

# Third District Court of Appeal

## State of Florida

Opinion filed December 19, 2018.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D18-1545  
Lower Tribunal Nos. 17-4162 & 17-5730

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**Karen Jacobsen, et al.,**  
Petitioners,

vs.

**Barbara Busko, as court-appointed Guardian of Karen Jacobsen,**  
Respondent.

On Petition for Writ of Certiorari from the Circuit Court for Miami-Dade County, Jorge E. Cueto, Judge.

The Law Office of Jonathan N. David, Esq., P.A., and Jonathan N. David, for petitioners.

Law Office of Henry Marinello, P.A., and Henry E. Marinello and Jessica Marie Marinello, for respondent.

Before LAGOA, LOGUE and SCALES, JJ.

SCALES, J.

Petitioner, attorney Jonathan N. David, seeks certiorari review of an order denying Mr. David's motion seeking authorization to represent Karen Jacobsen,<sup>1</sup> the ward in this guardianship proceeding. We deny Mr. David's petition.

The trial court determined the ward was incapacitated and appointed a guardian to represent the ward's interests. Thereafter, the record reflects that the ward reached out directly to Mr. David to hire him as the ward's attorney. While section 744.3215(1)(l) of the Florida Statutes (2018) does give the ward a right to counsel, the ward's right to contract with Mr. David was removed by the trial court's prior order determining the ward was incapacitated. See In re Guardianship of Bockmuller, 602 So. 2d 608, 609 (Fla. 2d DCA 1992). Only the ward's plenary guardian, respondent Barbara Busko, has the capacity to enter into a contract with an attorney on behalf of the ward. Id. (citing section 744.3215(3)(a), which provides that "[r]ights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right . . . [t]o contract"). Ms. Busko has hired counsel other than Mr. David to represent the ward.

Accordingly, we deny the petition.<sup>2</sup>

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<sup>1</sup> Mr. David designated the ward as "co-petitioner" in the petition.

<sup>2</sup> We also deny the guardian's request for attorney's fees.