

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2997-11T4

IN THE MATTER OF FRED RIZZO, AN
ALLEGED MENTALLY INCAPACITATED
PERSON.

Argued January 8, 2013 - Decided January 28, 2013

Before Judges Messano, Ostrer and Kennedy.

On appeal from the Superior Court of New Jersey, Chancery Division, Probate Part, Bergen County, Docket No. P-198-11.

William L. Gold argued the cause for appellant Douglas Rizzo (Bendit Weinstock, attorneys; Mr. Gold, on the briefs).

Neil A. Tortora argued the cause for respondent Fred Rizzo (Norton, Sheehy & Higgins, P.C., attorneys; Mr. Tortora, on the brief).

PER CURIAM

Douglas Rizzo ("Douglas")¹ appeals from the Probate Part's January 19, 2012 order making him contingently liable for the legal fees incurred by an attorney, Neil A. Tortora, whom the court appointed to represent Douglas's father, Fred Rizzo, then an allegedly incapacitated person. The order stated: "Neil A.

¹ For convenience we refer to Douglas Rizzo and Fred Rizzo by their first names and intend no disrespect in doing so.

Tortora, Esq. shall be paid a fee in the amount of \$9730.00, which amount is reduced to judgment and shall be paid by the Estate. Failing sufficient monies, responsibility for payment shall repose with Douglas Rizzo."

In 2007, Fred granted Douglas a durable power of attorney. In May 2011, the Bergen County Board of Social Services filed a complaint seeking a declaration that Fred was mentally incapacitated, and, among other forms of relief, the appointment of the Public Guardian for Elderly Adults as guardian of Fred's person and estate, and revocation of the power of attorney. The court appointed Tortora as attorney for Fred. Tortora thereafter incurred fees, the reasonableness of which are not questioned, in the course of conducting an investigation, providing a report to the court, and otherwise representing Fred.

Although questions were raised about Douglas's exercise of his authority under the power of attorney, the court ultimately made no finding of malfeasance. The court entered an order on November 7, 2011 appointing Douglas as his father's guardian, and approving Tortora's fees of \$9730. The subsequent order in January 2012 clarified that Douglas would be personally liable if Fred's estate were insufficient to pay Tortora's fee.

The court relied upon Rule 4:86-4, which states in relevant part, "The compensation of . . . appointed counsel . . . may be fixed by the court to be paid out of the estate of the alleged incapacitated person or in such other manner as the court shall direct." R. 4:86-4(e) (emphasis added). Apparently, Fred owned no liquid assets. His only asset was the equity in his house in which he, Douglas, and Douglas's family resided. His only income was his monthly Social Security payment. The court stated it would be inequitable to force Tortora to wait until Fred's death if the estate did not have sufficient funds to pay his fees.

The court thereafter entered a consent order staying execution against any of Douglas's assets pending appeal. Douglas then filed the instant appeal, challenging only the factual and legal basis for imposing personal liability on him for the legal fees incurred as a result of Tortora's representation of Fred.

During oral argument before this panel, both counsel reported that Fred had passed away in late 2012. Both agreed that the net equity in Fred's house was more than sufficient to enable his estate to pay Tortora's fees. Therefore, we can conceive of no circumstance in which Douglas's contingent liability would be triggered.

We generally avoid resolving issues in the abstract and deciding moot cases. N.J. Tpk. Auth. v. Parsons, 3 N.J. 235, 240 (1949). "An issue is 'moot' when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." Greenfield v. N.J. Dep't of Corrs., 382 N.J. Super. 254, 257-58 (App. Div. 2006) (citation omitted). "[W]here there is a change in circumstances so that a doubt is created concerning the immediacy of the controversy, courts will ordinarily dismiss cases as moot, regardless of the stage to which the litigation has progressed." Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). Consequently, we dismiss the appeal as moot.

Dismissed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION