STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SARAH HANDELSMAN, a Protected Person.

STEPHEN C. ALBERY, as Guardian and Conservator for SARAH HANDELSMAN, a Protected Person,

Petitioner-Appellee,

v

ROCHELLE SCHULTZ,

Respondent-Appellant.

and

FRANCES GOLDMAN,

Respondent.

UNPUBLISHED
August 26, 2003

No. 239743
Oakland Probate Court
LC No. 95-245763-CV

Before: Donofrio, P.J., and Bandstra and O'Connell, JJ.

PER CURIAM.

Respondent Rochelle Schultz appeals as of right the probate court's order granting petitioner Stephen Albery, as guardian and conservator for Sarah Handelsman, permission to move Handelsman from Florida to Michigan. We affirm.

Schultz first argues that Handelsman, who is Schultz's elderly mother, was denied due process as a result of Albery's failure to provide Handelsman with notice of the hearing regarding his petition seeking permission to have Handelsman moved, as required by MCR 5.105(D). However, Schultz lacks standing to assert this particular issue. As this Court noted in *In re AMB*, 248 Mich App 144, 176; 640 NW2d 262 (2001), "it is well settled that the right to notice is personal and cannot be challenged by anyone other than the person entitled to notice." In this regard, Schultz cannot assert that Handelsman's rights were violated; only Handelsman, or her guardian and conservator acting on her behalf, could make such a charge. "A [party] must

assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interest of third parties." *Fieger v Comm'r of Ins*, 174 Mich App 467, 471; 437 NW2d 271 (1988).

Further, we note that even if the notice issue was properly before us it is questionable what benefit, if any, notice would have provided to Handelsman. Considering her physical and cognitive state, Handelsman would likely have been unable to assist in any meaningful way; she almost certainly would not have benefited from being heard. See *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). Although a guardian ad litem would have been able to represent Handelsman's legal position, respondents failed to request that one be appointed and, contrary to respondent's contention, the trial court was not required to appoint such representation under MCR 5.408(B)(2), which concerns itself only with requests for modification or termination of a guardianship. In any event, given the evidence of the rapidness with which Handelsman's funds were being depleted, it is doubtful that anyone appointed to represent her at the hearing would have argued that Albery's petition was not in Handelsman's best interests.

Schultz also contends that the probate court erred in failing to hold an evidentiary hearing to consider Handelsman's personal interests in relocating. The probate court's decision that an evidentiary hearing was not warranted is reviewed for an abuse of discretion. See *Kernen v Homestead Development Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002). Schultz asserts that the probate court's ruling failed to consider Handelsman's preferences regarding nursing homes, failed to consider whether removing Handelsman from her current environment would be deleterious to her, and failed to consider whether the move alone could be detrimental to her care. The record does not reflect that the probate court abused its discretion.

The effect of the probate court's ruling was to grant Albery permission to move Handelsman to Michigan. The petition was brought by Albery, who asserted that, as a result of the significant distance between Handelsman and himself, he was having difficulty monitoring Handelsman's finances and ensuring her long-term care. The probate court agreed that the current circumstances required action, and granted Albery permission to move Handelsman to Michigan. The probate court had before it ample evidence of Handelsman's financial situation from the start of this case to the time of its ruling. The rationale for the order approving the move was that Albery could better monitor Handelsman's financial situation to avoid waste if he were closer to his ward.

Schultz's arguments on appeal stress her opinion that the probate court failed to consider the effects of the move on Handelsman's care. However, the probate court was not addressing where in Michigan Handelsman would live, or what type of care she would receive following the move. As Albery made clear at the hearing, no definitive plans had been made as to where Handelsman would ultimately reside. Albery suggested that Handelsman would receive the same type of health care she received in Florida, but would be closer so that he could more appropriately monitor her finances. The probate court expressly left open the issue of where Handelsman would live and what type of care she would receive, suggesting that respondents work with Albery to find a suitable living arrangement. Considering that the narrow question before the probate court related only to whether Albery, as guardian and conservator for

Handelsman, should be granted permission to move Handelsman so that he would be better able to monitor her financial situation and care, the probate court's decision not to hold an evidentiary hearing on the issue of her care was not an abuse of discretion.

We affirm.

/s/ Pat M. Donofrio
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell