IN THE COURT OF APPEALS OF IOWA

No. 8-420 / 07-1040
Filed July 16, 2008

IN THE MATTER OF THE CONSERVATORSHIP OF JOHN HECHMER,
Ward,

THOMAS HECHMER,
Interested Party-Appellant.

Appeal from the Iowa District Court for Adams County, David L. Christensen, Judge.

Thomas Hechmer appeals a district court decision finding he did not have standing to object to the administration of the conservatorship estate. **AFFIRMED.**

Thomas Jude Hechmer, Los Angeles, California, appellant pro se.

Catherine K. Levine, Des Moines, for appellee conservator.

Jeffrey B. Millhollin of Millhollin Law Office, Corning, for Mary Lou Hechmer.

Considered by Huitink, P.J., and Vogel, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SCHECHTMAN, S.J.

This is an appeal from the trial court's rulings that (1) the appellant, a son of the ward, was not entitled to notice of conservatorship proceedings, and, (2) lacked standing to object to the conservator's management of the ward's estate.

This appeal was filed on June 8, 2007. The ward, John Hechmer, died on December 8, 2007. The conservator has moved to dismiss for that reason.

I. Motion to Dismiss

Our statute, Iowa Code section 633.675 (2005) provides:

> A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances:
>
> . . . .
>
> 2. The death of the ward.

It is important that the legislature chose the word "cease" when the triggering event (in this case death) occurs in a guardianship, whereas it employed the word "terminate" when applied to a conservatorship. Death only starts moving the procedures to close the conservatorship. Section 633.677 requires "a full and complete accounting to . . . the ward's personal representative and to the court," while the following section, section 633.678, directs the delivery of all assets of the conservatorship "under direction of the court, to the person or persons entitled to them."

The district court record reflects that after application, the final report in the conservatorship, covering the time period from December 8, 2006, to December 8, 2007, was approved and filed on January 28, 2008. The court ordered that the

assets of the conservatorship be distributed to the estate of John Hechmer. In addition, the conservator was discharged.

This appeal does not involve any damages, nor does it concern any certain asset or properties of the ward, now decedent. It is solely a question of procedure. The death of the ward does not change either the facts or the law (though it does make the issue of standing moot). It was and remains ripe for resolution. The motion to dismiss is overruled.

II. Background

John L. Hechmer was a resident of Canal Fulton, Ohio. He was a widower, with eight adult children, one being Thomas Hechmer, the appellant. John met Mary Lou Cooley via the Internet on a web site, Catholic Singles, in 2002. They were married later that year in Cumberland, Iowa, at Mary Lou's church. Each was sixty-eight years old. A prenuptial agreement was executed sometime prior to the ceremony. They moved to Ohio, but in the spring of 2005, Mary Lou moved back to Corning, Iowa, because of health reasons. John joined her in June of that year. John's health continued to decline, having been diagnosed with advanced dementia that affected him physically and mentally. Mary Lou was unable to care for him, and John was placed in a nursing home in Elk Horn in 2006.

In September 2006, a petition for the appointment of a guardian and conservator was filed. At a contested hearing, Thomas objected to the appointment of Mary Lou as a conservator. Thomas and Mary Lou agreed that she would act as guardian and Arnold O. Kenyon III would act as conservator.

Kenyon was appointed on November 14, 2006. The ward's will was filed for safekeeping, as required by statute,[1] and provided that his property shall be divided equally among his "children that survive me. . . . If any of my children predecease me, their share shall lapse." The inventory reflected a certificate of deposit (CD) payable on death to Thomas.

On December 5, 2006, Thomas filed and signed a form notice entitled, "Request for Notice," which body states:

> As authorized by the provisions of Section 42 of the Iowa Probate Code the undersigned having an interest in the above entitled matter, does hereby request notice of the time and place of all hearings in such matter for which notice is required by law, rule of Court or by an order entered herein.
>
> My Post Office address is 8761 Cashio Street, Los Angeles, CA 90035.

The conservator filed an application for directions, which was set for December 18, 2006. Thomas was afforded no notice of this hearing, which did not address the notice issue, but did set aside some joint CD's to Mary Lou. There ensued a hearing on the standing issue. It was non-evidentiary and confined to arguments. Thomas was represented by an attorney (who has since withdrawn). The district court ruled that Thomas had "no standing before the Court that entitles him to notice or the right to intercede, object or be heard by this Court concerning the matters in the administration of the Conservatorship." The district court relied on the standard set forth in *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). This appeal followed.

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[1] Iowa Code sections 633.286 and 633.645.

III. Analysis

Section 633.42, regarding requests for notice, provides in relevant part:

> At any time after the issuance of letters testamentary or of administration upon a decedent's estate, any person interested in the estate may file with the clerk a written request, in triplicate, for notice of the time and place of all hearings in such estate for which notice is required by law, by rule of court, or by an order in such estate. . . . Thereafter, the personal representative shall, unless otherwise ordered by the court, serve, by ordinary mail, upon such person, or the person's attorney, if any, a notice of each hearing.

This statute is unambiguous and needs no further construction. *See Estate of Ryan v. Heritage Trails Assocs., Inc*., 745 N.W.2d 724, 730 (Iowa 2008) (noting where the language of a statute is plain and unambiguous, a court will not resort to rules of statutory construction).

There are three key words or combinations of words that clearly prove this statute, and any required notice emanating from it, is applicable to decedent's estates alone, and not conservatorships and guardianships. Firstly, the triggering event, "after the issuance of letters testamentary or of administration" references those issued in decedent's estates. The definitional section of our Iowa Probate Code, section 633.3(27) categorizes "letters" into letters testamentary, letters of administration, letters of guardianship, letters of conservatorship, and letters of trusteeship. The statute refers only to those letters issued in decedent's estates.

Secondly, section 633.3(15) defines "estate," as "the real and personal property of a decedent, a ward, or a trust . . . ." The use of the words "decedent's estate" does not include a ward's estate in a conservatorship.

Thirdly, the employment of the words "personal representative" applies solely to a decedent's estate, as the definition of "personal representative" "includes executor and administrator." Iowa Code § 633.3(30). Accordingly, the notice filed by Thomas under section 633.42 was ineffectual and inapplicable.

IV. Standing

The standing issue is now moot, since John has died. Thomas is now entitled to notice in his father's estate, as provided in the probate code, including any request for notice filed under section 633.42.

Additionally, Thomas, appearing pro se in this appeal, cites no authority to support his claim. Iowa Rule of Appellate Procedure 6.14(1)(*c*) provides that failure "to cite authority in support of an issue may be deemed waiver of that issue." We deem that issue also waived.

V. Costs

There is a considerable amount of unnecessary material contained in the appendix prepared by the appellant, considering the limited procedural issues in this case. *See* Iowa R. App. P. 6.15(3). The costs herein, including the cost of producing the appendix, are taxed to the appellant.

We affirm the decision of the district court.

AFFIRMED.