

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE MATTER OF :
HAZEL JONES : **No. 41-08-0313**
An alleged incapacitated person : **ORPHANS COURT DIVISION**
:
:

OPINION AND ORDER

Manor Care of Jersey Shore PA LLC's (Petitioner) filed a Petition for Attorneys' Fees on January 23, 2009, as a result of Petitioner's needing to file an Appeal, Undue Hardship Waiver, and Guardianship Petition on Hazel Jones' (Jones) behalf, due to Donna Toner's (Jones' daughter who was Power of Attorney) and Darcy Swinehart's (who acted as agent for Jones in admitting her into Petitioner's facility) failure to act in Jones' best interests. The parties were originally before this Court on a Guardianship Petition filed by Petitioner as Respondents failed to follow up financially on Jones' behalf once she was a resident at Manor Care. The Respondents opposed the Petition for Guardianship and before a hearing on the Petition, Respondent passed away. This Petition followed.

On February 23, 2009, a hearing on Petitioner's Petition was held. At the hearing, Petitioners explained that Donna Toner and Darcy Swinehart (Respondents) entered into an Admission Agreement with Petitioner, whereby Jones was admitted to Petitioner's skilled nursing facility. The Agreement reflected that Petitioner was to provide skilled nursing services to Jones in exchange for Respondents payment for those services out of Jones' resources. The Agreement further stated that if Jones' resources were insufficient, Respondents were to secure Medical Assistance benefits on Jones' behalf. Respondents failed to secure Medical Assistance benefits for Jones which resulted in an initial denial of benefits and the imposition of a two year penalty period by the Lycoming County Assistance Office (LCAO) for transfers of Jones' assets

to Respondents without receiving fair market value. After a hearing regarding the denial, the LCAO reduced the penalty period to eleven months, affirming the determination that transfers of Jones' assets to the Respondents were made without Jones' estate receiving fair market value in exchange for those assets.

The Petitioner was forced to file an Appeal as well as an Undue Hardship Waiver Application with the Department of Public Welfare and the LCAO in order to remedy the denial and penalty period. The Appeal required Petitioner to prepare for and participate in hearings as well as gather documentation and information in support of the Appeal. The Undue Hardship Waiver Application involved Petitioner's preparation of the application and gathering of supporting documentation and information.

As previously stated Petitioner also filed a Petition for Guardianship for Jones before this Court due to the Respondents failure to act on Jones behalf and due to their failure to correct the improper transfer identified by the LCAO. However, before Jones death and while the Guardianship was pending, the Undue Hardship Waiver was granted and Jones was awarded Medical Assistance benefits back to the date of her admission to the Petitioner's facility.

Pursuant to the Admission Agreement, the Respondents are contractually obligated to pay the "collection costs" or legal fees associated with collecting payment in the event the Respondents fail to pay for services rendered by the Petitioner to Jones. See Section 3.2.A.5 of the Admission Agreement.

Under Pennsylvania Law, litigants are entitled to attorneys' fees "as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter." 42 Pa.C.S. § 2503(7). "An award of counsel fees is intended to reimburse an innocent litigant for expenses made necessary by the conduct of an opponent." Am. Mut. Liab. Ins. Co. v. Zion &

Klein, P.A.,489 A.2d 259, 262 (Pa. Super. Ct. 1985). The amount of fees awarded is within the sound discretion of the trial court. Id. at 261. When exercising its discretion in awarding attorneys' fees, the court is to consider the following facts and factors:

the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; . . . the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question.

In re Trust Estate of LaRocca, 246 A.2d 337, 339 (Pa. 1968).

The Court finds that Petitioner's actions in filing the Appeal, Undue Hardship Waiver, and Guardianship Petition were all required because Respondents failure to act in Jones best interest. Therefore, the Court finds the Petitioner's are entitled to attorneys fees for the fees and costs made necessary by the Respondents conduct.

ORDER

AND NOW, this ____ day of April 2009, it is hereby ORDERED and DIRECTED that Donna Toner and Darcy Swinehart are jointly and severally liable to Manor Care of Jersey Shore PA LLC in the amount of ten thousand nine hundred and sixty-eight dollars (\$10,968.00) as reimbursement for their attorneys' fees and costs in litigating the above-captioned matter.

By the Court,

Nancy L. Butts, Judge

xc: Robert H. Lugg, Esq.
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