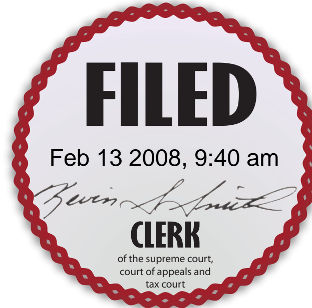
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

NICOLAS A. SILER
Allen, Allen & Allen
Salem, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE	)	
GUARDIANSHIP OF	)	No. 88A01-0612-CV-554
EDNA A. VOYLES, ADULT	)	

APPEAL FROM THE WASHINGTON CIRCUIT COURT
The Honorable Nicholas L. South, Special Judge
Cause No. 88D01-0603-GU-03

February 13, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The Washington Superior Court appointed Connie Kniesly and Ronald Voyles guardians of the person and the estate of their mother, Edna Voyles ("Edna"). Edna's children ("Claimants") then filed a claim with the guardians for personal services rendered to Edna. The trial court denied the claim. The Claimants filed a motion to correct errors, which the trial court also denied. The Claimants appeal and present two issues which we consolidate and restate as whether the trial court abused its discretion when it determined that Edna did not make an implied or express contract with the Claimants for personal services and whether Edna could be bound by a contract entered into by her deceased husband.

We affirm.

Facts and Procedural History

Beginning in 2000, Edna and her husband, Robert Voyles ("Robert"), could no longer care for themselves so their children, Ronald Voyles, Tommy Voyles, Connie Kniesly, Tena Bowling, Brenda Calloway, and Teresa Day began to assist in their care. Two other children did not assist in the care of their parents; Delores Voyles (Barger) predeceased her parents and Katie Voyles (Kramer) was unable to assist for other reasons. Edna had suffered from Parkinson's disease for many years, suffered from severe dementia in more recent years, and began to require constant care.

The Claimants allege that shortly before Robert died, he told Ronald and the other children to take care of Edna and to pay themselves although there is no evidence of an agreement beyond the testimony of the Claimants. In 2002, Robert died, and all of his

property was placed in a trust for the benefit of Edna. The Claimants continued to provide care for Edna in her own home. In 2005, Edna was placed in a nursing home.

On May 11, 2006, the trial court appointed Connie Kniesly and Ronald Voyles as guardians of the person and estate of Edna. On July 6, 2006, the Claimants filed a claim with the guardianship for personal services rendered to Edna over the preceding six years in the amount of $379,680.[1] The children of Delores Voyles (Barger) objected to the claim. The trial court determined that the total value of Edna's property is roughly $300,000 with an income from an annuity in the amount of $42,000 per year. The trial court denied the claim after determining that the services were gratuitous and that even if Robert, now deceased, entered into an express contract to pay for such services, then Edna was a beneficiary and the contract would be enforceable only against Robert or his estate and not against Edna. Also, the trial court determined that no evidence of an implied contract existed.

The Claimants then filed a motion to correct error that the trial court denied. The Claimants now appeal.

Standard of Review

The Appellee failed to file an appellate brief in this appeal.

> When an appellee fails to file a brief, we may reverse the trial court's decision based on a showing of prima facie error. Prima facie error means error at first sight, on first appearance, or on the face of it.

Morequity, Inc. v. Keybank, N.A., 773 N.E.2d 308, 311-312 (Ind. Ct. App. 2002), trans. denied (citations and quotations omitted).

---

[1] Claimants seek compensation yet failed to keep records of time actually spent caring for Edna and simply estimated the amount of time spent on caring for her. Additionally, we note that the claim far exceeds the total value of Edna's property and if this claim had been granted, Edna would have no further funds to provide for her care.

Additionally, the trial court uses its discretion when making determinations regarding the guardianship of a protected person. See Ind. Code § 29-3-2-4 (2007). This discretion necessarily includes both its findings and its order. Id. We will review the trial court's findings and orders for an abuse of discretion. In re Guardianship of V.S.D., 660 N.E.2d 1064, 1066 (Ind. Ct. App. 1996). A trial court abuses its discretion by making a decision that is "clearly against the logic and effect of the facts and circumstances presented." J.M. v. N.M., 844 N.E.2d 590, 602 (Ind. Ct. App. 2006), trans. denied.

We also note that the Claimants are appealing from a negative judgment. If a party who had the burden of proof at trial appeals from a negative judgment, that party will prevail only if it establishes that the judgment is contrary to law. Helmuth v. Distance Learning Sys. Ind., Inc., 837 N.E.2d 1085, 1089 (Ind. Ct. App. 2005). "A judgment is contrary to law when the evidence is without conflict and all reasonable inferences to be drawn from the evidence lead to only one conclusion but the trial court reached a different conclusion." Id.

Discussion and Decision

The Claimants argue that the trial court abused its discretion by determining that Edna did not enter into a contract with the Claimants for personal services. The Claimants believe that the doctrine of necessaries should apply to this situation. In Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1, 8 (Ind. 1993), the Indiana Supreme Court determined that the doctrine of necessaries would apply, specifically, when there is

a shortfall between the dependent spouse's necessary expenses and that spouse's available funds, the law will impose limited secondary liability on the financially superior spouse. This liability extends only to the superior spouse's ability to pay the debt and is secondary to the dependant spouse's ability to satisfy his or her obligations. In the present case, the Claimants wish to make Edna, the dependent spouse, liable for her own debts. Br. of Appellant p. 14. As they note, this is atypical.

The Claimants attempt to shoehorn Edna into this doctrine by arguing that she became the financially superior spouse when Robert died and all of the property went into a trust for her benefit, so she must be held liable for debts incurred when she was the dependent spouse. However, we conclude that the doctrine of necessaries does not apply in this case.

The purpose of the doctrine of necessaries is to support and protect a dependent spouse. Bartrom, 618 N.E.2d at 6. Robert did so during his lifetime and provided Edna with resources so that she could care for herself after his death. Also, the doctrine of necessaries requires the presence of two living spouses, not one living and one dead. Once Robert died, Edna was no longer his spouse and this doctrine would not apply, or would only apply as a claim against Robert's estate for the period while they both lived. Yet during the period when they both lived, Robert did in fact care for Edna, so the doctrine of necessaries would not apply for that period either. The Claimants have failed to show that the trial court abused its discretion in determining that the doctrine of necessaries does not apply to this case.

The Claimants argue that the trial court abused its discretion by determining that an agency relationship did not exist between Edna and Robert such that an agreement made by Robert bound Edna. Specifically, the Claimants assert that there existed an express, apparent and inherent agency between Robert and Edna such that Robert could bind Edna.

Agency of any kind requires some indicia that the principal, Edna, intended that or authorized Robert, as an agent, conduct business on her behalf. See Quality Foods, Inc. v. Holloway Assocs. Prof'l Eng'rs & Land Surveyors, Inc., 852 N.E.2d 27, 31-32 (Ind. Ct. App. 2006). As Claimants noted, marriage alone is insufficient. A number of methods are available that would have made her intentions known, i.e. durable power of attorney[2], guardianship, or evidence of a conversation with Edna. Without such indicia of intent, the trial court was well within its discretion to find that an agency relationship did not exist.

Finally, while the Claimants concede that Indiana law presumes that personal services provided by children for their parent are gratuitous, they argue that a contract existed where Edna intended to pay for the services. In Estate of Hann v. Hann, 614 N.E.2d 973, 979 (Ind. Ct. App. 1993), this court stated that:

> Where one accepts valuable services from another the law implies a promise to pay for them. Where services are performed by a non-family member, an agreement to pay may be implied from the relationship of the parties, the situation, the conduct of the parties, and the nature and character of the services rendered. However, where the parties are family members living together, and the services are rendered in the family context, no

[2] We would note that Ronald Voyles testified that Edna executed a Durable Power of Attorney that appointed him as the Attorney in fact. Tr. pp. 15-17. If the Power of Attorney was in effect during the time Robert allegedly told the Claimant to pay themselves, then we find it difficult to conclude that Robert made a contract on Edna's behalf with the Claimants when Edna had already named Ronald as her agent at the time. This document was entered into evidence yet it was not included as part of an exhibit file.

> implication of a promise to pay by the recipient arises. Rather, there is a presumption that services are performed gratuitously when there is evidence of a bond or family relationship between the decedent and the claimant, unless a contract implied in fact is shown.

Id. (internal citations omitted) (emphasis added).

In this case as in Hann, the Claimants must overcome the presumption that the personal services provided to Edna were performed pursuant to a contract implied in fact. As noted above, an express contract did not exist which would have supported the claim against the guardianship, so the Claimants must prove that the trial court did not abuse its discretion when it held that an implied contract did not exist.

In general terms, a contract implied in fact "arises out of acts and conduct of the parties, coupled with a meeting of the minds and a clear intent of the parties in the agreement." Nationwide Ins. Co. v. Heck, 873 N.E.2d 190, 197 n.1 (Ind. Ct. App. 2007). While we admire the devotion shown by the Claimants towards their mother, the evidence does not show that both parties had a meeting of the minds or that the clear intent of the parties was for Edna to pay for personal services provided by the Claimants. We find it difficult to conclude otherwise considering the condition of Edna during this time. We therefore conclude that the trial court did not abuse its discretion in determining that an implied contract did not exist.

The trial court did not abuse its discretion when it determined that Edna did not make nor was she bound by an implied or express contract with the claimants for personal services.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.