

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALFREDA PIELACK, a Protected
Person.

DENNIS PIELACK,

Petitioner-Appellant,

v

SHARON KOWALIK,

Respondent-Appellee.

UNPUBLISHED

September 16, 2008

No. 277496

Macomb Probate Court

LC No. 2006-189160-CA

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Petitioner Dennis Pielack, proceeding in propria persona, appeals as of right from a probate court order appointing his sister, respondent Sharon Kowalik, as conservator of the estate of their mother, Alfreda Pielack. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

As a preliminary matter, we disagree with respondent's argument that this Court lacks jurisdiction to hear this appeal of the order appointing respondent as a conservator. This Court has jurisdiction pursuant to MCR 5.801(B)(1)(a), which provides that a probate court order "appointing or removing a personal representative, conservator, or trustee, or denying such an appointment or removal" is appealable to this Court. We also disagree with respondent's argument that this appeal is now moot because of Alfreda's subsequent death. An issue is not moot if it will continue to affect a party in some collateral way. *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). The conservator of a protected individual's estate may influence the appointment of the estate's personal representative. MCL 700.3204. Petitioner asserts that Alfreda nominated him to serve as her personal representative in her will, and there is no indication that a personal representative has been appointed. Because respondent's status as conservator can potentially influence the appointment of Alfreda's personal representative, this appeal is not moot.

This Court reviews a probate court's appointment or removal of a fiduciary for an abuse of discretion. *Comerica Bank v Adrian*, 179 Mich App 712, 729; 446 NW2d 553 (1989). An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

MCL 700.5401(3) authorizes the appointment of a conservator when a court finds that (1) the individual is unable to manage her property and business affairs effectively due, among other reasons, to “mental illness, mental deficiency, physical illness or disability” and (2) the individual has property that “will be wasted or dissipated” without proper management. Both of these determinations were made by the probate court, and there was no dispute that Alfreda was in need of a conservator.

MCL 700.5409 provides for the priority of individuals “entitled to consideration for appointment” as conservator. The list includes “[a]n adult child of the protected individual.” In this case, petitioner and respondent, as Alfreda’s adult children, had equal priority for consideration as conservators. Pursuant to MCL 700.5409(2), “[i]f persons have equal priority, the court shall select the person the court considers best qualified to serve.” Although there was evidence of competing patient advocate designations and powers of attorney, the court found that Alfreda was not competent when she made these appointments. In determining which person was best qualified to serve, the probate court considered the parties’ pleadings and arguments, the report of a guardian ad litem, and the report of Dr. Lynn Pantano, a psychologist, who performed an independent examination of Alfreda. The court also interviewed Alfreda in chambers.

The probate court did not abuse its discretion in appointing respondent as Alfreda’s conservator. Dr. Pantano’s report recommended respondent’s appointment. The evidence also showed that Alfreda had been living with respondent and her husband, who lived in a clean, well-maintained home, were both employed, and had done a good job caring for Alfreda and managing her assets to be available for her care. Alfreda was comfortable in their home and wished to stay. Although there was evidence that petitioner and his wife had taken good care of Alfreda before she moved in with respondent, the court had two competing equal priorities to consider. Regardless of whether petitioner was qualified to act as conservator, the probate court’s appointment of respondent as conservator was a reasonable and principled one and, therefore, was not an abuse of discretion. *Maldonado*, *supra* at 388.

We find no support in the record for petitioner’s argument that the probate court discriminated against him because of his religious beliefs, or alleged religious use of marijuana. Nothing in the record indicates that petitioner’s alleged religious practices or use of marijuana were a factor in the probate court’s decision. Petitioner’s arguments concerning the constitutionality of various provisions of the Public Health Code and other constitutional arguments related to his alleged religious use of marijuana are beyond the scope of this appeal, which is limited solely to respondent’s appointment as conservator. As such, we decline to consider them. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993); *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 432; 576 NW2d 667 (1998).

We affirm.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio