MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Heather McClure O'Farrell,

Appellant-Respondent

v.

Guardian of Estate of George B. Drake,

Appellee-Petitioner

March 26, 2024

Court of Appeals Case No.
23A-GU-669

Appeal from the Hamilton Superior Court

The Honorable Michael A. Casati, Judge

Trial Court Cause No.
29D01-1804-GU-69

Memorandum Decision by Judge Kenworthy

Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

[1] Attorney Heather McClure O'Farrell ("O'Farrell")[1] appeals the trial court's order instructing her to repay $53,824.32 in legal and accounting fees she and her law firm collected for services purportedly rendered to George Baker Drake ("George") and the guardian of his estate. On appeal, she contends the order is void for lack of personal jurisdiction. We hold there was insufficient service of process to establish personal jurisdiction over O'Farrell. Because a judgment entered with insufficient service of process is void for lack of personal jurisdiction, we reverse.

Facts and Procedural History

[2] Since 2018, George, an incapacitated adult, has been the subject of guardianship. George's mother, Tricia Drake ("Tricia"), was the initial guardian of his person and estate. In 2019, O'Farrell filed an appearance on behalf of Tricia as guardian. In early 2020, the trial court entered an order approving the compromise of a personal injury claim for $285,000 to benefit George's estate. After approving the payment of fees to various entities, the

[1] Although appellant uses "Attorney McClure O'Farrell" throughout her brief, we refer to appellant as "O'Farrell" because her surname is styled as such on the Indiana Roll of Attorneys and to distinguish the individual from her law firm, McClure O'Farrell LP.

trial court ordered the balance of $162,578.39 to be paid to the guardianship estate and deposited in the McClure O'Farrell LP trust account. The approved fees included an $8,000 fee to O'Farrell for preparation of a special needs trust to be funded with the net settlement proceeds.

[3] On June 12, 2020, O'Farrell moved to withdraw her appearance. O'Farrell attached to her motion a partially redacted copy of a June 1, 2020, withdrawal letter she sent to Tricia. The motion and attached letter listed O'Farrell's business address at an office park in northwest Indianapolis known as The Pyramids. The trial court approved O'Farrell's motion on June 16. Tricia remained guardian proceeding *pro se*.

[4] Over the next two years, the guardian over George's person and estate would bounce between Tricia and George's father, John Drake ("John"). In December 2020, the trial court granted John's petition to transfer guardianship to him and ordered Tricia to file a complete accounting of the estate within thirty days. Tricia made numerous incomplete filings, including one in May 2021 purported to be a final accounting. John objected because the documents Tricia submitted failed to account for a portion of the approved net settlement proceeds. After hearings in June and July, the trial court re-appointed Tricia guardian over George's person, but John remained guardian of the estate in part due to "ongoing issues related to the actual amount of assets belonging to the Ward's estate, or assets that should be recouped for the Ward's estate[.]" *Appellee's Supp. App. Vol. 2* at 12. Tricia was still under court order to provide certain financial documentation, and her final accounting was never approved.

[5] Eventually, John petitioned to terminate the guardianship altogether, or in the alternative to appoint a neutral third party guardian of the estate to finalize the accounting issues stemming from when Tricia was guardian. At that point, the trial court appointed attorney Anne Hensley Poindexter ("Guardian") guardian of the estate and ordered her to reconstruct an accounting of the trust funds since the settlement.

[6] In August 2022, Guardian sent a letter to O'Farrell asking her to provide an accounting of the guardianship funds that had been held in the McClure O'Farrell LP trust account. Guardian addressed the letter to O'Farrell at The Pyramids address. O'Farrell did not respond.

[7] On October 5, Guardian filed an accounting and motion for rule to show cause captioned Report and Recommendation of the Guardian of the Estate (the "Report"). The Report explained that of the nearly $163,000 net personal injury settlement proceeds, $67,767.54 remained in trust. During her investigation, Guardian discovered several attorneys collected attorney fees from the estate; in particular, she preliminarily identified $39,308 in attorney and accounting fees O'Farrell's firm collected prior to O'Farrell's withdrawal as Tricia's counsel. The Hamilton County local court rules require a prior written court order for all fiduciary and attorney fees paid out of a guardianship.[2]

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[2] *See* Hamilton LR29-PR00-711.10, https://www.hamiltoncounty.in.gov/210/Probate-Rules#711 [https://perma.cc/9589-D9AA] ("No fees for fiduciaries or attorneys shall be paid out of any supervised estate or guardianship without prior written order of the Court.").

