



State of New Hampshire Guardian ad Litem Board

Public Hearing

April 18, 2014

Legislative Office Building Room 101

Members present: Alan Cantor, Susan Duncan, Chair, Chris Keating, Presiding Officer, Ann Larney, Representative Deanna Rollo, David Villiotti

Members Absent: Master Henrietta Luneau, Senator David Pierce, Dave Robbins

Also Present: Ann Thompson Bennett, respondent, Don Nason, prosecution, Kevin Coutreau, witness

A quorum was present.

Presiding officer Chris Keating called the hearing of Ann Thompson Bennett Docket #2013-C0004 to order at 1:36pm.

The Board members introduced themselves.

Mr. Nason & Ms. Thompson Bennett introduced themselves.

C. Keating gave an overview of the rules governing the hearing.

Mr. Coutreau was sworn in by A. Cantor who is a Justice of the Peace.

Mr. Nason and Ms. Thompson Bennett gave testimony and offers of proof.

Mr. Nason testified that Ms. Thompson Bennett violated GAL 503.03(a) Timeliness by:

1. Taking 3 weeks to contact the parties after receiving the order of appointment.
2. There was a delay in filing documents with court.
3. She took several weeks to return phone calls.

Ms. Thompson Bennett agreed that the above charges are what was in the Notice of Hearing.

Mr. Nason called Kevin Coutreau as a witness. Mr. Coutreau stated that he lived at 111 Baboosic Lake Road in Merrimack, NH 03054.

Mr. Nason testified that he is father in this case. Victoria Ashby is the mother and other party. He stated he is not familiar with Ms. Thompson Bennett as he has never met her however; she was assigned to be his GAL. Mr. Coutreau stated the issues brought up to the court were schooling, child support and alleged abuse. He stated that four months were lost in this case due to a lack of response from Ms. Thompson Bennett. Mr. Coutreau testified that he received a phone call from Ms. Thompson Bennett 3 weeks after she was appointed to his case. He went on to say we made several attempts to contact Ms. Thompson Bennett after this call with no response.

Ms. Thompson Bennett objected to the use of the word we as Mr. Coutreau can only speak for himself. Mr. Coutreau changed his answer to I.

Mr. Coutreau testified that he did not remember the exact dates of attempted communication but he did submit a document in his complaint with the specific dates and times. Mr. Nason asked if it was fair to say that the dates of January 17 Ms. Thompson Bennett was appointed to his case and February 7 was when he was first contacted could be considered true. Mr. Coutreau agreed. Mr. Coutreau's main complaint is that Ms. Thompson Bennett took too long to contact him, did not return phone calls and did not meet court filing deadlines. Approximately two weeks after receiving the paperwork from Ms. Thompson Bennett, Mr. Coutreau returned the completed paperwork and a check for his half of the retainer. He testified that he did not again hear from Ms. Thompson Bennett.

Mr. Nason showed Mr. Coutreau a document that he submitted to Board of the phone log of calls between himself and Ms. Thompson Bennett. Mr. Coutreau read from the document that he called Ms. Thompson Bennett on Jan. 25 & 30, 2013 and Feb. 7, 2013.

Ms. Thompson Bennett objected to document being submitted as evidence. She never received a copy of the document and therefore she cannot approve or disprove the list and its contents. Ms. Thompson Bennett was never provided this document from the Board. Mr. Nason shared the document with Ms. Thompson Bennett. In fairness to Ms. Thompson Bennett Presiding Officer Keating offered to either suspend the hearing to a later date in order to provide Ms. Thompson Bennett with the information or Mr. Nason can decide to not use the document and instead use Mr. Coutreau's memory. Mr. Nason argued that Ms. Thompson Bennett should have realized that she did not have all the attached documents when she first read the complaint and submitted a response. Mr. Nason agreed to not use the document as evidence and rely on Mr. Coutreau's memory alone. Ms. Thompson Bennett to continue the hearing without the phone log document being submitted as evidence.

Mr. Coutreau testified that he did not hear from Ms. Thompson Bennett again until May when his retainer fee was returned.

All parties agreed that following are the Statement of Facts:

1. January 17, 2013 – Order of Appointment
2. February 7, 2013 – Ms. Thompson Bennett sent the stipulation and paperwork to both parties.
3. February 26, 2014 – Mr. Coutreau's check was cashed.
4. March 27, 2014 – Signed Stipulations were due to the court.
5. April 15, 2014 – Preliminary Report was due.
6. April 19, 2014 – A new GAL was appointed.

Mr. Nason testified due to fact that Ms. Thompson Bennett did not return phone calls he had to pay child support for four months which he had his daughter 70% of time. He also said the court process is already a slow process and Mr. Coutreau was drowning in debt.

Ms. Thompson Bennett did not have any questions for Mr. Coutreau.

C. Keating asked Mr. Coutreau when phone call with Ms. Thompson Bennett took place and what the substance of the call was. Mr. Coutreau responded the call took place around February 6, 2013. He went on to say that it was a lengthy call and they talked about why he went back to court, child support, schooling of his daughter and the alleged abuse against the mother.

C. Keating went over submitted evidence for both sides which included.

1. GAL Stipulation
2. Case Summary from 9th Circuit Family Division
3. Temporary Order of Appointment of GAL
4. Letter from Ms. Thompson Bennett to the court that she was no longer accepting cases.

Ms. Thompson Bennett objected to the letter from her to the court being submitted as evidence. She stated that she did not know what relevance it had to these proceedings. C. Keating ruled that that letter would be excluded from evidence subject to anyone's ability to submit it later in the hearing.

Ms. Thompson Bennett testified that she doesn't know why this complaint has come to the level of a hearing. She stated that she was never retained by both parties. The GAL appointment says that she doesn't start an investigation until the retainer fee & signed stipulations are received from both parties. Ms. Ashby never paid her portion of the retainer nor did she return the signed stipulation. Usually Ms. Thompson Bennett charges a \$1500 retainer. For this case she changed her retainer to \$1000 to help the parties. Ms. Thompson Bennett had a conversation with Ms. Ashby on February 5, 2013 and told her that if she couldn't pay the retainer than she should motion the court for a reassignment of fees. Ms. Thompson Bennett testified that Mr. Coutreau did send back the paperwork, signed stipulation and his portion of the retainer fee. Ms. Ashby only sent in \$100. Ms. Thompson Bennett sent a letter to Ms. Ashby before the due date of stipulation stating that she had not received the signed stipulation or Ms. Ashby's portion of the retainer fee. In response to her letter Ms. Ashby sent in another check for \$100. Ms. Thompson Bennett testifies that the stipulations were due on to the court on February 27, 2013. That same day Mr. Coutreau filed motion to remove Ms. Thompson Bennett as GAL from the case. Ms. Thompson Bennett stated that she could not provide the signed stipulation to court because she did not have it signed by both parties nor did she have the full retainer from both parties. There was no hearing pending until August 2013. Ms. Thompson Bennett agreed that with Mr. Coutreau's testimony regarding their conversation on February 6, 2013. She also said that on February 7, 2013 she emailed out the paperwork and stipulation to both parties. On February 18, 2013 she received the paperwork and a check for part of the retainer fee from Ms. Ashby. Ms. Thompson Bennett explained that court will not accept stipulations unless it is signed by both parties. On February 23, 2013 Ms. Thompson Bennett received an email from Mr. Coutreau that he sent his the paperwork, signed stipulation and his portion of the retainer in the mail that day. Ms. Thompson Bennett received his information shortly thereafter. Ms. Thompson Bennett testified that the preliminary report was due on April 15, 2013. At the time the report was due Ms. Thompson Bennett still did not have the full retainer and signed stipulation from Ms. Ashby therefore she could not begin her investigation as the Order of Appointment states that retainers must be received in full before an investigation begins. She went on to say that since Mr. Coutreau filed an assented motion to have Ms. Thompson Bennett removed at GAL on March 27, 2013 she felt that it was just a matter of time for the Judge to grant the motion. On April 19, 2013 Ms. Thompson Bennett was removed from the case. After receiving the order from the court Ms. Thompson Bennett returned the monies to each party that they had paid. Ms. Thompson Bennett testified that she had not filed an appearance for this case and both parties had not agreed to her terms of appointment therefore not retaining her as GAL. Ms. Thompson Bennett posed the question at what point does she have an obligation to start an investigation when she hasn't been retained?

Ms. Thompson Bennett noted that in the initial complaint there was an accusation of oral agreement for a retainer payment plan. She stated that this never existed the only concession she made was lowering her retainer fee.

Mr. Nason then questioned Ms. Thompson Bennett. Ms. Thompson Bennett testified that she was not aware of any phone calls that were made after Feb. 7, 2013. She did not receive any messages. He could have called and hung up. Ms. Thompson Bennett said that she did have email communications with Mr. Coutreau. The Order of Appointment for Ms. Thompson Bennett was sent in the mail from the court on a Friday, the following Monday was a holiday so the earliest she would have seen was Tuesday. The deadline for retainer fee to be paid was February 20, 2013 and the stipulations due date was February 27, 2013. Ms. Thompson Bennett stated that she did not contact court regarding not being able to meet these deadlines as it is a common practice to not have retainer fees and stipulations by deadline. Ms. Thompson Bennett testified that two days before the stipulation due date on February 25, 2013 she mailed a letter to Ms. Ashby inquiring about the balance of her portion of the retainer. Ms. Ashby did send another check for \$100. Ms. Thompson Bennett stated that she did not contact Ms. Ashby again for the remaining balance and signed stipulation nor did she notify Mr. Coutreau that Ms. Ashby had not paid her portion of the retainer nor turned in her signed stipulations. Ms. Thompson Bennett testified that it is customary to not let the court know that stipulations are not going to be filed on time. In some cases the deadline is for stipulations passes before the GAL receives the Order of Appointment. She said that it is typical for the stipulation deadline to be missed.

In regard to the April 15, 2013 Preliminary Report deadline, Ms. Thompson Bennett testified that she had not been retained by the parties and therefore never filed an affirmative pleading to the court becoming a party. She felt that since she had not been retained and the assented motion to remove her was going to be granted therefore she did not need to file any motions with the court regarding the Preliminary Report.

C. Keating asked Ms. Thompson Bennett what her understanding was relative to her obligation upon receipt of the order of appointment. Ms. Thompson Bennett stated that she does not have to accept a case. She can send the Order of Appointment back to court with a letter saying she is not accepting case. It is Ms. Thompson Bennett's understanding that the receipt of an Order of Appointment does not mean you start an investigation.

Ms. Thompson Bennett agreed that she did not commence and investigation. She stated this was because she had not received the full retainer or signed stipulation from Ms. Ashby. Due to the fact that the hearing was not scheduled until August Ms. Thompson Bennett thought it was okay to give Ms. Ashby some more time to pay the fee and return the signed stipulation. Ms. Thompson Bennett testified that she did not file an affirmative pleading with the court in the case nor did she decline the appointment. She would have notified the court about not being able to meet the preliminary report deadline had there not been a motion pending to have her removed.

Ms. Thompson Bennett agreed that the order says to requests hearing if the retainer fees have not been paid by the deadline. She then stated that did not exercise this option. She also testified that she did not notify Mr. Coutreau that Ms. Ashby had not paid the full retainer nor returned the signed stipulations and she would not begin an investigation until both of those requirements were met.

C. Keating recessed the Hearing recessed for few minutes.

C. Keating recommenced the hearing.

Mr. Nason closed saying the GAL rules are formulated for best interests of child. Ms. Thompson Bennett was not timely in regards to the best interest of the recipient of services. She did not notify the court when she was unable to meet a deadline because the parties had not cooperated. She also did not communicate to the parties the status of the case.

Ms. Thompson Bennett closed saying that the implication is the GAL is required to do work without guarantee of payment. She would be very concerned if the Board establishes this as a rule. It happens very frequently that deadlines are not met. Ms. Thompson Bennett also said that if there were safety concerns a report should have been filed with DCYF. Ms. Thompson Bennett maintained her position that her lack of filing did not delay a hearing.

C. Keating declared the hearing closed.

Board discussion included the fact that there seems to be a bunch of parties with different expectations. The Court isn't going to know that Ms. Ashby did not meet the retainer deadline or the stipulation deadline unless they are told. Mr. Coutreau paid his \$500 and assumed it was time to get to work. Ms. Thompson Bennett should have filed a motion with the court for instructions. She also should have communicated with Mr. Coutreau that Ms. Ashby had not retained her yet and therefore an investigation had not begun.

While Ms. Thompson Bennett may not have demonstrated proper communication the reason for the hearing is timeliness therefore she cannot be found in violation.

The Order of Appointment has contradictory instructions on it. This seems to be a system problem. Even though a Guardian ad Litem is appointed by the court and has quasi judicial immunity it is really a fee for service arrangement. The expectations are different between the court, parties and GAL.

When they rewrite the rules the Board should consider adding a section on communication.

A. Larney made a motion that there was no rule violation as contained in the Notice of Hearing. The Board shall write a letter to Judge Kelly regarding the contradictory language in the Order of Appointment. A. Cantor seconded. Vote: 4-2. S. Duncan and Rep. Rollo opposed. Motion passes.

S. Duncan made a motion to have C. Keating sign the order on behalf of the Board. A. Larney seconded. Vote: 6-0. Motion passes.

C. Keating recessed the hearing.