IN THE COURT OF APPEALS OF IOWA

No. 3-874 / 13-0411
Filed December 18, 2013

IN THE MATTER OF THE GUARDIANSHIP AND CONSERVATORSHIP OF CARRIE BISBEE,

CARRIE BISBEE,
Ward-Appellant.

Appeal from the Iowa District Court for Bremer County, Christopher Foy, Judge.

Carrie Bisbee appeals from the district court order denying her motion for new trial in an action for appointment of guardian and conservator (involuntary). **APPEAL DISMISSED.**

Thomas A. Lawler of Lawler & Swanson, P.L.C., Parkersburg, for appellant.

Patrick Dillon of Dillon Law P.C., Sumner, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

MULLINS, J.

Carrie Bisbee appeals from the district court order establishing an involuntary guardianship and conservatorship. She contends a new trial is required because defects in the proceedings denied her due process of law. However, the guardianship and conservatorship have since terminated, and the issue is moot. Because she fails to indicate the issue falls within one of the mootness doctrine exceptions, we dismiss her appeal.

I. BACKGROUND FACTS AND PROCEEDINGS.

On May 4, 2013, Pamela Bisbee and Lisa Jones filed a petition for involuntary appointment of guardian and conservator for their mother, Carrie Bisbee. They alleged Carrie is a person whose decision-making capacity is so impaired she is unable to care for her personal safety or provide for herself as provided in Iowa Code sections 622.552(3)(a) and 633.566(2)(a) (2011), and named themselves as the proposed guardians and conservators. The district court set the matter for hearing and appointed an attorney as guardian ad litem (GAL) "to represent the interests of the proposed ward" and "to take actions outlined in Iowa Code § 633.561(4)."

On June 5, 2012, the GAL filed a document that purports to be both an answer to the petition and a report to the court pursuant to sections 633.561 and 633.575. In it, the GAL acknowledged timely service of the petition on Carrie, accepted service of the petition on himself, consented to jurisdiction of the court, and waived any irregularities of service and notice of hearing. The GAL stated he personally interviewed Carrie and informed her of the nature and purpose of

the proceedings, her rights, and the effects of an order appointing a guardian and conservator. Based on his review of the file and his interview of Carrie, the GAL concurred she "is unable to care for [her] personal safety, or attend to and provide for such necessities as food, shelter, clothing, medical care, [or] to make, communicate, or carry out important decisions concerning her own financial affairs" and recommended the court order an unlimited guardianship and conservatorship.

The court entered an order establishing the guardianship and conservatorship on June 11, 2012, following a hearing the same day. Carrie filed a motion for new trial "as a pre-answer motion" alleging the court lacked jurisdiction because of irregularities in the proceedings and seeking dismissal of the petition. A hearing was held in August 2012.

On February 25, 2013, the district court entered its order denying the motion for new trial. While the court noted "certain aspects of the proceedings in this matter do not strictly comply with the applicable statutes and procedural rules," it found "its appointment of the guardians and conservators was done in a manner consistent with the requirements of due process and in substantial compliance with the applicable law."

Carrie filed a timely notice of appeal, asking that the order appointing the guardians and conservators be vacated and the petition dismissed.[1] Afterward, Pamela and Lisa filed a final report recommending the guardianship and conservatorship be terminated, stating a "settlement [was] reached with [the[

[1] The appellees are not participating in this appeal.

ward." The district court found the final report "appears to contain an adequate accounting of the income, disbursements, and assets of the ward for the period it covers" and terminated the guardianship effective "immediately."

II. MOOTNESS.

Whether the court has jurisdiction to hear and determine an action depends on whether there is a justiciable controversy. *State ex rel. Turner v. Scott*, 269 N.W.2d 828, 831 (Iowa 1978). The court may raise this issue on its own motion. *In re M.T.*, 714 N.W.2d 278, 281 (Iowa 2006) ("Questions concerning this court's jurisdiction may be raised upon the court's own motion."); *see also United States v. Lares-Meraz*, 452 F.3d 352, 355 (5th Cir. 2006) (holding the question of mootness is a jurisdictional issue that the court may raise sua sponte when it is not raised by a party). After the appeal was transferred to this court pursuant to Iowa Code section 602.4102 (2013), we ordered Carrie to file a statement regarding whether the appeal is moot and, if moot, why this court should review it. The order set forth the factors we consider in determining whether to review a moot action.

