

STATE OF MICHIGAN
COURT OF APPEALS

MARK BRICKMAN, Conservator,

Petitioner-Appellee,

UNPUBLISHED
October 16, 2008

v

MARILYN ANN BRICKMAN, a Protected
Person,

No. 278403
St. Clair Probate Court
LC No. 07-110069-CA

Respondent-Appellant.

Before: Markey, P.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right the order of the probate court appointing a conservator over her estate. The court found that a conservator was necessary in order to preserve respondent's resources and prevent the waste and dissipation of her assets. We affirm.

On appeal, respondent argues that the trial court erred by failing to base its decision to appoint a conservator on medical evidence. We disagree.

The trial court determined that respondent was in need of a conservator because her testimony showed a lack of understanding of how her Visa account works, showed a lack of understanding of the ownership of her accounts at the Knights of Columbus Credit Union. She had little grasp, at least that she was able to communicate to the Court, of her household expenses and how much [her boyfriend] contributed to that. She had a significant lack of awareness regarding details or dates of events and the amounts of her bills. There is also substantial confusion on her part regarding the execution of the Power of Attorney and the Patient Advocate designation, both as to the purpose for those and the content of those documents, not even considering the dates on which they were executed.

Based upon all of that testimony, [the] Court finds that based upon clear and convincing evidence that [respondent] is in need of a conservator because she cannot manage her property or business affairs effectively due to mental deficiency.

On appeal, respondent asserts that the trial court's decision was not based on medical evidence that respondent was mentally deficient, nor did the trial court define the term or the way in which the term applies to respondent.

MCL 700.5401 does not define "mental deficiency," although the term is used elsewhere in the legislative code to define other terms.¹ The statute provides, in pertinent part,

The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:

(a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.

(b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money. [MCL 700.5401(3).]

The statute does not require the court to base its finding that an individual is in need of a conservator on medical evidence, but rather on its determination that the individual is unable to manage her business affairs, and that an individual's property will be wasted without proper management. MCL 700.5401(3). However, MCL 700.5401(3)(a) does state that the reasons the court may conclude that an individual is unable to manage her property may include "mental deficiency," although the statute neither defines this term nor requires the court to do so. Respondent argues that she is mentally competent and asserts that there is "no commonly accepted definition" of mental deficiency which may "be reasonably applied to [respondent]."

As respondent notes, when a statutory term is not defined by the statute, this Court construes the term according to its plain and ordinary meaning. *Cox v Flint Bd of Hosp Managers*, 467 Mich 1, 18; 651 NW2d 356 (2002). Resort to dictionary definitions is acceptable and useful in determining ordinary meaning. *Id.* "Mental" is defined as "of or pertaining to the mind." *Random House Webster's College Dictionary* (1995). "Deficiency" may be defined as "the state of being deficient; lack; insufficiency." *Id.* In addition, "deficient" is further defined as "a person who is deficient, esp. one who is mentally defective." *Id.* Based on these definitions, "mental deficiency" as used in the statute could plausibly refer to someone who has simply made consistently bad decisions with respect to his or her property, without being afflicted by some form of officially recognized mental illness or incapacity, as respondent argues. Respondent reasonably argues that nothing in the record suggests that her testimony at

¹ See MCL 700.1105(a): " 'Incapacitated individual' means an individual who is impaired by reason of mental illness, *mental deficiency*, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions" (emphasis added).

the hearing reflected a complete lack of understanding of her property or business affairs. However, this is not the standard set forth in the statute, and the court was not required to come to this conclusion or to determine that respondent was mentally ill or mentally retarded, as respondent argues on appeal. Rather, the court had to decide under the statute that respondent did not fully comprehend her business affairs and that her estate would suffer because of this deficiency. Thus, respondent's claim that the court's ruling was in error because it did not rely on medical evidence is without merit.

Respondent also claims that the court should not have appointed a conservator because no evidence was presented to show that her estate would be wasted. As discussed above, the trial court found that based on respondent's testimony regarding the use of her credit cards, her credit union accounts, her household expenses, and the situation with petitioner concerning the power of attorney and patient's advocate forms, that she could not effectively manage her property or business affairs due to mental deficiency. On appeal, respondent argues that she was not in danger of wasting or dissipating her estate, and that she was fully capable of managing her own business and property affairs.

MCL 700.5401(3)(b) permits the court to appoint a conservator for an individual when it finds that "the individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare . . . and that protection is necessary to obtain or provide money." In the instant case, the court found that respondent's lack of awareness regarding the rules of her agreements with her credit card company and credit union, combined with her "substantial confusion" with respect to the power of attorney and patient advocate designation forms that she had signed were sufficient reasons to find that a conservator was needed to manage her estate. The probate court's findings of fact are reviewed for clear error. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). Clear error is found when an appellate court is left with a definite and firm conviction that a mistake has been made. *Id.*

It is not apparent that the court clearly erred in its finding. The trial court's factual findings are generally afforded substantial deference. *Id.* Although we may not have reached the same result in the probate court's place, there was significant evidence of respondent making poor financial decisions and lacking understanding about some financial matters. Thus, without a definite and firm conviction that a mistake has been made, we affirm the probate court's factual findings with regard to respondent's actions that led to the court's conclusion that respondent required a conservator due to her mental deficiency.

Affirmed.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly