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GUARDIANSHIP OF Len SANDERS and the Guardian, Cledith Sanders, Appellants,
v.
Ramona S. CHAPLIN, Esquire, Appellee.

No. 1D20-3104

District Court of Appeal of Florida, First District.

March 2, 2022

Kevin S. Sanders of Kevin S. Sanders, LLC, Jacksonville, for Appellants.

No appearance for Appellee.

M.K. Thomas, J.

Cledith Sanders (Appellant) appeals the trial court's grant of attorney's fees and costs to Appellee, the court-appointed attorney for his sister, Len Sanders, an alleged incapacitated person. We affirm the order for the reasons below and certify conflict.

I. Facts

Appellant, represented by his own private counsel, petitioned to have his sister, Len, found incapacitated and to be appointed her plenary guardian. Shortly thereafter, on April 1, 2020, the trial judge appointed Appellee to "represent [Len] in all proceedings involving the petition for determination of incapacity and appointment of guardian and, if there be an adjudication of incapacity, to review the initial guardianship report and represent the ward during any objections thereto." On April 29, the court found Len incapacitated and appointed Appellant as the plenary guardian. Appellant filed his required oath and paperwork that same day.

Appellee filed a timely request for payment of attorney fees and costs, asserting that she had "rendered services to the

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guardian and incurred expenses for the benefit of the Ward, from April 1, 2020 through July 27, 2020," expending sixteen hours during the representation. A billing statement was attached with time entries applying a rate of $300 per hour, $10 in costs, and a total bill of $4,810. She further tracked the criteria of section 744.108(2), Florida Statutes, which she argued supported the requested amount.

At the attorney fee hearing, Appellant contested payment of attorney fees to Appellee. He argued that the trial court's order appointing Appellee as Len's attorney did not specify the statute under which she was appointed; but presuming it was section 744.331, Florida Statutes, that section is silent with respect to payment of fees. Further, he argued that section 744.108, Florida Statutes, did not authorize payment of attorney fees unless there was a showing of "benefit to the ward." Here, there was no benefit to the ward because all agreed that she was incapacitated and in need of a guardian. Once he was appointed as guardian, Appellee's services were of no benefit. Alternatively, Appellant contested the reasonableness of several of Appellee's time entries and total hours expended.

Appellee responded that she was entitled to attorney fees and costs pursuant to sections 744.108 and 744.331. She asserted her time entries were all related to services for Len and that the responsibilities of her legal representation continued until Appellant filed the final inventory in mid-July. The trial judge orally granted Appellee's request for attorney fees and costs. An order followed granting Appellee the requested fees and costs in full, finding both her rate and time from April 1, 2020, through July 27, 2020, reasonable and "necessary for the services rendered for the benefit of the Ward." The order directed Appellant, in his capacity as guardian of Len, to issue payment to Appellee. The order did not cite to any specific statutory provision as the basis for the attorney fee award.

II. Analysis

"While ordinarily orders determining attorney's fees are reviewed for abuse of discretion, an award of attorney's fees involving an interpretation of a statute is reviewed *de novo* ." *State Farm Mut. Auto. Ins. Co. v. Markovits* , 295 So. 3d 355, 356 (Fla. 1st DCA 2020) (citing *Palm Beach Polo Holdings, Inc. v. Stewart Title Guar. Co.* , 132 So. 3d 858, 862 (Fla. 4th DCA 2014)). The amount of attorney fees awarded is in the discretion of the trial court and its determination will not be disturbed unless not supported by competent, substantial evidence. *Gamse v. Touby* , 382 So. 2d 115, 116 (Fla. 3d DCA 1980).

At issue are two statutory provisions providing for attorney fee and cost reimbursement in guardianship proceedings. Initially, section 744.331 requires the trial judge to appoint an attorney for "an alleged incapacitated person." § 744.331(2)(a)–(b), Fla. Stat. Pursuant to the statute, the appointed attorney is "entitled to reasonable fees to be determined by the court," with the fees being "paid by the guardian from the property of the ward or, if the ward is indigent, by the state." § 744.331(7)(a)–(b), Fla. Stat.

Next, section 744.108 entitles an attorney to reasonable fees and costs for "services rendered ... on behalf of the ward." § 744.108(1), Fla. Stat. Likewise, the fees and costs are payable by the guardianship estate, and there is no requirement an attorney supply expert testimony before the court may find compensation reasonable. § 744.108(8) – (9), Fla. Stat. Section 744.108(1) specifically provides fee entitlement to a "*guardian* " or "an attorney who has rendered services to the *ward* or to the *guardian on the ward's behalf* ." (Emphasis

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added.) Section 744.102, Florida Statutes, the definitional section of Chapter 744, defines "guardian" as "a person who has been appointed by the court to act on behalf of a ward's person or property, or both." § 744.102(9), Fla. Stat. "Ward" is defined as "a person for whom a guardian has been appointed." § 744.102(22), Fla. Stat. Thus, by definition, attorney's fees and costs contemplated by section 744.108(1) relate to legal services performed and costs incurred *after* a finding of incapacity and appointment of a guardian for the ward.

Here, the time records and entries attached to Appellee's petition represent two stages of representation. The first stage encompassed Appellee's performance of legal services under section 744.331 from April 1 (the date of her appointment to represent Len) through April 29 (the date of the court's finding of Len's incapacity and appointment of Appellant as her guardian).[1] At the attorney fee hearing and in the order under review, the trial judge found these time entries and costs submitted by Appellee to be reasonable.[2] Competent, substantial evidence supports the award, and we find no abuse of discretion. Appellant's argument that section 744.331 is silent with respect to payment of attorney fees is meritless as the statute explicitly states that Appellee is "*entitled* " to reasonable fees and costs for the services. *See* § 744.331(7)(a)–(b), Fla. Stat. (emphasis added).

The second stage of legal service is the time entries from April 30 through July 27, those performed after Len was determined to be incapacitated and Appellant appointed as the plenary guardian. Once a guardian has been appointed, by its plain language, section 744.108(1) governs provision of attorney fees and costs. Subsection (2) then supplies the following criteria for application by the trial court to determine the amount of fees and costs due:

> (a) The time and labor required;
>
> (b) The novelty and difficulty of the questions involved and the skill required to perform the services properly;
>
> (c) The likelihood that the acceptance of the particular employment will preclude other employment of the person;
>
> (d) The fee customarily charged in

> the locality for similar services;
>
> (e) The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
>
> (f) The results obtained;
>
> (g) The time limits imposed by the circumstances;
>
> (h) The nature and length of the relationship with the incapacitated person; and
>
> (i) The experience, reputation, diligence, and ability of the person performing the service.

§ 744.108(2), Fla. Stat.

Appellant argues the trial judge erred in awarding fees to Appellee without making

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the required "benefit to the ward" findings as mandated by section 744.108. In support, Appellant cites to multiple decisions of our sister districts. *See In re Guardianship of Ansley,* 94 So. 3d 711, 713 (Fla. 2d DCA 2012) ("[A]n attorney's entitlement to payment of reasonable fees and costs is subject to the limitation that his or her services must benefit the ward or the ward's estate."); *see also Losh v. McKinley* , 106 So. 3d 1014, 1015 (Fla. 3d DCA 2013) ; *Thorpe v. Myers* , 67 So. 3d 338, 343 (Fla. 2d DCA 2011) ; *Butler v. Guardianship of Peacock* , 898 So. 2d 1139, 1141 (Fla. 5th DCA 2005) ; *Zepeda v. Klein* , 698 So. 2d 329, 330 (Fla. 4th DCA 1997). However, we decline to adopt this application. Respectfully, our sister districts have erroneously conflated the separate and distinct subsections of 744.108 and imposed a judicially created "benefit to the ward" standard to fee entitlement which is not supported by the plain language of the statute.

By its plain language, subsection 744.108(1) bestows fee entitlement and subsection (2) sets forth criteria to be applied by the trial judge in setting the amount of the fee due. The statute is void of any reference to "benefit to the ward" or "beneficial to the ward" as a prerequisite to fee entitlement. Granted, subsection (2) criteria contemplate "the result obtained" along with "novelty," "difficulty," and "skill required" in rendering services to the ward, among others. However, none of criteria explicitly or implicitly require a finding of "benefit to the ward" as a precursor for fee entitlement.

Here, the trial judge appointed Appellee to represent Len during the incapacity proceedings and specifically instructed her to continue her representation through appointment of a guardian and review of the final inventory. Without question, it is necessary and of benefit to the ward for her attorney to review and ensure the accuracy of the inventory and guardianship paperwork—to effectuate the process. To declare that a court appointed attorney tasked with these legal responsibilities may only be compensated for legal services rendered if she found error or declared a necessary amendment is without logic.

We adopt and embrace the reasoning of Judge Luck in his eloquent concurring opinion in *Schlesinger v. Jacob* , 240 So. 3d 75, 78 (Fla. 3d DCA 2018). Thus, we decline to "weld" onto the guardianship attorney fee statute, section 744.108(1), a standard that an attorney's services be "of benefit" to the ward before the court-appointed attorney is entitled to fees. Further, we agree with Judge Luck that this judicial infusion of a "benefit" standard for fee entitlement has adverse, broad, and unintended consequences. As Judge Luck explained,

> Adding the requirement that an attorney's services must benefit the ward, as our district courts have done, has consequences that were not intended by the legislature. Under *Losh* and the other cases cited by the majority opinion, if the attorney services rendered to the

> ward are not successful, then the attorney is not entitled to fees. The result is that attorneys are less likely to represent family members and interested parties concerned about how the ward is treated because they will not get paid, and thus, fewer claims by family members and interested parties will be brought to court. The result is less oversight of the most vulnerable members of our community. Adding the benefit requirement to section 744.108(1) discourages attorneys from bringing guardianship claims that would otherwise be brought.

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Id. at 79. Ignoring the plain language of section 744.108(1) and judicially imposing a "benefit to the ward" standard, "make[s] it harder for family members and interested parties to bring claims on behalf of their loved ones, undercompensate attorneys who render services to a ward (although don't ultimately prevail in the case), and double count certain factors in the entitlement decision and then again when considering the amount to award." *Id.* at 80.

In the drafting, review and filing of pleadings, the litigation of issues, and the supervision of the process on behalf of the ward, the court-appointed attorney renders valuable and necessary services. Our Legislature statutorily declared the critical value and necessity of such legal services in mandating the appointment of an attorney for all alleged incapacitated persons. As our colleagues in the Second District have recognized, section 744.108(1) "appears to presuppose that a guardian's services benefit the ward or the ward's estate." *See Thorpe* , 67 So. 3d at 343.

In recognizing guardianship as an equitable proceeding, our supreme court has emphasized that the overwhelming public policy of guardianship law "is the protection of the ward." *Hayes v. Guardianship of Thompson,* 952 So. 2d 498, 505 (Fla. 2006) (citing § 744.1012 Fla. Stat. (2006)). Likewise, the Fourth District has declared that, "[p]art of the expressed legislative intent of Chapter 744 is to assist a ward 'in meeting the essential requirements for [his] physical health and safety, in protecting [his] rights, in managing [his] financial resources, and in developing or regaining [his] abilities to the maximum extent possible.' " *Romano v. Olshen* , 153 So. 3d 912, 918 (Fla. 4th DCA 2014) (quoting § 744.1012, Fla. Stat. (2012)). "As courts of equity, guardianship courts are 'charged with the responsibility of protecting an incompetent and his property.' " *Id.* (quoting *Cohen v. Cohen* , 346 So. 2d 1047, 1048 (Fla. 2d DCA 1977)). "Thus, a court of equity is authorized to expansively construe Chapter 744 to protect the interests of a ward." *Id* . In perfect summation, chapter 744 "should be construed liberally to ensure a compensation framework that encourages competent, qualified guardians to serve." *Id* . at 921. Then, contrary to these principles and the plain language of the statute, why hang a millstone around the neck of those willing to perform this important legal function?

As noted by Judge Luck, there is no question the Legislature "knows how to write attorney's fee statutes that require the lawsuit to end successfully." *Schlesinger* , 240 So. 3d at 79. The Legislature declined to do so in section 744.108, and instead, provided for attorney's fees where services were rendered to the ward. *Id.* Section 744.108(1) is void of contingency or prevailing party semantics.

Similar language regarding attorney fee entitlement can be found in section 733.106, Florida Statutes, which governs fees and costs in probate. Section 733.106(3), states, "[a]ny attorney who has *rendered services* to an estate may be awarded reasonable compensation from the estate." (Emphasis added.) Akin to section 744.108, the trial court is then provided criteria to set the amount of fees and costs due and the portions of the estate from which payment ensues. *See* § 733.106(4)(c), Fla. Stat. In the context of section 733.106(3), to be paid, the attorney's services must have been "necessary for

or beneficial to the probate estate." *Tillman v. Smith,* 526 So. 2d 730, 733 (Fla. 5th DCA 1988) ; *see also Est. of Brock* , 695 So. 2d 714, 717 (Fla. 1st DCA 1996) ; *Dew v. Nerreter* , 664 So. 2d 1179, 1180 (Fla. 5th DCA 1995) ; *Franklin v. Stettin* , 579 So. 2d 245, 247 (Fla. 3d DCA 1991) ;

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In re Est. of Simon , 549 So. 2d 210, 212 (Fla. 3d DCA 1989). In determining the amount of fee due in probate, our sister districts have recognized that the "benefit" to the estate may include services that enhance the value of the estate, as well as services "that successfully give effect to the testamentary intention set forth in the will." *Dew* , 664 So. 2d at 1180. The services are those that simply effectuate the process. *See In re Est. of Lewis* , 442 So. 2d 290, 292 (Fla. 4th DCA 1983).

In contrast to section 733.106, section 744.311 mandates that the trial court appoint an attorney who shall render legal services to the alleged incapacitated person during the proceeding. Upon a determination of incapacity and appointment of a ward, these legal services logically continue to effectuate the process through to inventory and final court filings. To impose a more onerous standard for fee entitlement in guardianship proceedings, in which legal representation is statutorily mandated, lacks support. To be sure, such an onerous standard is not supported by the plain language of section 744.108.

The trial court's award of attorney fees for the legal services rendered from April 1 through July 27 are supported by sections 744.311 and 744.108. Neither statute declares that the petitioner bears the burden of proving that the legal services rendered were "of benefit to the ward" as a prerequisite to fee entitlement. Instead, the attorney is entitled to a fee. Next, the trial judge may scrutinize the time and cost submissions through application of the enumerated criteria to set the reasonable amount of fees and costs due.

Contrary to the declaration in the majority opinion in *Schlesinger* , our court has yet to weigh in on this issue. *Schlesinger* , 240 So. 3d at 76–77.[3] Having rendered our decision here, we are at odds with our respected sister districts. We cannot condone a judicially created and onerous standard for attorney fee entitlement in guardianship proceedings that is not supported by the plain language of section 744.108(1).

III. Conclusion

Pursuant to section 744.311, Appellee was statutorily entitled to fees for services she provided as the alleged incapacitated person's court-appointed attorney through appointment of the guardian. Following the appointment of Appellant as guardian, Appellee was entitled to a fee under 744.108(1) for the remainder of services found by the trial court to be reasonable and supported by the criteria enumerated in subsection (2). The plain language of section 744.108 does not require a finding of "benefit to the ward" as a prerequisite to an award of attorney fees and reimbursement of costs. Accordingly, the order awarding fees and costs to Appellee is affirmed.

We certify conflict with the decisions of the other District Courts of Appeal in *Losh v. McKinley* , 106 So. 3d 1014 (Fla. 3d DCA 2013) ; *In re Guardianship of Ansley* , 94 So. 3d 711 (Fla. 2d DCA 2012) ; *Thorpe v. Myers* , 67 So. 3d 338 (Fla. 2d DCA 2011) ; *Butler v. Guardianship of Peacock* , 898 So. 2d 1139 (Fla. 5th DCA 2005) ; and *Zepeda v. Klein* , 698 So. 2d 329 (Fla. 4th DCA 1997).

AFFIRMED.

Bilbrey, J., concurs; Makar, J., concurs with opinion.

Makar, J., concurring with opinion.

On its own motion, the trial court appointed attorney Ramona S. Chaplin to act

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as legal counsel for the potential ward, Len D. Sanders, after the attorney who initially filed the

petition for involuntary guardianship withdrew. After providing legal services for approximately three and one-half months (some of which arose after the trial judge appointed a plenary guardian), Chaplin moved to discharge her responsibilities upon the filing of the verified inventory in the case ("My representation pretty much ended after he filed the inventory"). *See* § 744.362(2), Fla. Stat. (2021) ("Review of the initial guardianship report and representation of the ward during an objection thereto, if any, shall be the appointed attorney's final official action on behalf of the ward. Thereafter, the court-appointed attorney is no longer obligated to represent the ward."). As payment for her services, she sought $4,800 in attorney's fees (16 hours at $300/hour) and $10 in postage/copies; she discounted her request by writing off $510 (1.7 hours) of her time entries. The trial judge granted her request over the objections of the guardianship, which asserted that Chaplin's work did not "benefit" the ward.

I concur in Judge Thomas's opinion in full and write separately to further discuss the blurring of the analysis under the attorney fees statute at issue, section 744.108, Florida Statutes, by which some courts appear to conflate the entitlement to fees with their amount.

Subsection (1) of the statute says: "A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is *entitled* to a reasonable fee for services rendered and reimbursement for costs incurred *on behalf of the ward* ." § 744.108(1), Fla. Stat. (2021) (emphases added). The italicized phrases reflect that subsection (1) relates to "entitlement" to fees, which must be "on behalf of the ward." Entitlement to fees under subsection (1) is not a function of whether the attorney's services "benefited" the ward, only whether they were "on behalf of the ward." Sometimes attorneys provide services on behalf of a ward that don't result in a direct benefit; indeed, sometimes no benefit is achieved. The threshold question of entitlement is benefit-blind, meaning that entitlement is established so long as the services were within the legal scope of the attorney's authority to act on the ward's behalf.

The second step, as Judge Thomas points out, involves determining the amount of the fee under subsection (2), which sets out nine criteria that trial courts must consider in doing so. *Id.* § 744.108(2). Subsection (2) is where a claimed lack of benefit to the ward is best addressed via an assessment of the reasonableness of time/labor expended, the novelty/difficulty of the issues, the skill required to perform the services properly, and—most importantly—the results obtained. An attorney who performed legitimate legal services on behalf of a ward, but ultimately failed to achieve a meaningful benefit, may be entitled to a fee award—even a full fee award—upon a showing that subsection (2) factors justify such an award; likewise, an attorney who achieves a benefit for a ward may be entitled to fees, but their amount may be adjusted downward (or even disallowed) because the time and effort expended were disproportionately high in comparison to the likely benefit to be gained. Trial judges have discretion to make these fact-intensive judgments under subsection (2).

To the extent that other districts have melded subsections (1) and (2) into a single test (i.e., did the attorney's provision of legal services benefit the ward?) or held that entitlement under subsection (1) requires a threshold showing of benefit to the ward, I agree that conflict exists.

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It is understandable that the two subsections have morphed into a shorthand way of awarding fees; the trial judge's order, for example, states that the fees awarded "are reasonable and necessary for the service rendered for the benefit of the Ward." Busy trial judges are likely to skip the entitlement step and go directly to consideration of subsection (2) factors, which will result in no harm in the vast majority of situations because the legal services rendered are within the scope of the attorney's authority. The danger is when attorneys take legitimate steps on behalf of a ward, but are not successful or have limited

success, that courts will rule that entitlement to fees is lacking, which is error. Section 744.108 is not a prevailing party statute, and it is wrong to apply it in such a fashion. As Judge Luck has noted, a misapplication of the statute would result in attorneys being "less likely to represent family members and interested parties concerned about how the ward is treated because they will not get paid, and thus, fewer claims by family members and interested parties will be brought to court." *Schlesinger v. Jacob* , 240 So. 3d 75, 79 (Fla. 3d DCA 2018) (Luck, J., concurring specially). The undesirable result would be "less oversight of the most vulnerable members of our community." *Id* .

In this case, the trial judge conducted a full hearing, fully considered the parties' submissions and arguments, and made a reasonable ruling supported by the record, tacitly rejecting the objection that Chaplin was not entitled to a fee award because she purportedly failed to provide a benefit to the ward. In other cases, the record may show that fees should not be awarded because the services were excessive, unwarranted, or duplicative. Absent an abuse of discretion. a trial court's findings and judgment should be upheld.

Finally, in light our decision in this case, it is advisable that orders and related forms explicitly include the two-step statutory process outlined in Judge Thomas's opinion to ensure that attorneys working on behalf of wards who provide legal services within their scope of authority are not penalized simply because a legitimate benefit sought is not fully achieved.

Notes:

[1] The trial court's order of April 1 designating Appellee as counsel for Len tracked the language of section 744.331 regarding representation during the incapacity proceedings.

[2] We acknowledge that Florida courts have reversed fee awards where a guardianship petition was denied; and had the petition here not been granted or had it been dismissed, the result may be different. *See Faulkner v. Faulkner* , 65 So. 3d 1167, 1169–70 (Fla. 1st DCA 2011) ; *Ehrlich v. Allen* , 10 So. 3d 1210, 1211 (Fla. 4th DCA 2009) ; *see also In re Guardianship of Klatthaar* , 129 So. 3d 482, 483–86 (Fla. 2d DCA 2014). That is not, however, at issue here. The petition was granted, and Appellee was therefore entitled to her fees for services rendered to Len as an "alleged incapacitated person."

[3] In *Price v. Austin* , 43 So. 3d 789 (Fla. 1st DCA 2010), our court affirmed a denial of attorney's fees in a proceeding for incapacity solely on the basis of untimely filing of the petition.