In order for there to be a justiciable controversy, there must be a dispute capable of judicial resolution or, in other words, "a live dispute between the parties." *State ex rel. Turner*, 269 N.W.2d at 831. Those cases that no longer present a justiciable controversy because the issues involved have become academic or non-existent are moot. *Martin-Trigona v. Baxter*, 435 N.W.2d 744, 745 (Iowa 1989). A claim may be rendered moot if there is a change in the facts

after the action is commenced. *In re Trust No. T-1 of Trimble*, 826 N.W.2d 474, 482 (Iowa 2013).

In response to this court's order, appellant's counsel filed a statement arguing the court's order terminating the guardianship and conservatorship does not render this appeal moot. Counsel states that because the court lacked jurisdiction to enter the order establishing the guardianship and conservatorship, it lacked jurisdiction to enter an order terminating the guardianship and conservatorship; therefore, the order cannot render the appeal moot. Counsel also argues that Carrie was unable to challenge the accounting of her estate because she would be submitting to the court's jurisdiction. In short, the only argument made by Carrie to support a mootness challenge is that if the appeal is dismissed, she will be denied the opportunity to question the activities performed by the guardians and conservators during the guardianship and conservatorship. The problem with this argument is that the court has already approved the final report and terminated the guardianship and conservatorship.

The test to determine whether a case is moot is whether a judgment, if rendered, would have any practical legal effect upon the existing controversy. *Junkins v. Brandstad*, 421 N.W.2d 130, 133 (Iowa 1988). We find it would not. An order vacating Carrie's guardianship and conservatorship would have no effect on her guardianship and conservatorship that has already terminated. *See In re M.T.*, 625 N.W.2d 702, 705 (Iowa 2001) (finding an appeal of an involuntary commitment order committing the appellant to inpatient treatment was moot when the appellant was no longer subject to the inpatient treatment order that

resulted from the challenged order; "Although we could remand the matter for another hearing, such an order would have no effect because the State no longer seeks to have M.T. committed for inpatient treatment.").

Carrie argues that if the appeal is dismissed she "will be denied the opportunity to question the actions of the guardians and conservators and the accounting of the guardians and conservators." She claims she did not appear at any of the hearings following the court's denial of her motion for new trial because "to do so would have been construed as waiving her right to object to the court's jurisdiction." We reject her claim. The action establishing a guardianship and conservatorship was separate from a challenge to the administration of the guardianship and conservatorship. Iowa Code sections 633.556 and 633.570 provide for the appointment of a guardian and conservator upon proof by clear and convincing evidence of the allegations contained in the petitions for appointment. Only after the guardianship and conservatorship has been established and a guardian and conservator are appointed can the reporting requirements of sections 633.669 and 633.670 become effective. There was no order staying the proper administration and reporting requirements of the guardianship and conservatorship. Because the establishment of the guardianship and conservatorship triggered the duty of guardians and conservators to provide an accounting, Carrie could have challenged the guardians and conservators' actions without waiving her challenges to personal jurisdiction in the institution of the proceedings.

Further, the prayer of Carrie's brief on appeal is that "[t]he appointment of guardians and conservators should be vacated and dismissed." Even if we were to address the issues raised on appeal and grant her request to vacate and dismiss the appointment order, Carrie would be in no different position than she is now. As she has raised no other claim to avoid mootness,[2] we find her appeal is moot.

APPEAL DISMISSED.

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[2] Our supreme court recently held that the stigma associated with involuntary commitment proceedings is presumed to have created a collateral consequence that justifies appellate review, thereby creating a new exception to the mootness doctrine. *In re B.B.*, 826 N.W.2d 425, 429 (Iowa 2013). This holding has not been extended to involuntary guardianship and conservatorship proceedings, and in her statement to the court, Carrie does not identify it as a possible exception to the mootness doctrine or ask us to extend the exception to this case. *See Hyler v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996) (stating that where a party fails to discuss an issue, the court "will not speculate on the arguments [the party] might have made and then search for legal authority and comb the record for facts to support such arguments").