

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 5/20/2024 11:31 AM

2 **IN THE MATTER OF THE GUARDIANSHIP**
3 **AND CONSERVATORSHIP OF JOHN F. J. II,**
4 **an adult incapacitated person,**


Ramon J. Maestas
Chief Clerk

5 **CHRISTOPHER A.J.,**

6 Petitioner/Conservator/ Guardian-Appellant,

7 and

No. A-1-CA-41410

8 **MARK HORTON,**

9 Counsel for John F. J. II.

10 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**

11 **David E. Finger, District Court Judge**

12 Martin, Dugan & Martin
13 Lane T. Martin
14 Carlsbad, NM

15 for Appellant

16 Horton Law Firm, LLC
17 Mark R. Horton
18 Carlsbad, NM

19 Counsel for John F. J. II.

20 **MEMORANDUM OPINION**

21 **HANISEE, Judge.**

22 {1} Petitioner, a duly appointed guardian and conservator for John F. J. II (the
23 protected person), appealed following the entry of an order concerning the payment
24 of attorney fees to former counsel for the protected person. We previously issued a

1 notice of proposed summary disposition in which we proposed to reverse and
2 remand. Former counsel has filed a memorandum in opposition. After due
3 consideration, we remain unpersuaded. We therefore reverse and remand for further
4 proceedings.

5 {2} We have reviewed the record with care, and are fully apprised of the
6 procedural history. To briefly summarize, the underlying proceedings were
7 contested in a manner that resulted in delay and expense. Once the incapacity of the
8 protected person became inescapably apparent, Petitioner was appointed permanent
9 guardian and conservator of the protected person’s estate. Former counsel, who had
10 been independently retained by the protected person, sought substantial attorney
11 fees. Petitioner attempted to challenge the reasonableness and propriety of those
12 claimed fees. The district court perceived Petitioner’s request for review as an
13 untimely motion for reconsideration pursuant to Rule 1-059 NMRA, and ordered
14 Petitioner to pay former counsel’s requested fees in full. The instant appeal followed.

15 {3} As we observed in the notice of proposed summary disposition, [CN 2-3] the
16 sequence of events at issue in this case does not lend itself to the application of Rule
17 1-059. To reiterate, the district court’s characterization of the order of May 26, 2023,
18 as a final disposition was not inappropriate. *See Clinesmith v. Temmerman*, 2013-
19 NMCA-024, ¶ 38, 298 P.3d 458 (indicating that a similar order resolving all pending
20 motions and appointing a permanent guardian and conservator constituted a final

1 order). And generally speaking, the district courts do lose jurisdiction thirty days
2 after final orders have been entered. *Kelly Inn No. 102, Inc. v. Kapnison*, 1992-
3 NMSC-005, ¶ 40, 113 N.M. 231, 824 P.2d 1033. However, district courts do not lose
4 jurisdiction to conduct further proceedings to carry judgments into effect or
5 otherwise to dispose of collateral matters. *Id.* ¶¶ 41-42. “Determining the amount of
6 an attorney[] fee award is one such matter.” *Id.* ¶ 42.

7 {4} The record makes clear that the order of May 26, 2023, was not fully
8 dispositive of the attorney fee award. Although the order indicated that former
9 counsel was entitled to payment, it did not specify the amount; rather, it provided
10 that former counsel was to submit invoices to Petitioner, who was further authorized
11 to file an objection with the court. [RP 477] After former counsel filed an affidavit
12 with (redacted) invoices, Petitioner made clear that he objected, and he sought
13 meaningful review of the reasonableness of former counsel’s fee request. [RP 498-
14 501] Under the circumstances, Rule 1-059 cannot be said to have barred Petitioner’s
15 request for review of the requested attorney fees. *See, e.g., Trujillo v. Hilton of Santa*
16 *Fe*, 1993-NMCA-005, ¶ 12, 115 N.M. 398, 851 P.2d 1065 (indicating that a post-
17 judgment motion concerning attorney fees did not fall under the auspices of Rule 1-
18 059), *rev’d on other grounds*, 1993-NMSC-017, 115 N.M. 397, 851 P.2d 1064.
19 Accordingly, the district court erred to the extent that it perceived Petitioner’s
20 challenge to be untimely.

1 {5} With respect to the district court’s handling of the dispute relative to the
2 attorney fees sought and ultimately awarded, we note that although court-appointed
3 professionals such as attorneys appearing in contested guardianship/conservatorship
4 proceedings are entitled to reasonable compensation from the estates of protected
5 persons, *see* NMSA 1978, § 45-5-105 (1993) (“If not otherwise compensated for
6 services rendered, any . . . attorney . . . appointed in a guardianship proceeding is
7 entitled to reasonable compensation from the estate of the incapacitated person.”),
8 former counsel was *not* court-appointed; accordingly, Section 45-5-105 is
9 inapplicable.

10 {6} With respect to the situation presented in this case, there have been recent
11 developments that provide significant guidance. It is now established that fees may
12 be awarded to independently retained attorneys, pursuant to NMSA 1978, Section
13 45-5-425(A) (1975), where such fees were incurred for the benefit of the protected
14 person, and with due regard for how payment of those fees will impact the protected
15 person. *See In the Matter of Protective Proceedings for Elizabeth A. (In re Elizabeth*
16 *A.)*, 2024-NMCA-017, ¶¶ 15, 16, 19, 22, 542 P.3d 793 (holding that district courts
17 have the power to order conservators to pay attorney fees that are billed to estates
18 within the parameters of Section 45-5-425(A), and that “the silence of Section 45-5-
19 105, governing compensation for court-appointed professional fees” does not

1 preclude payment of fees to noncourt-appointed attorneys), *cert. denied* (S-1-SC-
2 40174, Jan. 21, 2024).

3 {7} Accordingly, the district court had statutory authority to order Petitioner, as
4 conservator, to pay attorney fees to former counsel. However, awards of attorney
5 fees pursuant to Section 45-5-425 are subject to scrutiny. The “importance of court
6 supervision in guardianship and conservatorship proceedings cannot be overstated,
7 including oversight concerning the conduct of attorneys appearing in such cases,
8 whether or not they are appointed by the court.” *In the Matter of the Guardianship
9 and Conservatorship of C.G.*, 2020-NMCA-023, ¶ 58, 463 P.3d 487. In this case,
10 the district court did not evaluate former counsel’s requested fees, pursuant to
11 Section 45-5-425. Insofar as *Elizabeth A.* was issued on the heels of the district
12 court’s decision, this is unsurprising; nevertheless, more thorough and thoughtful
13 review of the requested fees, specifically in light of the factors identified in *Elizabeth
14 A.*, is warranted. *See generally Stein v. Alpine Sports, Inc.*, 1998-NMSC-040, ¶ 7,
15 126 N.M. 258, 968 P.2d 769 (“If a decision does not mention otherwise, [a] newly
16 fashioned rule is presumed to apply retroactively to all pending cases and appeals.”).

17 {8} We acknowledge that awards of attorney fees are occasionally upheld despite
18 the failure of the parties and the district court to conduct the requisite analysis;
19 however, this is only appropriate if the relevant facts were established below, the
20 district court made the necessary findings, and those findings were supported by

1 substantial evidence of record. *See, e.g., In re Elizabeth A.*, 2024-NMCA-017, ¶¶ 23-
2 26 (illustrating). Although former counsel vaguely suggests that this might be such
3 a case, [MIO 6] we find no support for that proposition. [RP 559-62] The record
4 does not establish either that the disputed fees were uniformly incurred for the
5 benefit of the protected person, or that the financial health of the protected person's
6 estate is such that the requested fees can be paid without causing undue adverse
7 impact upon him. We therefore conclude that reversal and remand is warranted, so
8 that district court may undertake the requisite inquiry.

9 ¶9) In closing, we reject former counsel's suggestion that Petitioner failed to
10 preserve the foregoing matters for consideration on appeal. [MIO 6-7] We conclude
11 that Petitioner's request for meaningful review of former counsel's fees was
12 sufficiently clear and timely to alert the district court to the issues; prescience,
13 relative to the decision rendered in *Elizabeth A.*, was not required. *See, e.g., In re*
14 *Guardianship of Patrick D.*, 2012-NMSC-017, ¶¶ 20-22, 280 P.3d 909 (holding that
15 the application of a variety of statutory provisions could properly be considered on
16 appeal, where the averments encompassed facts relevant to each, and the district
17 court's ruling was broad enough that it could have encompassed any of those
18 provisions); *cf. State v. Garcia*, 2009-NMSC-046, ¶ 12, 147 N.M. 134, 217 P.3d
19 1032 (indicating that it was not incumbent upon a party to anticipate a holding
20 rendered by this Court in order to preserve an argument for appeal). We also decline

1 former counsel’s request for narrow and specific instructions with respect to the
2 conduct of the proceedings on remand. [MIO 7-9] This is more appropriately left to
3 the informed discretion of the district court. *See generally Pizza Hut of Santa Fe,*
4 *Inc. v. Branch*, 1976-NMCA-051, ¶ 8, 89 N.M. 325, 552 P.2d 227 (“[T]rial courts
5 have supervisory control over their dockets and inherent power to manage their own
6 affairs so as to achieve the orderly and expeditious disposition of cases.”).

7 {10} Accordingly, for the reasons stated in our notice of proposed summary
8 disposition and above, we reverse and remand for further proceedings consistent
9 herewith.

10 {11} **IT IS SO ORDERED.**

11 
12 **J. MILES HANISEE, Judge**

13 **WE CONCUR:**

14 
15 **JENNIFER L. ATTREP, Chief Judge**

16 
17 **JACQUELINE R. MEDINA, Judge**