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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0563-22**

**IN THE MATTER OF
MARIE E. GROMPONE,
an adjudicated incapacitated
person.**

Submitted May 10, 2023 – Decided August 2, 2023

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey,
Chancery Division, Ocean County, Docket No. 226482.

Hegge & Confusione, LLC, attorneys for appellant
Helen Paglinawan (Michael Confusione, of counsel and
on the briefs).

Simeone & Raynor, LLC, attorneys for respondent
Patricia Singer (Kenneth E. Raynor, on the brief).

PER CURIAM

This appeal arises out of the guardianship of Marie¹ E. Grompone, an incapacitated person. Appellant Helen Paglinawan is Marie's sister.² Five years ago, Helen instituted a guardianship proceeding in the Ocean County Probate Part to declare Marie an incapacitated person. In 2019, the trial court appointed Patricia Singer, Marie's long-time friend, guardian of her person. Helen's son and Marie's nephew Joseph Paglinawan was appointed guardian of her estate. The dispute over the welfare and best interests of Marie and her finances continued after the guardianship proceeding ended.

Although Helen does not dispute the trial court's finding that Marie is incapacitated, she appeals from two orders: one denying her motion to intervene in litigation commenced by Joseph and be appointed substitute guardian of Marie's person; the other is a consent order (second consent order) resolving that action filed by Joseph against Patricia regarding Marie's finances. Helen seeks a remand for a plenary hearing to address Marie's best interests. We affirm.

¹ Marie is sometime referred to as Emily in the record. We refer to her as Marie in our opinion.

² Because certain individuals share a common surname, we will refer to them by their first names in this opinion for clarity and ease of reference, and we intend no disrespect by doing so.

I.

Marie's court-appointed counsel in the original guardianship action noted that Marie rarely saw Helen, who lives in Florida, and did not want her to serve as her guardian. Patricia has known Marie for more than five decades and served as her power-of-attorney and healthcare agent at Marie's request before she was declared incapacitated. Marie spent most holidays with Patricia and is godmother to her son. The Probate Court conducted a plenary hearing in the original guardianship action and considered testimony. Helen did not appeal the trial court's May 6, 2019 judgment of incapacity appointing Patricia as guardian of Marie's person.

Joseph thereafter filed several complaints against Patricia seeking an accounting of Marie's assets. Patricia contends these complaints were filed against her by Joseph at Helen's request, who did not file any pleadings in her own name. In August 2020, Patricia filed a complaint³ to transfer the guardianship action to Pennsylvania. Patricia sought to move Marie from her home in Forked River to live with her and her son in Pennsylvania, which was Marie's desire before her incapacity. Helen filed an answer and counterclaim, and Joseph filed an answer to Patricia's complaint. On January 28, 2021, the

³ This complaint is not contained in the appendices.

parties, including Helen, Joseph, Patricia, and the court appointed guardian ad litem (GAL), signed the first consent order allowing Marie to transition to Pennsylvania. The parties agreed Helen and Joseph, who lives in California, could visit Marie at her Forked River home. As a result of the first consent order being entered, the pending matters were dismissed without prejudice.

Shortly after the first consent order was entered, Joseph filed a new complaint to list Marie's home for sale, on notice to Helen, who assisted in preparing the home for sale. Visitation with Marie became challenging for Helen and Joseph and usually took place at hotels and restaurants after the house was sold. During the pandemic, Marie's physician wanted Helen and Joseph to quarantine and not see her in person.

Joseph then filed three complaints to approve his accountings as guardian of Marie's estate. None of the complaints asserted Patricia inappropriately used Marie's funds. Helen did not oppose the complaints to approve Joseph's accountings and sought monies from Marie's estate. The trial court approved two of Joseph's accountings and entered judgments thereon without objection from Helen. The third accounting was not approved at that time.

Before Patricia could advise the court that the transition period had ended and request an order for Marie's provisional transfer to Pennsylvania, Joseph

filed another complaint on December 27, 2021, essentially attempting to relitigate the claims Helen advances on appeal—opposing Marie's move to Pennsylvania and seeking claims to some of her personal property, such as jewelry and paintings. Helen was represented by the same attorney who represented Joseph at the time his complaint was filed. Patricia filed an answer and counterclaim alleging Joseph breached his fiduciary duties by advancing claims on behalf of Helen.

In February 2022, counsel then withdrew from representing Helen because Patricia raised a conflict of interest issue, but the same attorney continued to represent Joseph. In the interim, Joseph, Patricia, and the GAL engaged in settlement negotiations that largely resolved the issues in Joseph's complaint seeking an accounting from Patricia and approval of his third accounting, as well as challenging transfer of jurisdiction to Pennsylvania.

