

2008 WL 427851 (Neb.App.) (Appellate Brief)
Court of Appeals of Nebraska.

In Re Guardianship and Conservatorship of Rosemary C. DUNN, An
Incapacitated Person Julianne Dunn Herzog, An Interested Party, Appellant,

v.

Daniel H. DUNN, Guardian; William E. Seidler, Jr., Guardian Ad Litem;
and Fremont National Bank & Trust Company, Conservator, Appellees.

No. A-07-781.

January 10, 2008.

Appeal from the County Court of Douglas County, Nebraska the Honorable Daniel J. Beckwith, County Judge

Brief of Appellee Daniel H. Dunn, Guardian

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***1** This Brief is submitted by Appellee Daniel H. Dunn, M.D., the appointed and acting Guardian of Rosemary C. Dunn (referred to in this Brief as “Mrs. Dunn”), in a guardianship and conservatorship in the Douglas County Court (referred to in this Brief as the “Guardianship Proceeding”). The other Appellees in this appeal are William E. Seidler, Jr., who was appointed as Guardian ad Litem for Mrs. Dunn, and Fremont National Bank & Trust Company, who was appointed as the Conservator for the estate of Mrs. Dunn. Appellees will be respectively referred to in this Brief as the “Guardian, the “Guardian Ad Litem,” and the Conservator.”

STATEMENT OF JURISDICTION

This appeal arises out of the Guardianship Proceeding. Guardianship and conservatorship proceedings fall within the Nebraska Probate Code. [Neb.Rev.Stat. §30-2217](#) (Reissue 1995) provides that appellate review under the Nebraska Probate Code is governed by [section 30-1601 Neb.Rev.Stat. §30-1601](#) (Cum.Supp. 2006) provides that in all matters arising under the Nebraska Probate Code, “appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.” [Neb.Rev.Stat. §25-1911](#) (Reissue 1995) provides that a judgment or final order “may be reversed, vacated, or modified for errors appearing on the record.

[Neb.Rev.Stat. §25-1902](#) (Reissue 1995) provides that there are three types of final orders which are reviewable on appeal: (1) an order affecting a substantial right in an action and which determines the action and prevents a judgment; (2) an order affecting a substantial right made in a special proceeding; and (3) an order affecting a substantial right made on summary application in an action after judgment. *In re Trust of Rosenburg*, 269 Neb. 310, 314 693 N.W.2d 500, 503 (2005).

***2** An “action” is any proceeding in a court by which a party prosecutes another for enforcement, protection, or determination of a right or the redress or prevention of a wrong involving or requiring the pleadings, process, and procedure provided by

the code and ending in a final judgment. Every other legal proceeding by which a remedy is sought by original application to a court is a “special proceeding.” A special proceeding includes every special statutory remedy which is not in itself an action and encompasses civil statutory remedies other than those in Chapter 25 of the Nebraska Revised Statutes. *In re Trust of Rosenburg*, 269 Neb. 310, 314, 693 N.W.2d 500, 503 (2005); *In re Guardianship and Conservatorship of Larson*, 270 Neb. 837, 708 N.W.2d 262 (2004); *In re Estate of Snover*, 233 Neb. 198, 443 N.W.2d 894 (1989).

A proceeding to appoint a guardian and conservator under [Neb.Rev.Stat. §30-2619](#) and [§30-2633](#) is a special proceeding. A proceeding under the Nebraska Uniform Trust Code to remove a trustee is a special proceeding which affects a substantial right. *In re Trust of Rosenburg*, supra. Orders granting or denying petitions to remove a personal representative are orders affecting substantial rights made in special proceedings. *In re Estate of Snover*, 233 Neb. 198, 443 N.W.2d 894 (1989); *In re Estate of Seidler*, 241 Neb. 402, 490 N.W.2d 453 (1992)

Appellant's Brief generally asserts that all the foregoing rulings or orders assigned as error affected the substantial rights of Mrs. Dunn, the conservatorship estate, and Appellant.

The Guardian asserts that the “best interests test” regarding future visitation did not affect any substantial right. A substantial right is not affected unless “the order affects the subject matter of the litigation, such as diminishing a claim or defense that *3 was available to an appellant prior to the order from which an appeal is taken.” *In re Guardianship and Conservatorship of Larson*, 270 Neb. 837, 851, 708 N.W.2d 262, 273 (2004) A substantial right is an essential legal right, not merely a technical right. *In re Estate of Snover*, 233 Neb. 198, 202, 443 N.W.2d 894, 898 (1989)

There is no showing in the record or in Appellant's Brief that Appellant's visitation has been or will be denied or otherwise affected. There is also no showing that Mrs. Dunn's right to receive visitation has been or will be denied or otherwise affected. Therefore, this part of the County Court's order is not appealable.

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal by Julianne Dunn Herzog, an interested party, of various rulings of the Douglas County Court in the Guardianship Proceeding.

B. Issues Before the Trial Court

The following are the issues before the County Court which are the subject of this appeal: (1) approval of a proposal by the Conservator to obtain a loan to the conservatorship estate which would be secured by a farm; (2) application by the Guardian for attorney fees and costs; (3) application by the Conservator for attorney fees and costs; (4) application by the Guardian ad Litem for fees and costs; and (5) an application by Appellant to hold the Guardian in contempt or, in the alternative, to show cause why the Guardian should not be removed. There was also inquiry by the County Court and discussion regarding ongoing visitation of Mrs. Dunn.

*4 For ease of reference, the proposal by the Conservator to obtain a loan secured by the farm is referred to in this Brief as the “Motion for Loan Secured by Farm.”

Also for ease of reference, Appellant's application to hold the Guardian in contempt or to show cause why the Guardian should not be removed is referred to in this Brief as the “Motion to Remove Guardian.”

C. How the Issues were Decided

The County Court (1) approved the Motion for Loan Secured by Farm (2) approved and allowed attorney fees and costs of the Guardian; (3) approved and allowed attorney fees and costs of the Conservator; (4) approved and allowed fees and costs of the Guardian Ad Litem; and (5) dismissed the Motion to Remove Guardian as vexatious and without merit.

With regard to ongoing visitation, the County Court modified a previous visitation order. Only one of the modifications is challenged by Appellant in this appeal - that the Guardian may allow or disallow visitation of Mrs. Dunn using the "Best Interest Test."

The County Court also ruled that further accountings and related fees will be reviewed and acted upon without formal hearing within 10 days of filing, that objections will be summarily reviewed and ruled upon, and that pleadings and filings determined by the court to be vexatious on their face will not be scheduled for further hearing.

D. Scope of Review

An appellate court reviews guardianship and conservatorship proceedings for error appearing on the record made in the county court. *In re Guardianship and Conservatorship of Trobough*, 267 Neb. 661, 676 N.W.2d 364 (2004); *In re Guardianship of Zyla*, 251 Neb. 163, 555 N.W.2d 768 (1996).

*5 When reviewing for error appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable. *In re Trust of Rosenberg*, 269 Neb. 310, 693 N.W.2d 500 (2005); *In re Guardianship and Conservatorship of Trobough*, 267 Neb. 661, 676 N.W.2d 364 (2004); *In re Trust Created by Hansen*, 274 Neb. 199, 739 N.W.2d 170 (2007)

PROPOSITIONS OF LAW

I. An appellate court will not consider an alleged error unless it is both specifically assigned and specifically argued in the brief of the party asserting the error. *Semler v. Sears, Roebuck & Co.*, 268 Neb. 857, 861, 689 N.W.2d 327, 332 (2004).

II. An appellate court will not address errors that are assigned but not argued and errors that are argued but not assigned. *Krajicek v. Gaie*, 267 Neb. 623, 628, 677 N.W.2d 488, 492 (2004). *State ex rel City of Alma v. Furnas County Farms*, 266 Neb. 558, 575, 667 N.W.2d 512, 526 (2003).

III. An order affecting a substantial right made in a special proceeding is an appealable final order. *Neb.Rev.Stat. §25-1902* (Reissue 1995); *In re Trust of Rosenburg*, 269 Neb. 310, 314 693 N.W.2d 500, 503 (2005)

IV. An appellate court reviews guardianship and conservatorship proceedings for error appearing on the record made in the county court. *In re Guardianship and Conservatorship of Trobough*, 267 Neb. 661, 676 N.W.2d 364 (2004); *In re Guardianship of Zyla*, 251 Neb. 163, 555 N.W.2d 768 (1996).

