

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 26th *day of* September, 2014.

John Richard Harvey, Appellant,

against Record No. 131861
Circuit Court No. CL12000218-00

Audrey Tucker Harvey, et al., Appellees.

Upon an appeal from a
judgment rendered by the Circuit
Court of Nelson County.

Upon consideration of the record, pleadings and briefs, the Court is of the opinion that there is error in the trial court's judgment and, for the reasons stated below, we will reverse the judgment of the trial court.

John Richard Harvey appeals from the judgment of the trial court granting his petition for appointment of a guardian ad litem and conservator for his mother but awarding Harvey only \$23,688.00 of the \$39,480.46 for attorneys' fees and costs he requested pursuant to Code § 64.2-2008. Harvey asserts that the trial court erred in not awarding him the full amount of the requested attorneys' fees and costs. He also seeks an award of attorneys' fees and costs incurred in this appeal.

Code § 64.2-2008 provides in relevant part that

[i]f a guardian or conservator is appointed and the court finds that the petition is brought in good faith and for the benefit of the respondent, the court shall order that the petitioner be reimbursed from the estate for all reasonable costs and fees if the estate of the incapacitated person is available and sufficient to reimburse the petitioner.

Under the plain language of this statute, a petitioner is entitled to recovery of "all reasonable costs and fees" if certain conditions are met. In this case, the trial court appointed a guardian and conservator and stated in the judgment order that the petition was brought in good faith and that all of the fees and costs requested were reasonable. There is no dispute that Harvey's mother's estate is sufficient and available to pay the amount of attorneys' fees and costs at issue. Therefore, the trial court erred by reducing the award of attorneys' fees and costs from \$39,480.46 to \$23,688.00.

Accordingly, that part of the trial court's judgment ordering the conservator of Mrs. Harvey's estate to pay \$23,688.00 in attorneys' fees and costs to Harvey's counsel is reversed and the case remanded for entry of an order providing for payment to Harvey's counsel to satisfy the full amount of \$39,480.46 of attorneys' fees and costs sought in the trial court, and to determine the amount to be paid Harvey's counsel for reasonable attorneys' fees and costs incurred in this appeal.

Justice Lemons took no part in the consideration of this case. This order shall be certified to the said circuit court.

JUSTICE MIMS dissents.

A Copy,

Teste:

Debra L. Harrington

Clerk