

STATE OF MICHIGAN
COURT OF APPEALS

In Re Conservatorship of MICHAEL ROBERT
ARMSTRONG.

BELINDA ARMSTRONG, Conservator for
MICHAEL ROBERT ARMSTRONG, Minor,

Appellant,

v

KENNETH L. O'DEEN,

Appellee.

In Re Conservatorship of CHRISTOPHER LEE
ARMSTRONG.

BELINDA ARMSTRONG, Conservator for
CHRISTOPHER LEE ARMSTRONG, Minor,

Appellant,

v

KENNETH L. O'DEEN,

Appellee.

UNPUBLISHED
November 20, 2012

Nos. 306456
Eaton Probate Court
LC Nos. 11-048121-CY

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Eaton Probate Court
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Before: TALBOT, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, Belinda Armstrong, as the conservator for Michael Robert Armstrong and Christopher Lee Armstrong, appeals by right from the order of the probate court suspending her fiduciary powers and appointing a special fiduciary. Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS

Belinda Armstrong began serving as conservator for her adopted children, Michael and Christopher Armstrong, in 1998. In August 2009, the Ingham Probate Court appointed a special fiduciary to assist her with filing delinquent annual accountings for 2007 to 2008. The accounts were filed and the special fiduciary filed a report expressing concern over the extent to which Belinda Armstrong had comingled the children's account into a single "family account" that was "collectively accessed for family needs and wants." The court instructed her to no longer comingle the funds and she subsequently filed short form accountings for 2009 and 2010.

In 2011, this case was transferred to Eaton County Probate Court.

At a September 2011 hearing, the new probate court noted that it had gone through the file and had some concerns over the prior handling of the children's estates: "it appeared to us—and that's the reason that we have you in here—that there's been a lot of money that is earmarked for these two children that [has] gone to the parents to, you know, either add to the house or do certain things . . ." Belinda Armstrong explained that she had fallen behind on the filings because she had been diagnosed with cancer. She also indicated that she was in the process of gathering receipts and documentation for an accounting, but that some of her materials were in disarray. The probate court acknowledged her difficulties, but explained that it needed some clarification on the prior handling of the children's estates, "[b]ecause this case is 12 years old, but it's new to us, we need to get to the bottom. And I don't mean—I'm not alleging that anything was done wrong . . ." It determined that it would be best to have someone provide "oversight and help" with the accountings.

On the same day as the hearing, the probate court entered an order finding that Belinda Armstrong had failed to marshal and preserve the children's assets and, accordingly, it suspended her fiduciary powers and appointed a special fiduciary to marshal and preserve the children's assets. The order further noted that there had been no petition to remove Belinda Armstrong as the fiduciary, but that it would be the special fiduciary's responsibility to file such a petition.

This appeal followed.

II. STANDARD OF REVIEW

On appeal, Belinda Armstrong argues that the probate court erred when it removed her as the children's conservator and replaced her with a special conservator. Specifically, she contends that she was removed without proper notice and a hearing and without any evidence that would warrant her removal. This Court reviews a trial court's discretionary actions for abuse. *Taylor v Kent Radiology, PC*, 286 Mich App 490, 524; 780 NW2d 900 (2009). "And this Court will not disturb the trial court's decision unless it falls outside the range of principled outcomes." *Id.*

III. ANALYSIS

As a preliminary matter, we note that the probate court did not remove Belinda Armstrong as the children’s conservator. It did order the suspension of her fiduciary powers and ordered the appointment of a special fiduciary, but it did not actually remove her. Indeed, the court noted on its order that a petition for removal had not been filed and that such a petition would have to be filed by the special fiduciary. As such, Belinda Armstrong’s real claim of error is that the probate court erred when it suspended her fiduciary powers and appointed a special fiduciary.

Probate courts are authorized to enjoin a person subject to its jurisdiction—such as a conservator—from engaging in “conduct that presents an immediate risk of waste, unnecessary dissipation of an estate’s or trust’s property” MCL 700.1309(b). The court may also appoint a special fiduciary on its own initiative. See MCR 5.204(A); MCL 700.1309. The court may issue such an injunction or appoint a special fiduciary with or without notice. MCR 5.204(A). Moreover, the probate court may do so on the basis of information contained in the court’s files. MCL 700.1309.

Here, the probate court noted that it had concerns with the prior accountings and specifically with evidence that the children’s funds had apparently been used by the parents. And the accountings—such as they are—along with the other lower court records show that the children’s funds had not been adequately segregated from the family’s accounts and suggest that the children’s funds had been used for ordinary family expenses. The prior accountings had also not been specifically approved by the prior probate court. Moreover, Belinda Armstrong’s own statements to the court show that she had been ill and had struggled to balance and document the accountings. Given this evidence, we cannot conclude that the trial court’s decision to suspend Belinda Armstrong’s fiduciary powers and appoint a special fiduciary fell outside the range of principled outcomes. *Taylor*, 286 Mich App at 524.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly