IN THE SUPREME COURT OF FLORIDA

FSC CASE NO. SC05-675
3DCA CASE NO. 04-985
L.T. CASE NO. 03-2125 GD

WILLIAM F. HAYES, JR., ET AL.

vs.

IN RE: THE GUARDIANSHIP OF
MAE THOMPSON, etc.,

INITIAL BRIEF OF APPELLANTS

Submitted by:

EDUARDO I. RASCO, ESQ.
JESSICA B. LASSMAN, ESQ.
ROSENTHAL ROSENTHAL RASCO, LLC

Attorneys for Appellants
Turnberry Plaza, Suite 500
2875 Northeast 191st Street
Aventura, Florida 33180
Telephone: (305) 937-0300
Facsimile: (305) 937-1311

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IV. INTRODUCTION

The Appellants, William F. Hayes, Jr., William F. Hayes, III, and Vivian Hayes, will be referred to herein alternately as the "Appellants" or "The Hayeses." The lower court case is a guardianship matter of an incapacitated person, Mae E. Thompson, who is now deceased. The Ward, Mae Thompson will be referred to herein alternately as "The Ward" or "Ms. Thompson." The court-appointed counsel for the Ward, Stephen Fuller, Esq., will be referred to as "Mr. Fuller". The court appointed Guardian, Mirta Sanchez will be referred to as the "Guardian", Ulysses Felder, Esq., attorney for the Guardian will be referred to as "Mr. Felder", and Michael Swan, Esq., the court appointed monitor will be referred to as the "Court Monitor". References to the Record filed by the Clerk will be referred to by the symbol "R" followed by the appropriate number(s).

The appeal to the Third District Court was of a final order pursuant to Fla.R.App.P. 9.110, requesting review of the Order Awarding Attorney's Fees to the Ward's attorney, Mr. Fuller, rendered by Judge Maria M. Korvick on March 31, 2004. The within appeal is of the Third District Court of Appeals' opinion filed March 16, 2005 (R-852-853), certifying conflict between *McGinnis v. Kanevsky*, 564 So.2d 1141 (Fla. 3d DCA 1990) and *Bachinger v. Sunbank*, 675 So.2d 186 (Fla. 4th DCA 1996), concerning the issue as to whether or not Appellants have standing in this matter, and of the Third District Court's March 31, 2005, Order on

Attorney's Fees and costs to Appellee and denial of same to Appellants (R-850-851). Since the pending issue before this Court involves standing and whether Appellants are interested parties within the meaning of the Fla. Stat.. §731.201(21) (2003) a more detailed summary of the proceedings in the lower tribunal is set forth herein.

V. STATEMENT OF THE CASE AND THE FACTS

This case stems from an appeal of the *Order Deeming Funds in Bank Accounts and Constructive Trust* dated December 12, 2003, rendered by Judge Maria Korvick of the Eleventh judicial Circuit, in and for Miami-Dade County, Florida. This matter is a guardianship case on behalf of an incapacitated senior citizen, Ms. Thompson, who is now deceased. Ms. Thompson was an 83-year-old woman who was removed from her home shared with William Hayes, III,[1] at which time a Petition to Determine Incapacity was filed on her behalf. On or about the 14th day of April, 2003, the lower court appointed Mr. Fuller as counsel for the Ward. After the adjudication of incapacity, Mr. Fuller continued to act as the Ward's attorney. Appellants, Vivian Hayes, William Hayes, Jr., and William Hayes III (sometimes referred to as "Billy" in court orders) are Ms. Thompson's family.

[1] Interestingly, in the Guardianship proceedings, Appellants, Vivian Hayes, William Hayes, and William Hayes, III, are referred to in all motions and court orders as "Interested Parties", yet this appeal results from the 3rd Districts' opinion that the Hayeses have no standing because they are not interested parties.

Vivian Hayes is the Ward's sister who, until the lower court intervened, was responsible for her medical and financial assistance, William Hayes, Jr. ("William"), is Vivian's husband and the Ward's brother-in-law, and William Hayes, III, ("Billy") is Vivian's son and the Ward's nephew, with whom the Ward lived prior to the Ward's removal from her home. Most of the Ward's funds were held in joint bank accounts with Vivian Hayes for most of the Ward's lifetime.

In or about April of 2003, by order of the lower court all of Appellants' funds were frozen, totaling approximately $203,000.00 (R-18-21). In or about May of 2003, the probate judge incarcerated Vivian, an 80-year-old woman for five months for essentially visiting her sister contrary to court order and for failing to produce documents concerning their joint accounts with the Ward within 5 days as ordered by Judge Korvick (R- 57-59).

On November 24, 2003, the lower court held a lengthy hearing at which the court ordered that frozen funds (by prior court order) held in the individual name of William Hayes, Jr., be released, as the court found no evidence that these funds were connected to the proceedings, although they were frozen for more than seven months and freezing of the account left the Hayeses with nominal funds[2] with which to eat or pay their expenses.

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[2] William Hayes continued to receive a small pension from the Navy but Vivian Hayes social security was cut off for five (5) months while she was incarcerated.

The undersigned filed an appearance in this cause and faxed the same to the Guardian, and her attorney, Mr. Felder, on December 5, 2003, which appearance was reflected on the court's docket as of the 9th day of December, 2003, prior to the drafting and submission of the proposed order concerning the hearing of November 24, 2003. Mr. Felder, the Guardian's attorney, was advised that as attorney of record for the Hayeses, a draft of the order should be submitted to the undersigned counsel prior to submission to the court. Not only did Mr. Felder fail to comply with this reasonable request, which is typically the condition of submission of any order to the judge, but instead had the order hand-delivered to Judge Maria M. Korvick, had the order signed, delivered the order to the bank, and retrieved monies from the accounts of Vivian Hayes prior to ever submitting a copy of said order to undersigned counsel. In fact, Mr. Felder provided a facsimile copy of the order to undersigned counsel on December 15, 2003, three days after the order dated December 12, 2003, had been entered and only after the Guardian hand delivered the order to the bank and withdrew funds from the Hayeses' accounts.

As a result, the Hayeses filed a Motion for Sanctions requesting that all proposed orders be provided in advance to counsel of record, because the order contained obvious errors that could have been immediately corrected, as well as requesting that copies of all communications with the court be delivered by the same medium (e.g.: if hand delivered to the court, it should be hand delivered to

counsel of record) (R-504-506). This motion was denied (R-728) and became the impetus for the court appointed attorney, Mr. Fuller, to submit further motions and orders, ex-parte. The prior ex-parte orders were not appealed.

The Hayeses filed a timely motion for rehearing (R-428-474) of the *Order Deeming Funds in Bank Accounts and Constructive Trust* dated December 12, 2003, (R-420-427). This December 12th order, in pertinent part, made the following findings and rulings:

1. That real property located at 19740 SW 87th Avenue, Miami, Florida (hereinafter " The Real Property") titled in the name of Vivian Hayes, William Hayes, Jr., and the Ward shall be deemed to be owned 75.85% by the Ward; (see paragraph 1)
2. That William Hayes, III., must vacate The Real Property by January 2, 2004; (see paragraph 2)
3. That the Guardian was authorized to sell The Real Property; (see paragraph 3)
4. That William Hayes, III's, life savings and retirement account frozen by court order be released; (see paragraph 4)
5. That $10,600.00 be removed from William Hayes, III's, Washington Mutual bank account and paid to the Ward's account; (see paragraph 5)

6. That all of Vivian Hayes' bank accounts totaling approximately $93,000.00 be transferred to the Ward; (see paragraph 6)

7. That an additional $25,270.163 be withdrawn from William Hayes, III's bank account by court order and given to the Ward unless Billy presented documentation proving it was his money (which he later did see court order dated February 13, 2004 (R- 752); and (see paragraph 8)

8. Entering a judgment against Vivian Hayes for $91,813.20 payable in 90 days. (see paragraph 10)

The order of December 12, 2003, was replete with errors, omissions, and duplications as set forth in Appellants' Motion for Rehearing, which was partially resolved by stipulation (see court order dated February 13, 2004 (R-753-756) and July 21, 2004, as to some of the errors.

Throughout the course of the lower court proceedings, Mr. Felder and Mr. Fuller, have applied for and received orders awarding guardian's and attorneys' fees and costs without hearing, and at times without notice. For example, Mr. Fuller received $3,570.00 on January 27, 2004 (R 724-725); $5,291.00 on July 10, 2003 (R 90-91); and $3,333.00 on October 9, 2003 (R 235-236), all without hearing. Many of the petitions for fees contained duplicative time entries and inappropriate billing

practices and, as a result, the Hayeses filed objections to the petitions for attorneys' fees and other reimbursements (R 808-809).

After the undersigned filed the Motion for Rehearing of the December 12, 2003, order the trial court appointed a Court Monitor, Michael Swann, Esq. to review the Hayeses' allegations as contained in the Motion for Rehearing. Subsequent to investigation into the accountings of the forensic accountant also appointed by the court, it was stipulated that certain errors were apparent and the court entered an order dated February 13, 2004 (R-753-756), and then on July 21, 2004, correcting errors on the order dated December 12, 2003. The balance of the Hayeses' Motion for Rehearing of the December 12, 2003, *Order Deeming Funds in Bank Accounts and Constructive Trust*, is still pending. Based upon the allegations in the Motion for Rehearing the Hayeses contend that the funds left in the Guardianship estate belong to the Hayeses and not the Ward.

Pursuant to subsequent court orders dated February 13, 2004 and July 21, 2004, as partial adjudication of the Hayeses' Motion for Rehearing, the judgment against Vivian Hayes in excess of $90,000.00 was vacated, the sum of $6,370.68 was ordered to be returned to Vivian Hayes, and the sum of $25,270.16 has been returned to William Hayes, III. Further, William Hayes, Jr., had his funds totaling approximately $122,000.00 frozen returned to him after Messrs. Fuller and Felder, the proponents of freezing the accounts, admitted in court on or about November

24th, 2003, that they could find no basis whatsoever to argue that William Hayes, Jr.'s funds (consisting of a 85 year old man's entire life savings and retirement) should continue to be frozen and, therefore, said funds were unfrozen.

On March 31, 2004, the lower tribunal held a hearing on various matters, including the determination of additional fees to be awarded to Mr. Fuller. Counsel for the Hayeses made a proper objection and, notwithstanding the objection and the pertinent statutes and case law, Judge Maria M. Korvick again rubber stamped his request for fees and entered an Order on March 31, 2004, granting Mr. Fuller's attorneys' fees with virtually no hearing, without any expert testimony, without testimony of Mr. Fuller, without any evidence being admitted and without any findings as to Mr. Fuller's fees, all over the vehement objections of counsel for the Hayeses. Appellants appealed Mr. Fuller's entitlement to fees and the amount of fees awarded in said order, based upon the failure of Mr. Fuller to present testimony concerning his fee, his failure to introduce a fee statement or other evidence, Judge Korvick's refusal to allow the Hayeses' counsel to call Mr. Fuller or their expert witness to testify concerning the fees requested, and based upon the Judge's failure to make the necessary findings in the order.

On appeal, the Third District did not reach the merits as to whether the lower tribunal erred in awarding Mr. Fuller's fees with virtually no hearing, without any expert testimony, without testimony of Mr. Fuller, and without any findings as to

Mr. Fuller's fees, without any evidence being admitted over the vehement objections of counsel for the Hayeses due to the appellate court's finding that Appellants lack standing to challenge the lower court's award of attorney's fees. The Third District certified conflict regarding the issue of standing. The Third District also awarded Mr. Fuller appellate attorney's fees.

SUMMARY OF THE ARGUMENT

Given the facts of this case, there is no doubt that the Hayeses have standing despite the fact that whenever convenient, the trial court would discount the Hayeses' objections based upon lack of standing. The Hayeses' finances and freedoms were brought into the Guardianship proceedings. The Hayeses did not intervene, they came to Court in their own defense when their money and property were taken from them. All of the Appellants' funds were frozen, and Vivian Hayes was incarcerated for five months, and her and her son, Billy's, funds continue to be improperly held and spent by the Guardianship estate. For this reason alone, Vivian Hayes and her son have standing to challenge the use of these funds and they became interested parties entitled to due process, notice of proceedings, and an opportunity to be heard. Furthermore, all three Appellants, Mr. Felder, the Guardian's forensic accountant, Jesse Singer, the Court Monitor, and the current attorney for the Guardian of the property, Enrique Zamora, Esq., all have pending motions for attorney's fees in the lower court well in excess of $150,000.00, which

if ordered paid will be paid from funds which the Hayeses contend belongs to them. If this Court does not find the Hayeses have standing, their life savings will be doled out by the lower court with the Hayeses watching from the sidelines without being able to object, cross examine or defend against the awards of fees and costs payable with monies they still contend belongs to them.

Appellants have standing to seek the reversal of the attorney's fees granted to Mr. Fuller in the lower court and the appellate court in that said fees were paid (or will be paid) from those funds which Vivian and/or Billy contend belong to them, not by virtue of inheritance[3], but by virtue of said funds being improperly transferred to the Ward. The issues concerning the Hayeses' assets transferred to the Ward by Judge Maria M. Korvick's order dated December 12, 2003, are still pending upon Hayeses' Motion for Rehearing. Under the circumstances of this case, and pursuant to public policy, the Appellants herein are absolutely entitled to standing to raise objections to the instant Guardianship proceedings. Indeed, the Court may ultimately find that the monies spent belong to the Hayeses.

ARGUMENT

A. APPELLANTS HAVE STANDING TO ADDRESS THE ISSUE OF ATTORNEY'S FEES AT THE LOWER TRIBUNAL/TRIAL COURT LEVEL, AND THEY HAVE STANDING TO RAISE THE ISSUE ON APPEAL

[3] Coincidently, the Hayeses are the sole beneficiaries of the Ward's estate.

In order for a party to have standing to challenge a lower court's ruling, that party must be an "interested party." Fla. Stat. §731.201(21) defines an "interested party" as any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. The Appellants have every reason to be affected by the outcome of the proceeding because it was their personal funds and assets that were frozen by the probate court. Additionally, said funds were later transferred to the Ward in the proceedings and the disputed attorney's fees were paid for with said funds. As a result, the Appellants clearly meet the definition of an interested party under Florida law because they are affected by the outcome of the proceedings.

Appellants were made interested parties to the lower court proceedings not merely because they are family members, but because when the Ward was removed from her home the probate court entered orders freezing and ultimately transferring their assets and property to the Ward. Furthermore, the majority of the proceedings below involved motions against the Hayeses (i.e., R-12-17, 32-54, 101-136, 141-142, 257-295, et cetera) or by the Hayeses to have their assets or property returned to them (i.e., R-207-217, 230-231, 479-484, et cetera).

The Third District Court of Appeals held that Appellants have no standing to challenge the award of fees and certified conflict between *McGinnis v. Kanevsky*,

564 So.2d 1141 (Fla. 3d DCA 1990) and *Bachinger v. Sunbank/South Florida, N.A.*, 675 So. 2d 186 (Fla. 4th DCA 1996).

In *McGinnis v. Kanevsky*, 564 So.2d 1141 (Fla. 3d DCA 1990), the guardian, Lucille McGinnis, was awarded $78,890.00 for her services. McGinnis was later appointed the personal representative of the ward's estate. **After** the ward's death, during the administration of the estate, the heirs of the ward challenged the award of fees in the guardianship proceeding. The Third District held that guardianship fees, which were properly authorized by the probate court, could not be set aside after the ward's death merely because the ward's heirs considered the awards too high. In *McGinnis*, the appellate court stated that it was "an undisputed fact that each award of guardianship fees was made by the Trial Court upon appropriate application of the Guardian, without misrepresentation or impropriety of any kind . . . There is no basis whatever for permitting the revisiting of these duly entered orders long after they had been executed and become final." *Id.* at 1143.

The court concluded that heirs and beneficiaries of a ward have no standing to question the administration of a guardianship. The court stated that it is "only concerned with the welfare of the ward himself in the administration of what are, after all, **only his funds**". *Id.* at 1144, (emphasis added).

The case at hand is clearly distinguishable from the *McGinnis* case. In the Thompson guardianship, the guardianship funds became commingled with the funds of the Appellants, and to date, the funds of Vivian Hayes and William Hayes, III., remain in the guardianship estate. Accordingly, the funds that were used to pay Mr. Fuller came from the frozen or non-returned assets of the Appellant(s). Furthermore, the timing of the challenge to the fees are clearly different in the case at hand. In *McGinnis*, the heirs, whose funds were not used to pay the guardian, challenged awards in the guardianship after the Ward's death. The Hayeses *attended the hearing* and were prohibited from cross examining Mr. Fuller or presenting evidence to refute the claim for attorney's fees. The award to Mr. Fuller at issue was entered on March 31, 2004. The Hayeses appealed same prior to the Ward's death and the issue on appeal was not only entitlement, amount, and necessity of the fees, but also the lack of due process surrounding same. Furthermore, the funds used to pay for Mr. Fuller's fees partially belong to the Appellants, not simply as prospective heirs, but as the true owners of the funds while the Ward was alive.

The logic of *McGinnis*, that it would be unwise "to permit the intrusion of the relatives and devisees of the ward into the administration of the guardianship in order to preserve their alleged interests in the assets of the ward," *Id.*, still stands by properly permitting the Appellants standing under the circumstances of this case.

The Appellants are not challenging any awards in the guardianship estate to protect the assets for their inheritance; but rather, the challenge was intended to preserve their claims to the guardianship funds, which they claim, are their funds even prior to the death of the Ward.

In *Bachinger v. Sunbank/South Florida, N.A.*, 675 So. 2d 186 (Fla. 4th DCA 1996), the Fourth District held that heirs who cared for the ward before she was declared incompetent were "interested parties" with standing to object to a petition by a guardian for final discharge after the death of the ward. The *Bachinger* Court cited *Brogdon v. Guardianship of Brogdon*, 553 So.2d 299 (Fla. 1st DCA 1989), *Bachinger* at 187, wherein a son of a ward was held to be an "interested party" with standing during the ward's lifetime to contest actions of the guardian by virtue of his inheritance rights and his family interest. The *Brogdon* Court cited *Richardson v. Richardson*, 524 So.2d 1126 (Fla. 5th DCA 1988), wherein a contingent beneficiary under a testamentary trust was determined to have standing to object to a final accounting.

The *Bachinger* Court further distinguishes *McGinnis* with *Sun Bank and Trust Co. v. Jones*, 645 So.2d 1008 (Fla. 5th DCA 1994), by pointing out that in *McGinnis* the heirs were only objecting to the excessive amount, while there was a conflict in interest alleged in *Sun Bank and Trust Co. Bachinger* at 187. Similarly,

in the case at hand, the interested parties object to the lack of due process, not the amount, in the award of the fees.

The *Bachinger* Court further stated:

> "Although we have considered the concerns expressed by the majority in *McGinnis* regarding the conflict created when heirs are able to object to amounts being spent on the ward, we are not persuaded that it follows that they should have no standing. The *McGinnis* majority apparently felt that there were sufficient safeguards built into guardianship procedures, reasoning in a footnote: 'The point here is that just as it is obviously for the competent person to spend or misspend his assets as he pleases, so it is up to the guardianship estate, regulated by the guardian and the court, to do the same without the interference or concern with the totally non-altruistic wishes of the ward's relatives or legatees.' We cannot agree with that reasoning. It is not sufficient, in our opinion, to rely on the guardian and the court. Although courts approve annual accountings of guardians, it is highly unrealistic to assume that such an ex parte procedure would involve any high level of scrutiny, which is probably why approval is not conclusive. . . We conclude, based on the facts presented in the present case, that the appellants had standing. They alleged that, in addition to being heirs, they were relatives and were taking care of decedent before she was declared incompetent. If they do not have a sufficient interest to question how her funds were spent, there is probably no one who does, and we do not think that should be the case. As Judge Sharp observed in *Sun Bank and Trust Co. v. Jones*, 'Courts must scrupulously oversee the handling of the affairs of incompetent persons under their jurisdiction and err on the side of over-supervising rather than indifference.' We therefore reverse and certify conflict with *McGinnis.*

Bachinger at 187-188.

Clearly, the Appellants herein cared for the Ward for many years prior to her being declared incompetent. Billy lived with the ward, and Vivian assisted her with

her personal affairs, and the Ward and Vivian or Billy often co-mingled their funds and assets, for the Ward had no children or husband. Furthermore, unlike in *Bachinger* and *McGinnis*, as stated above, the Hayeses' funds and property were taken by Judge Maria M. Korvick before the Ward's death, which gives the Hayeses' objections the right to withstand any lack of standing argument.

In fact, there are no Florida cases which include facts where a party who was found to be disinterested also had his or her assets taken by the court and given to the ward. In *King v. Fergeson, Skipper, Shaw, Keyser, Baron, and Tirabassi, P.A.*, 862 So.2d 873 (Fla. 2d DCA 2003), the ward's daughter, who filed a petition for appointment as guardian, was entitled to notice of a petition for attorney's fees and costs filed by the attorneys for her sister, who also petitioned for appointment as guardian. The ward's daughter was found to be an active participant in the underlying litigation and, therefore, an interested party. If a party who merely files a petition to be appointed as guardian is deemed an interested party, clearly the Appellants herein were and continue to be interested parties.

Appellants do not claim to be interested parties solely due to inheritance rights. Appellants' Motion for Rehearing of Judge Maria M. Korvick's order transferring Appellants' funds and real property to the Ward is still under review. Accordingly, the very funds used to pay Mr. Fuller's fees partially belonged to the Appellants prior to the Ward's death.

Other Florida cases are distinguishable to the facts in this matter. For example, in *Ash v. Coconut Grove Bank*, 448 So.2d 605 (Fla. 3d DCA 1984), the appellate court held that the mother of the Ward was not entitled to participate regarding fees to the Guardian because her only financial interest was as the ward's heir at law.

The argument set forth by *McGinnis* that the court has a sufficient safeguard built into the guardianship procedures does not consider a probate judge's inability to oversee every case pending in their division with the sufficient detailed attention it needs and deserves. It also overlooks the possibility that the judge may be unaware of significant and material facts outside of the courtroom environment, which would render the court to express a different view concerning the reasonableness of the guardian's actions. It also overlooks the perception of the public at large that the ex-parte system in probate court results in inefficient administration and the sharing of the estate by attorneys. This is emphasized in *Brake v. Murphy, 736* So.2d 745 (Fla. 3d DCA 1999), wherein the Third District, in reversing an order awarding attorney's fees, states "probate court has become repugnant to a great many citizens because of the perceived delay in administration and disposition of the estate. Moreover, citizens are frightened by what they perceive to be sharing of the estate with an attorney." The case at hand in which the Hayeses' entire life savings was taken and given to the Ward and in which Vivian Hayes was incarcerated for

five (5) months for speaking to her sister contrary to a court order, and for failing to produce bank documents within 5 days, exemplifies the *fright* perceived by citizens of this State, when the court takes extreme positions and measures as has occurred in these proceedings. To say that the Hayeses have no standing is to allow our courts to divest a family of their entire life savings, take their real property in which they reside and *deem* it to belong to a Ward,[4] order it sold, and then, when the funds which were taken from the family members of the Ward are used to pay the attorney's fees or other expenses incurred to take their property, the family whose funds were taken have no standing to object.

The instant case stands as a monument to the need of a watchful eye by family members and other parties who previously cared for the ward, or family members of the ward, and even potential beneficiaries. If standing were a bar to this class of people who are sufficiently interested in taking their time and effort and their money to pay attorney's fees to oversee the administration of their relatives' estates, courts would be eliminating opportunities to safeguard the ward's rights. At worst, if a party who according to the reason of *McGinnis* would have no standing, objected to a disbursement in a Guardianship estate, the Judge could listen to the objection and still overrule the objection. Prohibition to standing

[4] In this case without the service of a summons or complaint (but that is an issue for another day).

eliminates the objection and eliminates the possibility that the Judge may agree with the relatives' concerns over the disbursement use or disposition of the ward's assets. Granting standing to family members or close friends whose lives have been intertwined with that of the ward's for many years prior to adjudication does not give these persons the ability to decide what the ward's funds should be used for, it merely provides the basis by which an alarm can be sounded and a judge alerted to a potential wasting or misuse of the ward's funds. Public policy demands that when a person is determined incompetent and their entire financial estate is managed by someone, who for all intents and purposes is a stranger to the ward, that there be the maximum amount of supervision and oversight. A trial judge does not have the resources, abilities, or personal knowledge concerning the ward's life circumstances to efficiently watch over the ward's assets. In fact, the court should welcome this class of persons' input in the Guardianship process. Granting them input and standing does not mean that they have an actual say. All decisions are still made by the probate judge, and to the extent that the probate judge believes that the objections of the family members, or others are inappropriate, unfounded or unjustified, then those objections should be overruled. It is quite a different rule to say that the objections cannot even be heard, for surely, if the objections were valid, the court would be pleased to sustain them and that would benefit the Ward. If as a

result of lack of standing, a relative's justified objection were never made, nor ever heard, the silence could be deafening.

B. THE APPELLATE COURT SHOULD RECONSIDER ITS ORDER ON ATTORNEYS' FEES AND COSTS IF THIS COURT FINDS APPELLANTS HAVE STANDING

If this Court finds that the Appellants have standing, then this Court should reverse the Third District order affirming the order dated March 31, 2004 and the Third District's order granting Mr. Fuller attorney's fees and denying the Hayeses request for appellate attorney's fees . This Court should either remand to the Third District for the determination of the appeal of attorney's fees on the merits based upon briefs submitted or alternatively, based upon the fact that there is no question that a hearing did not occur, this Court could reverse the lower tribunal's order and remand back to the trial court to have a proper evidentiary hearing concerning the need and reasonableness of attorney's fees expended by the Appellee.

VIII. CONCLUSION

Appellants clearly were and are interested parties within the meaning of Fla. Stat. §731.201(21) (2003) to the Guardianship proceedings and have standing to challenge the award of fees in the guardianship proceedings due to the court's taking of their property which was transferred to the Ward. The court's lack of findings in the award to Mr. Fuller of any attorney's fees or costs are erroneous as a matter of law, in that a full hearing was not conducted, the required factors of the

Florida Statutes were not considered, and no testimony of an expert nor of Mr. Fuller was taken and no document was admitted into evidence. Accordingly, the order awarding Mr. Fuller's fees must be reversed, and this Court should find that Appellants have standing and remand to the Third District to determine the remaining merits of this appeal or alternatively, reverse and remand to the trial court for further proceedings consistent herewith. The Third District's order granting Mr. Fuller Appellate attorney's fees should also be reversed and remanded to award the Appellants' attorney's fees and costs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the of the foregoing Initial Brief of Appellants was furnished by first class mail this 17th day of June, 2005, to: Enrique Zamora, Esq., Guardian of the Property, Zamora & Hillman, 306 Aviation Avenue, Unit 4C, Coconut Grove, Florida 33133; and Stephen B. Fuller, Esq., 424 Zamora Avenue, Coral Gables, Florida 33134.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I HEREBY CERTIFY that I have complied with the font requirements of Rule 9.210 of the Florida Rules of Appellate Procedure.

ROSENTHAL ROSENTHAL RASCO
Attorneys for Appellants
Turnberry Plaza, Suite 500
2875 Northeast 191st Street
Aventura, Florida 33180
Telephone: (305) 937-0300
Facsimile: (305) 937-1311

By:_____
EDUARDO I. RASCO, ESQ.
FLORIDA BAR NO. 646326
JESSICA B. LASSMAN, ESQ.
FLORIDA BAR NO. 0126292