

STATE OF MICHIGAN
COURT OF APPEALS

In re JENNIFER L. GEROR, a developmentally disabled person.

JENNIFER L. GEROR, a developmentally disabled person,

UNPUBLISHED
August 6, 2009

Petitioner-Appellee,

v

No. 283527
Genesee Probate Court
LC No. 03-170939-DD

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

Respondent-Appellant.

Before: Saad, C.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Farm Bureau appeals the probate court's order that required Farm Bureau to pay petitioner's attorney fees. We affirm.

Respondent says the probate court lacked jurisdiction to order Farm Bureau to pay the petitioner's attorney fees. We disagree.

Subject matter jurisdiction is a legal issue that we review de novo on appeal. *In re Haque*, 237 Mich App 295, 299; 602 NW2d 622 (1999). "Probate courts are courts of limited jurisdiction. Const 1963, art 6, § 15. The jurisdiction of the probate court is defined entirely by statute." *In re Wirsing*, 456 Mich 467, 472; 573 NW2d 51 (1998). "[T]he Mental Health Code provides that, except in the case of minors, a guardian for a developmentally disabled person may be made pursuant only to chapter 6 of the Mental Health Code." *In re Neal*, 230 Mich App 723, 726-727; 584 NW2d 654 (1998), citing MCL 330.1604(2).

Respondent argues that MCL 330.1615, the section of the Mental Health Code pertaining to attorney fees, contains no provision that grants the probate court the authority to order payment of attorney fees by third parties like respondent. However, we conclude that this statute does not control the issue.

While it is true that an action to appoint a guardian for a developmentally disabled person must be done pursuant to the Mental Health Code, *Neal, supra*, the issue here is attorney fees arising from an action on an insurance contract. And this Court found that question to be within the probate court's jurisdiction in *In re Shields Estate*, 254 Mich App 367; 656 NW2d 853 (2002). The Court explained: "Under MCL 700.1303(1)(i), the probate court has jurisdiction to 'hear and decide a contract proceeding or action by or against an estate, trust, or ward.' The statute imposes no limits on the types of contract actions and, further, the Legislature explained in MCL 700.1303(3) that the purpose of the statute was to simplify the disposition of actions involving estates Accordingly, the probate court had jurisdiction to decide this case." *Id.* at 369 (emphasis added).

This reasoning applies here because, according to MCL 700.1108(a), as used in EPIC, "ward" means an individual for whom a guardian is appointed. Petitioner is a developmentally disabled person and her mother, Laurie Geror, was appointed petitioner's guardian. Therefore, petitioner is a ward and the probate court had jurisdiction to hear her contract dispute with respondent under MCL 700.1303(1)(i) and to award attorney fees.

Defendant also contends that Wright's attorney's fees are not "allowable expenses" under the no-fault insurance act, MCL 500.3101 *et seq.* We disagree.

Determining what is an "allowable expense" under the no-fault act is a question of law, reviewed de novo. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005). "The no-fault insurance act is remedial in nature and must be liberally construed in favor of persons intended to benefit thereby." *Maloney ex rel Gauntlett v Auto Owners Ins*, 242 Mich App 172, 179; 617 NW2d 735 (2000). "[S]ubject to other provisions of the act, 'an insurer is liable to pay [personal injury protection] benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle'" *Sprague v Farmers Ins Exch*, 251 Mich App 260, 266; 650 NW2d 374 (2002), quoting MCL 500.3105(1). These PIP benefits "are payable only for 'allowable expenses.' Section 3107 defines allowable expenses as 'consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation.'" *Id.* at 267.

This Court has previously ruled that expenses associated with both guardianship and other services can be allowable expenses. In *Heinz v Auto Club Ins Ass'n*, 214 Mich App 195; 543 NW2d 4 (1995), this Court held that "the no-fault act is not limited strictly to the payment of medical expenses," and furthermore, MCL 500.3107(1)(a) "provides for the payment of expenses incurred for the reasonably necessary services for an injured person's care." *Id.* at 197-198. Though *Heinz* frames the issue as a question of whether services are reasonably necessary for an injured person's care, respondent cites several cases that specifically address the recovery of expenses by guardians. Here the probate court observed that Wright was not seeking to recover fees as a guardian, but rather, as an attorney who provided legal services directly to petitioner, the injured individual.

The question, therefore, is whether, pursuant to *Heinz*, Wright's legal services were "reasonably necessary services for an injured person's care." *Id.* at 198. Costs for "room and board, attendant care, modifying vehicles for paralyzed individuals, rental expenses, and similar costs have been found by this Court to be reasonably necessary expenses under subsection 3107(1)(a)." *Hamilton v AAA Michigan*, 248 Mich App 535, 544-545; 639 NW2d 837 (2001).

In the case at bar, Lawrence Geror, petitioner's father, filed three emergency petitions claiming that petitioner's health had been negatively affected by the actions of Laurie Geror, her guardian. Wright, acting as petitioner's attorney, visited petitioner's home and, while petitioner appeared to be healthy and receiving adequate care, Wright determined that a medical professional should assess the situation. The nurse subsequently assigned to the case produced several reports, which Wright reviewed in order to make recommendations for petitioner's care. In preparation for the hearing on guardianship, Wright also attended depositions of the medical professionals who testified regarding whether petitioner's needs were being met.

Wright's ultimate task was to investigate the facts and determine whether petitioner was receiving the necessary care, as well as represent her interests in a dispute over who, ultimately, would provide her future care. Wright's legal services were directly related to petitioner's care, and therefore, Wright's attorney fees are allowable expenses pursuant to MCL 500.3107(1)(a).

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Stephen L. Borrello