

Case Survey: Stautzenberger v. Stautzenberger,
2013 Ark. 148, 427 S.W. 3d 17

EXPENDITURES WHICH CONTRIBUTED TO WARD'S CARE THAT WERE
CONSISTENT WITH HER PREVIOUS SPENDING PATTERNS BEFORE
INCAPACITATION WERE FOUND TO BE PERMISSIBLE EXPENDITURES.

The Arkansas Supreme Court heard on appeal the case of *Stautzenberger v. Stautzenberger* in which a set of siblings sued their brother who served as their mother's ward.¹ Blair Stautzenberger served as guardian of his mother's estate after she was diagnosed with dementia, a role in which he served for a little over two years.² After the death of their mother, Duane and Michael Stautzenberger sued challenging Blair's management of the estate.³ The trial court appointed a master to look into the financial matters of the estate and the master determined that Blair had mismanaged the estate, a finding the trial court used in holding that Blair mismanaged the estate and holding him personally liable for some of the mismanagement.⁴ In addition, Duane and Michael moved to correct the judgment pursuant to Arkansas Rules of Civil Procedure 60 making Blair liable for additional losses and the court agreed.⁵

Prior to Blair being appointed guardian, he had taken care of his mother, holding a power of attorney, and his mother had made it known that if she became incapacitated, she wanted Blair to be her guardian.⁶ Once their mother became incompetent, none of the siblings objected to Blair being appointed as guardian.⁷ The court-appointed master found that \$128,990.86 was misappropriated over the two years, of which the trial court found that Blair was personally liable for approximately \$90,000.00 that was spent for expenditures that included church donations; direct support for her son, Robert; schooling for handicapped grandchildren; expenses related to care for someone who was like a daughter to the mother; and gifts and parties for the nursing home staff and residents.⁸

The first point of appeal for Blair was that the trial court exceeded its authority under Arkansas Rule of Civil Procedure 60 when it modified the original order to find him personally liable for expenditures he was initially found not liable.⁹ Blair claimed the motion to modify should have been denied because it failed to assert a "clerical mistake, error, or omission."¹⁰ The Court found that only 62 days had elapsed between the initial order and the modified order, placing it well within the 90-day statutory window.¹¹ Under Rule 60(a) the only limitation on a trial court's authority to vacate or modify a judgment is that it is done with "prior notice to all parties."¹² Here the court stated in court that it intended to make Blair personally liable for the

¹ *Stautzenberger v. Stautzenberger*, 2013 Ark. 148, at 1, 427 S.W. 3d 17, 19.

² *Id.* at 1–2; 427 S.W. 3d at 19–20.

³ *Id.* at 1, 427 S.W. 3d at 19.

⁴ *Id.*, 427 S.W. 3d at 19.

⁵ *Id.* at 1–2, 427 S.W. 3d at 19.

⁶ *Id.* at 2–3, 427 S.W. 3d at 20.

⁷ *Stautzenberger*, 2013 Ark. at 3, 427 S.W. 3d at 20.

⁸ *Id.* at 3–4, 427 S.W. 3d at 20.

⁹ *Id.* at 4, 427 S.W. 3d at 20.

¹⁰ *Id.*, 427 S.W. 3d at 20.

¹¹ *Id.* at 4–5, 427 S.W. 3d at 21.

¹² *Id.* at 5, 427 S.W. 3d at 21.

charges, so it was well within the court's authority to modify and correct the original order to their initial intent.¹³

Blair's second point of appeal is that the district court erred when it disallowed expenditures that contributed to the care and maintenance of his mother that were consistent with her previous pattern of spending and charitable giving.¹⁴ Blair argued that "maintenance" includes a wide range of circumstances and that the spending went towards "maintaining" her routines and habits as much as possible.¹⁵

The extent to which expenditures may be construed to be proper for the care and maintenance of the ward is a question of first impression for the court.¹⁶ The Arkansas Probate Code obligates a guardian to "care for and maintain the ward."¹⁷ The Court also looked to the Arkansas Code that provides that "Upon a showing that the action would be advantageous to the ward and his or her estate, the court may authorize the guardian to make gifts and disclaimers on behalf of the ward."¹⁸

The Court found the trial court clearly erred in finding Blair's spending was improper.¹⁹ The Court found that Ark. Code Ann § 28-72-409(b) specifically authorizes, without a court order, a custodial trustee to continue to support individuals who were supported before incapacitation.²⁰ The Court also included donations to the church as appropriate expenditures.²¹ Regarding expenditures, the lower court held as "food and household expenses," the Court found these well within the definition or what is required for "maintenance."²² The Court summed up their holding rather succinctly by stating that "[o]ur probate code does not require that a ward be maintained in an austere and joyless environment," but recognizes that not all of the expenditures may have been reasonable and necessary.²³

For these reasons, the court affirmed the lower court's decision with regard to the court's authority to modify its original order, but reversed and remanded to the lower court to enter a judgment consistent with their holding.²⁴

Justice Danielson wrote a concurring in part and dissenting in part decision.²⁵ Justice Danielson agrees with the Court's decision that the circuit court was within its discretion in modifying the previous order because the record makes it clear that the modified order was an attempt to clarify or correct its prior order and was not outside the confines of Rule 60(a).²⁶ For the disputed expenditures, Justice Danielson disagrees with the opinion and believes that the circuit court should have applied the "doctrine of substituted judgment" to determine whether the incapacitated individual would have made the same decisions prior to incapacitation.²⁷ Justice

¹³ *Stautzenberger*, 2014 Ark. at 5, 427 S.W. 3d at 21.

¹⁴ *Id.*, 427 S.W. 3d at 21.

¹⁵ *Id.* at 5–6, 427 S.W. 3d at 21.

¹⁶ *Id.* at 6, 427 S.W. 3d at 21.

¹⁷ *Id.*, 427 S.W. 3d at 21–22 (quoting Ark. Code Ann. § 28-65-301(a)(1)).

¹⁸ *Id.*, 427 S.W. 3d at 22 (quoting Ark. Code Ann § 28-65-308(b)(2)).

¹⁹ *Stautzenberger*, 2014 Ark. at 6, 427 S.W. 3d at 22.

²⁰ *Id.* at 6–7, 427 S.W. 3d at 22.

²¹ *Id.* at 7, 427 S.W. 3d at 22. (citing *Winters v. Winters*, 24 Ark. App 29, 747 S.W.2d 583).

²² *Id.*, 427 S.W. 3d at 22.

²³ *Id.* at 7–8, 427 S.W. 3d at 22.

²⁴ *Id.* at 8, 427 S.W. 3d at 22.

²⁵ *Stautzenberger*, 2013 Ark. at 8, 427 S.W. 3d at 22.

²⁶ *Id.* at 8–11, 427 S.W. 3d at 22–24.

²⁷ *Id.* at 17, 427 S.W. 3d at 27–28.

Danielson believes that the circuit court should reexamine the facts of the case using the substituted judgment doctrine to determine if the expenditures should be allowed.²⁸

²⁸ *Id.*, 427 S.W. 3d at 27–28.