IN THE COURT OF APPEALS OF IOWA

No. 8-588 / 98-0369

IN THE MATTER OF THE CONSERVATORSHIP OF CRAIG JONATHAN MOORE,

CRAIG JONATHAN MOORE, Ward,

Plaintiff-Appellant,

vs.

GREGORY JATHAN EPPING, Conservator,

Defendant-Appellee.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge.

Craig Moore appeals a district court ruling establishing an involuntary conservatorship. **AFFIRMED.**

R. L. Sole of Glasson, Sole, McManus & Combs, P.C., Cedar Rapids, for appellant.

Gregory J. Epping of Terpstra & Epping, Cedar Rapids, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Craig Moore appeals a district court ruling establishing an involuntary conservatorship and appointing Gregory J. Epping as conservator. Moore contends the district court's findings are not supported by substantial evidence. We affirm.

Moore, born on November 21, 1957, is a veteran of the United States Navy. Moore served as a communications technician from 1975 to 1977 and 1979 to 1981. While stationed in the Philippines, Moore married and had a child. Moore's wife[1] and daughter reside in the Philippines.

Moore began receiving V.A. benefits in 1983. He was deemed one hundred percent service-connected fully disabled in 1992,[2] which resulted in a $44,000 lump sum back payment. Moore claims to have put $30,000 in a Schwab account, sent $10,000 to his wife, and kept $4000 for personal spending. The Schwab account was closed in 1993; Moore cannot remember what he did with the money.

In 1996, the V.A. received reports Moore was homeless. The V.A. field examiner, Walter Gearino, found him living at the Village Inn. He was paying the daily room rate and ordering his meals from room service. At that time, despite receiving a total of $2700 per month in V.A. benefits and Social Security disability payments, Moore owed $1230 to Village Inn, $414 to Alpha Taxi Service, and $240 in outstanding court fines.

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[1] At the hearing, Moore was uncertain whether or not he was still married.

[2] The nature of Moore's disability is unclear from the record. Epping testified he believed Moore is schizophrenic. Moore is under the care of a psychiatrist.

Gearino apparently recommended Moore use a payee to help him with his money and referred him to Epping. Moore submitted a voluntary conservatorship petition and Epping was appointed conservator in May 1996.

During the voluntary conservatorship, Epping received Moore's V.A. benefits and Social Security disability payments. Epping arranged for housing and paid Moore's rent. Epping also sent $573.83 per month to Moore's wife, the dependents' share of Moore's V.A. benefits as determined by the V.A. Moore received a weekly allowance of approximately $250 to spend on food, clothing, and other personal items.

It appears Moore routinely runs out of spending money before the end of each month. Moore spends a significant amount of money on sweepstakes entries and magazine subscriptions. Gearino reported Moore seems unable to resist offers he receives in the mail and Moore did not seem to understand the probability of winning. He also noted there were at least one hundred unpaid bills stacked up in Moore's apartment on the day of his field examination in November 1997. Moore admitted he had a large number of unpaid bills and testified the total "probably wouldn't be more than $1000 or $1500."

Moore also pays money to a former landlord, Harold Sondrol, on a debt disputed by Epping. Sondrol failed to file a claim with the probate court after being told he needed to do this to receive payment. Nonetheless, Moore continues to make payments to Sondrol.

In March 1997, Moore removed Epping as payee of Moore's Social Security disability payments. In October 1997, Moore applied to terminate the voluntary conservatorship. Epping responded with a petition to establish an involuntary conservatorship.

The V.A. objected to the termination of the conservatorship and joined the action as a party in interest under Iowa Code § 633.615 (1997). Moore had previously been rated incompetent by the V.A., once in 1988-1989, and once in 1997. Both times, Moore successfully rebutted the incompetency ratings. While the V.A. admits Moore does not need to have every penny monitored, they do feel it is in his best interest to continue a limited conservatorship.

The district court found by clear and convincing evidence Moore lacks the psychological capacity to make important decisions about his financial affairs. The district court established a limited involuntary conservatorship, appointed Epping as conservator, and terminated the voluntary conservatorship.

I. STANDARD OF REVIEW. Moore argues it is difficult to determine the appropriate standard of review because his request to terminate the voluntary conservatorship was combined in a single hearing with Epping's petition to establish an involuntary conservatorship. Moore contends the district court's decision, in effect, did not terminate the voluntary conservatorship -- it was merely relabeled as involuntary. Thus, Moore concludes the appropriate standard of review is de novo. Iowa Code § 633.33 (1997); *In re Guardianship of Hedin*, 528 N.W.2d 567, 581 (Iowa 1995). However, Moore appeals only the establishment of the involuntary

conservatorship. Therefore, it is appropriate for us to use the standard of review for the establishment of an involuntary conservatorship.

Actions for the involuntary appointment of a conservator are triable at law. Iowa Code § 633.33; *In re Conservatorship of Leonard*, 563 N.W.2d 193, 194-195 (Iowa 1997). Thus, we review for errors at law. Iowa R. App. P. 4; *Leonard*, 563 N.W.2d at 195. The district court's findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. *In re Conservatorship of Deremiah*, 477 N.W.2d 691, 693 (Iowa App. 1991). In case of doubt or ambiguity, we construe the findings to uphold, rather than defeat, the trial court's judgment. *Id.* Evidence is substantial or sufficient when a reasonable mind would accept it as adequate to reach the same findings. *Id.*

II. SUBSTANTIAL EVIDENCE. Moore seems to have four major complaints with the evidence considered by the district court. First, Moore asserts Iowa law requires the evidence of incapacity to "involve at least a modicum of medical evidence." Second, Moore maintains there is no evidence of impairment of his decision-making capacity; the record impermissibly focuses on the content of Moore's decisions. Third, Moore argues he is entitled to some sort of presumption based on his V.A. rating of competency. Finally, Moore contends the conservatorship does not address his behavior related to his housing difficulties and his "predilection to enter sweepstakes and order magazines," and, therefore, those behaviors cannot be used to justify the involuntary conservatorship. We disagree.

A. Medical evidence. Moore relies on *In re Guardianship of Teeter* to support his assertion that Iowa law requires presentation of some amount of medical evidence. *Teeter*, 537 N.W.2d 808, 810 (Iowa App. 1995). *Teeter* does not impose a medical evidence requirement. *Teeter* merely states there must be some objective evidence for the court to evaluate on the proposed ward's incapacity; unsupported statements that the petitioner believes the proposed ward is incompetent or the petitioner disagrees with how the proposed ward is spending money is not substantial evidence to support a court's finding of incapacity.

In this case, there is substantial evidence to support the district court's finding that Moore lacks the psychological capacity to make important decisions about his financial affairs, including, for example: (1) Moore's admission he has one hundred unpaid bills; (2) Moore's request for additional funds for necessities because he chose to pay for sweepstakes entries and magazine subscriptions before he purchased things such as clothing; and (3) Moore's demonstrated inability to comprehend the probability he will win a "large prize."

B. Decision-making capacity, not content. Moore maintains the evidence he spends a significant amount of money on sweepstakes entries and magazine subscriptions impermissibly focuses on the content of his decisions instead of on his decision-making capacity. He correctly points out spending money foolishly is not sufficient evidence of incapacity. *Id.* However, Iowa Code section 633.566(2) clearly states the standard as "unable to make *or carry out* important decisions

concerning the proposed ward's financial affairs." (Emphasis added.) Moore testified about how he would handle his money if the conservatorship was terminated.

> I'd save most of it. I'd just pay that. Pay the rent. . . . Groceries and anything else, you know, I need, clothes or articles like, you know, that kind of stuff. That's what -- The rest of it I would save in my bank account.

Moore intends to manage his money well; the objectionable "content-focused" evidence really speaks to his capacity to carry out his intentions.

C. Veteran's Administration competency rating. Moore argues he is entitled to some sort of presumption based on his V.A. rating of competency. Iowa Code section 633.617 establishes that a V.A. incompetency rating is prima facie evidence for the necessity to appoint a conservator. However, there is no statutory language suggesting there should be a presumption of competence based on a V.A. rating of competency. A competency rating could be presented as evidence, just like any other evidence of competency the ward presents. In this case, Moore's rating of competency by the V.A. is weak evidence of decision-making capacity considering the VA's objection to termination of the conservatorship.

D. Effectiveness of the conservatorship to alter Moore's fiscally irresponsible behavior. Moore contends the conservatorship does not address his behavior related to his housing difficulties and his "predilection to enter sweepstakes and order magazines," and, therefore, those behaviors cannot be used to justify the involuntary conservatorship. Moore further argues Iowa's statutory exemption for

Social Security and veteran's benefits is sufficient protection without infringing upon his personal freedoms. Iowa Code § 627.6(8).

In Iowa, the district court must consider the availability of third-party assistance and must appropriately limit conservatorships to protect the personal liberties of the proposed ward. *Hedin*, 528 N.W.2d at 579-580. There is substantial evidence Moore cannot resist paying for sweepstakes entries and magazine subscriptions, nor does he seem able to resist the influence of Sondrol; statutory exemptions are no protection if Moore chooses to pay. Substantial evidence supports the district court's finding Moore lacks capacity and to support the limitations placed on the conservatorship. All of Moore's financial transactions are subject to the conservatorship, but he will continue to receive an allowance and enjoy discretionary spending.

For these reasons, we affirm the district court's ruling establishing an involuntary conservatorship.

AFFIRMED.