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FILED
10/06/2020

DA 20-0021

Bowen Greenwood
CLERK OF THE SUPREME COURT
Case No. 20-0021

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 257N

IN THE MATTER OF THE GUARDIANSHIP
AND CONSERVATORSHIP OF A.M.M.,

Incapacitated Person.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause Nos. DG 14-2 and DG 14-3
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Genet McCann, Self-represented, Big Sky, Montana

For Appellee:

Kent P. Saxby, Johnson, Berg, & Saxby, PLLP, Kalispell, Montana

Submitted on Briefs: September 2, 2020

Decided: October 6, 2020

Filed:



Clerk

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Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 On this fourth appeal in these proceedings,¹ Genet McCann (McCann) appeals three orders of the Twentieth Judicial District Court, Lake County: (1) the November 27, 2019 Order Approving Sixth and Final Accounting (July 1, 2018-July 20, 2019) and Terminating Co-Conservatorship; (2) the November 26, 2019 Order expanding the Rule 11 Order of June 24, 2015; and (3) the November 21, 2019 Order reiterating the clerk cannot file any pleadings from McCann that have not been certified by an attorney. We affirm the District Court.

¶3 McCann's main focus on appeal is her continued efforts to remove Judge James A. Manley from presiding over the guardianship and conservatorship proceedings of her mother, A.M.M., and to void all orders entered by Judge Manley in the case. McCann attempted to file an Affidavit to Disqualify Judge Manley on November 13, 2019—fourteen days before the scheduled November 27 hearing on the co-conservators' petition

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to terminate the conservatorship and without certification from a licensed attorney. Even if this motion had been properly filed, however, the motion to disqualify Judge Manley was untimely, as the statute requires affidavits to disqualify to be filed 30 days before a scheduled hearing. *See* § 3-1-805(1)(a), MCA.

¶4 McCann has further failed to raise any cognizable objections to the sixth and final accounting. She asserted denial of the right to “corporate access and discovery,” citing § 35-1-1106 and -1107, MCA (2017), *repealed by* 2019 Mont. Laws ch. 271, § 269 (effective June 1, 2020), and Title 72, chapter 38, MCA, but such claims are corporate governance issues, not conservatorship issues. She asserted certain rental income was unaccounted for, but the accountant for the conservator estate explained the additional rental income due from tenants on the subject properties is now owed to the probate estate and is not a conservatorship issue. The District Court did not err in approving the final accounting and closing the conservatorship based on these issues.

¶5 Finally, the District Court did not abuse its discretion in issuing orders enforcing and expanding its prior Rule 11 sanctions against McCann. As evidenced by the affidavit to disqualify that McCann attempted to file on November 13, 2019, McCann continues in her efforts to file groundless motions on issues that have been previously litigated and determined.

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Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶7 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR

Hon. James A. Manley
Lake County Courthouse
Polson, MT 59860

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for
MONTANA TWENTIETH JUDICIAL DISTRICT COURT LAKE COUNTY

IN THE MATTER OF THE) Cause Nos. DG 14-2 and 14-3
GUARDIANSHIP AND) Hon. James A. Manley
CO-CONSERVATORSHIP)
OF) ORDER APPROVING
ANNE MARIE McCANN) SIXTH AND FINAL ACCOUNTING
An incapacitated person) (JULY 1, 2018-JULY 20, 2019)
) AND
)) TERMINATING
)) CO-CONSERVATORSHIP
))

Paul J. McCann, Jr. and Douglas J. Wold, the duly appointed and acting Co-Conservators of Anne Marie McCann, (hereafter AMM) pursuant to the requirements of MCA 72-5-438 having filed herein the Sixth and Final Accounting of the income and expenses of Anne Marie McCann, and Inventory, and having petitioned this court for settlement thereof, and having filed a Petition for the termination of this Co-Conservatorship, the Court hereby makes the following:

FINDINGS OF FACT

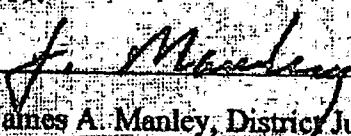
1. That due and legal notice of said Accounting and Petitions have been given to all interested persons in the manner and time required by law;
2. That the Sixth and Final Accounting is the final accounting required of the Co-Conservators;
3. That the Sixth and Final Accounting is in all respects true and correct;
4. That AMM, the Conservatee, died on July 20, 2019;

5. That Paul J. McCann, Jr., Co-Conservator, has been duly appointed and is acting as the Personal Representative of the Estate of Anne Marie McCann;
6. That all actions required of the Co-Conservators have been taken, and are hereby approved, and because AMM is deceased, the conservatorship should be terminated and the Co-Conservators discharged from their duties and obligations upon transfer of all of Anne Marie McCann's assets in the hands of the Co-Conservators to Paul J. McCann, Jr., Personal Representative of the Estate of Anne Marie McCann.

CONCLUSIONS OF LAW

1. That the Sixth and Final Accounting is complete and accurate and sufficient in law, and is hereby settled, allowed and approved.
2. That all of Anne Marie's assets in the hands of the Co-Conservators are hereby ordered to be transferred to Paul J. McCann, Jr., in his capacity as the Personal Representative of the Estate of Anne Marie McCann.
3. That the Co-Conservators have duly, faithfully and properly discharged their duties; their actions are approved, and they are hereby discharged and relieved of all their responsibilities in connection with this conservatorship.

SO ORDERED this 27 day of November, 2019.


James A. Manley, District Judge

Cc to: Casey Emerson, Guardian of AMM
Paul J. McCann, Jr., Co-Conservator of both AMM and Miriam Arneson
Douglas J. Wold, Co-Conservator of AMM
Wm. McCann
Sheila McCann, Co-Conservator of Miriam Arneson
Tom McCann
Kathleen Renander, c/o John Christensen
Tim McCann, Co-Conservator of Miriam Arneson
Genet McCann

Hon. James A. Manley
Lake County Courthouse
Polson, MT 59860

CLERK COURT OF MONTANA

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MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

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GUARDIANSHIP AND
CO-CONSERVATORSHIP
OF
ANNE MARIE MCCANN,
An incapacitated person

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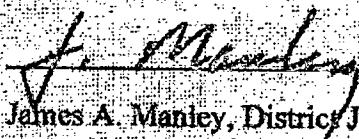
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