

STATE OF MICHIGAN
COURT OF APPEALS

In re Conservatorship of CLARA AUSTIN.

LAURA BROWN,

Petitioner-Appellant,

v

LAURA M. KYSTAD,

Respondent-Appellee.

UNPUBLISHED

July 18, 2013

No. 308676

Wayne Probate Court

LC No. 03-668256-CA

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUS, JJ.

PER CURIAM.

Petitioner Laura Brown appeals as of right from a probate court order disallowing an account and removing her as successor conservator and appointing respondent Laura M. Kystad as successor conservator. We affirm.

Petitioner is the guardian and successor conservator of her great aunt, Clara Austin, and is responsible for managing the benefits she received from the Social Security Administration and private pension funds. Petitioner filed a second amended annual account for the period between February 28, 2010, February 28, 2011. The guardian ad litem objected to the account for numerous reasons, including the lack of receipts for \$26,000 in expenditures, petitioner's failure to produce tax returns filed on behalf of Clara, failure to provide utility records to determine Clara's 1/6 share of those expenses, and petitioner's failure to purchase a pre-paid funeral for Clara as previously ordered by the court. The probate court referred to the negative guardian ad litem report, as well as the history of negative guardian ad litem reports and petitioner's history of conflict with every guardian ad litem that had been appointed, in denying the account, removing petitioner as successor conservator, and appointing a new successor conservator.

The removal of a conservator is governed by the Estates and Protected Individual's Code (EPIC), MCL 700.1101 *et seq.* The court is authorized to remove a conservator for good cause upon notice and hearing. MCL 700.5414. According to court rule, the court must notify the fiduciary, his attorney, and each surety of the nature of the deficiency and a notice to correct or appear for a conference. MCR 5.203(A). If the fiduciary fails to perform the duties within the

time specified, the court may suspend his powers. MCR 5.203(D). Upon the removal of the conservator, the court may appoint another conservator. MCL 700.5414.

It appears from the file that the court did not precisely follow these procedures. However, petitioner acted as her attorney, scheduled the hearing on the petition to allow the account, and was admittedly aware of the negative guardian ad litem report and the deficiencies in the account.

Petitioner, as a conservator, could only expend or distribute estate income or principal without court approval “for the support, education, care, or benefit of the protected individual.” MCL 700.5425. She owed a fiduciary duty to Clara to manage her estate in a prudent manner and without self-interest. MCL 700.5416; *In re Green Charitable Trust*, 172 Mich App 298, 312-313; 431 NW2d 492 (1988). Here, the court referred to the negative guardian ad litem report, as well as the history of negative ad litem reports and petitioner’s history of conflict with every guardian ad litem that had been appointed. Petitioner had no receipts for \$26,000 in expenditures. She also failed to provide copies of tax returns filed on behalf of Clara, and failed to provide copies of all utility records to determine Clara’s 1/6 share of those expenses. Petitioner also failed to provide documentation that she had complied with the court’s prior order to purchase a prepaid funeral plan for Clara. Because petitioner could not account for the expenses allegedly incurred on Clara’s behalf, she breached her fiduciary duty as a conservator by removing the funds from Clara’s estate. Therefore, the court did not abuse its discretion in disallowing the account and had good cause to remove petitioner as successor conservator and appoint a new successor conservator.¹

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause

¹ Petitioner’s contention that she did not have notice of the hearing is misplaced as she scheduled the hearing, was present at the hearing, and had notice that the guardian ad litem’s report was negative.