

IN THE COURT OF APPEALS OF IOWA

No. 7-090 / 06-1158
Filed April 25, 2007

HARVEY L. HARRISON,
Appellant,

vs.

**CONSERVATORSHIP OF DOUGLAS K. GRANDQUIST,
CYNTHIA S. GRANDQUIST, and
NANCY GRANDQUIST FIELDS, Conservators,**
Appellees.

Appeal from the Iowa District Court for Polk County, Ruth B. Klotz,
Associate Probate Judge.

Harvey Harrison appeals a court order that his legal fees cannot be paid
from assets of the conservatorship of Douglas Grandquist. **AFFIRMED.**

Harvey Harrison of Harrison & Dietz-Kilen, Des Moines, pro se.

Bruce Campbell of Davis, Brown, Koehn, Shors, & Roberts, P.C., Des
Moines, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Harvey Harrison appeals a court order that his legal fees cannot be paid from assets of the conservatorship of Douglas Grandquist.

I. Background and Facts

On January 7, 2005, Nancy Grandquist Fields and Cynthia Grandquist filed a petition for guardianship and conservatorship of Douglas Grandquist.¹ They were appointed co-guardians and co-conservators. Douglas died on January 23, 2006.

On February 13, 2006, Harvey L. Harrison filed a claim in the conservatorship for \$5425.91 for legal services rendered to Douglas from December 1, 2003 through March 29, 2005. On May 24, 2006, the co-conservators filed their final report. Harrison filed an objection to the final report because it did not include a \$5425.91 payment to him.

On July 6, 2006, the district court entered an order on the final report. The court ordered that Harrison's claim could not be paid from the assets of the conservatorship, but should instead be considered a claim in probate in the estate of Douglas.² Harrison appeals that provision of the court order.

II. Merits

Harrison asserts that the district court erred in ruling his claim could not be paid from the assets of the conservatorship. He also asserts that the district

¹ In 1998 Kenneth Grandquist created a trust which provided that, upon his death, his daughter, Cynthia, would receive \$1 million outright and his son, Douglas, would receive \$1 million in a trust. If Douglas predeceased Cynthia and had no children, then Cynthia would receive the remainder interest of Douglas's share. Kenneth died in 1999.

² The other provisions of the court order include: The co-conservators amend the accounting furnished with the final report to reflect only payments of costs of administration of the conservatorship, and Douglas's conservatorship was to be closed.

court erred in failing to require the co-conservators to obtain prior court approval before making payment from the conservatorship for Douglas's health and welfare.

A. Payment of Claim from Conservatorship

This issue involves the establishment of a claim in probate and is therefore triable as a law action. See *In re Guardianship and Conservatorship of Jordan*, 616 N.W.2d 553, 558 (Iowa 2000) ("Actions to set aside or contest wills, . . . and for the establishment of contested claims shall be triable in probate as law actions, and all other matters triable in probate shall be tried . . . in equity."). Findings of fact in a law action are binding upon this court if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a).

The district court found that, when a conservatorship is terminated due to the death of the ward, payments from the conservatorship are limited to costs of administration. We agree. A conservatorship terminates upon the death of the ward. Iowa Code § 633.675(2) (2005). When the conservatorship is terminated, the conservator is required to pay administration costs and render a full accounting. Iowa Code § 633.677. Upon termination, all assets of the conservatorship are to be distributed to the persons entitled to them. Iowa Code § 633.678. Once the conservatorship is terminated, all claims other than costs of administration must be dealt with in the estate proceedings. See *In re Guardianship of Pappas*, 174 N.W.2d 422, 424 (Iowa 1970) ("The proper place for determining this claim following decedent's death was in the estate proceedings. Our statutes are clear and unambiguous in laying down that procedure.").

