

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-031

JUNE TERM, 2004

In re Appeal of Robert Zuckerman	}	APPEALED FROM:
	}	Human Services Board
	}	
	}	
	}	DOCKET No. 18,376

In the above-entitled cause, the Clerk will enter:

Petitioner Robert Zuckerman appeals from a decision of the Human Services Board denying his motion to reopen an earlier ruling dismissing his appeal on the grounds that he lacked standing and the Board lacked jurisdiction in the matter. We affirm.

The factual and procedural background may be summarized as follows. Petitioner is the uncle of A.E., a young adult with Downs Syndrome who requires supervision and assistance. A.E.'s mother was killed in a car crash in June 1997. Petitioner and his wife, then residents of Connecticut, came to A.E.'s assistance and brought her to live with them. Petitioner was apparently appointed A.E.'s guardian by a Connecticut probate court. In 2001, petitioner and his wife moved with A.E. to Vermont, and he filed a petition with the Marlboro Probate Court to be appointed A.E.'s guardian. The probate court heard the matter in May 2001, but deferred its ruling until it was notified that the Connecticut probate court had surrendered its jurisdiction over the matter and had removed petitioner as guardian effective July 23, 2002.

The probate court held another hearing on the petition in January 2003, and issued a written decision in March, finding that A.E. was a person in need of a guardian, but declining to appoint petitioner as guardian on the ground that he had repeatedly failed to provide the Connecticut court with adequate accountings of funds belonging to A.E. Accordingly, the court appointed the Commissioner of Developmental and Mental Health Services as temporary guardian. Petitioner appealed the decision to the Windham Superior Court, which held a de novo hearing in April and issued a written decision and order in May. The court found that although the Zuckermans had provided a safe and loving home for A.E., petitioner had used A.E.'s funds to meet his family's financial needs without any accounting or separation of her money from his. The court concluded that A.E. is a person in need of a guardianship, but that petitioner had not shown that he was capable of responsibly handling her financial affairs and had improperly spent funds belonging to her. Accordingly, the court affirmed the appointment of the Commissioner as A.E.'s temporary guardian.

In May, the Windham Family Court appointed the Commissioner to be A.E.'s permanent guardian, on condition that A.E. remain living with the Zuckermans, and further ordered that the matter be reviewed in one year to determine whether the Commissioner should continue to serve as guardian.

Shortly after the probate court's decision in March 2003, petitioner filed a request for an emergency hearing with the Human Services Board, seeking an order compelling the Department of Developmental and Mental Health Services to cease and desist from providing guardianship services to A.E., which he believed were interfering with family matters. In June, the Board granted the Department's motion to dismiss, finding that it lacked jurisdiction and that petitioner lacked standing. Petitioner appealed the Board's ruling to this Court, but we dismissed the appeal for failure to file a timely transcript order. Petitioner then filed a motion with the Board to reopen its earlier decision, which the Board denied, reiterating its earlier findings and advising petitioner to address his concerns about the Department's guardianship to the probate and family courts. This pro se appeal followed.

Petitioner contends the Board erred in dismissing his appeal. The Board was correct in finding that its jurisdiction over

the Department is governed by 18 V.S.A. § 8727(b), which provides, in pertinent part, that "[a] person with a developmental disability or the person's guardian may appeal a decision of the department or an agency or program funded by the department to deny or terminate eligibility for services; to deny, terminate, suspend or reduce services; or when a request is not acted upon promptly to the human services board." Petitioner is not A.E.'s guardian, and although he may arguably qualify as A.E.'s "next friend" under § 8727(d) (authorizing appeals by a developmentally disabled person's "next friend" when there is conflict between the person and the guardian), the remedy sought by petitioner does not involve a decision "to deny or terminate services" of the kind contemplated by the statute. Compare 18 V.S.A. § 8723 (listing "services" provided by Department) with § 9310 (authorizing court to appoint Department to serve as guardian). Furthermore, even if the matter were within Board's jurisdiction, it would not have the authority to interfere with a guardianship within the courts' jurisdiction. See 14 V.S.A. § 3062 (vesting probate court with exclusive jurisdiction over all guardianship petitions). Petitioner's reliance on 3 V.S.A. § 3091(a) is similarly unavailing, as that statute authorizes appeals to the Board by applicants or recipients of assistance or services from the Department of Social and Rehabilitation Services, Department of PATH, the Office of Economic Opportunity, and the Office of Child Support.

Accordingly, we conclude that the Board properly dismissed petitioner's appeal as outside its jurisdiction. As the Board here correctly observed, petitioner must direct any claim concerning the Department's guardianship over A.E. to the probate and family courts. Our holding renders it unnecessary to address the Department's alternative argument that the Board's initial dismissal of the petition and this Court's dismissal of the appeal from that ruling bars the instant proceeding on the basis of res judicata.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Marilyn S. Skoglund, Associate Justice

Paul L. Reiber, Associate Justice