

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* Conservatorship of MARY L RICHTER.

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DEBORAH L RICHTER,

Petitioner-Appellant,

v

JAMES M ANDERSON, Conservator of MARY L  
RICHTER,

Respondent-Appellee.

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UNPUBLISHED

March 8, 2016

No. 325448

Roscommon Probate Court

LC No. 13-154583-CA

Before: SERVITTO, P.J., and GADOLA and O'BRIEN, JJ.

Petitioner appeals as of right the probate court's order dismissing her petition for the return of Mary L. Richter's assets. For the reasons below, we affirm.

**I. FACTUAL AND PROCEDURAL HISTORY**

This case arises out of petitioner's repeated contentions that other family members were financially taking advantage of Richter, petitioner's mother. In October 2013, Richter sought the appointment of a conservator because of her declining health. The probate court appointed a temporary conservator in December 2013 and a permanent conservator in May 2014. During that time, petitioner raised multiple objections and filed a petition asserting that Richter's grandchildren unduly influenced Richter to transfer assets from her estate to them. Petitioner contended that there were multiple improper transfers that occurred in the years leading up to the appointment of a conservator. Originally, she asked the court to order the conservator to trace any transfers from Richter's estate dating back to January 2012; however, she later asked the court to order the conservator to investigate any transfers dating back to January 2011. The court ordered both conservators to investigate and provide a report of activity relating to Richter's assets dating back one year before the appointment of a conservator in December 2013.

In August 2014, petitioner filed objections to an updated inventory filed by the conservator, again insisting that there were missing assets. At a November 2014 hearing on the matter, however, petitioner withdrew her objections and acknowledged that the inventory properly reflected the information provided to the conservator regarding the time period the court ordered him to investigate. The court indicated that it was prepared to hold a full hearing and

was open to expanding the conservator's investigatory authority, but petitioner stated that if there were other missing assets or improper transfers, it was her burden to investigate the matter and she had prepared a petition to that end.

That same day, petitioner filed a petition requesting an order "pursuant to MCL 700.5415(1)(b) and (e) . . . providing for the further investigation into the transfer of various assets of [Richter] . . . and to provide for the return of assets to [Richter]." Petitioner also requested a jury trial "for determination of the factual issues." In response, the probate court asked the parties to address whether petitioner had standing to object to the completeness of the conservator's inventory, and if so, whether she was "entitled to a jury trial to contest the same."

At a December 2014 hearing, the court focused on petitioner's standing to seek the return of Richter's assets, concluding that no such action under petitioner's name was appropriate under MCL 700.5415(1)(e). The court explained that only a conservator may seek the return of an estate's assets, but noted that petitioner could petition for the conservator's removal if he failed to pursue identified missing assets. The court further ruled that petitioner did not have a right to a jury trial to address the factual issues raised in the petition. Thereafter, the court entered an order dismissing the petition.

## II. STANDARDS OF REVIEW

On appeal, petitioner contends that she had standing to seek the relief she requested, and that she was entitled to a jury trial to determine the factual issues identified in the petition. "[A]ppeals from a probate court decision are on the record, not de novo." *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). "The trial court's factual findings are reviewed for clear error, while the court's dispositional rulings are reviewed for an abuse of discretion." *Id.* "The trial court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes." *Id.* However, we review de novo questions of law, such as statutory construction. *Id.*

## III. PETITION FOR RETURN OF ASSETS

Section 5415 of the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, governs petitions for orders after the appointment of a conservator. Subsection (1) authorizes "[a] person interested in the welfare of an individual for whom a conservator is appointed" to petition the appointing court to grant the forms of relief specified in its subdivisions, none of which include recovery of assets. Subdivision (e) adds to the list "other appropriate relief."

Petitioner's status as a person interested in Richter's welfare is not in dispute. Indeed, the probate court dismissed petitioner's petition not on this basis but because the court concluded that an order for the return of assets did not constitute "other appropriate relief" under MCL 700.5415(1)(e). Therefore, the issue presented on appeal concerns the interpretation of the catch-all phrase "other appropriate relief" used in MCL 700.5415(1)(e).

When statutory language is clear and unambiguous, courts must enforce the statute as written and no judicial construction is permitted. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). Courts may only go beyond the text to ascertain legislative intent if

statutory language is ambiguous. *Id.* at 312. “A catch-all provision is usually inserted into a statute to ensure that the language that immediately precedes it does not inadvertently omit something that was meant to be included.” *Sebring v City of Berkley*, 247 Mich App 666, 674; 637 NW2d 552 (2001). “When construing a catch-all phrase, courts will interpret it to include only those things of the same type as the preceding specific list. This is known as the doctrine of *eiusdem generis*.” *Id.*

The forms of relief specifically authorized by MCL 700.5415(1), preceding the catch-all phrase “other appropriate relief” in Subdivision (e), are as follows:

- (a) Require bond or security or additional bond or security, or reduce bond.
- (b) Require an accounting for the administration of the trust.
- (c) Direct distribution.
- (d) Remove the conservator and appoint a temporary or successor conservator.

These subdivisions each identify an action that either the court or conservator has discretionary authority to perform under other statutory provisions governing conservatorships. Subdivision (a) relates to MCL 700.5410(1), which states that a court “may require a conservator to furnish a bond.” Subdivision (b) concerns MCL 700.5418, which states that a conservator “shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs.” Subdivision (c) pertains to MCL 700.5425, which states that a conservator “may expend or distribute estate income or principal.” Finally, Subdivision (d) relates to MCL 700.5414, which states that a court “may remove a conservator for good cause, upon notice and hearing, or accept a conservator’s resignation.”

Considering the preceding statutory subdivisions, under the doctrine of *eiusdem generis*, the catch-all phrase “other appropriate relief” as used in MCL 700.5415(1)(e) is limited to actions that a court or conservator may undertake through a statutory grant of authority. See MCL 700.5401 through 5433. The question, then, is whether a separate statutory provision authorizes a court or conservator to recover assets belonging to a person under a conservatorship. MCL 700.5423(2)(a) states that a conservator may “[c]ollect, hold, or retain estate property.” Likewise, under MCL 700.5423(2)(aa), a conservator may “[p]rosecute or defend an action, claim, or proceeding in any jurisdiction for the protection of estate property.” Therefore, petitioner could have properly asked the conservator to exercise his statutory authority to seek the return of Richter’s assets, or asked the court to order such action. But the petition at issue did not call for either of these forms of relief. Rather, petitioner sought an order “to provide for the return of assets to [Richter].” Although this request is vague, consideration of the petition as a whole reveals that petitioner was not requesting that the conservator seek the return of the assets, but was rather asserting a right to seek the return of the assets in her own capacity.

To this end, petitioner also asked the court to “[s]et this matter for a Jury Trial for determination of the factual issues.” As the probate court surmised, petitioner was essentially requesting a “mini trial, on the return of assets,” brought in her own name. This is not consistent with the kinds of relief set forth in MCL 700.5415(1)(a) through (d), and the probate court

correctly held that petitioner's requested relief did not fall within the catch-all phrase "other appropriate relief" under MCL 700.5415(1)(e).<sup>1</sup>

Petitioner further argues that the probate court erred by dismissing her petition without considering her request to expand the conservator's investigatory powers. However, in previous proceedings, petitioner had withdrawn her request that the court consider this issue. On two previous occasions, petitioner had asked the court to expand the conservator's investigatory powers to encompass a longer time than that ordered by the court, prompting the court to explain that it had limited the investigatory period to one year before the conservator's appointment because "not too long before that, or maybe even during that time period, [petitioner] took [Richter] and tried to get her to change her will." Moreover, when the court was prepared to hold a full hearing on the matter, petitioner withdrew her objections to the conservator's inventory, effectively putting an end to the inquiry. Under these circumstances, the probate court's decision to dismiss the petition without again considering petitioner's request to expand the conservator's investigatory authority did not fall outside the range of reasonable and principled outcomes. See *In re Temple*, 278 Mich App at 128. Therefore, the probate court did not err by dismissing the petition.

Finally, because we affirm the probate court's decision to dismiss the petition, we need not address petitioner's argument that she was entitled to a jury trial to address the factual issues raised in the petition. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998) ("As a general rule, an appellate court will not decide moot issues.").

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael F. Gadola

/s/ Colleen A. O'Brien

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<sup>1</sup> This is not to say that petitioner could not pursue a claim for undue influence against Richter's other family members, but that question was not before the probate court and thus is not at issue in this appeal.