STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of FLORENCE LOUISE GRONSKI,
a Protected Person,

UNPUBLISHED
June 23, 1998

JEANE DIXON,

Petitioner-Appellee,

and

ROGER WINKELMAN, Conservator, and
KAREN GULLBERG COOK, Guardian Ad Litem,

Appellees,

v

RICHARD GRONSKI,

Respondent-Appellant.

Nos. 201697; 204344
Oakland Probate Court
LC No. 96-254243 CV

Before: Sawyer, P.J., and Bandstra and J. B. Sullivan*, JJ.

PER CURIAM.

Before this Court is an action seeking to determine whether the appointment of a guardian/conservator for an 81-year-old woman, who was unable to maintain her personal and financial affairs because of increasing age and debilitating dementia, was proper. Petitioner, the elderly woman's daughter, initiated two separate actions in Oakland County Probate Court requesting that she receive the appointment to act as her mother's guardian/conservator. Respondent, the elderly woman's son, contested the appointment. According to respondent, his mother did not require the assistance of a guardian/conservator and, in the alternative, if an appointment was necessary, respondent argued that he was the only suitable choice. After a hearing, the probate court declined to appoint either petitioner or

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

respondent to serve as their mother's guardian/conservator. Instead, the probate court appointed a public administrator to fill the role. The court also subsequently denied respondent's motion for rehearing/reconsideration. Respondent appeals both orders as of right. We affirm.

First, respondent argues that the probate court erred by refusing to allow him to cross-examine witnesses and present evidence at the hearing. Because the probate court had a great deal of discretion in limiting cross-examination, this issue is not subject to review unless a clear abuse of discretion appears on the record. *In the Matter of Jones*, 142 Mich App 207, 212; 369 NW2d 212 (1985); MRE 611. Because respondent offered no legal support for his assertion that as an "interested person" he was entitled to direct participation in the probate proceeding, we find that the probate court did not abuse its discretion by failing to allow respondent the opportunity to cross-examine witnesses and present evidence.

Next, respondent asserts that the probate court erred by appointing a guardian/conservator for Florence Gronski. According to respondent, the evidence presented at the hearing was far from clear and convincing because respondent was not allowed to present any contrary evidence. Instead, the probate court relied upon the one-sided report of the guardian ad litem and the testimony of petitioner.

On appeal, the question of appointing a guardian/conservator is left to the sound discretion of the probate court and is determined by the apparent condition of the ward, or of his estate. *In re Wagner*, 151 Mich 74, 76; 114 NW 868 (1908). "The court may appoint a guardian if it is satisfied by clear and convincing evidence that the person for whom a guardian is sought is a legally incapacitated person and that the appointment is necessary as a means of providing continuing care and supervision of the person of the legally incapacitated person." MCL 700.444; MSA 27.5444. If the court determines that a person is unable to manage his or her property which will be wasted or dissipated unless proper management is provided, the court may appoint a conservator to manage the estate and affairs of that person. MCL 700.461(b); MSA 27.5461(b).

In the instant case, the probate court was allowed to rely upon the recommendations and findings of the guardian ad litem. The report of the guardian ad litem advised the court that Florence Gronski was suffering from memory loss and dementia and seemed incapable of handling her own affairs. During the meeting with the guardian ad litem, Florence Gronski could not understand the purpose of the visit nor the nature of the proceedings. In fact, Florence Gronski believed that she was going to jail. When asked simple questions such as who is the current president of the United States and what meals were her favorite to prepare, Florence Gronski could not or would not answer. Florence Gronski could not tell the guardian ad litem the places in which she had worked or the source of her pension check. According to the guardian ad litem, Florence Gronski was not totally oriented to time and place and seemed to be able only to respond to an immediate concern.

In addition, petitioner provided the probate court with evidence supporting her theory that her mother required the assistance of a guardian/conservator. According to petitioner, Florence Gronski was unable to self-medicate, maintained no personal hygiene habits, and was unable to carry on conversations because of her difficulty with comprehension. Even respondent provided evidence that his mother required the assistance of a guardian/conservator. Respondent admitted to helping his

mother with her medication because she could no longer handle the responsibility. According to respondent, he helped care for his mother six days a week and had been previously granted power of attorney by his mother to assist in her financial affairs. Because the probate court was provided with clear and convincing evidence relating to Florence Gronski's inability to manage her personal and financial affairs, we find that the probate court did not abuse its discretion by appointing a guardian/conservator to act in her best interests.

Next, respondent contends that the probate court erred by appointing a public administrator as guardian/conservator of his mother's estate. According to respondent, the probate court failed to properly interpret the statutes defining priority classifications for such an appointment. Because respondent is the adult child of Florence Gronski and because respondent was given durable power of attorney over his mother's financial affairs, respondent argues that he was entitled to be appointed his mother's guardian/conservator.

The selection of an individual to be appointed an incapacitated person's guardian/conservator is a matter which is committed largely to the discretion of the probate court. *In re Williams Estate*, 133 Mich App 1, 11; 349 NW2d 247 (1984). Generally, relatives of the ward are preferred, but the best interests of the ward are paramount considerations when a guardian is selected. *Id*. The statute governing the appointment of a guardian, MCL 700.454(3); MSA 27.5454(3), allows a court to determine if the individuals who fall within the statutory priority guidelines are "suitable." Additionally, MCL 700.470(2); MSA 27.5470(2) grants the probate court the authority to pass over "a person having priority and appoint a person having less priority or no priority" for the role of conservator if good cause exists. The statutes' priority classifications are listed merely as a guide for a court's consideration. MCL 700.470(1); MSA 27.5470(1).

In the instant case, respondent was an individual entitled to priority consideration under the statutes based on his status as Florence Gronski's adult child and based upon his status as her primary caregiver. Because his mother granted him durable power of attorney, respondent argued that such an appointment entitled him to preference over petitioner and the public administrator under MCL 700.470; MSA 27.5470. However, respondent fails to note the discretionary language contained in both statutes, MCL 700.454; MSA 27.5454 and MCL 700.470; MSA 27.5470. Although respondent had priority, the probate court was presented with specific evidence questioning his suitability for the position of guardian/conservator.

Respondent loaned himself approximately $27,000 from the proceeds of the sale of his mother's home without executing a promissory note until after the initiation of the instant action in probate court, approximately three years later. Additionally, respondent placed the remaining proceeds from the sale of his mother's property into an annuity which listed respondent as its owner. While the motives behind respondent's ownership of the annuity was in dispute, his conduct showed a lack of foresight by placing the annuity in his own name without any provision to protect his mother financially in the event of his untimely death. Furthermore, the guardian ad litem recommended that the probate court appoint petitioner, rather than respondent, to serve as Florence Gronski's guardian/conservator. In the guardian ad litem's opinion, respondent did not act in his mother's best interests and appeared to "victimize" her. Because there was ample evidence presented to call into question respondent's

suitability to perform the position of guardian/conservator, the probate court did not abuse its discretion by appointing a public administrator to serve in that role.

Finally, respondent argues that the probate court erred in appointing a public administrator to serve as his mother's guardian/conservator based on an erroneous finding of fact. According to respondent, the probate court's decision to appoint a public administrator, rather than respondent, as Florence Gronski's guardian/conservator was strongly influenced by the erroneous assumption that respondent placed his mother's annuity under his name for an improper purpose.

The standard of review for findings of a probate court sitting without a jury is whether those findings are clearly erroneous. *In the Matter of the Estate of Powell*, 160 Mich App 704, 710; 408 NW2d 525 (1987). While the reason behind respondent's decision to place his mother's annuity under his own name may have been erroneously interpreted by the probate court, there was ample evidence presented to call into question respondent's suitability to serve as his mother's guardian/conservator. Therefore, again, we believe that the probate court did not abuse its discretion by appointing a public administrator as guardian/conservator of Florence Gronski's estate.

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Joseph B. Sullivan