

STATE OF MICHIGAN  
COURT OF APPEALS

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In re Estate of Louis V. Zalma.

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VICTOR SZALMA, conservator,  
  
Petitioner-Appellee,

v

KEVIN ZALMA,  
  
Respondent-Appellant.

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UNPUBLISHED  
January 23, 2001

No. 221979  
Livingston County  
Probate Court  
LC No. 97-002558-CG

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Respondent appeals as of right the order confirming the sale of real estate by the estate. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner entered into a conditional agreement to sell real estate owned by Louis Zalma. A higher competing offer was presented, and the guardian ad litem recommended approval of that offer. A motion to confirm the sale was held, and evidence was presented that the ward had expressed a desire not to develop the property, and that he would have accepted the lower offer. The court allowed for amended offers, and another hearing was held. At the conclusion of the hearing, the court found that Louis Zalma did not want to deal with anyone connected with respondent, and that the court should honor those wishes. The court approved the lower offer.

This Court will review the decision of a probate court confirming a sale of real property by an estate for abuse of discretion. *Schultz v Kent Probate Judge*, 313 Mich 323, 328; 21 NW2d 147 (1946). There is no showing that the probate court abused its discretion in this case. The court recognized in ordinary circumstances, there is no question that it would be proper for the court to accept the best offer for the property. However, in this case, there was evidence that the ward had expressed a particular intent when he was competent. A guardian or conservator of a legally incapacitated person may take action based on the clearly expressed intentions of the ward prior to his disability. *In re Wirsing*, 456 Mich 467, 475; 573 NW2d 51 (1998); *In re Martin*, 450 Mich 204, 229; 538 NW2d 399 (1995). A substituted judgment analysis allows a

surrogate to ascertain the decision the incompetent person would make if he were competent to do so. *Id.*, 220.

The evidence presented at the hearings allowed the probate court to conclude that Louis Zalma would have preferred selling the property at a lesser price based on his interest in maintaining the property in its current state, to be lived in by a family, and not to be developed in his lifetime. The estate was adequate to provide for Mr. Zalma's care during his life. Respondent has cited no authority that would preclude the probate court from confirming the sale.

Affirmed.

/s/ Jeffrey G. Collins  
/s/ Martin M. Doctoroff  
/s/ Helene N. White