

STATE OF MICHIGAN
COURT OF APPEALS

In re J. EDWARD KLOIAN.

J. EDWARD KLOIAN,

Petitioner-Appellant,

v

ROBERT G. MORRISON, and JAMES WINES,

Respondent-Appellee.

UNPUBLISHED

February 11, 2000

No. 213480

Washtenaw Probate Court

LC No. 98-112351 PO

Before: Hood, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Petitioner appeals as of right from the probate court's order denying his petition for a protective order. We affirm.

On April 21, 1998, a petition requesting a protective order was filed. In the petition, it was requested that:

[T]he court enter a protective order which provides for a stay of proceeding in circuit court pending hearing on petition and scheduling cases so that I [petitioner] won't be overwhelmed & dysfunctional [sic].

On May 8, 1998, respondent James Wines filed, as an interested party, an answer and objection to the petition. Wines asserted that petitioner had previously requested the appointment of a conservator in probate court, but had rejected the conditions of appointment. As a result of the rejection of the terms, the prior petition had been dismissed. Wines asserted that petitioner was seeking to delay other litigation to which Wines was a party. An order denying the prior petition for conservatorship was submitted with Wines' objections to petitioner's request for a protective order. On May 22, 1998, respondent Robert Morrison filed an answer to the petition for protective order which requested outright dismissal based on the deficiencies of the prior petition.

On June 25, 1998, the probate court heard oral arguments regarding the request for protective order. At the hearing, petitioner's counsel objected to respondents' presence, alleging that they were not interested parties as defined by statute. The probate court rejected counsel's assertion and allowed respondents to state their positions regarding the petition. At the hearing, counsel acknowledged that his request for a protective order sought the appointment of a "special scheduling master to coordinate the litigation cases and space them far enough apart so that the scheduling does not interfere with the disability [depression] of Mr. Kloian [petitioner]." Counsel asserted that actions were pending in Washtenaw Circuit Court, Oakland Circuit Court, and in "any of the district courts." The probate court rejected petitioner's argument that failure to appoint a special master would deny petitioner access to the courts based on his disability. Additionally, counsel admitted that although he was hired to represent petitioner's interests, he had not attempted to contact the attorneys in the various cases to address scheduling issues. The probate court heard additional arguments regarding res judicata before indicating that a written opinion would issue.

On July 9, 1998, the probate court denied the petition in an opinion and order. The probate court held that there were procedural deficiencies in the petition, and it failed to establish that petitioner had been denied access to the courts. However, even assuming that petitioner could correct those deficiencies, the probate court held that an order appointing a special master could not "*empower* that individual to schedule cases in Washtenaw County Circuit Court, much less Oakland County Circuit Court." (emphasis in original).

Petitioner raises various arguments on appeal. However, we need not address the merits of those arguments because we conclude that the probate court lacked jurisdiction to grant the petition. While petitioner correctly notes that MCL 700.461; MSA 27.5461 and MCL 700.469; MSA 27.5469 govern protective proceedings, petitioner has failed to address the limitations on the probate court's jurisdiction of those proceedings. MCL 700.462(c); MSA 27.5462(c) provides that the probate court has concurrent jurisdiction "to determine the validity of claims" against the protected person and his title to any property or claim. In the present case, petitioner has not asked the probate court to examine the validity of claims brought in circuit court, but rather, has asked the probate court to intervene in the scheduling of those matters. Accordingly, because the probate court lacked jurisdiction of the requested relief contained in the petition, it lacked the authority to order a special master to intervene in the scheduling of the various circuit court matters.

Even if we could conclude that the probate court had jurisdiction over the present matter, petitioner has failed to establish that there would be waste or dissipation unless a special master was appointed. MCL 700.461; MSA 27.5461. Petitioner is represented by counsel in the various legal proceedings in circuit court to guard against any waste or dissipation.¹

Affirmed.

/s/ Harold Hood
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

¹ We also question whether petitioner has presented a justicable controversy. At the hearing regarding the petition, the probate court inquired whether petitioner's counsel had attempted to contact the attorneys involved in the circuit court actions. Counsel for petitioner admitted that he had not. MCR 2.401(A) and MCR 2.401(B)(2)(c)(i) provides that the circuit court has discretion regarding scheduling matters and a party may object to a scheduling order. There is no indication in the record that petitioner's counsel requested that the circuit court exercise its discretion in scheduling matters to alleviate the effects of petitioner's depression. Furthermore, we question whether the issue is moot because we arguably can no longer fashion a remedy. *Frericks v Highland Twp*, 228 Mich App 575, 586; 579 NW2d 441 (1998). There was no request for a stay of proceedings, any such stay would not have affected the circuit court actions, and it has been over a year since the claim of appeal was filed. Arguably, the scheduling issues are moot due to the passage of time.