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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0449**

In re the Guardianship and Conservatorship of: Helen Vikla, Conservatee.

**Filed March 12, 2018
Affirmed
Schellhas, Judge**

Rice County District Court
File No. 66-P8-05-001645

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Marine Insurance Company)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellants-interested parties challenge the district court's allowance of the final accounts of the conservatee's emergency and general conservatorships. Respondent bond company challenges the court's application of equity to estop it from disclaiming bond coverage of conservatee's general conservatorship. We affirm.

FACTS

The procedural history in this case is lengthy and reflects a substantial commitment of time and attention by the district court. In August 2005, Rice County Social Services petitioned the district court for an emergency guardianship and conservatorship over Helen Vikla, then age 85. On August 17, in an ex parte order, the court found Helen to be incapacitated and granted a 90-day emergency guardianship and conservatorship over her and her estate, appointing Estates Resources, Inc. (ERI) to serve as emergency guardian and conservator.

On September 13, following a hearing, additional order, and issuance of letters of emergency guardianship and conservatorship, ERI, as the principal, filed a \$269,000 bond to cover the guardianship and conservatorship. ERI obtained the bond from respondent Empire Fire and Marine Insurance Company (Empire) through its agent, the Patrick J. Thomas Agency (PJT).

On September 15, 2005, Rice County petitioned for a general guardian and conservator for Helen. On October 5, the district court appointed attorney Phillip Zrimsek to represent Helen. On November 8, the district court granted a general guardianship and conservatorship over Helen, appointed ERI as guardian and conservator, and ordered ERI to file a bond in the amount of \$200,000. Rice County did not serve Empire with a copy of its petition or the district court's order granting a general guardianship and conservatorship, and ERI did not file a new bond.¹

¹ In an order of May 18, 2012, the district court noted that the \$269,000 bond filed in Helen Vikla's emergency conservatorship case "was physically transferred to the General

On March 27, 2007, the district court approved the final account of Helen's emergency conservatorship. On July 9, the district court approved the first annual account for Helen's general guardianship and conservatorship. Helen died on September 24, 2007. On July 31, 2008, ERI filed its final account of Helen's general conservatorship.

On July 30, 2008, appellants Elmer and Margaret Vikla (Viklas),² "as Co-Personal Representatives of the Estate of Helen Vikla, Deceased," moved the court to permit them "to intervene as an interested party in this matter, pursuant to Minn. Stat. § 524.5-102, subd. 7 (iii) and subd. 11."³ On September 2, the district court granted the motion. The Viklas then objected to the first and final accounts of Helen's general conservatorship and moved to enjoin ERI from further distribution of Helen's non-probate assets.

On November 14, 2008, the district court granted the Viklas' motion and restrained ERI from taking any further actions regarding Helen's non-probate assets. On May 26, 2009, the court ordered ERI to pay Helen's estate the sum of \$10,112.71, representing \$4,100 in conservator fees received after Helen's death, \$363 in bank charges and overdraft

Conservatorship File and is currently located there. This was done without Court Order or direction."

² While this appeal was pending, Elmer and Margaret Vikla died. This court has allowed their son, David Vikla, to be substituted for them as appellant. We nevertheless refer to appellant as the "Viklas."

³ The Viklas devote two pages in their brief to an argument that the district court erred by treating them as personal representatives of Helen's estate, rather than as "interested persons" within the meaning of Minn. Stat. § 524.5-420(e), and that this treatment prejudiced their ability to challenge the ERI's accountings. Because the record reflects that the court—without regard to the Viklas' status as personal representatives or "interested persons"—exhaustively considered the Viklas' accounting objections and amended objections, we will not further address this argument.

fees paid by ERI, and \$5,649.71 for overpayment of conservator fees to ERI, noted in the first annual account of Helen's general guardianship and conservatorship.