Harrison relies on *In re Britten*, 430 N.W.2d 408 (Iowa 1988), to support his contention that payment of claims against a ward should not be barred solely by reason of the ward's death. There, our supreme court held that “[a]ctions *already approved in the conservatorship proceedings* may be carried to conclusion if . . . it is in the interest of sound judicial administration.” *Britten*, 430 N.W.2d at 411 (emphasis added). In *Britten*, the actions had already been approved prior to the ward's death. See *id.* at 411-12 (“The conservator, after the death of the ward, retained the power to adhere to valid adjudications of the court rendered before that death occurred.”). Harrison's claim was not approved prior to Douglas's death. Therefore, the *Britten* holding is inapplicable to this case.

When a conservatorship is terminated due to the death of the ward, payments from the conservatorship are limited to costs of administration. Therefore, Harrison's claim could not be paid from the assets of the conservatorship, but should be considered a claim in probate in Douglas's estate.

B. Court Approval Prior to Making Payments

Harrison further asserts that the district court erred in failing to require the co-conservators to obtain prior court approval before making payment from the conservatorship for Douglas's health and welfare. See *Jordan*, 616 N.W.2d at 558. Proceedings in equity are reviewed de novo. Iowa R. App. P. 6.4.

Harrison contends that Cynthia engaged in self-dealing when she depleted assets in the conservatorship without court approval, thereby preserving trust assets for her own benefit. Harrison further contends that Cynthia's dual roles as co-conservator of the conservatorship and beneficiary of the trust “gave

rise to the potential for self-dealing.” He contends that Cynthia “had a duty to seek prior approval from the Court for expenditures for [Douglas’s] benefit, with full disclosure of the conflict presented by this arrangement and notice to all parties.” Harrison asserts that, “[b]y failing to disclose the conflict and proceeding in a self-interested manner, Cynthia violated the prohibition against self-dealing in probate matters.”

Under Iowa Code section 633.155, a fiduciary may not engage in self-dealing. “Self-dealing involves those situations in which a fiduciary personally profits from transactions between himself and the estate” *In re Estate of Snapp*, 502 N.W.2d 29, 33 (Iowa Ct. App. 1993). There is no allegation that there were any transactions between Cynthia and Douglas’s estate. We therefore hold that Cynthia did not engage in self-dealing.

Harrison essentially contends that, by the trust’s failure to pay certain expenses, the conservator unnecessarily depleted the conservatorship to her benefit. The flaw in this argument is that, under the terms of the trust, the trustee had total discretion to pay those expenses “after giving consideration to any other funds known to the Trustee to be available to Douglas K. Grandquist to provide for his proper care, support, maintenance, education and hospital and medical expenses.” Once the Trustee failed to pay the expenses, the conservators were obligated to pay the claims. We therefore hold that the conservators were not required to obtain court approval before making payments from the conservatorship.

Harrison further contends that his due process rights were violated when the conservators depleted the assets of the conservatorship without notice to

creditors and without court approval. Harrison's brief to this court does not cite any authority to support his contention that failure to notify him was a violation of his due process rights. There are no statutory or case law requirements in Iowa that require notice to creditors in this situation. Furthermore, conservatorships are matters of public record, and this conservatorship was in effect for over a year. We find no support for Harrison's contention that his due process rights were violated due to lack of notice.

Finally, Harrison asserts this court should find the conservators personally liable or require his claim be paid from trust assets "now in the hands of the remainder beneficiary, Cynthia Grandquist." Because his request for personal liability is raised for the first time here, we will not consider it. *See In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997) ("an issue which is not raised at the trial court may not be raised for the first time on appeal").

III. Conclusion

Once a conservatorship is terminated, all claims other than costs of administration must be dealt with in the estate proceedings. Therefore, we affirm the district court's ruling that Harrison's claim could not be paid from the assets of the conservatorship, but should be considered a claim in probate in Douglas's estate. Additionally, the district court did not err in not requiring the conservators to obtain court approval before making payments from the conservatorship. Cynthia did not engage in self-dealing, and there is no support for Harrison's contention that his due process rights were violated.

AFFIRMED.