

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of YOLANDA HANRAHAN.

FINDLING LAW FIRM, P.L.C., and HELPING
HAND NURSING SERVICE,

UNPUBLISHED
October 6, 2009

Petitioners-Appellees,

and

A. J. DESMOND FUNERAL HOME,

Intervening Petitioner,

v

SUSAN HANRAHAN, Personal Representative,

No. 286691
Oakland Probate Court
LC No. 2006-302077-DE

Respondent-Appellant.

Before: Murray, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Respondent Susan Hanrahan, the personal representative of the estate of her deceased mother, Yolanda Hanrahan, appeals as of right from the probate court's order appointing a receiver to oversee real property owned by the estate ("the Lahser property"). Petitioners are creditors of the estate. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Petitioner Findling Law Firm formerly represented respondent in her role as personal representative of the estate. Petitioner alleged that it was owed in excess of \$100,000 for its legal representation of respondent, and petitioned the court to appoint a receiver, noting that (1) its fees were a priority administrative expense, and the estate was subject to two other claims, (2) the Lahser property was "in imminent danger of tax forfeiture and appointment of a Receiver will stay said forfeiture," (3) the Lahser property was also subject to mortgages with Chase Bank and Republic Bank, and (4) a receiver was necessary to protect, preserve, and oversee the property and take whatever actions were necessary.

At a hearing on April 1, 2008, the following agreement was placed on the record:

MR. FINDLING: Mr. Ryan [respondent's attorney] will provide verification that Chase Bank and Republic Bank or their successors in writing to both myself and Mr. Rizik [Helping Hand's attorney] by April 11th, 2008, prove that either no payment is required by the estate or that payment is required and the specific amount and due dates of those payments.

Failure to provide to us by April 11, 2008, will trigger immediately the appointment of Mark Shapiro as the receiver with the filing of an affidavit of non performance by either myself or Mr. Rizik.

Failure to provide written proof of all required payments as of the date the payment is due shall also trigger the immediate appointment of Mark Shapiro as receiver without further court hearing. Mark Shapiro shall be appointed with all powers conferred under statute and common law at the rate of \$275 an hour with the maximum fees of \$5,000 and that we would adjourn this hearing for 45 days, and I believe that that encompasses—

THE COURT: Very well. Do you agree, Mr. Ryan?

MR. RYAN: Yes, your Honor. That's a correct recitation of our agreement.

Petitioner law firm thereafter submitted an order appointing Shapiro as receiver if no written objections were filed within seven days. Respondent filed objections two days later, in which she stated that Chase Bank had sold the Lahser property at foreclosure on January 15, 2008, and repurchased the property the same day, which the parties were unaware of when they placed their previous settlement on the record. Respondent claimed to be working through new counsel to have the interests of Chase Bank and Citizens Bank set aside based on allegations that the mortgages, initiated by a former personal representative, were fraudulent. She argued that the order submitted by petitioners failed to address that the Lahser property was currently owned by Chase Bank and thus was not subject to seizure by a receiver. Respondent submitted that, upon resolution of the accounts, all creditors would be offered payment.

Following a hearing, the court entered an order appointing Shapiro as receiver over the Lahser property, authorizing him “to control, sell, encumber, take possession of, or liquidate said Property for the purpose of satisfaction of the provision of any Orders or Judgments entered between the parties,” and ordering him to deposit the sale proceeds into a fiduciary checking account and not disburse the funds without an order of the court. The order further restrained the estate from transferring or encumbering the property in any way and stayed the creditors from taking any action to establish or enforce a claim against the estate during the pendency of the receivership. The order further limited the fees of the receiver to \$275 an hour, subject to a maximum fee of \$5,000. Respondent's motion for reconsideration of this order was denied because respondent had not demonstrated a palpable error by which the court had been misled.

This Court reviews decisions regarding the appointment of a receiver for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 161; 693 NW2d 825 (2005).

“Circuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law.” MCL 600.2926.¹ This statute authorizes a circuit court to appoint a receiver when specifically allowed by statute and also when no specific statute applies but the facts and circumstances render the appointment of a receiver an appropriate exercise of the circuit court’s equitable jurisdiction. *Reed, supra* at 161, quoting *Petitpren v Taylor School Dist*, 104 Mich App 283, 294; 304 NW2d 553 (1981). “The purpose of appointing a receiver is to preserve property and dispose of it under the order of the court.” *Reed, supra* at 162. The appointment of a receiver is generally considered a harsh remedy, which should only be resorted to in extreme cases. *Id.*; *People ex rel Dougherty v Israelite House of David*, 246 Mich 606, 618; 225 NW 638 (1929). “If less intrusive means are available to effectuate the relief granted by the trial court, a receiver should not be used.” *Petitpren, supra* at 295.

Respondent argues that the probate court abused its discretion in appointing a receiver because the Lahser property was no longer an asset of the estate and therefore did not require a receiver, and that she, as the personal representative, should have been allowed to continue to investigate the foreclosure. She asserts that the banks were cooperating with her attorney’s investigation. Respondent also argues that the probate court should have held an evidentiary hearing to determine the true state of the property, petitioner law firm’s motivation to collect attorney fees rather than to protect the estate, and continuing issues with the decedent’s conservatorship.

In this estate action, the probate court was authorized to appoint a receiver if the facts and circumstances rendered the appointment of a receiver an appropriate exercise of the court’s equitable jurisdiction. *Reed, supra* at 161; *Petitpren, supra* at 294; MCL 600.2926; MCL 600.601(3)(a). The probate court stated that it wanted to appoint a receiver to “find out what really went on out there” and “to really get into this thing and see what’s really going on” and “to get at it and find out the truth[.]” The court indicated its concern was to protect the estate. The court also indicated that it would consider a motion for rehearing from respondent within a week. In fashioning the order, the court granted the receiver broad powers with respect to the estate’s property but also ordered the receiver to deposit any funds from the sale of the property in a fiduciary fund to be disbursed only upon the court’s order and placed limitations on the receiver’s fees. The court’s order protected the estate’s interest in the property, protected the interests of the estate’s creditors, and did not incur unnecessary expenses to the estate. The court did not abuse its discretion.

Respondent also argues that the probate court abused its discretion in relying on the parties’ settlement agreement to appoint a receiver because, when the parties stated their agreement on the record, they were operating under a mutual mistake of fact regarding the status of the Lahser property. Generally, a party may obtain relief from a settlement agreement on the grounds of mutual mistake, fraud, or ignorance of a material term of the settlement agreement. *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998); *Howard v Howard*, 134

¹ Pursuant to MCL 700.1303, the probate court has concurrent legal and equitable jurisdiction to determine a property right interest in regard to an estate of a decedent.

Mich App 391, 394, 399-400; 352 NW2d 280 (1984). The record reflects that the parties were unaware of the true status of the Lahser property at the time they entered into their agreement regarding the appointment of a receiver. However, the probate court had the equitable power to appoint a receiver to oversee the disposition of the property in order to settle the estate. The record reflects that the probate court appointed a receiver pursuant to this equitable power, independent of the parties' prior agreement. It did not abuse its discretion in doing so.

We affirm.

/s/ Christopher M. Murray

/s/ Stephen L. Borrello

/s/ Elizabeth L. Gleicher