Therefore, Guardian asked the trial court to order O'Farrell and two other attorneys to show cause as to why they should not be held in contempt for accepting fee payments without prior court approval. In the certificate of service, Guardian certified she sent a copy of the Report to O'Farrell "via E-Service through the Indiana E-Filing System, or by email at the address below[.]" *Appellant's App. Vol. 2* at 40. The certificate of service lists O'Farrell at The Pyramids address and no email is listed.[3] The Chronological Case Summary ("CCS") is silent on the Report's distribution.

[8] On October 7, the trial court ordered the three attorneys to appear on November 1 for a hearing "to show cause why they should not be held in contempt for accepting Guardianship funds for payment of fees without prior approval and without an Order from this Court" (the "Order to Show Cause"). *Id.* at 41. The order's distribution list included O'Farrell at The Pyramids address. The CCS entry for the order states: "Order Setting Hearing to Show Cause entered. Hearing set for November 1, 2022 at 3:30 p.m. Copy to Heather via first class mail." *Appellee's App. Vol. 2* at 16. O'Farrell was not included in the automated E-Notice distribution. Later that month, the trial court issued an order concerning the proper method for filing exhibits in

[3] On appeal, Guardian cites to the certificate of service as proof she served O'Farrell the Report through both the E-Filing System and via mail at The Pyramids. O'Farrell states in her brief a copy was mailed to The Pyramids. From our review of the record, it is unclear from the certificate whether the Report was E-Served, e-mailed, mailed, or sent to O'Farrell via some combination of the three.

advance of the hearing. O'Farrell was not included on the distribution list or automated E-Notice distribution of the exhibit order.

[9] O'Farrell did not appear at the November 1 hearing. When the trial court asked whether Guardian had heard from O'Farrell, Guardian responded: "No. My attempts to contact her prior to the report did not result in any communication. And I have had no communication nor response from her since the filing of the report." *Tr. Vol. 2* at 13.

[10] At the hearing, the trial court admitted into evidence Guardian's reconstructed accounting. Guardian also submitted an unredacted copy of the June 1, 2020, withdrawal letter O'Farrell sent Tricia. Enclosed with the letter was an itemized accounting of the firm's trust account and a check for $82,193.86 made out to "Tricia Drake as Guardian of George Drake." *Ex. Vol. 3* at 20. The previously redacted portion of the letter stated the check represented the gross deposit of the settlement proceeds "less amounts disbursed at your request and the *quantum meruit* value of this firm's representation of George Drake in his criminal matters and guardianship. This is an exercise of this firm's attorney's lien rights pursuant to Indiana law (see *Pearman v. Szakaly, Ind: Court of Appeals 2019*)." *Id.* at 21.

[11] Based on McClure O'Farrell LP's itemized accounting, Guardian identified several fees she believed O'Farrell improperly distributed from the firm's trust account without court approval, including $30,604 for criminal attorney fees, $4,704 for guardianship accounting fees, and $6,516.32 in other fees. Guardian

also questioned O'Farrell's use of the $8,000 court-approved fee to prepare a special needs trust because the estate subsequently paid $2,500 to another law firm to prepare the trust that was ultimately funded. Finally, Guardian believed Tricia paid O'Farrell $4,000 more from the estate in late 2020 after the trust was funded and O'Farrell had withdrawn. In all, Guardian questioned $53,824.32 in fees paid or collected by O'Farrell. The trial court stated: "Well, I don't know how I can approve McClure O'Farrell's fees when she's failed to appear and show cause. So, my thought is based on her failure to appear that I'll deny the payments at this time to McClure O'Farrell." *Tr. Vol. 2* at 26.

[12] On November 15, the trial court entered its written order on the November 1 hearing and ordered O'Farrell to repay the guardianship estate $53,824.32 within sixty days (the "Payment Order"). The distribution list included O'Farrell at The Pyramids address. The CCS entry for the Payment Order states: "Order of November 1, 2022 entered. Copy to Heather via first class mail." *Appellee's App. Vol. 2* at 17. Again, O'Farrell was not included in the automated E-Notice distribution.

[13] On November 28, the copy of the Payment Order the clerk sent to O'Farrell was returned as undeliverable and unable to forward. This was the first time a letter to O'Farrell was returned. Thereafter, Guardian searched the Indiana Roll of Attorneys and discovered O'Farrell had a new business address in Zionsville. On January 17, 2023, Guardian sent O'Farrell a follow-up letter via email and by certified and regular mail to the Zionsville address. The next day, the trial court entered a new order extending the deadline for O'Farrell to repay

the estate by sixty days (the "January 17 Order") and ordered the clerk to send it and a copy of the Payment Order to O'Farrell at the new address via first class mail. Guardian's certified mailing went unclaimed, the first class mail was returned, and O'Farrell did not respond to Guardian's email. The clerk's first class letter was also returned.

[14] In March, Guardian petitioned the trial court for further instructions on how to contact O'Farrell. The trial court entered an order on March 10 finding the first class mail and email to O'Farrell's address on file with the Indiana Roll of Attorneys was sufficient service of process to provide O'Farrell actual knowledge of the January 17 Order. On Guardian's motion, the trial court reduced the January 17 Order to a final judgment in an order dated March 22 (the "Judgment Order"). The Judgment Order was sent to O'Farrell at two addresses and via email. O'Farrell apparently received the Judgment Order because she promptly filed this appeal on March 28.[4]

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[4] In her brief, Guardian argues O'Farrell's appeal was untimely. Guardian raised the same issue in a motion to dismiss the appeal, which our motions panel denied on August 28, 2023. Having reviewed the matter, we see no reason to set aside the decision of our motions panel. The Judgment Order, not the prior Payment Order, was the final appealable judgment, and thus O'Farrell's appeal was not untimely. *See Georgos v. Jackson*, 790 N.E.2d 448, 452 (Ind. 2003) (holding a trial court's order that a party consummate a settlement in part by paying the agreed amount was not a final appealable judgment because it did not state what would happen if the money was not paid).

Guardian also filed a motion to strike thirty-seven statements in O'Farrell's appellant's brief she believes are inappropriate or not included in the appellate record. Our appellate rules require the statement of facts and each contention in the argument to be supported by citations to the record on appeal or appendix. Ind. Appellate Rules 46(A)(6) & (8). O'Farrell's brief references some facts not in the record, including (1) certain court and disciplinary proceedings, (2) when O'Farrell moved business offices, and (3) actions allegedly not taken by Guardian and the trial court. In an order issued concurrently with this decision, we grant in part the

Standard of Review

[15] O'Farrell argues the trial court lacked personal jurisdiction over her and therefore the Judgment Order is void. To render a valid judgment, a court must possess both jurisdiction over the subject matter and jurisdiction over the parties. *Mishler v. Cnty. of Elkhart*, 544 N.E.2d 149, 151 (Ind. 1989). Personal jurisdiction is a court's power to impose judgment on a particular defendant. *Boyer v. Smith*, 42 N.E.3d 505, 509 (Ind. 2015). Personal jurisdiction is a question of law. *LinkAmerica Corp. v. Cox*, 857 N.E.2d 961, 965 (Ind. 2006). As with other questions of law, we review *de novo* a determination of the existence of personal jurisdiction. *Id*. We owe no deference to the trial court's legal conclusion as to whether personal jurisdiction exists. *Id*. However, personal jurisdiction depends on facts, and we review the trial court's factual findings for clear error. *Id*. Clear error exists where the record does not contain facts or inferences to support the trial court's findings. *In re Adoption of D.C.*, 887 N.E.2d 950, 955 (Ind. Ct. App. 2008).

[16] Ineffective service of process prohibits a trial court from exercising personal jurisdiction over a respondent. *Id*. A judgment entered without personal jurisdiction violates due process, is void, and may be attacked at any time. *Id*. Whether service of process was sufficient to warrant exercise of personal

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motion to strike the portions of O'Farrell's brief that discuss those matters; we deny the motion as to the other statements.

jurisdiction over a person turns on two issues: (1) Did service comply with the Indiana Rules of Trial Procedure (the "Trial Rules"); and (2) Did the attempts at service comport with the Due Process Clause of the Fourteenth Amendment? *Id.* at 955–56.

[17] In addition, Indiana law holds default judgment in disfavor and strongly prefers disposition of cases on their merits. *See Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014). Therefore, "any doubt of the propriety of a default judgment should be resolved in favor of the defaulted party." *Id.* (citation omitted).

The trial court did not have personal jurisdiction over O'Farrell after her withdrawal as the guardian's attorney of record.

[18] First, we address the threshold issue of whether the trial court exercised personal jurisdiction over O'Farrell because of her prior involvement with the guardianship proceedings.

[19] O'Farrell was Tricia's former attorney and not a party to the guardianship proceedings when Guardian filed the Report and the trial court issued the Order to Show Cause. Therefore, O'Farrell argues any claim against her should have been raised in a separate cause of action and served on her according to the Trial Rules to establish personal jurisdiction over her.

[20] Guardian, on the other hand, argues the proceedings against O'Farrell were merely a continuation of the guardianship proceedings, and thus service of a

complaint and summons was not required to establish personal jurisdiction over O'Farrell. Guardian argues "a separate lawsuit or complaint was not required to be filed when the funds in question were *already being supervised* by the trial court under a guardianship, when O'Farrell herself was bound by an order to maintain the funds in *her* trust account, and when the trial court has been granted *wide discretion* by the Legislature to make orders relating to an incapacitated person's property." *Appellee's Br.* at 18. Guardian directs our attention to the enumerated responsibilities and powers of a guardian to safeguard and manage a protected person's assets. *See id.* at 17–18 (citing, *inter alia*, Ind. Code § 29-3-8-1 *et seq*.). From these, Guardian asks us to infer O'Farrell submitted herself to the jurisdiction of the trial court and that personal jurisdiction extended past O'Farrell's withdrawal.

[21] We agree that O'Farrell's representation of Tricia as guardian subjected O'Farrell to the trial court's jurisdiction, at least while she was the attorney of record. But we need not infer personal jurisdiction, because the guardianship statutes explicitly provide: "By accepting appointment, a guardian *and the guardian's attorney* submit personally to the jurisdiction of the court in any proceeding relating to the guardianship." I.C. § 29-3-7-4 (1988) (emphasis added).

[22] However, the guardianship statutes also state the "attorney of record for a guardian continues as such until the termination of the guardianship or the attorney's withdrawal, whichever occurs first, as approved by the court." I.C. § 29-3-9-10 (1988). In this case, the trial court approved O'Farrell's motion to

withdraw in June 2020, over two years before the court issued the Order to Show Cause. The trial court's order on the motion to withdraw stated it had "examined the counsel's Motion" and ordered her name withdrawn from the cause of action. *Appellant's App. Vol. 2* at 37. Thereafter, O'Farrell was no longer included on the trial court's distribution lists for orders and notices.

[23] To support the argument that O'Farrell remained subject to the trial court's jurisdiction, Guardian relies on this Court's opinion in *Appeal of Wickersham*. 594 N.E.2d 498 (Ind. Ct. App. 1992). There, we affirmed a trial court's order limiting legal fees paid out of the guardianship estate to the guardian's attorney and instructing an attorney to repay unapproved legal fees to the guardianship estate. *Id.* at 501–02. *Wickersham* differs from this case in two important aspects: the attorney in *Wickersham* was the guardian's attorney of record when the trial court ordered him to repay fees; and second, the attorney accordingly did not dispute the court's exercise of personal jurisdiction over him.

[24] Guardian points us to no authority, and we have found none, that would support the trial court's continuing exercise of personal jurisdiction over a guardian's attorney who had withdrawn two years prior with the court's approval.[5] In our view, owing to her court-approved withdrawal and the

[5] We acknowledge there may be circumstances under which a trial court exercises personal jurisdiction over an attorney even after the attorney withdraws. For example, some courts have held an attorney's subsequent withdrawal from a case does not deprive the court of personal jurisdiction over the attorney to impose sanctions for signing a frivolous or vexatious pleading in violation of Federal Rule of Civil Procedure 11 or equivalent state trial rule. *See, e.g., In re Itel Sec. Litig.*, 791 F.2d 672, 675 (9th Cir. 1986), *cert. denied*; *W. Auto Supply Co. v. Hornback*, 545 N.E.2d 764, 766 (Ill. App. Ct. 1989).

elapsed time, O'Farrell was not a party to the proceedings by the time Guardian filed the Report and the trial court issued the Order to Show Cause. Accordingly, O'Farrell was no longer subject to the trial court's jurisdiction.

[25] Guardian nevertheless suggests O'Farrell continued to be subject to the trial court's jurisdiction because the court never approved O'Farrell's fees or the guardian's final accounting. A guardian is statutorily required to file with the trial court an inventory of the guardianship property within ninety days of appointment. I.C. § 29-3-9-5(a) (1995). Thereafter, guardians must file written verified accountings of the guardian's administration biennially and not more than thirty days after the guardian's appointment ends. I.C. § 29-3-9-6(a) (2019). A guardian's resignation does not terminate the guardian's appointment "until the guardian's resignation and final account have been approved by the court." I.C. § 29-3-12-5(c) (2017). However, all these provisions are directed at the guardian, not the guardian's attorney. As Guardian concedes, O'Farrell was never the guardian of the estate. When O'Farrell withdrew, Tricia remained guardian, and the statute affirmatively places the burden of providing a final accounting on the guardian.

[26] Finally, Guardian cites Indiana Code Section 29-3-9-12 for the proposition that "[s]hould the trial court find an error with an accounting, the trial court has the discretion to order the recovery of a protected person's property." *Appellee's Br.* at 18. The statute empowers a guardian to compel a third party's compliance with the guardian's demands by bringing an enforcement proceeding in the

court with jurisdiction over the guardianship. *See* I.C. § 29-3-9-12(b) (2014).[6] The statute thus establishes the trial court's subject matter jurisdiction over an enforcement proceeding against a third party but is silent as to how the court obtains power over the third party to impose judgment against it. Based on our research, no reported case has ever applied or cited this statute. But nothing in the statute relieves the trial court from first obtaining personal jurisdiction over an individual before entering judgment against her.

[27] In sum, having approved O'Farrell's motion to withdraw, the trial court was without personal jurisdiction over her two years later when Guardian filed the Report and the trial court entered the Order to Show Cause.

The judgment is void because service of process was insufficient to reassert personal jurisdiction over O'Farrell.

[28] We turn next to whether there was sufficient service of process of the Report and Order to Show Cause to reassert personal jurisdiction over O'Farrell and ensure her due process rights to notice and an opportunity to be heard.

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[6] Indiana Code Section 29-3-9-12(b) provides:

> (b) If a third party fails to comply with a guardian's written demand or instruction that:
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> (1) was issued within the scope of the guardian's authority; and
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> (2) is consistent with this article;
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> the guardian may bring an enforcement proceeding to compel compliance in the court having jurisdiction over the guardianship.

[29] A claim of insufficiency of service of process challenges the manner or method of service. *Cotton v. Cotton*, 942 N.E.2d 161, 164 (Ind. Ct. App. 2011). Generally, the Trial Rules govern the procedure and practice in civil actions in Indiana courts. *See* Ind. Trial Rule 1 ("Except as otherwise provided, these rules govern the procedure and practice in all courts of the state of Indiana in all suits of a civil nature whether cognizable as cases at law, in equity, or of statutory origin."). The Indiana Supreme Court has the authority "to adopt procedural rules governing the course and conduct of litigation and such rules take precedence over any conflicting statutes." *Avery v. Avery*, 953 N.E.2d 470, 472 (Ind. 2011). "Thus, the trial rules supersede statutory provisions addressing matters purely civil and procedural in nature, unless otherwise stated." *Robinson v. Est. of Hardin*, 587 N.E.2d 683, 685 (Ind. 1992).

[30] "Trial Rule 4 (process), Trial Rules 4.1 through 4.17 (service of process), and Trial Rule 5 (service and filing of pleading[s] and other papers) are each meant to satisfy the notice element of due process." *Cotton*, 942 N.E.2d at 164. Where there is no service of process, there can be no personal jurisdiction, and a default judgment issued by the court is void. *Shotwell v. Cliff Hagan Ribeye Franchise, Inc.*, 572 N.E.2d 487, 489 (Ind. 1991).

[31] Under Trial Rule 4(A), the "court acquires jurisdiction over a party or person who under these rules . . . is served with summons[.]" T.R. 4(A). To serve an individual by mail, Trial Rule 4.1(A) requires sending a copy of the summons and complaint by registered or certified mail with return receipt requested and

returned showing receipt of the letter.[7] T.R. 4.1(A). In this case, Guardian served the Report on O'Farrell either by E-Service, email, or mail to The Pyramids address, or some combination of the three. The clerk of court mailed the Order to Show Cause to O'Farrell via first class mail to The Pyramids address. None of these letters (if more than one) were returned. Only when the subsequent Payment Order the clerk mailed was returned did Guardian realize O'Farrell had moved business offices. Then Guardian attempted to serve O'Farrell the Payment Order, January 17 Order, and Judgment Order by various means including certified mail, but did not again serve the Report.

[32] Because Guardian served the Report via E-Service, email, and/or mail and the clerk served the Order to Show Cause by first class mail, O'Farrell argues the trial court lacked jurisdiction to enter subsequent orders against her. We find this Court's opinion in *Bowmar Instrument Corp. v. Maag* instructive. 442 N.E.2d

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[7] In full, Trial Rule 4.1 provides four options for serving summons on an individual:

> (A) In General. Service may be made upon an individual, or an individual acting in a representative capacity, by:
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> > (1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or
> >
> > (2) delivering a copy of the summons and complaint to him personally; or
> >
> > (3) leaving a copy of the summons and complaint at his dwelling house or usual place of abode; or
> >
> > (4) serving his agent as provided by rule, statute or valid agreement.
>
> (B) Copy Service to Be Followed With Mail. Whenever service is made under Clause (3) or (4) of subdivision (A), the person making the service also shall send by first class mail, a copy of the summons and the complaint to the last known address of the person being served, and this fact shall be shown upon the return.

729 (Ind. Ct. App. 1982). In *Bowmar*, a father failed to comply with a trial court order increasing his child support obligation so the court ordered him to execute a wage assignment. *Id*. at 730. A copy of the trial court's order was mailed to the father's employer, Bowmar, which was not a party to the action. *Id*. When the mother did not receive the assigned sum, she filed a petition for contempt against Bowmar. *Id*. After a hearing, the trial court ordered Bowmar to comply with the wage assignment. *Id*. But on appeal, this Court held the trial court did not acquire personal jurisdiction over Bowmar in any of the proceedings leading up to the contempt citation. *Id*. And because the trial court did not have personal jurisdiction over Bowmar at the time of the contempt proceeding, "it follows that Bowmar was not in contempt and the trial court lacked jurisdiction for the other orders it entered against Bowmar." *Id*. at 731.

[33] Similar to the court in *Bowmar*, the trial court did not have personal jurisdiction over O'Farrell when Guardian filed the Report and the trial court issued the Order to Show Cause directing O'Farrell to appear. "A basic tenet of our judicial system is that a person or legal entity falls within the trial court's jurisdiction for a particular civil action only when he or it has been properly made a party to that action." *Id.* at 730. Typically, this is accomplished through service of process. *Id*. (citing, *inter alia*, Trial Rule 4(A)). Because O'Farrell was not served with the Report or the Order to Show Cause according to Trial Rule 4, the trial court did not obtain personal jurisdiction over her prior

to entering the Payment Order; accordingly, the Payment Order and subsequent orders are void.

[34] Guardian, however, argues service by the E-Filing System or first class postage prepaid mail was sufficient service of process on O'Farrell. Guardian first contends Trial Rule 4.17 exempts guardianship proceedings from Trial Rule 4.1, and thus first class mail satisfies the requirements for serving any notice required by the guardianship statutes. Trial Rule 4.17 provides: "Rules 4 through 4.16 shall not replace the manner of serving summons or giving notice as specially provided by statute or rule in proceedings involving, without limitation, the administration of decedent's estates, guardianships, receiverships, or assignments for the benefit of creditors." T.R. 4.17. Trial Rule 4.17 acts to "exempt certain proceedings . . . from [Trial Rule] 4 through [Trial Rule] 4.16 regarding methods to 'serve summons' and 'notice.'" *Milligan v. Denham*, 553 N.E.2d 1265, 1266 (Ind. Ct. App. 1990), *adopted by* 563 N.E.2d 595 (Ind. 1990).

[35] Indiana courts have narrowly interpreted Trial Rule 4.17 to apply only to those proceedings explicitly listed, despite the rule's potentially expansive phrase "without limitation." For example, our Supreme Court has held Trial Rule 4.17 does not exempt parties involved in a will contest from complying with Trial Rules 4 through 4.16 because a will contest is not a proceeding involving the administration of a decedent's estate. *Robinson*, 587 N.E.2d at 685. In that case, the Trial Rules superseded the specific statutory method for effectuating

service. *Id*. Thus, where the statutes implicated by Trial Rule 4.17 do not provide explicit procedural rules, the Trial Rules will step in.

[36] The guardianship statutes generally speak in terms of giving or providing notice, rather than process, summons, or service of process,[8] and prescribe the method of giving notice for certain guardianship matters. Section 29-3-6-1(a) provides that after a petition to establish guardianship or for issuance of a protective order is filed, notice of the petition and hearing "shall be given through the E-filing System of the Indiana Courts or by first class postage prepaid mail." I.C § 29-3-6-1(a) (2022). In addition, when a guardian prepares and files an inventory of the guardianship property, the guardian shall provide notice "in the same manner as the notice of the hearing to establish a guardianship." I.C. § 29-3-9-5(a) (1995).[9] Because Section 29-3-6-1(a) explicitly provides the method of service for a petition to establish guardianship and inventory of guardianship property, Trial Rule 4.17 therefore exempts notice of those guardianship matters from Trial Rules 4 through 4.16.

[37] However, when giving notice of petitions *other than* for appointment of a guardian, no method of service is specified in the statutes. *See* I.C. § 29-3-6-1(b)

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[8] The guardianship statutes make only one reference to summons in the section related to a trial court's subject matter jurisdiction. *See* I.C. § 29-3-2-1(f) (2011) ("Jurisdiction under this section is not dependent on issuance or service of summons."). "Indiana Code Section 29-3-2-1 sets the jurisdiction of Indiana courts to hear guardianship actions." *In re Guardianship of M.E.T.*, 888 N.E.2d 197, 198 (Ind. Ct. App. 2008).

[9] Similarly, notice of a petition to establish a temporary guardianship must be served under Section 29-3-6-1(a), but the requirements there are in addition to the petitioner's obligations under Trial Rule 65 (Injunctions). *See* I.C. § 29-3-3-4(b) (2018).

(2022) (providing that "[w]henever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to" certain persons without specifying a method of service). Further, the statutes do not set forth any procedures for bringing an enforcement action against a third party under Section 29-3-9-12, much less prescribing the form and content of the notice or the method for perfecting service in that situation.

[38] Guardian would read Section 29-3-6-1(a) to require service by the E-filing System or by first class postage prepaid mail for any notice given in any guardianship proceeding. But the guardianship statutes are not that expansive. And considering our Supreme Court's narrow application of Trial Rule 4.17, we see no reason why a guardian should be exempt from complying with the Trial Rules when serving process on and establishing personal jurisdiction over an individual whose compliance the guardian seeks to compel. Accordingly, service of the Report by E-service, email, and/or mail and Order to Show Cause by first class mail only was insufficient service of process to establish personal jurisdiction over O'Farrell.

[39] Guardian next argues compliance with Trial Rule 5, which permits service on a party or party's attorney by first class mail to a last known address, or by electronic means to an email address, was sufficient in this case. *See* T.R. 5(B). As this Court has previously summarized:

> Trial Rule 4, entitled "Process", addresses the various requirements of the form and content of a summons. Trial Rules

> 4.1 through 4.17 govern how that process (the summons and complaint) is served, depending on the type of party to be served or the method by which service is to be effected.
>
> . . . Trial Rule 5 governs the service of subsequent pleadings and papers, such as written motions, pleadings subsequent to the original complaint, written motions, briefs, documents related to discovery, and other written notices.

Musgrave v. Squaw Creek Coal Co., 964 N.E.2d 891, 897 (Ind. Ct. App. 2012), *trans. denied*. Trial Rule 5 designates the method to serve subsequent pleadings on *parties* after the summons and complaint have been served. Trial Rule 5 thus assumes personal jurisdiction over a party has already been established. But O'Farrell was not a party to the guardianship proceedings, nor was she representing a party, and therefore Trial Rule 5 is inapposite here.

[40] Guardian next argues even if Trial Rule 4.17 does not apply to this case, we should find the savings provision in Trial Rule 4.15 applies. Technically insufficient service may be sufficient under Trial Rule 4.15(F) if the service is "reasonably calculated to inform the person to be served that an action has been instituted against him, the name of the court, and the time within which he is required to respond." T.R. 4.15(F). But the savings provision of Trial Rule 4.15(F) "only cures technical defects in the service of process, not the total failure to serve process." *LaPalme v. Romero*, 621 N.E.2d 1102, 1106 (Ind. 1993). This is not a case of technical defect. *Cf. Lepore v. Norwest Bank Ind., N.A.*, 860 N.E.2d 632, 636 (Ind. Ct. App. 2007) (holding that service

conforming to Trial Rule 4.1(A)(3), but followed up by certified mail, rather than first class mail as required by Trial Rule 4.1(B), was still sufficient).

[41] Guardian points to her initial attempts to serve the Report, and her efforts to serve or re-serve the Payment Order, January 17 Order, and Judgment Order after the Payment Order was returned to sender. She also notes O'Farrell's email address did not change throughout the process. However, actual knowledge of a hearing derived from sources other than service of process does not satisfy due process requirements. *See Front Row Motors*, 5 N.E.3d at 759. Further, notice should be reasonably calculated to inform a person of the pending proceedings, and not a mere gesture. *See id*. It is unclear exactly how Guardian served the Report on O'Farrell. To the extent the record is unclear on this point, we are mindful that Indiana law disfavors default judgments and "any doubt of the propriety of a default judgment should be resolved in favor of the defaulted party." *Id.* at 758. Further, the clerk sent O'Farrell the Order to Show Cause by first class mail only and failed to send O'Farrell the subsequent order concerning hearing exhibits at all. The record before us does not demonstrate efforts reasonably calculated to inform O'Farrell of the hearing on the Order to Show Cause.

[42] Finally, Guardian argues there was substantial compliance with the indirect contempt statute to establish personal jurisdiction over O'Farrell. "Any act related to a current or pending proceeding that tends to deter the court from the performance of its duties may support a finding of contempt." *In re Nassar*, 644 N.E.2d 93, 95 (Ind. 1994). Contempt of court "involves disobedience of a court

or court order that 'undermines the court's authority, justice and dignity.'" *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016) (quoting *In re A.S.*, 9 N.E.3d 129, 131 (Ind. 2014)). There are two kinds of contempt: direct and indirect. *Id*. Indirect contempt involves acts committed outside the presence of the court which nevertheless tend to interrupt, obstruct, embarrass, or prevent the due administration of justice. *Id*. The contempt at issue in this appeal—the alleged payment or acceptance of attorney fees from a guardianship estate without a prior court order required by local court rule—is indirect because it took place outside the courtroom and the personal knowledge of the trial court.

[43] "An indirect contempt requires an array of due process protections, including notice and the opportunity to be heard." *In re Contempt of Wabash Valley Hosp., Inc.*, 827 N.E.2d 50, 62 (Ind. Ct. App. 2005). The indirect contempt statute sets forth the procedural requirements for finding indirect contempt.[10] I.C. § 34-47-

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[10] Indiana Code Section 34-47-3-5 provides in full:

> (a) In all cases of indirect contempts, the person charged with indirect contempt is entitled:
>
> (1) before answering the charge; or
>
> (2) being punished for the contempt;
>
> to be served with a rule of the court against which the contempt was alleged to have been committed.
>
> (b) The rule to show cause must:
>
> (1) clearly and distinctly set forth the facts that are alleged to constitute the contempt;
>
> (2) specify the time and place of the facts with reasonable certainty, as to inform the defendant of the nature and circumstances of the charge against the defendant; and
>
> (3) specify a time and place at which the defendant is required to show cause, in the court, why the defendant should not be attached and punished for such contempt.

3-5 (1998). Compliance with the statute fulfills the due process requirement that a contemnor be provided adequate notice and an opportunity to be heard. *Reynolds*, 64 N.E.3d at 833.

[44] The plain language of the indirect contempt statute entitles the alleged contemnor "to be served" with the rule to show cause. *See Troyer v. Troyer*, 867 N.E.2d 216, 220 (Ind. Ct. App. 2007) ("The person charged with indirect contempt must be served with a rule of the court against which the contempt was alleged to have been committed[.]"). From the language of Section 34-47-3-5, it is unclear whether service should be made under Trial Rule 4 or 5. Because an indirect contempt citation typically is directed at a party who allegedly has disobeyed a lawful court order, service under Trial Rule 5 normally would be sufficient. *See, e.g., Autotech Techs. LP v. Integral Rsch. & Dev. Corp.*, 499 F.3d 737, 747 (7th Cir. 2007) (observing that a local federal court rule requiring a contempt motion to be served under the manner of service of a summons under Federal Rule of Civil Procedure 4 was more stringent than the normal requirements, which usually would be satisfied by Federal Rule of Civil Procedure 5(b) in part because personal jurisdiction would not need to be

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(c) The court shall, on proper showing, extend the time provided under subsection (b)(3) to give the defendant a reasonable and just opportunity to be purged of the contempt.

(d) A rule provided for under subsection (b) may not issue until the facts alleged to constitute the contempt have been:

(1) brought to the knowledge of the court by an information; and

(2) duly verified by the oath of affirmation of some officers of the court or other responsible person.

reasserted under Rule 4). Here, the indirect contempt citation is directed at a person not already subject to the personal jurisdiction of the trial court. Therefore, service of process under Trial Rule 4 is necessary to bring the person into the trial court's jurisdiction. Accordingly, the trial court did not have jurisdiction to find O'Farrell in contempt of court.

Conclusion

[45] As our Supreme Court has observed, "it is a bold move" for a person to ignore a pending proceeding and subsequently challenge personal jurisdiction. *Stidham v. Whelchel*, 698 N.E.2d 1152, 1156 (Ind. 1998). It is equally bold to withhold guardianship funds without first obtaining the trial court's approval. However, because the trial court granted O'Farrell's motion to withdraw and later attempts at service fell short of those necessary to obtain personal jurisdiction over O'Farrell, the Payment Order and subsequent orders entered against her are void. Accordingly, we reverse.

[46] Reversed.

Altice, C.J., and Weissmann, J., concur.

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