Four months later, Helen retained new counsel and filed a motion styled "request to join litigation and be heard on this motion and a supporting certification" but did not formally move to intervene and did not append a proposed pleading to her motion.⁴ Helen certified in her moving papers that

⁴ The court construed Helen's "request to join litigation" as a motion to intervene under Rule 4:33-1, which provides:

Marie was only supposed to live with Patricia in Pennsylvania for one year, and thereafter, the living situation would be re-evaluated. Helen claimed there were "several instances of wrongdoing" by Patricia regarding Marie's finances and Patricia "isolating" Marie from her family. Helen also certified that Patricia manipulated the situation to the point Marie is an "outsider" in Helen's life. Helen claims Marie's living accommodations are a "secret" and that Patricia is "breaching her duty of care" as Marie's fiduciary. Helen accused Patricia of "using" Marie to "fund" her and her children's lives and dissipating Marie's assets.

While Helen's motion to intervene was pending, Joseph, Patricia, and the GAL entered into the second consent order, which is the subject of this appeal, disposing of all outstanding issues involving Marie. At the September 21, 2022 hearing on Helen's motion to intervene, she appeared and was represented by

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 4:33-3 requires a person desiring to intervene to "file and serve on all parties a motion to intervene stating the grounds therefor and accompanied by a pleading setting forth the claim or defense for which intervention is sought."

new counsel, who acknowledged settlement of the outstanding issues, with Joseph's input, but without Helen's participation. The second consent order was presented to the court that day for approval.

Joseph, Patricia, and the GAL were voir dired by the court as to their understanding of its terms and their voluntariness in entering the second consent order. The GAL stated she met with Marie and confirmed she was receiving quality care from a court-appointed nurse case manager. The GAL recommended the court execute the second consent order because it was in Marie's best interests. The court approved the second consent order and denied Helen's motion to intervene as moot because of the settlement achieved and memorialized in the second consent order.

Although the court denied Helen's motion to intervene, the court allowed her to express any concerns she had about Marie under oath at the hearing. Helen testified she was not happy about Marie being moved out of her Forked River home to another state because Helen was not permitted to visit her sister at Patricia's home. On October 14, 2022, the court entered an order memorializing its decision denying Helen's motion to intervene, and on October 17, 2022, the court formally filed the second consent order.

II.

The sole issue Helen raises on appeal is whether we should remand this matter for a plenary hearing to address Marie's health, welfare, and best interests because the court should have conducted a hearing before approving the second consent order filed October 17, 2022. We decline to do so.

A plenary hearing is required to resolve material factual disputes. See Conforti v. Guliadis, 128 N.J. 318, 322-23 (1992). A dispute of material fact is one that "bear[s] directly on the legal conclusions required to be made and [such] disputes can only be resolved through a plenary hearing." Spangenberg v. Kolakowski, 442 N.J. Super. 529, 540-41 (App. Div. 2015) (citing Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007)).

A plenary hearing should be ordered "only where the affidavits show that there is a genuine issue as to a material fact" and the "trial judge determines that a plenary hearing would be helpful." Murphy v. Murphy, 313 N.J. Super. 575, 580 (App. Div. 1998) (quoting Shaw v. Shaw, 138 N.J. Super. 436, 440 (App. Div. 1976)). Helen has not pointed to any conflicting material facts warranting a plenary hearing. As the court correctly noted, the second consent order rendered Helen's motion to intervene moot because it terminated—by settlement—the matter in which Helen sought to intervene.

Given a probate judge's broad powers, we review a determination made by that judge only for an abuse of discretion. See In re Est. of Hope, 390 N.J. Super. 533, 541 (App. Div. 2007) ("Remedies available to courts of equity 'are broad and adaptable.'") (quoting In re Mossavi, 334 N.J. Super. 112, 121 (Ch. Div. 2000)). The trial court's decision will only constitute an abuse of discretion where "the decision [was] made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." United States v. Scurry, 193 N.J. 492, 504 (2008) (alteration in original) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

Applying these principles, we are satisfied that the court acted within its discretion in denying Helen's motion to intervene and approving the second consent order without conducting a plenary hearing. Moreover, Helen can petition the Pennsylvania court presiding over the guardianship matter regarding any present or future concerns she has about Marie's care by Patricia. Our decision affirming the court's denial of a plenary hearing only addresses the procedural posture of the case and the lack of specificity in Helen's motion to intervene. We express no opinion as to the merits of any claims Helen may advance in the Pennsylvania guardianship matter regarding Marie.

To the extent any argument raised by Helen has not been explicitly addressed in this opinion, it is because either our disposition makes it unnecessary, or the argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION