STATE OF MICHIGAN

COURT OF APPEALS

In re C. A. CERASOLI, Minor.

UNPUBLISHED
January 9, 2018

No. 338675
Tuscola Probate Court
LC No. 17-035626-GM

Before: STEPHENS, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right an order appointing petitioner as the guardian of respondent's grandchild, C.C. We affirm.

I. FACTUAL BACKGROUND

C.C. was born in November of 2016. He and his mother, Shantel, lived with respondent and respondent's longtime partner from July 2016 until Shantel died in January 2017 of a drug overdose in respondent's home. Respondent and her partner helped support C.C. and Shantel financially, and helped Shantel care for him on a day-to-day basis.

On the day Shantel died, petitioner was contacted so that family could be notified of Shantel's death. According to petitioner, she went to the scene where a police officer told her that Child Protective Services (CPS) was going to be called and that she should take C.C. home with her. At some point that night, respondent had a seizure or an "aura," but opted not to go to the hospital. Respondent was repeatedly encouraged to allow petitioner to take C.C. that night so that she should make funeral arrangements for Shantel. Eventually respondent agreed to allow petitioner to babysit C.C. Respondent explained that she felt like she had no other alternative than to allow petitioner to take C.C. that night, but believed that she would have C.C. back within a few days.

On January 19, 2017, four days after Shantel died, petitioner filed a petition for the appointment of a guardian for C.C. in the Tuscola Probate Court. Petitioner was appointed temporary guardian, with an expiration date of February 15, 2017. The temporary guardianship was twice extended when the guardianship hearing was adjourned. On February 14, 2017, respondent also filed for guardianship of C.C.

Following the guardianship hearing, the probate court issued an opinion on April 28, 2017, finding that it was in the best interests of C.C. to appoint petitioner as guardian. Respondent was granted grandparenting time with C.C.

II. ANALYSIS

Respondent first argues that the court erred by failing to dismiss petitioner's guardianship petition on grounds that the proofs were insufficient. Respondent also challenges the venue, notice, and content of the petition.[1]

We review a probate court's dispositional rulings for an abuse of discretion and its factual findings for clear error. *In re Bibi Guardianship*, 315 Mich App 323, 328; 890 NW2d 387 (2016). A probate court's dispositional ruling constitutes an abuse of discretion "when it chooses an outcome outside the range of reasonable and principled outcomes." *Id.* at 329 (citation omitted). A probate court's finding of fact is clearly erroneous when this Court "is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id.* (citation omitted).

A. REQUIREMENTS OF MCL 700.5204

Respondent cursorily argues that petitioner was unable to prove by a preponderance of the evidence that a statutory basis for guardianship existed. We disagree.

The Estates and Protected Individuals Code, MCL 700.5201 *et seq.*, governs the guardianship of minors. "A minor's guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent's minor and unemancipated child[.]" MCL 700.5215. "A person may become a minor's guardian by parental appointment or court appointment." MCL 700.5201. A person interested in the welfare of a minor may submit a petition to the court to appoint a guardian, MCL 700.5204(1), and the court may appoint a guardian if it finds all of the following:

> (*i*) The minor's biological parents have never been married to one another.
>
> (*ii*) The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.
>
> (*iii*) The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption. [MCL 700.5204(2)(c).]

[1] These issues were not properly presented for appeal because respondent did not include them in her statement of questions presented. MCR 7.212(C)(5); *People v Anderson*, 284 Mich App 11, 16; 772 NW2d 792 (2009).

Both parties agree that C.C.'s mother was deceased and that C.C.'s father is unknown. Further, both petitioner and respondent are related to C.C. within the fifth degree, respondent as his maternal grandmother, and petitioner as his mother's first cousin. Accordingly, proper statutory grounds for the appointment of a guardian existed. See MCL 700.5204(2)(c).

B. VENUE

Respondent next argues that venue of the guardianship proceedings was improper in Tuscola County. We disagree.

Venue for guardianship proceedings regarding a minor are proper "in the place where the minor resides or is present at the time the proceeding is commenced." MCL 700.5211. It is undisputed that C.C. was present in Tuscola County under the care of petitioner. Thus, venue was proper in that county.

Respondent suggests that C.C.'s presence in Tuscola County was "involuntary" and that the proceeding should have taken place in Genesee County where C.C. resided for the first two months of his life. She cites no legal authority for this proposition. Further, respondent did not make a motion to change venue to Genesee County, MCR 5.128(A), and objections to venue are waived if not timely raised. MCR 2.221(C).[2] Further, respondent filed her petition for guardianship in the same venue and fully participated in the hearings, thereby indicating that Tuscola County was a proper venue.

C. NOTICE

Respondent next argues that petitioner failed to provide her with proper notice of the guardianship. We disagree.

MCR 5.102 provides that a petitioner must "cause to be prepared, served, and filed, a notice of hearing for all matters requiring notification of interested persons." In an application for appointment of a guardian of a minor, "interested persons" include "each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition[,]" as well as grandparents, if the minor's parents are deceased. MCR 5.125(C)(19). Here, the proof of service indicates that respondent was served notice of the hearing by first class mail. Respondent does not appear to take issue with the receipt of notice, but with the fact that the notice listed her as "next of kin" instead of a person who had principal care and custody of the child. Regardless, "a party who enters a general appearance and contests a cause of action on the merits submits to the court's jurisdiction and waives service of process objections." *In re Gordon*, 222 Mich App 148, 158; 564 NW2d 497 (1997). Respondent's attorney filed a general

[2] "Procedure in probate court is governed by the rules applicable to other civil proceedings, except as modified" by Chapter 5 of the Michigan Court Rules which are the rules specific to probate court. MCR 5.001(A).

appearance and respondent was fully involved in the proceedings. Accordingly, her argument that she did not receive proper notice is without merit.

Respondent also argues that "due process was likely violated" because petitioner indicated on the guardianship petition that C.C.'s father was unknown, but also indicated that C.C. was not an Indian child. Respondent's petition for guardianship included the same information. There is nothing in petitioner's allegations or briefing to suggest that C.C. was an Indian child, and since his father is unknown there is no basis for concluding that he is an Indian child based on the father's lineage. Without further explanation, it is unclear exactly what respondent is asserting. A party may not claim error and then leave it up to this Court to determine and rationalize the basis for her claims or attempt to unravel and make her arguments; accordingly, we need not address it further. See *William v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

D. CONTENT OF THE PETITION

Respondent next argues that the contents of the petition were untrue, and therefore, petitioner committed perjury and perpetrated a fraud upon the court so the probate court should have dismissed petitioner's guardianship petition sua sponte. We disagree.

Under MCR 5.114(B), a petition must be authenticated under oath or by signing a statement that asserts: "I declare under the penalties of perjury that this [petition] has been examined by me and that its contents are true to the best of my information, knowledge, and belief." A person who knowingly makes false declarations under the rule is in contempt of court, MCR 5.114(B)(2), and may be liable for sanctions, as the court deems appropriate. MCR 2.114 (E). However, the court rule does not provide any further relief for a document that contains allegedly false or misleading statements.

Respondent's claim that petitioner's petition was "wholly false" is exaggerated, although not completely unfounded.[3] But respondent fails to establish that dismissal of the petition is the proper remedy for the alleged false or misleading statements. Furthermore, respondent cannot show prejudice because the probate court considered both petitioner and respondent's petitions at the same time. Accordingly, the probate court was not required to sua sponte dismiss the petition because of minor discrepancies in the petition. See *Bibi*, 315 Mich App at 328.

[3] The petition itself appears consistent with the accounts of both petitioner and respondent, except for the fact that petitioner only listed herself as providing principal care and custody of C.C. within the previous 63 days. However, in a "Minor Guardian Social History" questionnaire filed with the petition, petitioner described her frequency of contact with C.C. as: "I have visited and constant contact with mother since baby's birth and purchaser of all the babies [sic] bigger belongings." This was contrary to petitioner's testimony that she had only met C.C. twice and had not had a relationship with C.C.'s mother for years because of her drug addiction.

E. ERRONEOUS FINDINGS OF FACT AND DISPOSITIONAL RULING

Respondent finally argues that the probate court used an erroneous finding throughout its opinion and that the error tainted the entire opinion, warranting reversal. We disagree.

A court must appoint a guardian who "serves the minor's welfare[.]" MCL 700.5212. The guardianship statute fails to explain how a court should determine what serves a minor's welfare; however, the purpose of the guardianship statute is to "promot[e] the best interests of children." *Deschaine v St Germain*, 256 Mich App 665, 671 n 9; 671 NW2d 79 (2003). Here, the probate court considered the best interest factors outlined in MCL 700.5101, which apply to the appointment of a professional guardian under MCL 700.5106, to analyze whether the proposed guardians would serve C.C.'s welfare under MCL 700.5212. While an analysis of these factors is not required in appointing a minor's guardian, MCL 700.5212, a review of these factors was an appropriate way for the probate court to determine what "serves the minor's welfare."

Under MCL 700.5101,

> (a) "Best interests of the minor" means the sum total of the following factors to be considered, evaluated, and determined by the court:
>
> (*i*) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (*ii*) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue educating and raising the child in the child's religion or creed, if any.
>
> (*iii*) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
>
> (*iv*) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
>
> (*v*) The permanence, as a family unit, of the existing or proposed custodial home.
>
> (*vi*) The moral fitness of the parties involved.
>
> (*vii*) The mental and physical health of the parties involved.
>
> (*viii*) The child's home, school, and community record.
>
> (*ix*) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.

> (*x*) The party's willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and his or her parent or parents.
>
> (*xi*) Domestic violence regardless of whether the violence is directed against or witnessed by the child.
>
> (*xii*) Any other factor considered by the court to be relevant to a particular dispute regarding termination of a guardianship, removal of a guardian, or parenting time.

These factors parallel the best-interests factors found in the Child Custody Act, MCL 722.21 *et seq*. Therefore, by way of analogy, the court need not equally weigh the factors but may consider their weight as relevant to the appropriate circumstances. *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006).

Respondent's primary argument is that the probate court erroneously found that respondent reached out to petitioner for the purpose of caring for C.C. and that this error tainted the entire opinion, warranting reversal of the guardianship appointment. She focuses her argument on factors (*ii*) and (*xii*), arguing that both were weighed in favor of petitioner based on an inaccurate finding of fact.

Preliminarily, we note that the findings were partly erroneous. The court characterized respondent's actions as "reaching out" to petitioner to care for C.C., and the court concluded that because respondent reached out, she must have been "confident" that petitioner was an appropriate caregiver. The record reflects that respondent contacted petitioner so that C.C.'s mother's paternal relatives would be made aware that she had passed away. Neither respondent nor petitioner alleged that respondent's purpose for contacting petitioner was so that she could take C.C. Only after continued encouragement from law enforcement did respondent agree to allow petitioner to "baby sit" C.C. while she took care of funeral arrangements. However, whether "coaxed" or not, it is undisputed that respondent did place C.C. in petitioner's care that night. Therefore, consistent with the court's conclusion, entrusting petitioner with C.C. belied respondent's assertion that petitioner was an inadequate caregiver for the child.

An erroneous finding of fact only warrants reversal of a court's decision if the error is "inconsistent with substantial justice." MCR 2.613(A). Here, the court's mistake did not undermine the finding that respondent entrusted petitioner with C.C.'s care. Moreover, if the mistaken finding were disregarded, the other evidence would support the appointment of petitioner as guardian. Even if the factors that were weighed with the erroneous fact in mind were not used by the court, the court still found that, out of the 12 best interest factors, three weighed in favor of petitioner, and two others "slightly" weighed in her favor. Therefore, in light of the entire record, the probate court's erroneous finding is harmless and does not require reversal of its decision to appoint petitioner as guardian. See MCR 2.613(A).

Furthermore, the court's appointment of petitioner as guardian was not outside the range of principled outcomes. See *Bibi*, 315 Mich App at 329. First, factors (*i*), (*iii*), (*v*), (*ix*), and (*xi*) were equal between the parties or inapplicable. The court did not find that any factors weighed

in favor of respondent. However, the court did find that multiple factors favored the appointment of petitioner as guardian. First, factor (*iv*) weighed in favor of petitioner because C.C. had been residing in her home from January 2017 until the order was entered at the end of April 2017. In addition, the CPS worker established that petitioner's home was appropriate for C.C. Moreover, the court found that factor (*vi*) weighed in favor of petitioner because of respondent's own account of physically assaultive behavior. Also, factor (*vii*) was weighed in favor of petitioner, as the court believed that petitioner was in good health as opposed to respondent who had multiple medical problems. The CPS worker also said that petitioner was in a "better place" both mentally and physically to care for C.C. Finally, the court weighed factors (*viii*) and (*x*) "slightly in favor" of petitioner. As to the former, the court noted that C.C. has been "progressing well" with petitioner and that he was a "clean, healthy, and happy baby" while in her care. As to the latter, the court's "complete impression" was that respondent would be unlikely to follow through in facilitating a relationship with C.C. and petitioner. The probate court's appointment of petitioner as the guardian of C.C. was based on its determination that the appointment would serve his welfare pursuant to MCL 700.5212, and the decision does not constitute an abuse of its discretion. See *Bibi*, 315 Mich App at 329.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly