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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/27/09
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BY: DN

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Guardianship) 1 CA-CV 08-0561
and Conservatorship for:)
) DEPARTMENT A
MICHAEL THOMAS PETRAMALA,)
) **MEMORANDUM DECISION**
An Adult.)
) (Not for Publication -
MICHAEL THOMAS PETRAMALA, an) Rule 28, Arizona Rules of
Adult,) Civil Appellate Procedure)
)
Petitioner-Appellant,) **FILED 10-27-2009**
)
v.)
)
MARICOPA COUNTY PUBLIC FIDUCIARY,)
as Guardian and Conservator of)
Michael T. Petramala; JUDITH)
MORSE, Guardian ad Litem for)
Michael T. Petramala,)
)
Respondents-Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. PB2006-002295

The Honorable Karen L. O'Connor, Judge

AFFIRMED IN PART; VACATED IN PART

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PER CURIAM

¶1 Petitioner-Appellant Michael Thomas Petramala appeals from a superior court order approving action taken by Mr. Petramala's conservator, Respondent-Appellee Maricopa County Public Fiduciary ("MCPF"), to resolve pending legal actions involving Mr. Petramala. For the following reasons, we affirm the order in part and vacate in part.

Factual and Procedural Background¹

¶2 In December 2002, Mr. Petramala attended a party where, according to his allegations, several people assaulted him. Mr. Petramala filed a number of lawsuits against the persons involved in the alleged assault. Attorney Robert Lewis was hired to represent several of the defendants in Mr. Petramala's actions.

¶3 Mr. Petramala then started a campaign of harassment against the guests at the party, their family members, and their

¹ Our earlier memorandum decision, *In re Petramala*, 1 CA-CV 07-0285 (Ariz. App. April 8, 2008) (mem. decision), detailed the superior court's appointment of a guardian and conservator for Mr. Petramala; we include those facts here as relevant to the issues in this appeal.

lawyers, including Mr. Lewis. This harassment included filing numerous and repeated lawsuits against these individuals, subpoenaing their banking and other personal records, and repeatedly calling and visiting these individuals and their employers and families. Mr. Petramala also sent letters to the State Bar concerning Mr. Lewis and his law firm.

¶14 Mr. Petramala ignored a superior court order that he not call or harass these individuals. Ultimately, the superior court dismissed Mr. Petramala's lawsuits as a sanction for his behavior. Mr. Petramala then initiated new legal proceedings and continued his harassment. The courts in these various proceedings ordered Mr. Petramala to pay sanctions totaling between \$30,000 and \$50,000. In addition, Judge Barbara Mundell, Maricopa County Superior Court Presiding Judge, found Mr. Petramala to be a "vexatious litigant" and ordered that he could not file any more lawsuits without her prior approval.

¶15 However, because Mr. Petramala's harassment continued, Mr. Lewis filed an action on behalf of himself, his law firm, and his clients seeking a preliminary injunction against harassment prohibiting Mr. Petramala from continuing his abusive conduct. Maricopa County Superior Court Judge Paul A. Katz granted Mr. Lewis's request for an injunction. Mr. Petramala nevertheless continued his harassment in violation of the court order.

¶16 Judge Katz then appointed Respondent-Appellee Judith A. Morse as Mr. Petramala's guardian ad litem ("GAL") and authorized Ms. Morse to file a guardianship and/or mental health petition. Ms. Morse, acting as Mr. Petramala's GAL, filed a Petition for Permanent Appointment of Guardian and Conservator, asking the court to appoint MCPF to serve as Mr. Petramala's guardian with mental health authority and as his conservator. A jury found that Ms. Morse had proven by clear and convincing evidence that Mr. Petramala was in need of a guardian and the court appointed MCPF as his guardian with mental health authority and his conservator.

¶17 In spring 2008, the superior court held a hearing on Mr. Petramala's petition to terminate his guardianship and his alternative petition asking the court to order MCPF to provide information to him regarding the lawsuits pending at the time the court appointed MCPF to assist him. At the hearing, MCPF's counsel told the court that after discussing the matter with Mr. Petramala, it had dismissed the lawsuits that were pending when it began serving as Mr. Petramala's guardian. Counsel admitted that MCPF had failed to obtain prior approval for the dismissals, but suggested that failure could be cured if the court subsequently approved the dismissals. Mr. Petramala's counsel agreed that MCPF should seek court approval regarding the previous dismissal of Mr. Petramala's personal injury case.

The court directed MCPF to file a request for approval of the dismissals.

¶8 On May 5, 2008, MCPF requested that the court approve the dismissal of four civil cases involving Mr. Petramala. We briefly summarize MCPF's description as follows:

Michael Petramala v. American Family Mutual Insurance Company, Maricopa County Superior Court Cause No. CV 2006-004115

Mr. Petramala brought claims against American Family for bad faith, breach of contract, and declaratory judgment arising out of American Family's refusal to provide insurance coverage to Mr. Petramala for incidents that occurred before the effective date of his insurance policy.

Michael Petramala v. Jan Neary, Maricopa County Superior Court Cause No. CV 2006-004114

Mr. Petramala brought a suit on behalf of American Family's shareholders against one of American Family's insurance adjusters, alleging she had conspired with Mr. Lewis in a scheme to pay non-policy holders who are violent criminals.

Robert K. Lewis, et al. v. Michael Petramala, Maricopa County Superior Court Cause No. CV 2005-051890 and Arizona Court of Appeals Case No. 1 CA-CV 06-0041

Mr. Lewis filed an action on behalf of himself, his law firm, and his clients seeking an injunction against harassment prohibiting Mr. Petramala from continuing his abusive conduct. The court granted the request. Mr. Petramala appealed from the preliminary injunction. He filed his opening appellate brief and the appellees moved to dismiss the appeal. The appellate court stayed the appeal pending resolution of the guardianship proceedings and lifted the stay once MCPF was appointed Mr. Petramala's guardian.

Petramala v. Fitzgerald, et al., Maricopa County Superior Court Cause No. CV 2003-002253, consolidated with Michael Petramala v. Lacie Reed, et al., Maricopa County Superior Court Cause No. CV 2004-015460, and Arizona Court of Appeals Case No. 1 CA-CV 06-0554

The court dismissed Mr. Petramala's claim against defendant Reed and awarded her costs and attorneys' fees. Mr. Petramala and the remaining defendants filed a stipulation to dismiss the remainder of the case. Mr. Petramala appealed and filed his opening appellate brief.

MCPF represented there were serious questions concerning the legitimacy of Mr. Petramala's claims or defenses and that, as a result, MCPF had concluded that no good faith basis existed to continue the cases. MCPF noted that the cases also presented a risk of adverse judgments or sanctions against Mr. Petramala, which MCPF was able to avoid by concluding the cases. MCPF claimed Jerry Kappeler, the person assigned by MCPF to serve as Mr. Petramala's guardian, and Randall Garczynski of the Maricopa County Attorney's Office had discussed three of the matters with Mr. Petramala prior to dismissal and advised him that MCPF intended to conclude the cases.

¶19 Mr. Petramala disputed much of MCPF's description of the dismissed cases and opposed the request, arguing that the record was insufficient to allow the court to make the requisite determination that MCPF had acted in good faith and with reasonable prudence. He requested the court conduct a hearing on that issue. Without conducting a hearing, the court approved the dismissals. Mr. Petramala timely appealed.

¶10 We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(J) (2003).

Issue

¶11 Mr. Petramala argues the superior court's refusal to conduct a hearing on MCPF's request for approval violated his First Amendment right to redress and his due process rights under the Fourteenth Amendment because the court did not provide him a meaningful opportunity to be heard. He also contends the court erred in approving MCPF's dismissals of his pending lawsuits because Arizona law required MCPF to obtain the court's approval before dismissing the cases.

Discussion

¶12 The superior court approved MCPF's compromise of four lawsuits involving Mr. Petramala: three claims not involving personal injury or wrongful death (the "Non-Injury Claims")² and one personal injury claim³ (the "Injury Claim").⁴ Mr. Petramala challenges that approval, arguing the court did not comply with

² *Michael Petramala v. American Family Mutual Insurance Company*, Maricopa County Superior Court Cause No. CV 2006-004115; *Michael Petramala v. Jan Neary*, Maricopa County Superior Court Cause No. CV 2006-004114; and *Robert K. Lewis, et al. v. Michael Petramala*, Maricopa County Superior Court Cause No. CV 2005-051890 and Arizona Court of Appeals Case No. 1 CA-CV 06-0041.