*6 V. When reviewing for error appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable. *In re Trust of Rosenberg*, 269 Neb. 310, 693 N.W.2d 500 (2005); *In re Guardianship and Conservatorship of Trobough*, 267 Neb. 661, 676 N.W.2d 364 (2004); *In re Trust Created by Hansen*, 274 Neb. 199, 739 N.W.2d 170 (2007)

VII. The Nebraska Probate Code does not by its terms require an evidentiary hearing on every motion or application filed in a guardianship proceeding

STATEMENT OF FACTS

Appellant is one of Mrs. Dunn's daughters and is an attorney practicing in Omaha, Nebraska. The Guardian is one of Mrs. Dunn's sons and is a general surgeon practicing in Minneapolis. Mrs. Dunn resides in a memory care unit at River Village, a facility in Minneapolis.

Appellant appeals from a Journal Entry and Order of the Douglas County Court filed June 14, 2007, following hearings held on April 25, 2007, May 11, 2007, and June 5, 2007.

It is difficult for the Guardian to respond to the issues raised by Appellant in this appeal. Appellant has critically omitted the April 25 evidentiary hearing from the record on appeal, even though that hearing involved testimony and exhibits on two of the principal issues. Appellant's Brief fails to clearly articulate and address the issues she claims to be asserting. The Assignments of Error are unspecific and over-inclusive. Issues and claimed errors appear in Appellant's Statement of Facts, but not in her Assignments of Error or Argument. There are Assignments of Error which are not *7 argued and there are Arguments for which there are no Assignments of Error. Finally, not only has Appellant failed to provide a sufficient record on appeal, she asserts certain facts and occurrences which are contrary to the record which is before this Court.

The Guardian will defer to the Statements of Fact contained in the Briefs of the Conservator and the Guardian Ad Litem as to the issues which most directly relate to them in this appeal. This Brief will principally deal with the issues most directly related to the Guardian.

The Guardian filed a Motion for Attorney Fees on April 11, 2007, with an attached detailed description of attorney services rendered. The Conservator filed a Motion for Guidance on Issue of Whether to Sell the Farm and/or Acreage on April 19, 2007. (T4- 9) This Motion requested guidance on whether to sell the farm or to obtain a loan secured by the farm. For ease of reference, this Motion is referred to in this Brief as the "Motion for Loan Secured by Farm."

On April 26, 2007, an **evidentiary** hearing was held on the Guardian's Motion for Attorney Fees and on the Motion for Loan Secured by Farm. These Motions are two of the principal issues raised by Appellant in this appeal, but she neglected to include in this hearing in the Bill of Exceptions. Therefore, the testimony and documentary evidence at the April 26 evidentiary hearing is not in the record.

The other principal issue affecting the Guardian is an Application filed by Appellant on June 5, 2007, the same date as the last of the three hearings. This Application requested that the Guardian be held in contempt or removed as Guardian. It was dismissed by the County Court without conducting an evidentiary hearing on the stated grounds that it was vexatious and without merit.

***8 ARGUMENT**

I. Appellant did not specifically assign as error or specifically argue in her Brief that it was error for the County Court to dismiss her Motion to Remove Guardian

Appellant filed a Verified Application to Find Daniel Dunn in Contempt or, in the Alternative Show Cause for Removal, hereinafter referred to as the "Motion to Remove Guardian." The Statement of the Case section of Appellant's Brief correctly states that the Motion to Remove Guardian was at issue before the County Court and that it was dismissed as being "vexatious and lacking in merit."

The first Assignment of Error in Appellant's Brief states that the County Court erred in "failing to hold an evidentiary hearing on the disputed issues." The Motion to Remove Guardian is not mentioned in the first Assignment of Error. The second Assignment of Error states that the County Court erred in making several rulings, including dismissal of the Motion to Remove Guardian.

However, Appellant does not argue this in her Brief. Argument I of the Brief generally addresses evidentiary hearings, but does not argue that it was error to dismiss the Motion to Remove Guardian without conducting an evidentiary hearing. Instead,

Appellant only argues that she objected to mortgaging the farm and to “various requests for attorney fees and costs” and that it was error for the County Court not to conduct an evidentiary hearing on those objections. The Motion to Remove Guardian is not argued or even mentioned. (Appellant's Brief at p.9)

*9 Argument II of Appellant's Brief states that, the County Court erred in approving the mortgage of the farm, in approving attorney fees, in declaring a “best interests” test regarding future visitation, and in dismissing the Motion to Remove Guardian. However, the text following stated Argument II barely discusses any of these alleged errors. With respect to the Motion to Remove Guardian, Appellant's Brief states at pp. 9-10 as follows:

Finally, it is clear from what passes as a record in this case that the trial court was no longer interested in matters relating to Mrs. Dunn's health and welfare. The fact that the trial judge concluded that [Appellant's Motion to Remove Guardian] was without merit and vexatious without ordering a hearing or appointing a visitor to investigate ... shows that the decision in that regard is arbitrary, capricious and unreasonable. (emphasis added)

In other words, Appellant only argues that the failure to hold an evidentiary hearing on the Motion to Remove Guardian supports her preposterous proposition that the County Judge did not care about Mrs. Dunn's welfare. This cannot substitute as argument that it was error for the County Court not to conduct an evidentiary hearing on the Motion to Remove Guardian.

An appellate court will not consider an alleged error unless it is both specifically assigned and specifically argued in the brief of the party asserting the error. *Semler v. Sears, Roebuck & Co.*, 268 Neb. 857, 861, 689 N.W.2d 327, 332 (2004). An appellate court will not address errors that are assigned but not argued and errors that are argued but not assigned. *Krajicek v. Gaie*, 267 Neb. 623, 628, 677 N.W.2d 488, 492 (2004). *10 *State ex rel City of Alma v. Furnas County Farms*, 266 Neb. 558, 575, 667 N.W.2d 512, 526 (2003).

Appellant's Brief does not specifically assign as error that there was no evidentiary hearing on the Motion to Remove Guardian. Appellant's Brief does not specifically argue that it was error to dismiss the Motion to Remove Guardian or that it was error not to conduct an evidentiary hearing on the Motion to Remove Guardian. Accordingly, this Court should not consider any issues or error relating to the Motion to Remove Guardian.

If this Court disagrees, the next two sections of this Brief substantively address the dismissal of the Motion to Remove Guardian without conducting an evidentiary hearing.

II. The Nebraska Probate Code does not require an evidentiary hearing on a motion to remove a Guardian

Appellant cites two statutes regarding her Motion to Remove Guardian, both of which deal with motions and objections after a guardian has been appointed. She cites [Neb.Rev.Stat. §30-2623\(a\)](#) (Reissue 1995), which permits an interested person to petition for removal of a guardian, and [Neb.Rev.Stat. §30-2629\(c\)](#) (Cum.Supp. 2006), which permits an interested person to challenge any action or proposed action by a guardian. However, neither of these statutes, by their terms, entitles a moving party to an evidentiary hearing. Appellant apparently recognizes this fact by stating at the top of page 8 of her Brief that these statutes “clearly contemplate an evidentiary hearing will be held to determine the resolution of the issues presented.” (emphasis added)

*11 In contrast, [Neb.Rev.Stat. §30-2645](#) (Reissue 1995), which permits an interested person to petition for removal of a conservator and to petition for various other relief. [Section 30-2645](#) specifically provides for “notice and hearing” - language which is absent from [§§30-2623\(a\)](#) and [§30-2629\(c\)](#) relating to guardians.

III. The County Court properly exercised its discretion in dismissing the Motion to Remove Guardian without an evidentiary hearing

The opening paragraph in the Motion to Remove Guardian accuses the Guardian of failing to protect Mrs. Dunn and failing to keep her safe. Appellant intimates in the second paragraph that Mrs. Dunn has been subjected to **elder abuse**. The principal thrust of these alleged concerns were bruises on Mrs. Dunn's hands and arms. Yet the vast majority of the Motion rambles on and on about a wide variety of irrelevant matters, much of which defy credibility and, frankly, are a small part of Appellant's effort over more than two years to discredit the facility where Mrs. Dunn resides.

The Motion is not really about the bruises. The bruises were a way for Appellant to again come to the Court to challenge the River Village facility and force the parties to respond to the allegations in an evidentiary hearing. Such a hearing would require the Guardian to take at least two days away from his surgical practice to travel to Omaha to testify at the hearing and testimony from employees of River Village may also be necessary.

More importantly, the Motion to Remove Guardian effectively accuses River Village of causing the bruises by illegally restraining Mrs. Dunn and accuses the Guardian of neglect in failing to protect Mrs. Dunn from such restraints. Mrs. Dunn was previously evicted from River Village after Appellant traveled to the facility and caused *12 significant disruption. The Guardian asserts that these allegations against River Village in the Motion to Remove Guardian are a continuation of Appellant's efforts to disrupt Mrs. Dunn's care at River Village and to again have her mother evicted. That is why Appellant wants to exercise visitation at River Village, why the Guardian has denied visitation at River Village, and why the County Court requires Appellant's husband, David L. Herzog, to accompany Appellant when she travels to Minneapolis for visitation.

Appellant states at the bottom of the second page of the Motion to Remove Guardian that she was "horrified" when she saw the bruises in February of 2007. Appellant states at the bottom of the fourth page of the Motion to Remove Guardian that she was "shocked" at the bruising on Mrs. Dunn's hands and arms when she visited her on May 7, 2007, and proceeded to go back to the hotel and subject her mother to a physical exam and photographs of her arms and legs. She wrote a letter to the Guardian ostensibly dated May 7 attached to the Motion to Remove Guardian which states that it is upsetting to think that Mrs. Dunn is "at the mercy of those who would hurt her." [River Village]

May 7 is chronologically important. It is four days prior to the May 11 hearing. If Appellant was truly "horrified" by the bruising in February of 2007, why didn't she do something then? If Appellant was truly "shocked" by the bruising on May 7 and truly believed that her mother was "at the mercy of those who would hurt her," why didn't she raise it at the hearing on May 11? Instead, she waited to file the Motion to Remove Guardian on the same day the June 5 hearing. Appellant made a "record" of the bruising and waited to use it when she thought it would be most advantageous to her, not at the time she was supposedly horrified and shocked. The Motion to Remove *13 Guardian is not about protecting Mrs. Dunn. It is about using Mrs. Dunn's bruises for other purposes.

If the bruising was really an issue, why didn't Appellant immediately file an appeal and ask that it be expedited, instead of waiting until the last day and subsequently requesting an extension of the brief date? Why doesn't Appellant express concern about the bruising/**elder abuse** in her Brief? This appeal is merely an exercise.

The County Court's history with this case gives it the ability to discern between, real issues and feigned issues. This Court should defer to the County Court's infinitely closer relationship to the parties and issues. The County Court's determination that the Motion to Remove Guardian was vexatious and did not deserve an evidentiary hearing was not arbitrary, capricious, or unreasonable - it was patently correct. An evidentiary hearing jeopardizes Mrs. Dunn's continuity of care at River Village.

IV. Appellant did not specifically argue in her Brief that the County Court erred in approving the Guardian's attorney fees

Appellant asserts in the Statement of the Case section of her Brief that the reasonableness of the Guardian's attorney fees was at issue below. Approval of the Guardian's attorney fees was generically assigned as error.

However, Appellant failed to argue in her Brief that the Guardian's attorney fees were unreasonable. In fact, Appellant did not even argue that the County Court erred in approving the Guardian's fees. Her sole argument is a statement on page 9 of her Brief to the effect that the County Court failed to hold an evidentiary hearing on her objections *14 to the "various" requests for attorney fees. The next section of this Brief demonstrates that an evidentiary hearing *was* held on the Guardian's Motion for Attorney Fees.

Therefore, this Court should not consider anything relating to the Guardian's attorney fees because Appellant did not argue this in her Brief. *Semler v. Sears, Roebuck & Co., supra*; *Krajicek v. Gaie, supra*; *State ex rel City of Alma v. Furnas County Farms, supra*.

V. Appellant did not object to the Guardian's Motion for Attorney Fees and was not denied an opportunity to present evidence regarding the Guardian's attorney fees

Appellant asserts in the Statement of the Case section of her Brief that her objection to the Guardian's attorney fees was summarily overruled. However, she does not argue this assertion in her Brief and does not cite any part of the record demonstrating that her non-existent objection was summarily overruled.

Appellant asserts in the Statement of the Case section of her Brief that she was denied the opportunity to present evidence in support of her objection. However, she does not argue this assertion in her Brief and does not cite any part of the record demonstrating that she was denied the opportunity to present evidence to support the non-existent objection.

Appellant neglected to present the proper record to this Court and the assertions in Appellant's Brief are directly contrary to the record which is before this Court.

The Transcript and Supplemental Transcripts do not contain any objection by Appellant to the Guardian's attorney fees. The Bill of Exceptions, consisting of the *15 proceedings held on May 11 and June 5, 2007, does not disclose any objection to the Guardian's attorney fees.

The fact is that there was an evidentiary hearing on the Guardian's Motion for Attorney Fees on April 25, 2007. Appellant neglected to include the April 25 hearing in the record on appeal. Nevertheless, the record which is before this Court discloses that the County Court noted at the May 10 hearing that it had previously taken the Guardian's Motion for Attorney Fees under advisement and that a ruling on the fees would be included in an Order on matters which were addressed at the May 11 hearing. (10:5-7, 11-14) Appellant made no mention of the Guardian's attorney fees at the May 11 hearing.

The June 5 hearing related to Appellant's objections to the attorney fee application of the Conservator and the fee application of the Guardian Ad Litem; but not the Guardian. (20:20-23) The county court allowed Appellant to state her objection to said fee applications. (22:4-6) Appellant's first statement makes clear that her objection related on to the Conservator and the Guardian Ad Litem. (22:7-8) Appellant proceeded to state her objection at length, without ever mentioning the Guardian's attorney fees. (22:7-23:9; 24:4-11)

A Journal Entry dated April 26 and filed April 30, 2007 (T-19), clearly states that a hearing was held on April 25 on the Guardian's Motion for Attorney Fees, that Appellant was present at that hearing with her attorney, that evidence was adduced,

and that the Guardian's Motion for Attorney Fees was taken under advisement. Therefore, there was an evidentiary hearing on the Guardian's Motion for Attorney Fees at which Appellant was present with counsel and at which she obviously had the *16 opportunity to present evidence in support of any objection to the Guardian's Motion for attorney fees.

VI. There was an evidentiary hearing on the Motion for Loan Secured by Farm and Appellant was not denied an opportunity to present evidence on such Motion

Appellant states on page 2 of her Brief that the County Court summarily overruled her objection to the Motion for Loan Secured by Farm. This is not true.

The Order dated April 26, 2007, and filed on April 30, 2007 (T7) specifically states that a hearing on the Motion for Loan Secured by Farm was held on April 25, 2007, that Appellant and her attorney appeared at the hearing, and that evidenced was adduced. Also, the April 26 Order specifically states that “no opposition has been expressed to the proposition of the conservator obtaining a line of credit to provide liquidity and pledging the farm as collateral to secure the line of credit.” (T7)

The record in this appeal is incomplete. Appellant failed to include in the Bill of Exceptions a transcription of the April 25 hearing and the exhibits which were offered and received into evidence at that hearing. It is not possible for this Court to review any issues relating to the Motion for Loan Secured by Farm without the testimony and exhibits from the April 25 hearing.

It is true that subsequent to the April 25 evidentiary hearing, Appellant filed an Objection to the Motion for Loan Secured by Farm (T24) and requested another hearing. However, this Objection is not relevant to the issues raised by the Motion and which were the subject of the earlier hearing. Instead, her Objection personally attacks *17 the Guardian, falsely asserts that the estate has been depleted by “thousands upon thousands of dollars” for non-allowed fees, states that Mrs. Dunn's residence is in a “slum renewal project” states that Mrs. Dunn is “incarcerated,” and recycles her objections regarding the placement of Mrs. Dunn. None of this had anything to do with the Motion for Loan to Secure Farm and, therefore, it was entirely appropriate for the County Court to decline to hold a second evidentiary hearing on this Motion.

VII. Appellant did not specifically assign as error in her Brief that the County Court erred in its ruling regarding future accountings and fees

In Argument III of her Brief, Appellant asserts that the County Court erred in ruling that future estate accountings and related fees, and objections to such accountings and fees, will be reviewed and ruled upon without a formal hearing.

Appellant mischaracterizes this part of the June 14 Order by neglecting to mention an additional sentence - “Pleadings and filings determined to be vexatious will not be scheduled for further hearing.” Therefore, the County Court did not say there would be no future evidentiary hearings on accountings and fees if an objection is filed. Instead, the County Court said that there would be no evidentiary hearing on the objection would be held if it was vexatious on its face.

However, this alleged error is not assigned as error in Appellant's Brief and should not be considered by this Court on appeal. *Semler v. Sears, Roebuck & Co., supra; Kraijcek v. Gaie, supra; State ex rel City of Alma v. Furnas County Farms, supra.*

***18 CONCLUSION**

The Guardian respectfully requests that the Douglas County Court be affirmed in all respects.

RESPONSE TO APPELLANT'S MOTION TO BYPASS

Appellant filed a Motion to Bypass. The Guardian does not believe this is an appropriate case for bypass. As discussed above, the record on appeal is incomplete and Appellant's Brief assigns errors which are not argued and argues matters which are not assigned as error.

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