In June 2009, the Viklas filed amended objections to the first annual account and the final account of Helen's general guardianship and conservatorship. On May 13, 2010, after ERI failed to respond to the Viklas' objections, the district court found ERI in contempt of court, ordered ERI to file a timely response to the Viklas' amended objections, and threatened to sanction ERI \$1,000 if it failed to respond.

On January 18, 2011, the district court entered judgement against ERI in favor of Helen's estate in the amount of \$10,112.71. And the court ordered ERI to notify Empire of the judgment, make alternative arrangements for completion of the annual account, and pay the court's sanction of \$1,000 for its failure to file an amended account and respond to the Viklas' objections. On September 26, the court ordered Zrimsek to prepare a final account of Helen's general conservatorship.⁴ On November 15, 2011, the court ordered the Viklas to prepare an inventory of Helen's assets and mistakenly ordered PJT, instead of Empire, to satisfy the judgment against ERI. In January 2012, the Viklas petitioned for surcharge on Empire's bond, believing that it covered Helen's general conservatorship.

⁴ Because ERI's vice president, Terri Hauge, was convicted of six counts of felony theft-by-swindle and one count of perjury, the district court removed ERI as conservator. *See In re Disciplinary Action against Hauge*, 831 N.W.2d 913, 913 (Minn. 2013). As part of Hauge's sentence, she was ordered to pay Helen's estate \$39,216.45 in restitution. The Viklas also claimed restitution, but the record is unclear about whether Hauge was ordered to pay restitution to the Viklas. *State v. Hauge*, No. 66-CR-10-3444 (Minn. Dist. Ct. Oct. 8, 2012). [Opinion not available on Westlaw].

On March 21, 2012, Empire moved the district court to discharge its bond filed in Helen's emergency conservatorship and to find that the bond did not cover Helen's general conservatorship. On May 18, the court concluded, as a matter of law, that Empire's bond covered only Helen's emergency conservatorship but that the Viklas had nevertheless adequately pleaded in equity the necessary elements to estop Empire from disclaiming coverage of Helen's general conservatorship. The court conducted an evidentiary hearing on the Viklas' equitable claim and on whether Empire had proper notice of prior proceedings.⁵

On February 25, 2013, following the evidentiary hearing, the district court found that although ERI and PJT knew that emergency conservatorships ended at most after 90 days, PJT invoiced Helen's estate for a surety-bond premium for four years after the emergency conservatorship ended and for two years after Helen's death, and Helen's estate paid the bond premiums through 2009. The district court also found that Hauge had not informed PJT or Empire about the requirement for a bond in Helen's general conservatorship. The district court: (1) vacated the mistaken judgement entered against PJT; (2) discharged ERI as conservator for Helen's emergency conservatorship, retroactive to December 11, 2005; (3) denied Empire's motion to discharge it of liability relating to the emergency conservatorship; and (4) estopped Empire in equity from disclaiming coverage of Helen's general conservatorship.

⁵ At the evidentiary hearing in December 2012, the court heard testimony from a bond-writing expert, the president of PJT, and Hauge, and accepted into evidence exhibits relating to Helen's assets prior to and after her death.

In September 2014, Zrimsek filed the final account for Helen's general conservatorship. In November 2014, the Viklas filed objections to the final account. On September 25, 2015, based in part on the Viklas' objections, the district court accepted an amended final account from Zrimsek. Viklas then filed further objections to the final account based on ERI's alleged misconduct. The court heard the Viklas' objections in May 2016, and on August 1, 2016, found that the Viklas had failed to prove many of their claims against ERI by a preponderance of the evidence. But the court ordered ERI to pay attorney fees incurred by Helen's estate in the amount of \$30,000 and to pay Helen's estate \$14,143.75 for overbilling Helen as her general conservator.

The Viklas moved for a new trial or amended findings of facts and conclusions of law. On December 21, 2016, the district court denied the post-trial motions and ordered that upon payment of \$44,143.75, including \$3,200 to Zrimsek, Empire would be discharged "on its obligations under any surety bond issued to [ERI], regarding the General Conservatorship of Helen Vikla." In January 2017, Empire made the requisite payments, and the district court ordered the discharge of ERI and Empire on January 17, 2017, stayed for 60 days. This appeal followed.

Following the Viklas' appeal of the district court's order of December 21, 2016, and Empire's notice of related appeal of the district court's order of February 25, 2013, this court construed the Viklas' appeal as including the August 1, 2016 order and judgment and accepted jurisdiction over both the direct appeal and the notice of related appeal.

DECISION

I.

“The primary purpose of a conservatorship is to protect the person and property of a class of citizens who are incapable of fully protecting themselves.” *In re Guardianship and Conservatorship of Durand*, 845 N.W.2d 821, 825 (Minn. App. 2014) (quotation omitted), *aff’d*, 859 N.W.2d 780 (Minn. 2015). “Factual questions in probate court are evaluated under the clearly erroneous standard.” *In re Conservatorship of Moore*, 409 N.W.2d 14, 16 (Minn. App. 1987); *see also* Minn. Stat. § 524.1-304(a) (2016) (noting that probate proceedings “shall be governed insofar as practicable by [the] Rules of Civil Procedure”); Minn. Civ. R. P. 52.01 (“Findings of fact . . . shall not be set aside unless clearly erroneous”). Appellate courts review the district court’s decision to grant or deny a motion for a new trial for clear abuse of discretion because the decision rests largely within the discretion of the district court. *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 625 (Minn. 2012).

The Viklas argue that “[a]pproval of a conservator’s accountings require notice to all interested persons” and that “Helen’s beneficiaries and heirs were denied their right to receive notice when the district court decided that the Viklas’ objections to the Final Account in the Emergency Conservatorship and their objections to the First Annual Account in the General Conservatorship would not be considered.” The Viklas argue that the emergency conservatorship should be reopened “so that the account can be examined as required under the rules,” without specifying which rules. They also argue that Helen’s general conservatorship should remain open and that the district court should settle the first

annual and final accounts based on their objections. Empire argues that the Viklas’ claims represent a collateral attack on the probate court’s final orders.

A. Notice to the Viklas and Helen’s heirs

1. Emergency Conservatorship

In addition to service upon the respondent, “[i]n a proceeding to establish a conservatorship . . . notice of the hearing shall also be given to the persons listed in the petition.” Minn. Stat. § 524.5-404(a), (b) (2016). After appointment of a conservator, notice of the hearing on a petition for an order to establish a conservatorship “shall be given to interested persons pursuant to section 524.5-113 and to any other person as ordered by the court.” Minn. Stat. § 524.5-404(c) (2016). Under section 524.5-113(a), “[i]nterested persons” are to be given “notice of a hearing on a petition.” Minn. Stat. § 524.5-113(a) (2016).

“Interested persons” include: a protected person; conservator; legal representative; spouse, child, sibling, or if none can be found, the next living kin; an attorney for the protected person; and “any other person designated by the court.” Minn. Stat. § 524.5-102, subd. 7 (2016). The term “[n]ext of kin” shall be determined by the court.” Minn. Stat. § 524.5-102, subd. 11 (2016). “The conservator shall give notice of the filing of the conservator’s inventory . . . to the protected person and *any other person the court directs.*” Minn. Stat. § 524.5-404(d) (2016) (emphasis added).

In this case, the parties do not dispute that the Viklas were “interested persons” under the law. By taking judicial notice of the emergency-guardianship-and-conservatorship district court file, we know that the emergency petition did not list the

Viklas as interested persons, and that the district court did not direct ERI to give notice to the Viklas, nor did the Viklas receive any notice of the emergency-conservatorship proceedings. See *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 530 (Minn. 2010) (“[W]e have taken judicial notice of public records and have said we have the inherent power to look beyond the record where the orderly administration of justice commends it.” (quotation omitted)).

But the record reflects that on November 23, 2005, in the general guardianship and conservatorship proceeding, ERI mailed notice of filing of the November 8, 2005 order appointing a guardian and conservator for Helen to Margaret and Elmer Vikla. The last finding of fact in this order states that “[a]n emergency guardianship of the person and conservatorship of the estate was established following hearing on September 2, 2005.” In its May 13, 2015 order, the district court concluded that the Viklas’ objections to the amended final account for the emergency conservatorship were not properly before the court and therefore declined to consider them. The Viklas argue that the district court abused its discretion. We disagree.

When the district court allowed the final account of Helen’s emergency guardianship on March 27, 2007, the Viklas had known about the emergency conservatorship since November 2005. From November 2005 until July 2008, the Viklas did not complain to the court that they were not noted as interested persons in the emergency proceeding and did nothing to ensure that they would receive notice of ERI’s request for allowance of account of Helen’s emergency conservatorship. Instead, the Viklas waited to seek intervention in the general conservatorship only after Helen’s death on

September 24, 2007, and did not object to the final account of Helen's emergency conservatorship until July 2008.

On appeal, "the burden of showing error rests upon the one who relies on it. And [appellate courts] do not reverse unless there is error causing harm to the appealing party," because "error without prejudice is not ground for reversal." *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (emphasis and quotation omitted); *see also* Minn. R. Civ. P. 61 ("No error . . . in any ruling or order . . . is ground for . . . disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice."). We conclude that the Viklas have failed to demonstrate how they sustained prejudice by not receiving formal notice of the hearing on the final account. We therefore affirm the district court's refusal to consider the Viklas' objections to the emergency conservatorship account. *See Midway Ctr. Assocs.*, 306 Minn. at 357, 237 N.W.2d at 79 (concluding that the appellant failed to show prejudicial error by the district court and therefore the court was "compelled to affirm the [district] court").

2. General conservatorship

On July 9, 2007, the district court allowed the first annual account of the general conservatorship for the period ending November 7, 2006, almost two years after the Viklas received a copy of the order appointing a general conservatorship for Helen. The Viklas argue that, because Elmer Vikla was Helen's next of kin, ERI should have notified them of the hearing regarding the first annual account, but it did not. Assuming without deciding that the Viklas were entitled to such notice, we conclude that they have not shown that they

were prejudiced by the lack of notice because the district court heard and addressed their objections to the first annual account.

B. Allowance of the final account of Helen’s general conservatorship

The Viklas argue that the district court erred in allowing the final account of the general conservatorship because it improperly dismissed all other interested parties except the Viklas, and failed to address their objections regarding post-death expenses and conservator fees. The Viklas argue that this court should remand and order that the final account be kept open and that Empire and ERI not be discharged. We disagree.

This court applies an abuse-of-discretion standard of review to a district court’s decision allowing or disallowing the fees and expenses contained within a conservator’s accounting. *In re Guardianship of Doyle*, 778 N.W.2d 342, 350–51 (Minn. App. 2010) (citing *In re Estate of Baumgartner*, 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966)). “A probate court’s determination of factual questions will not be set aside unless clearly erroneous.” *In re Conservatorships of T.L.R.*, 375 N.W.2d 54, 58 (Minn. App. 1985). “Clear error exists when the district court’s findings are not supported by the evidence.” *Doyle*, 778 N.W.2d at 352.

Following the death of a protected person, the conservator “shall conclude the administration of the estate by distribution of probate property to the personal representative of the protected person’s estate,” and the conservator “shall file a final report and petition for discharge . . . and notice of hearing for allowance of said report shall be given to interested persons and to the personal representative.” Minn. Stat. § 524.5-431(b)

(2016). When a conservatee dies “the personal representative of the estate is the only interested person.” Minn. R. Gen. Pract. 416(g).

Upon termination of the conservatorship, a conservator shall report to the court for administration of the estate. Minn. Stat. § 524.5-420(a) (2016). “An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship.” *Id.*

On September 15, 2008, following their intervention, the Viklas served specific objections to ERI’s Final Account for the general conservatorship, including objections to the first annual account for the period ending November 7, 2006. The Viklas maintained that an \$8,530.79 deficiency existed concerning the value of Helen’s assets,⁶ and that ERI overbilled for its conservator fees by \$5,649.71. On May 26, 2009, the district court ordered ERI to pay Helen’s estate \$5,649.71 as a result of the objected-to conservator fees in connection with the first annual account of the general conservatorship. In June 2009, the Viklas submitted further account objections.

On September 10, 2014, the district court ordered Zrimsek to file an informal accounting of the post-death expenses. Zrimsek filed an informal accounting and final account for the general conservatorship, which included \$14,461.53 in conservator fees. On January 13, 2015, the court conducted a hearing on the final account and, on May 13, issued an order, addressing the Viklas’ objection to post-death expenses. The court disallowed \$12,578.02 in “unverified payments” by ERI and allowed the remaining

⁶ According to the first annual account, this deficiency resulted from the termination of a life estate Helen held upon her death.

expenses of \$11,697.51 as being “fully documented” in the final account submitted by Zrimsek and “necessary [for Helen’s] living expenses and . . . not disputed.”

The Viklas filed objections again in October 2015, repeating earlier objections. On May 26, 2016, the district court conducted another hearing on the Viklas’ objections and, in an August 1 order, found that it had already addressed the Viklas’ objection to ERI’s use of Helen’s POD accounts to pay for post-death expenses and that it had fully considered post-death expenses in the final account and denied any further claims. The court allowed an amended final account of Helen’s conservatorship, which included a reduction in conservator fees of \$14,461.53 to \$12,061.98, based on the Viklas’ objection. The court found that an \$8,494.04 deficiency existed in the value of Helen’s assets to be distributed to her estate and determined that the Viklas were entitled to attorney fees in the amount of \$30,000.

The court ordered judgment in favor of Helen’s estate and against ERI and Empire, jointly and severally, in the amount of \$44,143.75 (\$5,649.71+\$8,494.04+\$30.000). Upon payment of the judgment amount, the court ordered that ERI would be relieved of its liability as conservator and that Empire would be discharged from any obligations under its surety bond. Empire made full payment, and the district court ordered the discharge of ERI and Empire on January 17, 2017, stayed for 60 days.

We conclude that the district court did not clearly err in finding that it had already addressed the Viklas’ objections to the post-death expenses, and that it did not abuse its discretion in its allowance and disallowance of post-death expenses. *See Doyle*, 778 N.W.2d at 352 (“Clear error exists when the district court’s findings are not supported by

the evidence.”). Our review shows that the district court carefully and exhaustively considered the Viklas’ objections and arguments before allowing the amended final account.

Because the court’s decision is not based on an erroneous view of the law and is not against logic or the facts in the record, we conclude that the district court did not abuse its discretion in allowing the amended final account of the general conservatorship. See *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 501 (Minn. 2018) (“A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” (quotation omitted)). We therefore affirm the district court’s August 1, 2016 order for judgement against Empire and ERI jointly and severally in favor of Helen’s estate, and we affirm the denial of the Viklas’ motion for a new trial or amended findings of fact and conclusions of law.

C. The Viklas’ claim that ERI remains in default

The Viklas’ claim that ERI is in default and that we therefore must remand and order the district court to keep the conservatorship open. But the Viklas did not apply to the district court for default judgment against ERI. See Minn. R. Civ. P. 55.01(b) (stating that “a party entitled to a judgment by default *shall apply* to the court therefor” (emphasis added)). The Viklas therefore are functionally arguing that the district court erred by failing to grant relief that they did not request. The Viklas’ request that this court hold ERI in default is not properly before this court. We conclude that the district court did not abuse its discretion by ordering Empire and ERI discharged upon satisfaction of judgment in the amount of \$44,143.75 and therefore reject the Viklas’ claim that ERI remains in default.

See Minn. Stat. § 524.5-431(f) (2016) (stating that a district court “shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator”).

II.

A district court “shall require the conservator to furnish a bond in an amount that the court determines is necessary to reasonably protect the protected person’s assets” whenever “the value of the personal property of the estate of the proposed protected person in the initial inventory of the estate filed by the conservator . . . is expected to be at least \$10,000.” Minn. Stat. § 524.5-416(a)(5) (2016); *accord In re Guardianship and Conservatorship of Pates*, 823 N.W.2d 881, 890 (Minn. App. 2012). As noted above, on November 8, 2005, the district court granted a general guardianship and conservatorship over Helen, appointed ERI as guardian and conservator, and ordered ERI to file a bond in the amount of \$200,000. Rice County did not serve Empire with a copy of its petition or the district court’s order granting a general guardianship and conservatorship, and ERI did not file a new bond.

In a February 25, 2013 order, the district court ruled that, as a matter of law, Empire’s bond for the emergency conservatorship did not cover Helen’s general conservatorship.⁷ But the district court also concluded that under principles of equitable estoppel, Empire could not disclaim coverage of Helen’s general conservatorship. Empire,

⁷ The district court cited Minn. Stat. § 524.5-311 (2004) (“[A]n emergency guardian . . . may be granted authority to act for a period not to exceed 90 days.”), because the law governing emergency conservatorships did not exist at the time of the creation of Helen’s emergency conservatorship. See 2010 Minn. Laws ch. 334, § 15, at 1008–10 (codified as Minn. Stat. § 524.5-409 (2010)).

in its cross-appeal, argues that, as a matter of law, equitable estoppel cannot create a surety bond.

Minnesota law applies equitable principles in proceedings pertaining to conservatorships. Minn. Stat. § 524.5-103 (2016) (stating that “the principles of law and equity supplement [the] provisions” of the conservatorship statute). Minnesota appellate courts review a district court’s decision to award equitable relief for an abuse of discretion. *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016); *see also City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011) (concluding that “a district court’s conclusion on equitable estoppel . . . is reviewed for abuse of discretion”). A reviewing court gives the district court’s equitable determinations deference because it “acts like a fact-finder, weighing all relevant factors and considering the unique facts of each case,” and “is in the best position to analyze the facts and balance the relevant factors.” *Moua*, 875 N.W.2d at 819.

“Under an abuse-of-discretion standard, we may overrule the district court when the court’s ruling is based on an erroneous view of the law,” and when “its decision is against the facts in the record.” *Sarpal*, 797 N.W.2d at 24. This court reviews findings of fact under the clearly erroneous standard. Minn. R. Civ. P. 52.01. “If the district court’s ruling is free of legal or factual errors,” we do not overturn its decision. *Sarpal*, 797 N.W.2d at 24.

Equitable estoppel is “an equitable doctrine addressed to the discretion of the court and intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights.” *Nelson v. Comm’r of Revenue*, 822 N.W.2d 654, 660 (Minn. 2012) (quotation omitted). “Those who deal with a [conservator] are bound, at their

peril, to determine under what authority he acts.” *Vadnais v. State*, 224 Minn. 439, 442, 28 N.W.2d 694, 696 (1947).

Equitable estoppel is properly invoked when the following elements are proved:

1. There must be conduct, acts, language or silence amounting to a representation or a concealment of material facts.
2. These facts must be known to the party estopped at the time of his said conduct, or at least the circumstances must be such that knowledge of them is necessarily imputed to him.
3. The truth concerning these facts must be unknown to the other party claiming the benefit of the estoppel, at the time when such conduct was done, and at the time when it was acted upon by him.
4. The conduct must be done with the intention, or at least with the expectation, that it will be acted upon by the other party, or under such circumstances that it is both natural and probable that it will be so acted upon.
5. The conduct must be relied upon by the other party, and, thus relying, he must be led to act upon it.
6. He must in fact act upon it in such a manner as to change his position for the worse, in other words, he must so act that he would suffer a loss if he were compelled to surrender or forego or alter what he has done by reason of the first party being permitted to repudiate his conduct and to assert rights inconsistent with it.

Brekke v. THM Biomedical, Inc., 683 N.W.2d 771, 777 (Minn. 2004) (quotation omitted).

Empire does not cite to any law or case to support its argument that the district court cannot use equitable estoppel to create a surety bond. This court is unaware of any caselaw that bars the application of equity to surety bonds. Indeed, Minnesota appellate courts have also used equitable estoppel in an analogous situation involving insurance contracts. *See Pesina v. Juarez*, 288 Minn. 379, 385–86, 181 N.W.2d 109, 113 (1970) (affirming application of equitable estoppel against auto insurer to prevent insurer from disclaiming expired coverage for insured driver); *Alwes v. Hartford Life and Acc. Ins. Co.*, 372 N.W.2d

376, 379–80 (Minn. App. 1985) (affirming application of equitable estoppel estopping insurer from disclaiming coverage for insured).

Empire argues that even if the district court did not err in applying equity, the facts of this case fail to meet the necessary elements of equitable estoppel. Empire specifically challenges whether Empire made a material misrepresentation, had knowledge of Helen’s general conservatorship, and intended to induce reliance by the Viklas, and whether the court or ERI relied on Empire’s representations. Empire concedes that the Viklas had no reason to know that ERI failed to procure a bond in the general conservatorship.

The district court considered multiple definitions of equitable estoppel, including the six factors outlined by the supreme court in *Brekke*, and based its order on the following facts and circumstances: strict assertion of Empire’s rights would harm Helen’s estate (i.e. the protected person); both ERI and Hauge, its guilty officer, were insolvent; Empire continued to invoice and collect premiums for four years during the pendency of the general conservatorship and after Helen’s death; Empire knew that Helen’s emergency conservatorship could last no more than 90 days; Empire was deemed to have knowledge of the termination of the emergency conservatorship because it had been included in the original emergency conservatorship proceedings; and Empire deviated from industry standards with “hasty” underwriting practices it used in issuing the bond for Helen’s emergency conservatorship.

Empire argues that it had no duty to discover the status of Helen’s emergency conservatorship. But this court concluded that such a duty to discover exists in conservatorships where a district court order, sent to the party implicated by the duty,

imputes knowledge of the conservatorship. See *In re Conservatorship of W.L.*, 552 N.W.2d 734, 737 (Minn. App. 1996) (imputing actual knowledge of terms of conservatorship to bank, despite not having received letters of conservatorship, and stating that bank “transacted business without the letters [of conservatorship] . . . at its own risk,” and “to hold otherwise would reward [the bank] for its failure to obtain [the district court’s order]. Such a result is intolerable”).

Based in part on Hauge’s testimony, the district court found that the Viklas did not know that ERI had failed to acquire a separate bond for the general conservatorship. The district court found that the Viklas reasonably believed that Empire’s bond for Helen’s emergency conservatorship protected Helen’s general conservatorship because they had continued paying premiums for the bond coverage, which PJT had continued to cash for Empire beyond the termination of Helen’s emergency conservatorship and after she died. The record includes copies of the premium checks sent from “Helen Viklas Conservatorship,” and received and cashed by PJT. From this evidence, the court reasonably determined that “Empire neglected that duty [to inquire as to the status of the 90-day bond] but continued to collect bond premiums.”

The district court’s findings of fact are well supported by evidence in the record, and we conclude that the court did not abuse its discretion in equitably estopping Empire from disclaiming bond coverage of Helen’s general conservatorship.

Affirmed.