

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

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In the Matter of the ESTATE OF DAISY  
LITTLE, Legally Incapacitated Person.

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EDWARD LITTLE,

Petitioner-Appellant,

v

WALTER SAKOWSKI,

Respondent-Appellee.

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UNPUBLISHED

August 4, 1998

No. 199065

Wayne Probate Court

LC No. 89-830843

Before: Cavanagh, P.J., and White and Young, Jr., JJ.

MEMORANDUM.

Petitioner, proceeding in propria persona, appeals as of right from the probate court's order denying his petition for removal of fiduciary and appointment of successor. Petitioner is the adult son of Daisy Little. Linda Gordon, a niece with whom Mrs. Little lives, is her guardian. Respondent was appointed special fiduciary and conservator of Mrs. Little's estate by the probate court.

Petitioner was permitted to live in the house owned by his mother provided he paid the taxes and insurance on the property. When petitioner failed to do so, respondent sought to evict him. Petitioner then obtained a warranty deed from his mother purporting to transfer the house to him. The probate court set aside the deed as executed by a legally incapacitated person, and declared that title to the property was in Daisy Little. Respondent then commenced eviction proceedings due to petitioner's failure to pay the taxes and insurance on the property, and petitioner filed the instant petition for removal of fiduciary and appointment of successor, requesting that he or Linda Gordon be appointed conservator. The court denied the petition.

We review the probate court's denial of petitioner's petition for an abuse of discretion. *In re Williams Estate*, 133 Mich App 1, 11; 349 NW2d 247 (1984). As an interested party, petitioner may petition the probate court to terminate the conservatorship. MCL 700.490; MSA 27.5490. The court

may remove a conservator for good cause, upon notice and hearing. MCL 700.475; MSA 27.5475. Additionally, a fiduciary may be removed for the reasons stated in MCL 700.574; MSA 27.5574, *In re Bontea Estate*, 137 Mich App 374, 377; 358 NW2d 14 (1984), which include failure to render an account, failure to perform an order of the court, and absconding or otherwise becoming unsuitable or incapable of administration.

Petitioner does not assert that respondent should be removed pursuant to MCL 700.475; MSA 27.5475, or MCL 700.574; MSA 27.5574. *Bontea, supra*, 137 Mich App at 377. Rather, petitioner's dissatisfaction with respondent appears to be based primarily on respondent's attempt to evict petitioner from the property.. Testimony at the hearing established that petitioner was permitted to live in the house so long as he paid rent (apparently consisting of the property taxes and insurance). There was testimony that the property taxes were delinquent and that petitioner was not paying rent. The property was at risk of being lost for taxes. Based on petitioner's failure to pay the ongoing expenses of the property, respondent's conduct was in the best interest of Mrs. Little. The guardian ad litem appointed by the court agreed. Accordingly, the probate court did not abuse its discretion by denying the petition for removal of fiduciary and appointment of successor.

Petitioner also challenges respondent's authority to evict him from his mother's house, and asks that he be permitted to pay the back taxes on the property. The scope of respondent's authority was not challenged or addressed below; petitioner sought only to remove respondent. Therefore, the issue is not properly subject to appellate review in this case, *Alford v Pollution Control Industries of America*, 222 Mich App 693, 699; 565 NW2d 9 (1997), and we do not address it. Similarly, whether petitioner should be granted time in which to pay the taxes on the property is a matter that must first be addressed to the probate court.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Helene N. White  
/s/ Robert P. Young, Jr.