

STATE OF MICHIGAN
COURT OF APPEALS

DARREN FINDLING, Successor Conservator of
CAROL KOWALSKI, a Protected Person,

UNPUBLISHED
May 29, 2014

Petitioner-Appellee,

v

No. 314189
Macomb Probate Court
LC No. 2006-187349-CA

AUTO CLUB INSURANCE ASSOCIATION,

Respondent-Appellant.

Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

M. J. KELLY, J. (*concurring in part and dissenting in part*).

The majority has examined the petitioner’s billing summary by dividing the expenses into four general categories. I concur with the majority’s treatment of the conservator’s services with the exception of those described under the second category: “settling matters related to Kowalski’s slip and fall in a Kroger store, including outstanding medical bills, liens, and a lawsuit.” Because I believe those expenses are compensable under our decision in *In re Carroll (On Remand)*, 300 Mich App 152; 832 NW2d 276 (2013), I respectfully dissent from that part of the majority’s opinion.

In *Carroll*, this court explained—and the majority acknowledges—that replacement services apply to *ordinary* activities performed for the benefit of the entire household. *Id.* at 171-172. Bringing a lawsuit for injuries suffered in a slip and fall accident is not, to my mind, an ordinary service performed for the benefit of the entire household. And while it is true that Kowalski would have brought the lawsuit on her own before the subject motor vehicle accident, it is now necessary to have the conservator bring the action on her behalf because of the motor vehicle related injuries. It also seems clear that obtaining a recovery in the slip and fall litigation may be necessary to ensure that Kowalski has the assets to meet future medical needs as an injured person. For these reasons, I believe there is a sufficient causal nexus to warrant the conservator’s fees associated with the slip and fall litigation. *Id.* at 173-174.

/s/ Michael J. Kelly