



Missouri Court of Appeals

Southern District

Division One

IN THE MATTER OF PEGGY GONSALVES,)
an incapacitated and disabled person.) No. SD36795
) FILED: December 17, 2020

APPEAL FROM THE CIRCUIT COURT OF DENT COUNTY

Honorable Nathan T. Kelsaw, Judge

APPEAL DISMISSED

Concerned by Peggy Gonsalves' failing faculties and finances, her son Steven obtained appointment as guardian and custodian over vigorous objection by grandchild Arika despite her admitted self-dealing under a power of attorney.¹

Arika appeals only the guardianship, claiming statutory priority for that and raising other complaints. As authority for her appeal, she cites RSMo § 472.170.1, under which "an appeal would be limited to challenging the probate court's ruling that [Peggy] was incapacitated." *Estate of Whittaker*, 261 S.W.3d 615, 619 (Mo.App. 2008). Arika's points challenge other things, so we must dismiss.

Background²

Peggy needed help in June 2019. She'd lost her caregiver and place to live. She suffered dementia, was blind, almost 91, and had seizure disorder, diabetes, hypertension, hearing loss, chronic pain, a heart condition, and other maladies.

¹ We use first names for clarity and convenience; no disrespect or familiarity is intended. Respondents filed no briefs, so we proceed without benefit of their perspectives.

² Described as we must view the evidence, most favorably to the judgment, ignoring all contrary evidence and inferences. *Estate of L.G.T.*, 442 S.W.3d 96, 100 (Mo.App. 2014).

She took 13 medications. She fell more frequently. She could not care for herself. Her blind pension and social security totaled \$2,100 monthly.

Having financially supported Arika “for years,” Peggy moved in with Arika’s family, supposedly short-term. They were to split household costs evenly, but Peggy actually paid much more – all the rent (\$575), Arika’s cable and phone bills, \$200-300 monthly for food, \$400 for car repairs, etc. Arika took over Peggy’s finances and drew checks on Peggy’s account, including for cigarettes (Peggy didn’t smoke), gas (Peggy didn’t drive), and lottery tickets. When the checking account ran dry, Arika took Peggy to a payday lender to get a high-interest loan. Peggy paid Aaron’s for Arika’s rented appliances. Arika switched to DISH TV in Peggy’s name and at Peggy’s expense although Peggy was blind.

Other relatives also were in Peggy’s pocket. Her daughter (Arika’s mother) borrowed living expenses while she pursued a disability claim. Peggy’s sister previously got checks. Steven kept reminding family members that “Mom can’t keep paying for your cars and for everything else.” He checked Peggy’s bank records in July 2019, with her approval, and “it was clear that something was not right ... too much money was moving.” He spoke with Peggy, who seemed not to grasp the situation’s gravity. Her 401(k) balance dropped 90% in two years (\$60,000 to \$6,300), then even further until Arika withdrew and spent the last \$900 in August 2019.

The next month, Peggy signed a durable power of attorney (a generic form citing West Virginia statutes) giving Arika broad powers over Peggy’s affairs, including checkwriting, access to bank accounts, and contracting on Peggy’s behalf. Peggy’s banker notarized the document, but would not honor it or let Arika withdraw money, so Arika had Peggy close that account and open one at another bank. Arika bounced 3-4 checks totaling \$800 including overdraft fees. Unbeknown to Peggy, several credit cards were opened in her name.

Witnesses described conditions at Arika’s house as “horrific,” not habitable, and a health hazard to Peggy, who sustained fractures when she fell down Arika’s

stairs. A Protective Services investigator³ came to the hospital on December 27. Peggy asked him “to open an investigation, because she had concerns that she was being taken advantage of by Arika and Casey [Arika’s husband].”

Arika kept spending Peggy’s money although Peggy no longer lived there. Steven filed for emergency guardianship and conservatorship which, after a hearing, the court ordered and decreed Arika’s power of attorney “of no force or effect” pending further proceedings. Two weeks later, Arika got Peggy’s next pension check and spent it.⁴ Casey filed repeated motions, alone or jointly with Arika, asking the court to reinstate Arika’s power of attorney.

After various procedural delays prompted by Arika, and based on evidence of Peggy’s total incapacity and disability due to dementia, blindness, and other conditions, the court entered the final judgment that Arika now appeals, Peggy’s counsel having reported that Peggy did not oppose Steven becoming her guardian.⁵

³ Department of Health and Senior Services, which had received several hotlines about Peggy’s situation.

⁴ We quote Arika’s later testimony:

Q. When was this emergency guardianship granted?

A. The 21st.

Q. When did her check come in for her February 1 pension payment?

A. On the 3rd, I guess.

* * *

Q. Did you turn it over to the conservator, the emergency conservator?

A. No. We used it to pay rent for that following month.

* * *

Q. So the rent would have been for February, correct?

A. Right.

Q. After she had moved out, correct?

A. Yes.

* * *

Q. You took her money in February and used it for the bills at your residence. Is that accurate?

A. Yeah.

⁵ Peggy, who attended hearings in January and February, was in a skilled nursing facility under the emergency guardianship and did not attend court after the COVID epidemic hit.

Analysis

Arika raises five points on appeal. The first two challenge waivers of Peggy's rights to a jury trial and to attend certain hearings. Point 3 alleges Peggy's counsel was ineffective. Point 4 complains that Peggy was not sworn as a witness. Finally, in Point 5, Arika claims a statutory priority over Steven for appointment as guardian.

The statute Arika invokes, § 472.170.1, does not support these challenges.⁶ “[R]eading the plain language of this section, an appeal would be limited to challenging the probate court’s ruling that [Peggy] was incapacitated.” **Whittaker**, 261 S.W.3d at 619. See also **Matter of Walker**, 875 S.W.2d 147, 149-51 (Mo.App. 1994)(“the extent of a ward’s disability can be appealed”).⁷

Arika cannot use § 472.170.1 to bootstrap standing to assert points outside the statute’s scope. **Whittaker**, 261 S.W.3d 619. “Without statutory authority, no right to appeal exists.” **Id.** at 617. Appeal dismissed.⁸

DANIEL E. SCOTT, J. – OPINION AUTHOR

NANCY STEFFEN RAHMEYER, P.J. – CONCURS

WILLIAM W. FRANCIS, JR., J. – CONCURS

⁶ Arika does not, and cannot, invoke the probate code’s general appeal statute, § 472.160, because she is not an “interested person.” See **Whittaker**, 261 S.W.3d at 617-18. Further, even if Arika was interested, she fails to show how *she* was aggrieved by anything of which she complains. See **Matter of Lawson**, 496 S.W.3d 620, 622-23 & n.3 (Mo.App. 2016).

⁷ Why such narrow focus? Perhaps because § 472.170.1 lets, among others, “any reputable citizen of the county” bring such an appeal. When you allow anyone (perhaps everyone) to appeal – with or without any personal interest, aggrievement, or standing in the usual legal sense – it seems wise to limit their sphere of complaint.

⁸ We need not further address any point. **Id.** at 619. Suffice it to say all would fail anyway. **Whittaker** and **Walker** defeat Point 5, and Arika brought no Point 1-4 complaint to the trial court’s attention before raising them on appeal. “It is a fundamental rule that contentions not put before the trial court will not be considered on appeal. An appellate court will not convict a trial court of error on an issue which was not put before it to decide.” **Walker**, 875 S.W.2d at 152 (internal quotation marks omitted). Individual points suffer additional failings as well.