do so. Her Creditor's Claim was wholly unsubstantiated." Without supporting evidence, it is impossible for a court to determine the validity and reasonableness of claimed costs. We conclude the District Court did not err by denying Mastrovito's claim on the ground that it was not sufficiently supported to establish reasonable reimbursable costs.

¶15 Further, we are not persuaded by Mastrovito's contention that the District Court's decision to not grant a Rule 16 scheduling conference "deprived Mastrovito of her right to a fair evidentiary hearing on the merits." The District Court granted Mastrovito an additional opportunity to provide information in support of the nondescript amounts she had submitted for reimbursement, so that she could facially satisfy the requirements of law, discussed above. Had she done so, a hearing to test and determine the validity and

reasonableness of her requests would have been appropriate. Here, however, Mastrovito's claim did not even satisfy this threshold, leading the District Court to correctly reason that a further hearing could not "change the facts" of a facially insufficient claim.

¶16 Affirmed.

/S/ JIM RICE

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR