

1

**H. KYLE FLETCHER, JR., Appellant,**  
**v.**  
**CYNTHIA LEE BENNETT, as guardian of**  
**Joseph Martini, as incapacitated person,**  
**Appellee.**

**No. 2D22-1794**

**Florida Court of Appeals, Second District**

**June 23, 2023**

Appeal from the Circuit Court for Orange County; Leticia Marques, Judge.

H. Kyle Fletcher Jr., pro se.

No appearance for Appellee.

MORRIS, Chief Judge.

In this guardianship appeal, H. Kyle Fletcher, the attorney representing the guardian of the ward, appeals an order authorizing payment of attorneys' fees and expenses. We conclude that Fletcher was not afforded due process when the circuit court failed to conduct a hearing before awarding attorneys' fees in an amount lower than what Fletcher requested. We also conclude that the circuit court erred by

2

failing to make adequate findings supporting the reduction in fees. We therefore reverse.<sup>[1]</sup>

## **BACKGROUND**

Fletcher represents Cynthia Lee Bennett, the guardian of the ward, Joseph Martini. In October 2021, Fletcher filed a petition for fees for work performed in the guardianship proceeding from April 2021 through October 2021. He requested \$10,530.00. He also sought reimbursement for expenses. In February 2022, the circuit court entered an order awarding fees in the amount of \$6,311.23, a significant reduction from what

Fletcher requested. No hearing was conducted before the circuit court entered its order.

In the order, the circuit court set the reasonable hourly rate at \$375 per hour for attorney work and implicitly set the reasonable hourly rate at \$175 per hour for paralegal work. The circuit court did not make a determination as to the compensable number of hours for which fees would be awarded. The court provided various nonspecific reasons for denying some of the fee requests. The circuit court concluded that the fee request contained duplicate entries, requests for fees that were the work of a guardian and not an attorney, and requests for fees that were paralegal or assistant work billed at an attorney rate. The circuit court also concluded that the ward was not responsible for fees related to the

3

Second Suggestion of Capacity hearing which was purportedly requested by Fletcher but not prosecuted. The circuit court denied the request for expenses.<sup>[2]</sup>

## **ANALYSIS**

I. Failure to hold a hearing before reducing fees

"The right to due process of law must be respected in guardianship proceedings." *Shappell v. Guardianship of Naybar*, 876 So.2d 690, 691 (Fla. 2d DCA 2004). In *Shappell*, we reviewed an order denying a request for guardian's fees, and we acknowledged that courts "frequently dispose of uncontested petitions for compensation and expenses in guardianship matters informally without conducting a hearing." *Id.* at 692. However, we explained that because due process requirements applied in guardianship proceedings, "even in the absence of a challenge by an interested party to a guardian's petition for fees, the circuit court should not reduce the amount of compensation requested by the guardian without first providing the guardian with an opportunity to be heard on the petition."

*Id.* Because the circuit court in that case denied the guardian's petition without notice or an opportunity to be heard, we concluded that a due process violation occurred. *Id.*

Attorneys in guardianship proceedings must be afforded the same due process rights as guardians. That is, an attorney's petition for fees should not be denied or reduced without providing the attorney notice and an opportunity to be heard. Our record does not reflect that a hearing on the petition was conducted in this case. Further, the

4

guardian of the ward actually consented to the amount of Fletcher's requested fees. Yet the circuit court reduced Fletcher's fee request without providing him with notice and an opportunity to be heard, thereby violating his due process rights. Had a hearing been conducted, Fletcher might have been able to explain the entries or provide evidence related to the entries that the circuit court found problematic. By failing to conduct a hearing, the circuit court violated Fletcher's due process rights. This does not end our analysis, however, because the circuit court also erred by failing to include adequate findings in the order.

II. Inadequacy of findings in order reducing fees and denying expenses

"Generally, we review an award of fees for an attorney's services in a guardianship for abuse of discretion." *In re Guardianship of Ansley*, 94 So.3d 711, 713 (Fla. 2d DCA 2012) (first citing *Butler v. Guardianship of Peacock*, 898 So.2d 1139, 1141 (Fla. 5th DCA 2005); and then citing *Gamse v. Touby*, 382 So.2d 115, 116 (Fla. 3d DCA 1980)). "We defer to the circuit court's findings of fact when they are based on competent, substantial evidence." *Id.* (citing *State, Fla. Highway Patrol v. Forfeiture of Twenty Nine Thousand Nine Hundred & Eighty (29,980.00) in U.S. Currency*, 802 So.2d 1171, 1172 (Fla. 3d DCA 2001)).

Section 744.108(1), Florida Statutes (2021), provides that "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." Section 744.108(2) sets forth criteria that a circuit court must consider in determining reasonable attorneys' fees. They are:

(a) The time and labor required;

(b) The novelty and difficulty of the questions involved and the skill required to perform the services properly;

5

(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)(a)-(i).

"[T]he probate court is not 'at liberty to award anything more or less than fair and reasonable compensation for the services rendered or monies expended in each individual case.' " *Thorpe v. Myers*, 67 So.3d 338, 345 (Fla. 2d DCA 2011) (quoting *Lutheran Servs. Fla., Inc. v. McCoskey*, 978 So.2d 885, 890 (Fla. 2d DCA 2008)). But "[a]n award of fees and costs under this section is subject to the requirement that the attorney's services must benefit the ward or the ward's estate." *In re Guardianship of Rawl*, 133 So.3d 1179, 1183 (Fla. 2d DCA 2014).<sup>[3]</sup> "The

6

attorney seeking fees under this statute bears the burden of proving that his or her services benefitted the ward or the ward's estate." *Id.* (citing *Ansley*, 94 So.3d at 714). "To the extent that attorney's fees for the ward's services involved unproductive litigation in pursuit of goals that did not benefit the ward, the [circuit] court has the discretion to reduce the fee award by the fees attributed to those pursuits." *Id.* (citing *Thorpe*, 67 So.3d at 345-46). "A fee award that is reduced based on services that do not benefit the ward will be upheld on appeal if there is competent, substantial evidence to support it." *Id.* (first citing *Ansley*, 94 So.3d at 714; and then citing *Thorpe*, 67 So.3d at 341).

In awarding fees under section 744.108, a circuit court must explain the basis for the award, including the reasonable hourly rate, the number of compensable hours, and the other factors that the court considered in determining the award. *In re Kesish*, 98 So.3d 183, 185 (Fla. 2d DCA 2012) (citing *Thorpe*, 67 So.3d at 346). Such findings are necessary for "meaningful appellate review." *Ansley*, 94 So.3d at 713 (quoting *Jones v. Dunning*, 661 So.2d 941, 942 (Fla. 5th DCA 1995)). Where an order fails to contain

meaningful findings concerning the reasonable hourly rates and the number of hours compensated [or where it] omits any statement of other factors that the circuit court considered in reducing the amount

requested[, such] deficiencies make it impossible for [an appellate] court to engage in meaningful appellate review of the order on appeal.

*Id.* at 714. We have previously recognized that section 744.108 "does not require the court to make findings of fact in support of . . . fee awards,"

7

yet we have also acknowledged that in the absence of such a statutory requirement, "courts have required findings to support discretionary rulings on specific kinds of issues when the absence of such findings might create a perception of arbitrariness or deprive the parties of meaningful appellate review." *In re Guardianship of Sitter*, 779 So.2d 346, 348 (Fla. 2d DCA 2000).

A circuit court need not explicitly reference the statute as long as the circuit court provides a sufficient explanation for the reduction in a fee request. *See Meyer v. Watras*, 223 So.3d 1010, 1013 (Fla. 4th DCA 2017). However, at a minimum, it must provide sufficient factual findings regarding the compensable number of hours and the reasonable hourly rate on which the fee award was based. *See id.* The court in *Meyer* acknowledged that sorting through time entries is "exceedingly painstaking and time consuming," but it is also "a necessary evil [for] trial judges [to] make that effort." *Id.* (quoting *Haines v. Sophia*, 711 So.2d 209, 211 (Fla. 4th DCA 1998)). We agree.

Where an appellate court cannot determine the basis for a circuit court's award, it cannot determine if there is competent, substantial evidence to support the award. *Ansley*, 94 So.3d at 714. And "effective appellate review is especially important in guardianship matters [because] the courts wield extraordinary power over the ongoing financial and personal welfare of wards." *Sitter*, 779 So.2d at 348.

Here, the circuit court expressly found that Fletcher's requested hourly rate of \$375 per hour

for attorney work was reasonable. The circuit court also implicitly found that the requested hourly rate of \$175 per hour for paralegal work was reasonable when it reduced some of Fletcher's requested fees for attorney work to that rate. However, in denying portions of the fee requests on various grounds, the circuit court

8

failed to delineate the number of compensable hours that led to the reduced fee award. The circuit court also failed to specifically identify and/or explain which fee entries were noncompensable for the reasons it stated.

For example, in denying some fee requests as duplicate entries, the circuit court merely listed dates of the entries, but it failed to explain which entries on those dates were duplicates. This was important because there were more than just two identical entries for some of the dates, and the circuit court's order does not adequately inform this court whether the fees for all but one of the entries was being denied or whether the fees for just one of the "duplicates" was being denied. Further, there is no explanation as to how the court concluded that the entries were truly duplicates. Some of the entries refer to Fletcher reading and responding to emails, but there is no indication on the invoice as to whether Fletcher read and responded to more than one email from different people, which would not be a duplication of work. And because there was no hearing, it is unknown how the circuit court reached a conclusion that the entries were duplicates unless it simply assumed that fact.

Similarly, while the circuit court denied fees for various dates based on the conclusion that the entries were for work that was the function of the guardian and not an attorney, the court failed to specifically indicate which entries on those dates met that definition. The only specific type of work that the circuit court referenced was drafting status reports and annual plans.<sup>[4]</sup> But on the various dates

9

cited, there are numerous other types of work listed in the time entries, and it is unclear which entries the circuit court was denying for those dates.

The same problem arises in the circuit court's conclusion that paralegal work on various dates was improperly billed at the attorney rate. Again, the circuit court did not specifically identify which entries were for paralegal work and were thus reduced accordingly.

Finally, the circuit court failed to provide any detail about its conclusion that the entries for the Second Suggestion of Capacity hearing should be denied because Fletcher had demanded the hearing but then failed to prosecute it. The circuit court explained that the ward was not responsible for paying for hearings that are demanded but not prosecuted. This appears to be a conclusion that the hearing did not benefit the ward. And while the circuit court has the discretion pursuant to this court's caselaw to reduce a fee request for services that did not benefit the ward, the circuit court did not cite the specific time entries for this work that were being denied. This is important because there are time entries discussing suggestion of capacity on 5/21/2021, 6/17/2021, 6/23/2021, 6/24/2021, 7/7/2021, 8/11/2021, 8/12/2021, and 9/2/2021. These entries do not indicate whether they are for a first or second suggestion of capacity hearing. There are also entries for various dates that generally refer to "capacity" and "hearing,"

10

with no indication whether those entries related to the Second Suggestion of Capacity hearing. And the circuit court's order did not point to any evidence in the record that would support its conclusion that Fletcher requested the hearing but failed to prosecute it.

The circuit court abused its discretion in entering the order on appeal. The order fails to contain a finding related to the number of compensable hours, fails to specify which entries on the various dates were being denied, and fails

to indicate, even implicitly, that the circuit court considered the factors set forth in section 744.108. The circuit court's explanations for its reductions do not correlate to the statutory factors, and the lack of specificity and vagueness in the order preclude meaningful appellate review.

### CONCLUSION

The circuit court violated Fletcher's due process rights by failing to conduct a hearing before awarding fees in a reduced amount. The trial court also abused its discretion by failing to provide adequate findings in the order on appeal. Accordingly, we reverse and remand for further proceedings.

Reversed and remanded.

CASANUEVA and LUCAS, JJ, Concur

Opinion subject to revision prior to official publication.

-----

Notes:

[1] This appeal originated in the Fifth District Court of Appeal, which at the time the appeal was filed, had jurisdiction over appeals involving cases from the Orange County circuit courts. Such appeals would now be within the jurisdiction of the Sixth District Court of Appeal which was established January 1, 2023. However, in April 2022, while the appeal was pending, the underlying guardianship case was transferred to Hillsborough County and, as a result, the appeal was subsequently transferred to this court which has jurisdiction over appeals involving cases from Hillsborough County.

[2] In this appeal, Fletcher does not challenge the denial of reimbursement for expenses; he confines his argument to the reduction in his fee requests. However, due to our reversal, the trial court may conduct a hearing on remand. At that time, Fletcher will have the opportunity to readdress that issue.

[3] *But see In re Guardianship of Sanders v. Chaplin*, 334 So.3d 723, 727-29 (Fla. 1st DCA 2022) (disagreeing that section 744.108 requires a finding of a benefit to the ward before attorneys' fees may be awarded and certifying conflict with this court and the Third, Fourth, and Fifth Districts on this issue). Fletcher asserts that this court should recede from this court's line of caselaw holding that there must be a benefit to the ward in order for attorneys' fees to be awarded or that we should certify conflict with *In re Guardianship of Sanders* as well as with the concurrence in *Schlesinger v. Jacob*, 240 So.3d 75, 78 (Fla. 3d DCA 2019), on this point. However, because we are reversing the order on appeal for other reasons as explained herein, we need not reach the merits of that issue. We note that Fletcher has also failed to provide a reason other than his own disagreement-as to why we should recede from our caselaw. Consequently, this issue will not be addressed further in this case.

[4] We note that in his brief, Fletcher asserts that he had never been instructed to file a status report, and he acknowledges that status reports are inherent work to a guardian in a court of equity to apprise the circuit court of what is happening in a complex case. But Fletcher contends that in addressing this issue, the circuit court failed to consider "the novelty and difficulty of the questions involved," a required factor under section 744.108(2)(b). It is unclear whether Fletcher is requesting fees for his own work on a status report, but we need not decide the merits of that issue based on our conclusion that the order must be reversed on other grounds.

-----