

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF ROBERT F. EVASIC, Protected
Person.

UNPUBLISHED
January 28, 2000

RONALD W. EVASIC, Guardian of the ESTATE
OF ROBERT F. EVASIC, and SOMMERS,
SCHWARTZ, SILVER & SCHWARTZ, P.C.,

No. 210738
Washtenaw Circuit Court
LC No. 95-107781 CV

Appellants,

v

MARY A. SCHIEVE, Conservator of the ESTATE
OF ROBERT F. EVASIC,

Appellee.

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

Appellants appeal as of right from the Washtenaw Circuit Court's March 11, 1998 order directing the payment of estate funds to Mary A. Schieve, conservator of the estate of Robert F. Evasic ("Evasic"). We vacate and remand to the circuit court for further proceedings.

I. STATEMENT OF FACTS

Evasic suffers from a closed-head injury and long-term mental deficiencies, caused by an automobile accident. On March 17, 1988, Evasic's father, Dr. Ronald W. Evasic (Dr. Evasic), was appointed guardian of Evasic's person and estate by order of the Pontotoc County District Court, State of Oklahoma. It is unclear from the record on appeal whether Evasic actually resided in Oklahoma at the time. It is clear that Evasic moved to Michigan at some point, in order to receive treatment at the Eisenhower Residential Head Injury Program in Washtenaw County. On October 24, 1995, Schieve was appointed conservator to Evasic's estate, by order of the Washtenaw Circuit Court. The circuit court expressly declined to make any findings of fact regarding Evasic's residence, either at the time of his incapacitation or at the time of the conservator's appointment. The circuit court nevertheless

determined that it had jurisdiction to appoint a conservator because Evasic's money was located in Washtenaw County.

Eventually, Evasic's long-standing products-liability lawsuit came to a close. Appellant Sommers, Schwartz, Silver & Schwartz, P.C. received a substantial amount of money as a cash payment to Evasic, which it deposited into an interest-bearing trust account. Sommers, Schwartz then received conflicting instructions with respect to the money. Schieve directed Sommers to release the funds to her, on her authority as Evasic's Michigan conservator. Dr. Evasic directed Sommers to maintain the funds in its interest-bearing account, on his authority as Evasic's Oklahoma guardian. Schieve petitioned the circuit court to resolve the dispute, resulting in the circuit court's March 11, 1998 order directing Sommers to pay Evasic's funds to Schieve.

After the appeal was filed, on September 22, 1998, the Oklahoma court entered an order transferring the guardianship to the Washtenaw Circuit Court. The order provided as follows: "This guardianship shall be transferred to Washtenaw County, Probate Court, Ann Arbor, Michigan. The undersigned Judge and the Honorable John N. Kirkendall shall coordinate the transfer of all assets to the Michigan Court."

II

We must decide whether the Washtenaw Circuit Court had jurisdiction to appoint a conservator for Evasic's estate in Michigan where an Oklahoma court had already appointed a guardian for Evasic in that state, whose appointment had not been dissolved or terminated. Appellants seek to frame this appeal as a "full faith and credit" issue requiring the Michigan court to enforce the judgment of another state. However, that is not the issue before this Court because there is no out-of-state judgment which a party seeks to enforce. Rather, the question is one of exclusive or concurrent jurisdiction over the appointment of a fiduciary and disbursement of estate assets. Appellants argue that the Oklahoma court had exclusive jurisdiction over Evasic's estate, and the Michigan court was without jurisdiction to appoint a conservator or enter an order regarding distribution of Evasic's assets.

The Oklahoma statutes in effect in March 1988, when the guardianship was created, stated as follows:

A. Except as otherwise specifically provided by law, the Oklahoma Guardianship Act applies to:

1. minors in this state;
2. incapacitated and partially incapacitated persons in this state; and
3. property located in this state of nondomiciliaries who are minors or incapacitated or partially incapacitated persons, or property coming into the control of a guardian who is subject to the laws of this state.

B. No person, whether a parent or otherwise, has any power as a guardian of property, except by appointment as hereinafter provided. [30 Okla Stat Ann § 1-112.]

The Oklahoma statutes further distinguished between jurisdiction over persons found within the state and nondomiciliaries. The statutes provided: “A guardian of the person or property, or both, *of a person residing in this State*, who is a minor, or of unsound mind, may be appointed in all cases . . .” 30 Okla Stat Ann § 1-113, emphasis added. “A guardian *of the property, within this State, of a person not residing therein*, who is a minor, or of unsound mind, may be appointed by the county court.” 30 Okla Stat Ann § 1-118, emphasis added. A plain reading of these statutes requires the conclusion that the powers of a guardian appointed by an Oklahoma court depend on the protected person’s place of residence. If the protected person resides within the state, a guardian may be appointed over both his person and property. 30 Okla Stat Ann § 1-113. If the protected person does not reside within the state, a guardian may be appointed only over his property located within the state of Oklahoma. 30 Okla Stat Ann § 1-118. The March 17, 1988 order appointing Dr. Evasic guardian specifies that he was “appointed guardian of the person and estate” of his son. Therefore, the order appears to be premised upon 30 Okla Stat Ann § 1-113, governing protected persons residing within the state.

Although it is clear that Evasic was living in Michigan when the Washtenaw Circuit Court entered its order, it is unclear when, if ever, Michigan became his legal residence. Assuming that Evasic legally resided in Oklahoma when the guardianship was created, the Oklahoma court properly acquired exclusive jurisdiction over the management of the estate and the guardian had complete authority over the estate assets. “In all cases the court making the appointment of a guardian has *exclusive jurisdiction* to control him in the management and disposition of the person and property of this ward.” 30 Okla Stat Ann § 1-114, emphasis added. “A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.” 30 Okla Stat Ann § 1-119. To determine whether the Oklahoma court had exclusive jurisdiction to create the guardianship, we need to know if Evasic was residing in Oklahoma at the time or if he was a nondomiciliary. If he was the latter, the express terms of the Oklahoma statutes restricted the jurisdiction of the Oklahoma courts to Evasic’s property located within that state, 30 Okla Stat Ann § 1-112, and the jurisdiction of the Oklahoma courts would not extend to Evasic’s assets located in Michigan. Because the Washtenaw Circuit Court expressly declined to make any findings of fact regarding Evasic’s legal residence, either at the time of his incapacitation or at the time of the motion hearing, we do not have sufficient facts to determine the extent of the Oklahoma court’s jurisdiction.

Appellants contend that the Washtenaw circuit court’s order was invalid because the Oklahoma court had acquired exclusive jurisdiction over the estate, and that jurisdiction had neither been terminated nor transferred on the date the circuit court’s order was entered. Appellants rely primarily on *In re Thomas Estate*, 211 Mich App 594; 536 NW2d 579 (1995). There, the Macomb Probate Court appointed a guardian for a minor child. The guardian and minor child then moved to Vermont, and a probate court in that state established a new guardianship. The Vermont court then ordered a Michigan bank to transmit the child’s funds to the Vermont guardians, and the bank complied. This Court concluded that the Vermont order was invalid because the Macomb Probate Court had neither

terminated nor transferred its jurisdiction over the guardianship at the time the Vermont order was entered. As this Court stated:

In this case, there was no termination of the proceeding in Michigan before the Vermont probate court accepted jurisdiction of the case and ordered respondent to release the funds. Therefore, it appears that the Vermont order was invalid. [*Id.* at 599.]

This Court then held the bank jointly and severally liable for misappropriation of the child's funds because it relied on an invalid court order. *Id.* at 602. Appellants argue that this case presents a similar situation to *In re Thomas Estate* because the Oklahoma guardianship was neither terminated nor transferred until after the Washtenaw Circuit Court entered its March 11, 1998 order. Appellant Sommers, Schwartz also avers that it is in the same dilemma as the bank in the case of *In re Thomas Estate* because one state's court directed it to disburse estate funds before another state's court relinquished jurisdiction over the estate.

We review a circuit court's rulings regarding distribution of estate assets for abuse of discretion. *In re Estate of Rice*, 138 Mich App 261, 270; 360 NW2d 587 (1984). However, we review de novo issues of law such as jurisdictional issues. *WA Foote Memorial Hospital v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995). From the record on appeal, we cannot determine whether Evasic was domiciled in Oklahoma or Michigan when Dr. Evasic was appointed as his guardian. Therefore, we cannot determine if the Oklahoma statutes conferred exclusive jurisdiction over Evasic's person and assets to the Oklahoma courts, or if they merely conferred jurisdiction over his assets located within the state of Oklahoma. If the Oklahoma court did have jurisdiction over both Evasic's person and estate, then the holding in the case of *In re Thomas Estate* would ordinarily require a finding that the Washtenaw Circuit Court lacked jurisdiction to appoint a conservator or enter an order regarding the disbursement of estate funds because the Oklahoma court had not relinquished jurisdiction over the previously appointed guardian.

However, the Oklahoma court's order, entered after the filing of this appeal, consolidated jurisdiction over the original guardianship and the conservatorship in the Washtenaw Circuit Court. Appellants have requested a remand of this matter to the circuit court, in light of the order transferring jurisdiction. Appellee does not object to a remand. Given the order transferring jurisdiction over the guardianship to the Washtenaw Circuit Court, the jurisdictional dispute will be resolved on remand and the circuit court can offer complete relief to the parties and exercise complete control over Evasic's assets. Therefore, we vacate the circuit court's order and remand this matter to that court for further proceedings.

Vacated and remanded to the circuit court for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Hilda R. Gage