³ *Petramala v. Fitzgerald, et al.*, Maricopa County Superior Court Cause No. CV 2003-002253, consolidated with *Michael Petramala v. Lacie Reed, et al.*, Maricopa County Superior Court Cause No. CV 2004-015460, and Arizona Court of Appeals Case No. 1 CA-CV 06-0554

⁴ Although Mr. Petramala asserts that all of his civil cases arise from a personal injury claim, we independently determine which of his cases actually do arise from a personal injury.

the requirements of due process and lacked authority to subsequently approve the dismissals.

¶13 Arizona law sets forth a conservator's powers with respect to legal claims by or against a ward:

C. A conservator, acting reasonably in efforts to accomplish the purpose of the appointment, **may act without court authorization or confirmation to:**

. . . .

19. Pay or contest any claim, **settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible except that personal injury or wrongful death claims shall be compromised pursuant to subsection D of this section.**

. . . .

D. **A conservator may act with court approval to compromise a personal injury or wrongful death claim for a protected person.** The conservator may act with court approval to release an alleged tortfeasor if the release is in the best interest of the protected person. If the conservator obtains an order of approval for compromise from a court of competent jurisdiction, the compromise may be in exchange for a lump sum amount or an arrangement that defers the receipt of part or all of the consideration for the compromise until after the protected person reaches majority and may involve a structured settlement or the creation of a trust on the terms that the court approves for any protected person.

A.R.S. § 14-5424(C)(19), (D) (2005) (emphasis added).

¶14 Thus, although MCPF was not required to obtain the court's authorization or confirmation to settle the Non-Injury Claims, the statute obliged it to "act with court approval" to compromise the Injury Claim. A.R.S. § 14-5424(D).⁵ Mr. Petramala argues that this provision required MCPF to obtain the court's approval prior to agreeing to dismiss the Injury Claim and its failure to obtain such approval voids the dismissal. By approving MCPF's stipulation to dismiss the Injury Claim subsequent to the dismissal, the superior court impliedly ruled that A.R.S. § 14-5424(D) does not require a conservator to obtain the court's approval before compromising a personal injury or wrongful death claim. We resolve questions of law involving statutory construction de novo. *Forszt v. Rodriguez*, 212 Ariz. 263, 265, ¶ 9, 130 P.3d 538, 540 (App. 2006).

¶15 The court's primary goal in interpreting a statute is to determine and give effect to the intent of the legislature. *In re Estate of Jung*, 210 Ariz. 202, 204, ¶ 12, 109 P.3d 97, 99 (App. 2005). In determining the legislature's intent, we initially look to the language of the statute itself. *Id.* "If the language is clear, the court must 'apply it without

⁵ MCPF argues A.R.S. § 14-5424(D) does not apply to a conservator's decision to compromise the appeal of a ward's claim. We reject this argument, as the statute grants a conservator authority to compromise a ward's "claim" and does not restrict this power to resolve lawsuits pending in the superior court.

resorting to other methods of statutory interpretation' unless application of the plain meaning would lead to impossible or absurd results." *Bilke v. State*, 206 Ariz. 462, 464, ¶ 11, 80 P.3d 269, 271 (2003) (quoting *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994)). However, if the legislative intent is not clear from the statute, we consider other factors such as "the context of the statute, the language used, the subject matter, its historical background, its effects and consequences, and its spirit and purpose." *Estate of Jung*, 210 Ariz. at 204, ¶ 12, 109 P.3d at 99.

¶16 Section 14-5424 allows a conservator to act without court authorization or confirmation to settle all claims except personal injury or wrongful death claims, which it states a conservator "may act with court approval to compromise." A.R.S. § 14-5424(D). As the word "may" modifies "act" and not "with court approval," the statute authorizes, but does not compel, a conservator to compromise a ward's personal injury or wrongful death claim. *City of Chandler v. Ariz. Dep't of Transp.*, 216 Ariz. 435, 438-39, ¶ 10, 167 P.3d 122, 125-26 (App. 2007) (stating use of the word "may" generally indicates permissive intent). Nevertheless, the statute clearly requires that a conservator obtain court approval when compromising a ward's personal injury or wrongful death action, as it requires that the conservator act "with court approval." The legislature

allowed a conservator to compromise other claims by or against the ward's estate without court authorization or confirmation, but specifically excluded personal injury and wrongful death claims from that provision, and instead required court approval for those settlements. Thus, when read as a whole and in context, *Hanson Aggregates Ariz., Inc. v. Rissling Constr. Group. Inc.*, 212 Ariz. 92, 94, ¶ 6, 127 P.3d 910, 912 (App. 2006) (stating that when interpreting a statute, courts are required to read the statute as a whole and give meaningful operation to all of its provisions and ensure an interpretation that does not render meaningless other parts of the statute), it is clear that the legislature intended to limit the conservator's authority in personal injury and wrongful death cases. Accordingly, MCPF was required to obtain the superior court's approval of its stipulation to dismiss the Injury Claim.

¶17 Mr. Petramala insists that MCPF was required to obtain this approval prior to dismissing the Injury Claim and that its failure to do so voids the dismissal. We disagree, as the statute contains no requirement that a conservator obtain approval before compromising a ward's personal injury or wrongful death action. If the legislature had so intended, it would have explicitly conditioned a conservator's compromise of such actions on *prior* court approval, not merely authorized compromise *with* court approval. We decline to read into the

statute a restriction not put there by the legislature. *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965) (“[C]ourts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself.”). Thus, a conservator need not obtain the superior court’s approval prior to its compromise of a personal injury or wrongful death claim, and MCPF’s failure to obtain such prior approval does not render the dismissal of the Injury Claim void. Instead, the dismissal obtained without approval merely is voidable, in that it remains subject to being vacated until approved by the court pursuant to the statute.

¶18 We now turn to whether the court properly approved MCPF’s stipulation to dismiss the Injury Claim. We are guided by the Arizona Supreme Court’s decision in *In re Guardianship of Sorrells*, in which it declined to overturn the probate court’s subsequent approval of a conservator’s compromise of a ward’s claim. 58 Ariz. 25, 40, 117 P.2d 96, 102 (1941). In that case, the guardian appointed to oversee the estate of a minor failed to pursue a contract claim belonging to the minor. *Id.* at 32-33, 117 P.2d at 99. When the minor achieved majority, he challenged the guardian’s final account and report on the grounds that the guardian had improperly dismissed the claim and caused a loss to his estate. *Id.* at 33, 117 P.2d at 99. The court conducted a jury trial, at which the guardian offered

evidence that because the minor's claim appeared to be uncollectable, she had arranged a compromise agreement that resulted in an increase to the minor's estate greater than the amount the minor could have received from any judgment on his claim. *Id.* at 39-40, 117 P.2d at 102. After hearing the evidence and considering the jury's answers to several special interrogatories regarding the subject, the trial court approved the settlement. *Id.* at 34-35, 40-41, 117 P.2d at 100, 102.

¶19 The Arizona Supreme Court wrote that, if the probate court had approved the settlement in advance, it could not be questioned unless there was an allegation of fraud. *Id.* at 40, 117 P.2d at 102. Because the guardian had not obtained such approval, however, the probate court could subsequently approve the settlement only if the guardian showed that she acted in good faith and with reasonable prudence in reaching the compromise. *Id.* The supreme court determined that ample evidence supported the probate court's finding that the minor's estate did not suffer any loss by reason of the guardian's compromise and that the guardian had acted in good faith and with reasonable prudence. *Id.* at 39-41, 117 P.2d at 102.

¶20 In this case, the superior court did not hold a hearing to determine whether MCPF acted in good faith and with reasonable prudence in compromising the Injury Claim. The parties provided the court contested descriptions of the

lawsuit, but MCPF did not offer any evidence to allow the court to evaluate its merits or the reasonableness of MCPF's decision to settle the case. MCPF did not offer any testimony from Mr. Kappeler or Roger Coventry, the persons assigned by MCPF to serve as Mr. Petramala's guardian and conservator, respectively, regarding the reasons for MCPF's decision to compromise the Injury Claim and dismiss Mr. Petramala's appeal.⁶ As a result, there is no evidence in the record to support the superior court's approval of MCPF's action.⁷

¶21 Typically, the lack of a hearing would end our inquiry and we would remand this matter for a hearing. However, in this case the only aspect of the Injury Claim that remained was the appeal in 1 CA-CV 06-0554. We take judicial notice of the Opening Brief in 1 CA-CV 06-0554. *State v. Rojers*, 216 Ariz. 555, 560, ¶ 25, 169 P.3d 651, 656 (App. 2007) ("Judicial notice

⁶ Although the court was entitled to take judicial notice of the pleadings in that case, *In re Sabino*, 198 Ariz. 424, 425, ¶ 4, 10 P.3d 1211, 1212 (App. 2000) (stating that it is proper for a court to take judicial notice of its own records or those of another action tried in the same court), there is no indication in the record that it did so.

⁷ We reject Mr. Petramala's argument that the court's failure to grant him a hearing, in and of itself, violated his First Amendment right to redress and his due process rights under the Fourteenth Amendment because the court assertedly did not provide him a meaningful opportunity to be heard. The superior court has discretion to control its proceedings and no rule mandates that it grant each request for a hearing. Moreover, Mr. Petramala responded to MCPF's arguments and had an opportunity to submit any evidence he believed to be relevant to the court.

is discretionary, and it may be taken at any stage of the proceeding."). We have reviewed the Opening Brief and find that the Injury Claim is meritless.⁸ The dismissal of this claim is therefore affirmed.

⁸ Mr. Petramala's brief suffers from many defects. In the first place, there are no citations to the record for the facts which Mr. Petramala asserts. Such citations are required pursuant to Arizona Rule of Civil Appellate Procedure 13(a)(4) ("A statement of facts relevant to the issues presented for review, with appropriate references to the record."), as well as our case law. *Mast v. Standard Oil Co. of Cal.*, 140 Ariz. 1, 2, 680 P.2d 137, 138 (1984) ("It is also the policy of the court that neither we, the trial court, nor the court of appeals should be required to perform counsel's work by searching the record to attempt to discover facts which establish or defeat the motion. These are tasks which must be left to counsel [if represented]"). Though we have overlooked these errors in certain situations, *Drees v. Drees*, 16 Ariz. App. 22, 23, 490 P.2d 851, 852 (1971) ("Failure of counsel to comply with this rule may be regarded as sufficient cause for dismissal but the appellate courts of this state are inclined to decide cases on their merits rather than punish litigants because of counsel's inaction."), we decline to do so here as this is not a case where Mr. Petramala was represented by incompetent counsel (he is pro per) and the very cause for the dismissal was Mr. Petramala's failure to follow court orders. See *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) ("enforcing the minimal standards of advocacy set forth in the rules of civil appellate procedure").

Additionally, Mr. Petramala's opening brief is laced with scurrilous, irrelevant assertions that would likely be subject to a motion to strike and an award of sanctions against him: It asserts "the court should also take judicial notice that Defendant Lewis is a bigot and believes in discrimination," Opening Brief at 19; calls one defendant "a known perjurer who forges false id documents to take her under 18 year-old girlfriends to sex clubs with her," Opening Brief at 17; asserts that an insurer "and their violent criminals must be made to pay for the aggravated assault upon the victim," Opening Brief at 16; and argues that "The depositions of this case were totally screwed up by the violent criminal scumbags and their slimeball

¶22 With respect to that portion of the order approving MCPF's compromise of the Non-Injury Claims, it is clear that Arizona law did not require MCPF to obtain authorization or confirmation from the superior court to resolve those claims, A.R.S. § 14-5424(C)(19), and MCPF was therefore not required to seek the court's approval for its stipulations to dismiss those actions.⁹ The court's order approving the dismissals was unnecessary, and we therefore vacate this portion of the order.

attorneys," Opening Brief at 5; "Shyster Lewis Ethically and Constitutionally Prohibited from Remaining on case . . ." Opening Brief at 6.

As to the merits, the dismissal was entered, according to the terms of the judgment itself, because the court "found specifically that Plaintiff is contemptuous of the court's orders to discontinue contact with Ms. Reed." Though Mr. Petramala raises many issues contesting the proceedings in his Opening Brief, he does not point us to any location in the record that shows his denial of this fundamental finding that supported the dismissal.

⁹ To the extent Mr. Petramala claims that a stipulation to dismiss without affording him an opportunity to be heard violates his due process rights, we reject this contention. Mr. Petramala was afforded due process, including notice and the right to be heard, as part of the process that led to the appointment of the guardian and conservator.

Conclusion

¶23 For the foregoing reasons, we vacate that portion of the superior court's order pertaining to the Non-Injury Claims (as unnecessary) and affirm that portion of the order approving the dismissal of the Injury Claim.

_____/s/_____
DIANE M. JOHNSEN
Presiding Judge

_____/s/_____
MAURICE PORTLEY
Judge

_____/s/_____
DANIEL A. BARKER
Judge