IN THE COURT OF APPEALS OF IOWA

No. 6-316 / 95-1108

FILED
OCT 25 1996
CLERK SUPREME COURT

IN THE MATTER OF THE CONSERVATORSHIP AND GUARDIANSHIP OF ETHEL I. GRAY,

CONNIE McCRIGHT,
Petitioner-Appellant.

Appeal from the Iowa District Court for Henry County, John G. Linn, Judge.

Connie McCright, daughter of Ethel Gray, challenges the district court order finding it had jurisdiction over the person and subject matter to appoint a conservator and guardian for Ethel. **AFFIRMED.**

James E. McCright, Oklahoma City, Oklahoma, and Jon M. McCright of Fisher, Ehrhart, McCright & Turner, Cedar Rapids, for appellant.

Steven E. Ort of Bell, Hansen & Ort, New London, and Cynthia H. Danielson of Danielson Law Office, P.C., Mount Pleasant, guardian ad litem for Gray.

Considered by Streit, P.J., Vogel, J., and McCartney, S.J.*

*Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

Connie McCright (Connie) the daughter of Ethel I. Gray, appeals an order of the district court finding the court had jurisdiction over the person and property of Ethel I. Gray and appointed a guardian and conservator for her.

Connie asserts on appeal that the district court failed to give full faith and credit to Oklahoma orders finding that Ethel I. Gray (Ethel) was a resident of Oklahoma and appointing Connie as her guardian and conservator. She also challenges the action of the trial court in considering posttrial briefs filed by the guardian ad litem for Ethel, which consideration she asserts was untimely.

We affirm.

Ethel had been a long-time resident of Henry County, Iowa, and had resided for a number of years in her home in New London, Henry County, Iowa. She is a woman of advanced years.

Because Ethel suffers from senile dementia and Alzheimer's, she was first placed in a limited care nursing facility in November of 1993. At that time, medical reports reflected that Ethel had suffered a significant loss of memory because of strokes, she experienced depression and suffered from poor hearing. While at the limited care facility, Ethel was noted to be disoriented and confused--she did not remember to take her medications or took too much medication--and she had serious memory problems. In view of these problems, she was discharged from the limited care facility in May of 1994 and entered a nursing home facility. Her physician, who

had treated her since 1972, determined that in the latter part of 1994 Ethel suffered from dementia due to Alzheimer's. He also noted her history of high blood cholesterol and hypertension with recent memory loss.

On December 27, 1994, Connie and her husband, who reside in the Oklahoma City, Oklahoma, area, removed Ethel from the nursing home care facility to Oklahoma City.

On the same date, Connie filed a petition in the Oklahoma State District Court seeking her appointment as "guardian of the person" and "guardian of the property" of Ethel. Thereafter, the Oklahoma court appointed Connie as such guardian of both the person and property.

On or about December 30, 1994, two applications were filed in Henry County District Court seeking the appointment of a conservator of the property belonging to Ethel, which included her home in Henry County, Iowa. One petition was filed by her son, Byron Gray (Byron), who is a brother of Connie, proposing he be appointed conservator, and the other petition was filed by an attorney who had represented Ethel over the years proposing that Firstar Bank be appointed conservator of her property. Thereafter, the attorney also filed, on January 10, 1995, a petition for appointment of guardian of the person of Ethel proposing her son, Byron, be appointed as guardian.

On March 16, 1995, Connie filed petitions for appointment of conservator and of guardianship in Henry County District Court proposing that Connie be appointed to both positions.

After trial, the district court appointed Connie as guardian of the person of Ethel, concluding Ethel was apparently happy and adequately cared for under Connie's aegis. The court, however, appointed Firstar Bank of Burlington, Iowa, as conservator of her property.

Our review is at law, reviewing for any reversible error in the proceedings. Iowa Code §§ 633.555 and 633.569 (1994). The findings of the district court for Henry County are generally binding upon us as a verdict.

The trial court found that Ethel did not have sufficient mental capacity to wittingly and knowingly change her place of residence or domicile. Under the authority of *Julson v. Julson,* 255 Iowa 301, 306, 122 N.W.2d 329, 332 (1963) and *Gray v. Roth,* 438 N.W.2d 25, 28 (Iowa App. 1989) the court found that it retained jurisdiction for the purposes of appointing a guardian. The trial court further found that even assuming arguendo that Ethel was not a resident of Iowa, that it had jurisdiction to appoint a conservator over her property consisting of her home in Henry County, Iowa. *Edwards v. Smith,* 238 Iowa 1080, 1087, 29 N.W.2d 404, 407 (1947).

The issue argued both in district court and in this court by the appellant is that the full and faith and credit clause of the federal constitution mandates acceptance by the Iowa court of the orders entered in Oklahoma State District Court appointing Connie as both guardian and as conservator (in Oklahoma, known as a guardian of the property).

While it is required that states must give full faith and credit to judgments and decrees of sister states, this is not an absolute mandate. The Supreme Court of Iowa held that a second court, such as our Iowa District Court, must first find that the issues were fully and fairly tried in the sister state court. *Struebin v. State of Illinois*, 383 N.W.2d 516, 519 (Iowa 1986). If that inquiry by the Iowa court concludes that the issues were "fairly and fully litigated," then the mandate is imposed. *Id.* Here, however, the trial court did not find that the issues of Ethel's competency and the appropriateness of Connie to be appointed as her conservator had been fully and fairly litigated in Oklahoma, setting forth considerable detail in its decree the various factors it found were not litigated, including Connie's prior management of Ethel's affairs and the questionable execution of a power of attorney by Ethel in favor of Connie. The trial court found that had those factors been known and litigated in Oklahoma, the Oklahoma court could well have refused to make the appointment as it did in appointing Connie as "guardian of the property."

Section 633.63 of the Code of Iowa requires that fiduciaries handling Iowa property must be residents of Iowa. States are rightfully concerned about who manages real property within their boundaries; how and in what fashion these properties are treated. *Gaskins v. Gaskins*, 311 Ky. 59, 61, 223 S.W.2d 374, 375 (1949).

We are not directed to any relevant material indicating that the trial court considered any portion of the brief which appellant contends was late filed and therefore find no reversible error in this regard.

In reviewing the record in this case, we agree with the trial court and find no error in its analysis of the issues and its conclusions.

Based upon the foregoing, we, therefore, affirm the judgment and decree of the trial court. Costs of the appeal are to be assessed to the appellant.

AFFIRMED.