

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA

IN RE: DAVID J. ANDERSON,
an incapacitated person.

: NO. 41-2024-0358
:
: ORPHANS' COURT
:
:
: Motion for Attorney's Fees

OPINION AND ORDER

By Order dated September 5, 2024, filed to the docket captioned above, the Court appointed Elizabeth E. Anderson, M.D. (hereinafter "Movant") who is the mother of David J. Anderson, as plenary guardian of his person and estate. Movant subsequently filed a Complaint seeking to void the marriage of David J. Anderson and Felicia Aloisio. That matter is currently pending before this Court in docket number FC-2024-21111.

Felicia Aloisio later filed a Petition to Remove Guardian, as amended by the Amended Petition filed January 21, 2025 (hereinafter collective the "Amended Petition"). On January 28, 2025, this Court conducted a hearing on the Amended Petition and dismissed it by Order dated January 28, 2025.

On February 14, 2025, Movant filed a Motion seeking an award of attorney's fees expended in resisting the Amended Petition, pursuant to 42 Pa.C.S. § 2503(7). The gravamen of that Motion is simply Movant's claim that both the Petition to Remove Guardian, and the Amended Petition filed January 21, 2025, were "vexatious, obdurate, and brought in bad faith." The Court conducted an evidentiary hearing on that Motion, on March 31, 2025. Both Movant and Felicia Aloisio appeared, with counsel. Movant testified that she expended approximately \$10,000.00, defending the Amended Petition. Felicia Aloisio testified that she speaks to David Anderson daily, and that he made various claims to her about abuse inflicted upon him by his mother. Felicia Aloisio denied any personal knowledge of such abuse, and testified that she filed both the Petition to Remove Guardian, and the Amended Petition, based upon reports of abuse by David Anderson. While there was no evidence of the claimed abuse, the Court has little doubt that David Anderson may have made unfounded claims of abuse in his telephone conversations with Felicia Aloisio.

QUESTION PRESENTED:

WHETHER MOVANT IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS PURSUANT TO 42 Pa.C.S. § 2503.

ANSWER TO QUESTION PRESENTED:

MOVANT IS NOT ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS PURSUANT TO 42 Pa.C.S. § 2503.

DISCUSSION:

The American Rule of Attorneys' Fees

Pennsylvania follows what is commonly known as the "American Rule," that a successful litigant cannot recover attorneys' fees from an adverse party, unless there is either an express agreement between them, statutory authority, or some established exception. *Trizechahn Gateway LLC v. Titus*, 976 A.2d 474, 482-83 (Pa. 2009) (citing *Mosaica Charter School v. Commonwealth Department of Education*, 813 A.2d 813, 822 (Pa. 2002)). In this matter, Movant bases her claim for attorneys' fees upon the text of 42 Pa.C.S. §2503.

The Statute in Question

42 Pa.C.S. § 2503 provides that "the [] participants shall be entitled to a reasonable counsel fee as part of the taxable costs" in ten (10) enumerated circumstances, including "(7) any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of any matter" or "(9) any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith." 42 PA.C.S. § 2503.

The underlying Petition to Remove Guardian, as amended, has already been resolved in favor of Movant. The question remains whether the conduct of Felicia Aloisio, either in filing her Petition to Remove Guardian, as amended, or her prosecution of that Petition, was so arbitrary, vexatious or in bad faith as to justify an award of attorney's fees under 42 Pa.C.S. § 2503.

Counsel for Movant accurately asserts that there was little evidentiary support for the Amended Petition, beyond the unsubstantiated claims that David Anderson made to his wife. Movant contends that, given the limited evidentiary support, Felicia Aloisio acted in bad faith. The test for an award of attorneys' fees, however, is not quite so simple. In civil

litigation, defendants routinely contend that the claims asserted by plaintiffs lack adequate evidentiary support. Where a defendant concedes that a claimant has a legitimate claim, significant litigation rarely results. It is the settled law of this Commonwealth that an award of counsel fees under 42 Pa.C.S. § 2503(7) requires “a trial’s court’s specific finding of dilatory, obdurate, or vexatious conduct.” *Township of South Strabane v. Piecknick*, 686 A.2d 1297, 1301 (Pa. 1996). Furthermore, 42 Pa.C.S. § 2503(9) permits “imposition of fees and costs for conduct that is ‘otherwise ... in bad faith’” and bad faith means “fraud, dishonesty or corruption.” *County of Fulton v. Secretary of Commonwealth*, 292 A.3d 974, 1014 (Pa. 2023) (citing *MFW Wine Co., LLC v. PLCB*, 276 A.3d 1225, 1240 (Pa. Commw. Ct. 2022)).

In this matter, the Court makes no such finding. Felicia Aloisio filed both her Petition to Remove Guardian and Amended Petition based upon the claims of David Anderson, whom she believed. The Court has little doubt that the claims of abuse made by David Anderson were at least exaggerated, and perhaps entirely false. In order to conclude that Felicia Aloisio filed her Amended Petition in bad faith, the Court would need an evidentiary basis for a finding that she acted knowingly, or with reckless disregard for the truth. The testimony presented on March 31, 2025, does not support such a finding.

AND NOW, this 1st day of April, 2025, for the reasons set forth above, the Motion for Attorney’s Fees, filed February 14, 2025, is denied.

By the Court,

William P. Carlucci, Judge

WPC/aml

cc: Frederick P. Santucci, Esquire
Andrea Pulizzi, Esquire
Lauren Appolonia, Esquire
Patricia Shipman, Esquire