

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE PERSON
AND ESTATE OF: GEORGE WILLIAM
CRESSER, ADULT PROTECTED
PERSON.

No. 85828-COA

JOYCE A. CRESSER,

Appellant,

vs.

JANET CRESSER AND DANIEL
GOODSELL, AS CO-
ADMINISTRATORS OF THE ESTATE
OF GEORGE WILLIAM CRESSER,
Respondents.

FILED

MAY 31 2024

ELIZABETH A. BROWN
CLERK OF SUPERIOR COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joyce A. Cresser appeals from a district court order and judgment in a guardianship matter. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

In February 2017, a guardianship case was initiated by respondent Janet Cresser, who alleged that her sister, Joyce, was intentionally isolating their father, George William Cresser, and wrongfully depleting his assets. After a year of litigation, the parties reached a stipulation and order, and Joyce was appointed to be the guardian of the person and estate for her father. However, in December 2018, issues arose concerning Joyce's management of George's estate. Thus, the district court appointed a Nevada Guardianship Compliance Office financial forensic specialist to investigate and audit George's estate. In February 2019, the court also ordered Joyce to file an accounting of the estate within 60 days, but the accounting was not filed until August 30. The specialist prepared

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three reports, which revealed numerous irregularities, including that Joyce spent down George's individual retirement account, and comingled and misappropriated estate funds. In October 2019, George's counsel, on behalf of George, filed a petition to remove Joyce as guardian of the person and estate, citing the issues revealed in the specialist's reports, and requested recovery against Joyce for the amount of money misappropriated from the estate. The district court held a five-day evidentiary hearing spread over several dates. At the evidentiary hearing, the district court heard testimony from multiple witnesses, including Joyce and the financial forensic specialist. The financial forensic specialist testified as to the investigation and audit of George's estate. Notably, the financial forensic specialist testified that Joyce was evasive and resistant throughout the investigation. Additionally, the financial forensic specialist testified that Joyce did not keep records or receipts of transactions to demonstrate that they were for George's benefit. The financial forensic specialist further testified that although Joyce insisted that Janet was responsible for mishandling funds from George's estate, the financial forensic specialist did not find evidence of this.

Following the evidentiary hearing, the district court issued a written order and judgment in November 2020. Specifically, the district court found that Joyce drained George's retirement account, comingled funds, accepted loans and made gifts on behalf of the estate without first obtaining court approval and without documentation, engaged in cash transactions that prevented the tracing of funds, failed to maintain a recordkeeping system to track George's money, failed to file tax returns, diverted \$4,265 from the sale of George's real property located in California, and filed an overinflated budget that did not accurately account for actual

expenses for George. The district court found that although the financial forensic specialist noted \$90,396 in unexplained/undocumented financial transactions from George's estate, a portion of these transactions predated the February 2017 filing of the petition for guardianship (\$27,683), and that the district court would consider the transactions that occurred in the period after the filing of the guardianship petition. The district court further found that Joyce offered testimony at the evidentiary hearing that provided sufficient explanation that approximately \$40,000 of the transactions were legitimately for George's benefit. Accordingly, the district court determined that \$22,713 in transactions remained unaccounted for, and ultimately held that Joyce was responsible for reimbursing these funds. Therefore, the district court found that good cause existed to remove Joyce as guardian of the estate, pursuant to NRS 159.185(1)(d), for mismanaging the guardianship estate. Additionally, the district court awarded George recovery against Joyce for double damages in the amount of \$45,426. *See* NRS 159.346(2)(a) (authorizing the district court to impose double damages on a guardian for any action deemed "deliberately harmful or fraudulent or to have been committed with malice"). The district court further imposed a penalty of \$5,000 against Joyce for her willful failure to timely file an annual accounting.

Subsequently, Joyce filed a motion for reconsideration of the district court's order and judgment. She contested the district court's finding that she had improperly diverted funds from the sale of George's California real property, arguing that any funds disbursed from the sale were authorized by the court. She also argued that the \$22,713 judgment should be vacated because all the funds she expended from the estate were for George's benefit. She further argued that her conduct did not meet the

standard necessary to impose double damages against her. Finally, she argued that the filing of the late accounting of the estate did not warrant the \$5,000 penalty. The district court granted Joyce's motion in part and vacated the order and judgment only as to the imposition of double damages. Joyce now appeals.

On appeal, Joyce first disputes the district court's finding that she improperly diverted \$4,265 from the proceeds of the sale of George's California real property.¹ Joyce then challenges the \$22,713 judgment on the basis that the district court did not explain how it arrived at this amount, that it is unclear if the district court relied exclusively upon the financial forensic specialist reports, and that the district court should not have considered any expenditures that occurred before she was appointed guardian in 2018. She further argues that the financial forensic specialist reports contained errors, and that the financial forensic specialist was biased against her. Finally, Joyce argues that the \$5,000 penalty against her was not warranted as she did not willfully fail to timely file the accounting.

This court reviews a district court's guardianship determinations for an abuse of discretion and its conclusions of law de novo.

¹Although Joyce points to the transcript from this hearing to argue that the district court gave her permission to disburse expenses associated with the sale of the real property, this is belied by the transcript contained in the record on appeal. The district court explicitly ordered Joyce to place proceeds from the sale in George's blocked account. The record is devoid of evidence that the district court authorized Joyce to reimburse herself or any other individuals for expenses associated with the sale. Thus, we are not persuaded by this argument.

In re Guardianship of Jones, 139 Nev., Adv. Op. 17, 531 P.3d 1236, 1246-47 (2023). “We give deference to the district court’s findings of fact, and we will not set them aside unless clearly erroneous or not supported by substantial evidence.” *Id.* at 1247. Substantial evidence “is evidence that a reasonable person may accept as adequate to sustain a judgment.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Pursuant to NRS 159.346(1)(c), if a guardian violates any right of a protected person set forth in Chapter 159, the district court may issue “an order compensating a protected person or the estate of a protected person for any injury, death or loss of money or property caused by the actions of the guardian or the failure of the guardian to take appropriate action.”

Here, Joyce contends that the district court did not explain how it reached the \$22,713 judgment amount, but we are not persuaded by this contention. Specifically, the district court’s order found, based on the financial forensic specialist’s reports, that there were \$90,396 in unexplained/undocumented financial transactions, but the court reduced this amount by the transactions that predated the February 2017 filing of the petition for guardianship (\$27,683), and by \$40,000 based off of Joyce’s testimony at the evidentiary hearing. Thus, \$22,713 remained unaccounted for. To the extent Joyce argues that the district court improperly considered transactions that occurred while the guardianship case was pending, but before she was named guardian of the estate, we are likewise not persuaded by this argument. The district court’s jurisdiction over the protected person and the estate commences with the guardianship petition, *see* NRS 159.039(2) and (3), and the petition here was initiated in part due to concerns regarding George’s estate. Moreover, the district court is authorized to appoint an investigator into allegations or claims affecting the

protected person as soon as a guardianship petition is filed, and NRS 159.315 provides the district court with broad authority to order a person to return an asset of the protected person. Thus, the district court was not precluded from considering the time period the guardianship case was pending, but before Joyce was formally named guardian, when determining the amount she misappropriated from George's estate.²

Furthermore, to the extent Joyce challenges the district court's factual findings concerning transactions she made for George's benefit, disputes the findings contained in the financial forensic specialist reports, and asserts that the financial forensic specialist was biased against her, this court will not reweigh the district court's resolution of these factual issues so long as its decision is supported by substantial evidence, nor will we reweigh a witness's credibility. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Joyce's challenges to specific transactions contained in the financial forensic specialist reports are either not supported by the record or are belied by the financial forensic specialist's testimony, and thus we cannot discern any error. Additionally, the district court did not exclusively rely on the financial forensic specialist reports, but allowed Joyce to testify and explain the transactions that were flagged by the financial forensic specialist. The district court carefully considered the evidence and found that Joyce

²We also note that the record reflects that Joyce agreed to file an accounting of the estate that included the time period from November 1, 2016, through the date of the first anniversary of her appointment as guardian in the stipulation and order appointing Joyce as guardian of the person and estate. Consequently, Joyce stipulated that the time period before she became guardian could be considered by the district court. Thus, we further reject Joyce's arguments regarding reimbursement of estate funds that predated her appointment as guardian in light of the stipulation and order.

provided sufficient explanation to justify over \$40,000 in expenditures. To the extent Joyce's argument relies on her testimony at the evidentiary hearing, Joyce filed a transcript request form seeking transcripts of only one of the five days of the evidentiary hearing. While this court issued an order directing the preparation of the transcripts Joyce requested, Joyce's request did not include the entire evidentiary hearing and did not contain the dates of her testimony. Thus, we necessarily presume that the transcripts from the other four days of the evidentiary hearing support the court's factual findings and ultimate decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[] the district court's decision"). Indeed, without a copy of the entire transcript, we are unable to meaningfully review Joyce's challenges regarding the evidence and arguments presented at the evidentiary hearing. Because this court defers to the district court's factual findings and will not disturb them unless clearly erroneous, *see Ellis*, 123 Nev. at 152, 161 P.3d at 244, we conclude that the district court did not abuse its discretion.

Finally, although Joyce purports that the district court abused its discretion in imposing a penalty against her for failing to timely file an accounting of the estate, NRS 159.345 provides the district court with the authority to impose a \$5,000 penalty for a guardian that has failed to timely file an accounting. The record supports that even after the district court granted Joyce a 30-day extension in July 2019 to file the accounting, the accounting was not timely filed. Thus, the district court did not abuse its

discretion in imposing the \$5,000 penalty against Joyce. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244.

Therefore, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Gloria Sturman, District Judge
Joyce A. Cresser
Goodsell Law Group
Eighth District Court Clerk

³To the extent Joyce raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.