

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: The Guardianship
of Leocadia Bombrys

Court of Appeals No. L-08-1451

Trial Court No. 2006 GDN 1926

DECISION AND JUDGMENT

Decided: June 30, 2009

* * * * *

Gary E. Horn, for appellant.

Terrance K. Davis and Nathan A. Hall, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant brings this accelerated appeal from an order of the Lucas County Court of Common Pleas, Probate Division, awarding attorney fees following remand.

{¶ 2} The details of this matter are more fully explained in our original consideration in *In the matter of the guardianship of Bombrys*, 6th Dist No. L-08-1069, 2008-Ohio-3851.

{¶ 3} Appellant, Suzanne Pietras, and appellee, Carolynn Loch, are sisters, daughters of Leocadia Bombrys. In 2006, both sisters applied to be guardian of the person of their mother. The matter was referred to a magistrate who, following extensive hearings, determined that, given the enmity between the applicants, an independent guardian of the person should be appointed. Neither party objected to the magistrate's decision, which was adopted by the court.

{¶ 4} After the guardianship decision, appellee applied for an award of attorney fees incurred in her unsuccessful bid to be appointed guardian. Appellant responded with a memorandum in opposition to the award or, in the alternative, that attorney fees be awarded to both unsuccessful applicants for guardian.

{¶ 5} When, without a hearing, the trial court awarded both parties fees, appellant appealed. On consideration, we held that absent the specific demonstration that an award of attorney fees was beneficial to the estate or the ward, it was an abuse of discretion to award attorney fees. *Id* at ¶ 21. Since there was nothing in the record demonstrating such specific benefits, we reversed the award and remanded for further proceedings. *Id* at ¶ 23-24.

{¶ 6} On remand, the trial court conducted a hearing on the application for attorney fees, found that these legal expenses were of benefit to the ward and, again, awarded both parties attorney fees.

{¶ 7} From this order, appellant again appeals, arguing in a single assignment of error that there was no specific demonstration of a benefit to the estate or the ward.

{¶ 8} "Absent a specific demonstration that the actions are beneficial to the estate or ward, a guardian may not be reimbursed from the estate for legal expenses incurred in proceedings relating solely to the determination of whether the guardian may serve in that capacity." *In re Guardianship of Wonderly* (1984), 10 Ohio St.3d 40, 42.

{¶ 9} In essence, appellant argues that the trial court had insufficient evidence upon which to base its finding that the parties' contest for the guardianship of Leocadia Bombrys was of direct benefit to her.

{¶ 10} An appellate court will not set aside the decision of a lower court when that court's judgment is supported by some competent, credible evidence. *Vogel v. Wells* (1991), 57 Ohio St.3d 91, 96. To prevail, then, appellant must show that there was no evidence upon which the trial court could have found a demonstrable benefit to this ward. See, id.

{¶ 11} In this matter, however, appellant has not provided us with a transcript of the hearing on the application for fees, nor has she provided us with an alternative App.R. 9 substitute. Appellant bears the burden of demonstrating error by reference to matters in the record. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus * * * the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Labs.* (1980), 61 Ohio St.2d 197, 199.

{¶ 12} Consequently, presuming the regularity of the proceedings below, appellant's sole assignment of error is found not well-taken.

{¶ 13} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Probate Division, is affirmed and appellant is ordered to pay costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Richard W. Knepper, J.
CONCUR.

JUDGE

Judge Richard W. Knepper, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.