COURT OF APPEALS
DECISION
DATED AND FILED

June 5, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP152 **Cir. Ct. No. 2010GN53**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN THE MATTER OF THE GUARDIANSHIP AND PROTECTIVE PLACEMENT OF ELIZABETH L.:

MARYBETH LIPP,

APPELLANT,

RICHARD L.,

CO-APPELLANT,

V.

OUTAGAMIE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

RESPONDENT.

APPEAL from orders of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Reversed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PETERSON, J. MaryBeth Lipp and Richard L., both pro se, appeal orders placing their mother, Elizabeth L., under guardianship and protective placement. They argue the circuit court lost competency to act on the petitions, the court erred by invalidating the 2009 power of attorney documents, and Elizabeth's adversary counsel and guardian ad litem were ineffective. Lipp also contends the court and social worker failed to act in Elizabeth's best interests and the court deprived Lipp of her constitutional right to custody of her mother.

¶2 We conclude the circuit court lost competency to act on the guardianship petition by failing to complete the hearing within the statutorily mandated time limitation. We therefore reverse the guardianship order. Because the protective placement order is dependent on the guardianship's incompetency adjudication, we also reverse the protective placement order.

BACKGROUND

¶3 Elizabeth has had progressive dementia since at least 2006. In January 2009, Richard transferred $28,000 from one of Elizabeth's accounts to his account. In February 2009, Richard and Lipp took Elizabeth to an attorney, and Elizabeth executed a durable power of attorney that named Richard and another son, Dennis L., as her agents. Elizabeth also executed a health care power of attorney that named Richard as her agent, and her daughter, Marcia Lynch, as an alternate agent.

¶4 On June 24, 2010, the County petitioned for temporary and permanent guardianship of Elizabeth's person and estate. The petition alleged that Elizabeth was incompetent as a result of dementia and in need of a guardian of the person and estate. The petition also alleged Elizabeth was being financially exploited by family members.

¶5 On July 30, the County filed an amended permanent guardianship petition, nominating Lynch as the guardian of Elizabeth's person. The County also filed a petition for protective placement.

¶6 On August 10, the court held a hearing on the petitions for permanent guardianship and protective placement. Dr. Thomas Altepeter testified Elizabeth suffered from dementia and was incompetent and in need of a guardian of her person and estate. He also recommended protective placement.

¶7 After Altepeter's testimony, six other witnesses testified. Testimony was taken over the course of five hearings and finally concluded on October 21, 2010.

¶8 The court found Elizabeth incompetent and in need of a guardian of her person and estate. The court also invalidated Elizabeth's 2009 power of attorney documents after finding that Elizabeth had not been competent to execute those documents, and that her agent, Richard, had been financially abusing her. The court appointed Lynch as guardian of Elizabeth's person and Elizabeth's granddaughter, Laura Bell, as guardian of her estate. Finally, the court ordered protective placement.

DISCUSSION

¶9 On appeal, Lipp and Richard argue the circuit court lost competency to act on the guardianship petition. A court's competency is implicated "when the failure to abide by a statutory mandate is 'central to the statutory scheme.'" ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶10, 273 Wis. 2d 76, 681 N.W.2d 190 (citation omitted).

¶10 Specifically, Lipp and Richard contend the court lost competency by failing to hear the guardianship petition within the statutorily mandated ninety-day period. *See* WIS. STAT. § 54.44(1) (guardianship petition "shall be heard within 90 days after it is filed").[1] In this case, the guardianship petition was filed on June 24, 2010, and the court held five hearings on the petition. Although the first and second hearings were within the ninety-day period, the last three were held outside the time limit. Lipp and Richard argue the court lost competency because the hearings were not completed within ninety days.

¶11 The County responds that Lipp and Richard failed to make any competency objections in the circuit court and therefore cannot raise their objections for the first time on appeal. Although the County is correct that, generally, a challenge to a court's competency is waived if not raised in the circuit court, *see* ***Mikrut***, 273 Wis. 2d 76, ¶30, the ***Mikrut*** court explicitly refrained from determining whether the waiver rule could be applied to noncompliance with statutory time limits, ***id.***

¶12 After ***Mikrut***, the court in ***Sheboygan County Department of Social Services v. Matthew S.***, 2005 WI 84, ¶37, 282 Wis. 2d 150, 698 N.W.2d 631, determined the waiver rule could not be applied to a court's failure to hold a hearing on a termination of parental rights petition within the statutorily mandated forty-five days. The court concluded that, as a result of the time violation, the circuit court lost competency to act on the petition. ***Id.***, ¶¶30, 37. Based on ***Mikrut*** and ***Matthew S.***, we must conclude Lipp and Richard could not waive a

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

competency challenge centered on the court's failure to hear the guardianship petition within the statutorily mandated ninety days.

¶13 The County, however, argues that, even though the hearing on the petition was not completed within ninety days, the court did not lose competency because WIS. STAT. § 54.44(1) does not require the hearing to be "heard and completed" within the time limit. Rather, the County asserts it is sufficient that the hearing began within the time limitation.

¶14 We disagree. WISCONSIN STAT. § 54.44(1)'s mandate that the petition "shall be heard within ninety days" plainly contemplates the hearing's completion within that period. *See* ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 ("If the meaning of the statute is plain, we ordinarily stop the inquiry and apply that meaning."). Although there are provisions that allow some statutory time limits to be extended for "good cause," there is no such provision for guardianships. For example, the protective placement statute, which uses identical "heard within" language, allows for a one-time forty-five day extension of the time limit. *See* WIS. STAT. § 55.10(1). If the legislature had intended to allow a guardianship hearing to go beyond the ninety-day limit, it would have provided for an extension of the time limit. *See* ***Kalal***, 271 Wis. 2d 633, ¶44. In fact, if "heard within" did not mean completion, the ninety-day time limit would be rendered meaningless and a guardianship case could be continued and extended repeatedly.

¶15 The County offers additional arguments in support of why we should determine the court did not lose competency. It contends no one was prejudiced by the delay, Lipp and Richard provided lengthy testimony causing delay, and the case was complicated and involved multiple parties who were all represented by

counsel. These are all good policy arguments for why there ought to be a provision allowing for the extension of time limits on a guardianship hearing. But these arguments are legislative considerations. As a court, we are bound by the statute as written.

¶16 Because the circuit court failed to complete the guardianship hearing within ninety days, the court lost competency to act on the petition. We therefore reverse the guardianship order.[2] Additionally, because the protective placement order is dependent on the guardianship's now-vacated incompetency adjudication, *see* WIS. STAT. § 55.06, we must also reverse the protective placement order.

¶17 Because we reverse both orders, we need not address Lipp's or Richard's remaining arguments. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed); ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground"). However, we observe that, in the conclusions of Lipp's and Richard's briefs, Lipp requests attorney fees and Richard requests reimbursement for all legal costs. Other than Richard's single citation to WIS. STAT. § 244.44,[3] the parties provide no legal authority or argument in support of their requests, and we will not consider them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider undeveloped arguments).

[2] Because the guardianship order is reversed, other determinations that were included in the order, such as the court's invalidation of the 2009 power of attorney documents, are also reversed.

[3] WISCONSIN STAT. § 244.12 provides, "Except as otherwise provided in the power of attorney, an agent is entitled to reimbursement of any expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances."

By the Court.—Orders reversed.

Not recommended for publication in the official reports.