

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2853-14T3

IN THE MATTER OF  
  
ANNA FABICS.

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Submitted March 14, 2016 – Decided March 24, 2016

Before Judges Carroll and Summers.

On appeal from the Superior Court of New Jersey, Chancery Division, Probate Part, Middlesex County, Docket No. 244999.

Joseph Fabics, appellant pro se.

Respondent Laszlo Fabics has not filed a brief.

PER CURIAM

This is a guardianship matter in which Joseph Fabics (Joseph)<sup>1</sup> appeals the Chancery Division's January 2, 2015 order restricting his visitation time with his elderly mother, Anna Fabics (Anna). At the time, Anna was in hospice care, and she passed away five days later. Accordingly, we dismiss the appeal as moot.

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<sup>1</sup> Because this appeal involves family members who share a common surname, we refer to them by their first names in this opinion for clarity and ease of reference. We intend no disrespect in doing so.

We briefly summarize the factual and procedural history. On May 16, 2014, Joseph filed a verified complaint in which he sought to have Anna, then eighty-eight years old, adjudicated incapacitated. Joseph alleged that Anna suffered from schizophrenia, which rendered her incompetent to care for herself or manage her affairs. Joseph also sought to be appointed guardian of Anna's person and property.

On May 22, 2014, the court appointed Ann Renaud, Esq., as Anna's attorney in the guardianship proceeding. The order directed Ms. Renaud to submit a written report of her findings and recommendations prior to the scheduled hearing.

Renaud submitted a detailed report dated September 12, 2014. She noted that Joseph had made a similar claim regarding his mother's condition in 2006. Adult Protective Services investigated the matter and determined that "the problem did not reside with Anna, but rather with [Joseph], who they believed was harassing his mother and causing her great anxiety." Subsequently, in February 2007, Anna executed a power of attorney naming her other son, Laszlo Fabics (Laszlo), as attorney in fact. Since then, Laszlo had been assisting Anna and paying her bills.

Renaud noted that two physicians that examined Anna diagnosed her as suffering from dementia, and both concluded

that she was unable to manage her affairs and was in need of a guardian. Renaud also arranged for Anna to be evaluated by a board certified psychiatrist. Joseph was present during the examination and, according to Renaud, he "displayed some of his most clinically useful behavior. He was unwilling, yet again, to even listen to some helpful information [the psychiatrist] tried to share with him. He displayed behavior that to the educated lay person demonstrated mental illness . . . ."

Renaud reported that "Laszlo is absolutely crystal clear about [Anna's] finances, has arranged for a local clinic family practitioner to make house calls, and has a well formulated plan for her future." Further, Anna expressed a preference for Laszlo, who Renaud noted "also shows a very patient and calm demeanor even when he is confronted by [Joseph] in the most ugly of fashions."

Renaud further wrote: "[Joseph], on the other hand, would be as unsuitable a guardian as I could imagine." She opined that Joseph "is completely unstable and is totally unable to properly care for his mother. I have become convinced that leaving her in his care is tantamount to torture and should be stopped immediately."

On October 31, 2014, following a hearing, the court adjudicated Anna incapacitated and appointed Laszlo to serve as

her guardian. Pertinent to this appeal, Paragraph 10 of the judgment provided:

Laszlo . . . shall grant visitation access to Joseph . . . between 9:00 a.m. and 8:00 p.m. upon notice by Joseph [] that he desires to visit, and such visitation shall be unlimited except as otherwise provided above, unless and until . . . Anna [] asks Joseph [] to leave. Upon being asked to leave by Anna [], Joseph [] will immediately leave her home.

On December 23, 2014, Joseph filed an "emergent motion to enforce litigant's rights on short notice," claiming that Laszlo was preventing him from visiting Anna. He averred that "[t]he [c]ourt's order allowing me visitation has not worked and for this reason I request the court's intervention to enforce [l]itigant's [r]ights and allow for fair visitation."

Joseph's motion was originally denied without prejudice on the basis that it was not emergent. Following a series of emergent appeals, on December 31, the Supreme Court remanded the matter to the Chancery Division to schedule a hearing on the motion on an emergent basis.

The trial court conducted a hearing on January 2, 2015, at which Joseph, Laszlo, and Renaud appeared. Laszlo reported that Anna was only conscious "maybe a half hour a day." Joseph stated that he saw Anna the previous day and that she was "virtually comatose" and "complaining about stomach pains."

Joseph asked the court to "take her off hospice care" and enter "an order to take her to the hospital."

Renaud reported that, since the October 31, 2014 judgment was entered,

there have been a number of occasions where [Joseph] has gone to the house and created quite a disturbance and hence, the police have been called. I've been called by the police myself. And it has not been pleasant.

And I think the thing that's so disturbing to me is that [Joseph] would have been allowed in that house on any occasion he wanted if he would have gone in and sat down and spoken to his mother politely and kindly. But that hasn't been what's happening.

And what we have here is a situation where once again [Joseph] believes that . . . if he hauls his mother to the hospital she's going to be miraculously cured. But she unfortunately has been diagnosed as failure to thrive at this point and placed on hospice with full medical . . . not only has that been with their blessing. It's been what they have recommended.

I believe that Laszlo has been doing everything in his power to act in his mother's best interest . . . in consultation with me and with Dr. Rosenhand and with various and sundry medical personnel. And I think that . . . everybody . . . believes that Joseph should have the opportunity to see his mother[,] he needs to see her in a manner that's not distressing . . . and with the understanding that his mother is now dying and needs to be . . . helped out of this world, not hassled.

Based on Anna's condition, and Renaud's recommendation, the court entered an order allowing Joseph to visit Anna for one hour per day between the hours of 9:00 a.m. and 5:00 p.m. The court found that "at present expanding the visitation beyond one hour per day is not in [Anna's] best interest." The court also denied Joseph's application that Anna be transferred to a hospital.

Anna passed away on January 7, 2015. Thereafter, Joseph filed this appeal challenging the trial court's January 2 order. Before us, Joseph argues that it was an abuse of judicial discretion to limit his right to see his gravely ill mother to one hour per day.

We certainly sympathize with the frustration Joseph conveys concerning his inability to visit Anna during her final days, as well as the judicial review process. However, having reviewed the record, we find no abuse of judicial discretion in the restriction that the trial court found to be in Anna's best interest. More importantly, the issue of visitation, or any limitation imposed upon Joseph's ability to visit with his mother, is rendered moot by her death.

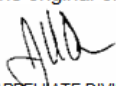
"Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm." Betancourt

v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010).  
"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 Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006).

Here, Joseph's emergent motion sought to enforce the visitation rights granted him under the October 31, 2014 judgment declaring Anna incapacitated and appointing Laszlo as her guardian. Joseph appeals from the January 2, 2015 order that restricted those rights. However, with Anna's passing, there is no effective relief that Joseph can now be awarded. Accordingly, we conclude his appeal must be dismissed 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