State of New Hampshire Guardian ad Litem Board

Public Hearing Minutes
January 16, 2015
Legislative Office Building Room 101

Members Present: Alan Cantor, Susan Duncan, Chair, Master Henrietta Luneau, Chris Keating, Vice-Chair, Betsy Paine, David Villiotti

Members Absent: Dave Robbins

Also Present: Don Nason, Prosecutor

A quorum was present.

Presiding officer Chris Keating called hearing of Rebecca Hewson Docket #2014-C0006 to order at 2:04pm.

Mr. Keating noted for the record GAL was not present. The Board made multiple attempts in compliance with GAL 208.02(c) *At least 14 days before any hearing relative to a complaint against a guardian ad litem the board shall provide the guardian ad litem and the complainant with the notice specified in Gal 208.01(b) either: (2) By certified mail, with return receipt requested, and by postage prepaid first class United States mail.* to notify the GAL using the addresses she provided to the Board and the address provided from the court. All attempts were made via certified return receipt USPS. The GAL did not pick up the Notice of Hearing at the PO Box provided by the Court and when sent to her home address provided on her application it was sent back as no such address. After conferring with counsel it was confirmed that the Board has done its due diligence in attempting to notify Ms. Hewson of the hearing and can proceed without her present in compliance with GAL 210.02 (c) *If the party who does not have the overall burden of proof fails to attend the hearing after having been given notice in accordance with Gal 208.01, the testimony and evidence of all other parties or intervenors shall be received and evaluated.*. It is also noted for the record that the original Hearing notice scheduled for December was picked up at the Tamworth PO Box by Roy Hewson.

Master Luneau swore in Don Nason, Prosecutor.

The Board members introduced themselves.

Mr. Nason gave testimony and offers of proof.

Mr. Nason testified that on April 23, 2013 Rebecca Hewson was appointed as the GAL to a case. The court sent the order of appointment out but the paperwork was returned in June due to the PO box being closed.

In addition to the court having the wrong address the Board was also not notified of Ms. Hewson new address for both her business and her home.

On November 13, 2013 Ms. Hewson did not appear for the final pretrial conference and she did not notify either the parties or the Court of her absence.

On April 30, 2014, The Honorable Judge Desjardins removed Ms. Hewson as the GAL and ordered her to return the retainer fee to the parties.

On June 13, 2014, Ms. Hewson did not appear for a show cause hearing on performance in this case. She again did not notify the court or parties of her absence.

Both parties in the case reported to the court that Ms. Hewson never contacted either of them.

Through his ability as an investigator Mr. Nason believes that Roy Hewson who has been signing for Ms. Hewson's mail appears to be her father. He was also able to find out that Ms. Hewson has not passed away nor has she been arrested. There has also been no action on her social media.

Mr. Nason went on to say that on September 22, 2014 the Board sent a request for a GAL response to this complaint and was signed for by Roy Hewson at Tamworth PO Box. No response was received by the Board.

Mr. Nason testified that Ms. Hewson violated the following rules and the reasons:

Gal RULE 404.01(a3) Updating of Information and Provision of Information Upon Request of the Board. (a) A guardian ad litem currently certified by the board shall notify the board of any change in:(3) The mailing address of his or her guardian ad litem business; by not updating her new mailing information with the Board.

Gal RULE 503.02(a),(c),(d) General Obligations of All Guardians Ad Litem. (a) Unless otherwise specified in an order or other instruction of the appointing court, a guardian ad litem shall at all times act in what he or she, in good faith, believes to be in the best interests of the recipient of services. (c) A guardian ad litem shall perform those duties assigned to him or her by the appointing court. (d) A guardian ad litem shall, in good faith: (1) Formulate a recommendation, or such other report as is directed by the appointing court, as is intended to address the best interests of the recipient of services or such other matter as directed by the orders or other instructions of the appointing court; and (2) Develop a presentation to the court that is designed to achieve results that are in the best interests of the recipient of services or such other result as set forth in the orders or other instructions of the appointing court. by not staying in contact with the parties, attend hearings, providing reports, not appearing for show cause hearing and not returning the retainer of $1,000 as ordered by the court. She also did not prepare or provide reports to the court as ordered.

Gal RULE 503.03(a),(b),(c) Timeliness. A guardian ad litem shall: (a) Undertake actions on behalf of a recipient of services in a manner that is sufficiently timely to avoid prejudice to the best interests of the recipient of services or such other object of appointment as specified in the orders or other instructions of the appointing court; (b) Adhere to all

applicable deadlines imposed by an appointing court or by statute; (c) Timely appear for all scheduled hearings, conferences, mediation sessions and other court proceedings, unless excused by the court; by not contacting the parties or appearing for hearings. Ms. Hewson also did not provide proper contact information to the court and caused undo delay in case.

Gal RULE 503.05(c) Advocacy. (c) A guardian ad litem shall endeavor to expedite the conclusion of the case to the extent that he or she, in good faith, believes that to do so is consistent with the best interests of the recipient of services or such other purpose of his or her appointment as is set forth in the orders or other instructions of the appointing court, by failure to contact parties, no submitting a preliminary report as ordered by the court, and not showing up for hearings.

Gal RULE 503.11(f) Fees. (f) If, at the conclusion of a case, the guardian ad litem is in possession of any unearned fees, he or she shall return those fees to the person who paid them to the guardian ad litem, or in such other manner as that person or the fee agreement may direct. By not returning the deposit.

Gal RULE 503.12(a) Gathering and Reporting Facts and Other Information. (a) A guardian ad litem shall gather such facts and information regarding the family history, background, current circumstances, concerns and wishes of the recipient of services, from the recipient of services and from other sources, as will enable the guardian ad litem to: (1) Form a good faith conclusion about the best interests of the recipient of services or about such other matters as directed by the orders or instructions of the appointing court; and (2) Conduct his or her duties in conformity with these rules and the instructions of the appointing court. By not meeting with the parties, not providing a preliminary report.

Gal RULE 503.15(a), (b) Termination of Representation.(a) Upon the termination of a guardian ad litem's appointment, the guardian ad litem shall take such steps as he or she in good faith believes are necessary to protect the best interests of the recipient of services. (b) The steps described in (a) above shall include, but not be limited to, the following: (1) Surrendering papers and property to which the recipient of services, the parties or the court may be entitled; (2) Refunding and transferring any unearned fees; and (3) To the extent possible, taking action in a sufficiently timely manner as to allow time for appointment of another guardian ad litem. By not surrendering her file to the new Guardian ad Litem, not returning the retainer fee, failure to show up for a show cause hearing and causing undue delay in the case.

Gal RULE 505.02(g) Accounts. (g) Upon the conclusion of a case, a guardian ad litem shall return any unearned fees in his or her possession to the person who paid them to the guardian ad litem, or in such other manner as that person or the written fee agreement may direct. By not returning all unearned fees to the parties.

Mr. Nason then rested his case.

Board discussion included that Ms. Hewson should have notified the court if something had come up and she could no longer perform her duties as a Guardian ad Litem. There was no evidence provided to prove that extenuating circumstances existed.

M. Luneau made a motion that Ms. Hewson violated GAL 404.01(a3) as there was no evidence presented to contrary. B. Paine seconded. Vote: 6-0. Motion passes

A. Cantor made a motion that Ms. Hewson violated GAL 503.02(a),(c),(d) as there was no evidence presented to contrary. M. Luneau seconded. Vote: 6-0. Motion passes

M. Luneau made a motion that Ms. Hewson violated GAL 503.03(a),(b),(c) as there was no evidence presented to contrary. B. Paine seconded. Vote: 6-0. Motion passes.

B. Paine made a motion that Ms. Hewson violated GAL 503.04 (a),(b1),(b2),(b4),(b5) as there was no evidence presented to contrary. S. Duncan seconded. Vote: 6-0. Motion passes.

M. Luneau made a motion that Ms. Hewson violated GAL 503.05(c) as there was no evidence presented to the contrary. B. Paine seconded. Vote: 6-0. Motion passes.

A. Cantor made a motion that Ms. Hewson violated GAL 503.11(f) bases on the evidence presented the fees were ordered by the court to be returned at the conclusion of Ms. Hewson's appointment. B. Paine seconded. Vote: 6-0. Motion passed.

A. Cantor made a motion that Ms. Hewson violated GAL 503.12(a) as there was no evidence presented to the contrary. B. Paine seconded. Vote: 6-0. Motion passes.

A. Cantor made a motion that Ms. Hewson violated GAL 503.15(a),(b) as there was no evidence presented to the contrary. S. Duncan seconded. Vote: 6-0. Motion passes.

B. Paine made a motion that Ms. Hewson violated GAL 505.02(g) as there was no evidence presented to the contrary. S. Duncan seconded. Discussion included that the rule says at the at the conclusion of a case, a guardian ad litem shall return and unearned fees, etc. This leaves room for interpretations to the definition of conclusion of a case. Is it the end of case when it is closed or when a GAL is no longer a party. B. Paine withdrew her motion. S. Duncan removed her second. M. Luneau made a motion that based on inconclusive evidence Ms. Hewson did not violate 505.02(g) as the Board does not know if the case is concluded. B. Paine seconded. Vote: 6-0. Motion passes. No

M. Luneau made a motion pursuant to GAL 402.03(c) to conditionally certify Ms. Hewson for the purpose of imposing sanctions for violation occurring while she was a certified Guardian ad Litem. B. Paine seconded. Vote: 6-0. Motion passes

A. Cantor made a motion pursuant to GAL 402.01 (a)(1) the Board revoke Ms. Hewson's certification. S. Duncan seconded. Vote: 6-0. Motion passes.

A. Cantor made a motion pursuant to GAL 402.01(a)(6) to issue Ms. Hewson a fine of $800 with $500 suspended upon proof of return of the $1,000 retainer to the parties within 30 days of date on the order. B. Paine seconded. Vote: 5-1. S. Duncan opposing. Motion passes.

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

C. Keating declared the hearing adjourned.