

IN THE COURT OF APPEALS OF IOWA

No. 8-660 / 98-0418

Filed April 30, 1999

CASS COUNTY, IOWA,

Plaintiff-Appellant,

vs.

**PAULINE SANDHORST, Conservator
and Guardian of Eugene Sandhorst,**

Defendant-Appellee.

Appeal from the Iowa District Court for Cass County, James M. Richardson,
Judge.

The county appeals a district court's ruling approving the county's claim against the Eugene Sandhorst Conservatorship for services provided to Eugene Sandhorst but denying access to the assets of the Eugene Sandhorst Trust to pay the claim. **AFFIRMED IN PART AND REVERSED IN PART.**

James P. Barry, County Attorney, for appellant.

Wendy L. Carlson and Danette L. Kennedy of Whitfield & Eddy, P.L.C., Des
Moines, for appellee.

Heard by Huitink, P.J., and Mahan and Zimmer, JJ., but decided en banc.

MAHAN, J.

Cass County appeals a district court's ruling approving the claim against the Eugene Sandhorst Conservatorship for services provided to Eugene Sandhorst but denying access to the assets of the Eugene Sandhorst Trust to pay the claim. The county contends the district court should have rescinded or corrected previous orders which approved the transfer of Eugene's assets from the conservatorship to the trust for the express purpose of maintaining Eugene's eligibility to receive government benefits and services. We affirm in part and reverse in part.

Eugene is a forty-six-year-old man afflicted with Down's Syndrome. Eugene's mother, Pauline Sandhorst, is his conservator and guardian.

Eugene began receiving services from CASS, Inc. in 1978. CASS, Inc. is a non-profit organization which lends assistance to persons with disabilities. Funding for CASS, Inc., comes from both the State of Iowa and Cass County. They specialize in areas of work activity, employment support, and community support living. While employed at CASS, Inc., Eugene received wages.¹ In addition, Eugene received social security benefits. Cass County expended the sum of \$31,021.56 for Eugene's services from July 1992 until April 1997.

In early 1997, Cass County discovered Eugene had assets separate from the conservatorship in a sum exceeding \$38,000. Funding for Eugene's care was terminated on April 28, 1997, on the basis of this newly-discovered information.

¹ The record shows these wages were not redirected to repay either the State of Iowa or Cass County for Eugene's care.

Cass County discovered Eugene had inherited a fractional remainder interest in real property from his maternal grandfather, Bruno Waldau, in 1983. Pauline was appointed as Eugene's guardian and conservator in May 1989. In June 1989, Pauline petitioned for authorization to transfer Eugene's remainder interest in the real property from the conservatorship into a separate trust. Part of the motivation for this transfer was that Eugene not be disqualified from receiving local, state, or federal government benefits he would otherwise be eligible to receive as a result of his disability.

The district court granted approval in June 1989 and Eugene's remainder interest in the real property was transferred to the trust. A dispute among the beneficiaries of Bruno's will was ultimately resolved by the sale of the real property and the distribution of the proceeds. The district court approved the sale of Eugene's remainder interest in February 1995 and authorized the transfer of Eugene's share of the proceeds to the trust in May 1995.²

Cass County's obligation to pay for Eugene's services from 1992 until 1997 was mandated pursuant to Title XI,³ Iowa Code section 222.60 (1989). Upon discovery of Eugene's trust assets, Cass County filed a claim in May 1997 against the conservatorship for repayment of all expenditures.

On January 30, 1998, the district court entered an order granting the claim of Cass County in the amount of \$31,021.56. The conservatorship was directed to apply

² Court orders from February and May 1995 clarified the legal description of the remainder interest transferred to the trust in 1989.

³ In 1993, the relevant title was changed to Title VI.

"any and all sums presently held in this conservatorship towards satisfying said claim." The district court further ordered that the trust not be invaded to satisfy the claim.

I. STANDARD OF REVIEW. Our scope of review is for errors at law. Iowa R. App. P. 4. The district court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

II. NOTICE. Pauline asserts we do not have jurisdiction to review the issue presented because Cass County has not filed a petition to vacate or modify the contested orders pursuant to Iowa Rule of Civil Procedure 252. We disagree.

The three orders were entered on June 26, 1989; February 20, 1995; and May 1, 1995. It is undisputed Cass County was not served with notice involving the three orders and did not become aware of the trust assets until early 1997. Funding for Eugene's care was terminated on April 28, 1997, on the basis of this *newly-discovered information*. Cass County then filed a claim for repayment in May 1997.

The record clearly indicates Cass County could not have directly appealed the granting of the three orders. In addition, it would have been an impossibility for Cass County to file a petition to vacate or modify even the last order of May 1, 1995, as the time limit under rule 253 had passed when Cass County first discovered the existence of the trust. The time limit under rule 253 is jurisdictional and, therefore, the court is without power to entertain a petition filed thereafter. *Kern v. Woodbury County*, 234 Iowa 1321, 1324, 14 N.W.2d 687, 688 (1944).

The district court sitting in probate has jurisdiction over the administration, settlement, and closing of conservatorships. *See* Iowa Code § 633.10(3) (1997). The district court has authority to order and approve conveyances of conservatorship assets. *See* Iowa Code §§ 633.388, 633.396, 633.399, 633.402, and 633.652. Orders obtained without notice are not final and are reviewable by the district court at any time prior to the entry of the order approving the final report. *See* Iowa Code §§ 633.36-.37. This language applies to guardianships and conservatorships as well as other probate matters. *In re Guardianship of Sams*, 256 N.W.2d 570, 572 (Iowa 1977). Pauline does not dispute that the June 1989, February 1995, and May 1995 orders were entered without notice to or an appearance by Cass County, nor does Pauline assert an order has been entered approving the final report of the conservator. Thus, even disregarding the due process implications, Cass County had the right by statute to obtain review of these orders. *Id.* The district court has the authority to not only enter orders approving conveyances of conservatorship assets, but to vacate those orders. *In re Estate of Borrego*, 490 N.W.2d 833, 836 (Iowa 1992).

In addition to the statutory considerations, there are also due process implications which must be addressed. It is undisputed Cass County had a financial interest in this matter and the three district court orders were entered without notice to the county. Cass County had expended \$31,021.56 in Eugene's behalf. Cass County was entitled to notice and an opportunity to be heard. U.S. Const. amend.

XIV, § 1; Iowa Const. art. I, § 9; *Scott County v. Iowa District Court*, 397 N.W.2d 754, 756 (Iowa 1986).

We conclude, therefore, Cass County has a statutory and due process right to seek review of the three district court orders. We find Pauline's argument we are without jurisdiction to review this matter to be without merit.

III. VALIDITY OF THE TRANSFERS. Cass County contends the district court erred in not “rescinding or correcting” the previous orders in question. We agree.

It is the public policy of the State of Iowa that the knowing transfer of a legal or equitable property interest with the intent to obtain or enable the transferor to obtain public assistance is prohibited. Iowa Code § 714.8(12). It is undisputed the trust was created for the purpose of maintaining Eugene's eligibility for public assistance.

Under Iowa law, fraudulent transfers are void. *American Sur. Co. of New York v. Edwards & Bradford Lumber Co.*, 57 F. Supp. 18, 27 (D.C. Iowa 1944). Cass County asserts the actions of Eugene's family and counsel rise to the level of criminal behavior. Thus, Cass County argues the previous orders are void and may be vacated at any time. *Holmes v. Polk City Sav. Bank*, 278 N.W.2d 32, 35 (Iowa 1979); *Johnson v. Mitchell*, 489 N.W.2d 411, 414 (Iowa App. 1992).

We do not address the issue of criminal behavior. However, we do find the actions in setting up the trust violate the public policy addressed in section 714.8(12).

We conclude Cass County should be able to invade the trust assets to satisfy the claim.

We affirm that part of the district court's order which approved the claim of Cass County against the conservatorship. However, we reverse that portion of the district court's order which held the trust not be invaded to satisfy the claim.

AFFIRMED IN PART AND REVERSED IN PART.

Huitink, Streit, and Zimmer, JJ., concur; Sackett, C.J., specially concurs; Vogel, J., dissents.

SACKETT, C.J. (specially concurring)

I concur with the majority that a May 1, 1995 transfer of cash from Eugene Sandhorst's conservatorship to a trust was a void transfer and should be rescinded.

Cass County filed a claim in the Conservatorship of Eugene Sandhorst seeking to establish a claim for reimbursement. The conservatorship answered alleging, among other things, on May 1, 1995, an order issued authorizing transfer of \$36,534.97 to a trust naming Donnis Kessler as trustee, and the trust was not available to Eugene.

The County now appeals contending, among other things, the May 5, 1995 order approving transfer of \$36,534.97 from the conservatorship to the trust should be voided.

The dissent to the majority opinion correctly points out the pleadings and procedures are hardly clear. Yet, the record reflects the County's claim on appeal was fully tried and both the trustee and conservator were before the district court. The undisputed facts are on May 1, 1995, the conservator transferred money to the trust for the purpose of maintaining Eugene's eligibility for public assistance. The transfer was made without notice to the County, a known creditor.

I agree with the majority this transfer should be voided.

VOGEL, J. (dissenting)

I respectfully dissent. While I wholeheartedly agree with the public policy voiced by the majority, we cannot abandon our rules of civil and appellate procedure in order to achieve this result.

Application of the Iowa Rules of Civil Procedure in a conservatorship. All actions triable in probate are to be governed by the rules of civil procedure, except as otherwise provided in the code. *See* Iowa Code § 633.34 (1997). The majority interprets Iowa Code sections 633.36 and 633.37 to provide that no order entered in a conservatorship is final until the conservatorship is closed and a final report is filed. However, this interpretation could lead to impractical results. A conservatorship is a vehicle to protect assets of someone who is not able to do so. *See* Iowa Code § 633.566. There is no time limitation on the duration of a conservatorship. *See* Iowa Code § 633.675. The conservator is obligated to make periodic reports and have such reports approved by the court. *See* Iowa Code §§ 633.670, 633.671. If the orders approving the periodic reports are not final orders, subject to our rules of civil procedure, then an aggrieved person would have the ability to revisit an order entered years, even decades earlier. If such were the case, any witnesses, such as a previous conservator, bank personnel, accountant, attorney, or tax advisor, to name just a few, may no longer be available or if available, may not be able to recall the relevant events. This scenario is just one example of why we have rules of civil procedure.

Cass County is seeking to vacate or modify final judgments which were never appealed. See Iowa R. App. P. 1 & 5. I would find Iowa Code section 633.34 controls and requires Cass County to follow the rules of civil procedure. As Cass County did not file a timely petition to vacate or modify any of the contested orders pursuant to Iowa Rules of Civil Procedure 252 and 253, I would find that we do not have authority to review the orders.

I further disagree with the majority opinion as additional reasons exist to affirm the district court.

Funding by Cass County. Cass County provided funding to Cass, Inc., for Eugene's services beginning in July of 1992. When Eugene's trust assets were disclosed on his application for services in 1997, Cass County terminated his funding and filed a claim in the conservatorship for repayment of its expenditures. The majority concludes that Cass County is entitled to invade the trust because the orders of June 26, 1989 (in which the court authorized conveyance of Eugene's fractional remainder interest to the trust), February 20, 1995 (in which the court approved the sale of the real estate), and May 1, 1995 (in which the court approved transfer of the Eugene's interest in the sale proceeds to the trust), were entered in violation of Cass County's due process rights. I disagree for the several reasons stated below.

The origins of the trust property. The Eugene Sandhorst Trust was funded with a remainder interest Eugene inherited from his grandfather. Bruno Waldau died in 1983 leaving a life estate in certain real estate to his son, Lawrence, and his

daughter, Pauline, with a remainder interest in several grandchildren, including Eugene. In 1988 Pauline established the Eugene Sandhorst Trust.

In May of 1989, Pauline petitioned the court to open a conservatorship for Eugene. In the initial inventory filed with the court Pauline listed Eugene's fractional remainder interest in the real estate as an asset, but noted that his interest was subject to her life estate.

In June of 1989, the district court authorized the conveyance of Eugene's fractional remainder interest in the real estate from the conservatorship to the trust. The terms of the trust provide that Pauline is the sole income and principal beneficiary of the trust during her lifetime, thereby preserving her life estate. Upon Pauline's death, the remaining assets are to fund the Residuary Trust, from which the trustee may make discretionary distributions for Eugene's supplemental care. This was designed as a spendthrift trust, such that creditors may not reach either the principal nor the interest. Upon Eugene's death, the remaining assets are to be distributed to Pauline's heirs.¹

Sale of the trust assets. In 1995 the beneficiaries of Bruno Waldo's will, including Eugene and the several other fractional remaindermen, agreed to sell the real estate and distribute the proceeds. Eugene's remainder interest was held in the trust, with the trustee having authority to sell the property. However, there was a dispute being litigated among the beneficiaries of the Bruno Waldau estate as to each beneficiaries' interest in the three tracts of real estate. Until that issue was settled, a

¹ The distribution from the Residuary Trust upon Eugene's death, to Pauline's heirs, runs contrary to the concept of a remainder interest in Eugene.

question remained as to whether all of Eugene's fractional remainder interest had actually been transferred to the trust in 1989. For that reason, Pauline, as conservator, petitioned the court and received authority to sell Eugene's fractional remainder interest. The court granted Pauline's request for authority to sell in February of 1995; she received the proceeds of the sale, and the court authorized the transfer of Eugene's share of the proceeds (\$35,534.97) to the trust in May 1995. Both orders were the result of the precautionary petition filed by Pauline. However, as Eugene's remainder interest was correctly identified and transferred to the trust in 1989, there was no remainder interest in the conservatorship at the time of the sale. Consequently, these two orders had little, if any, effect. The trustee, under Article VI (1) of the trust, had the power to sell any trust assets without court authority and did in fact sign the deed, conveying Eugene's fractional remainder interest². The majority's conclusion that Cass County should have received notice of the sale of real estate in 1995 is illusory because no property from the conservatorship was sold. Only that property which had been transferred to the trust in 1989, subject to a life estate in Pauline, was sold.

Unpreserved issues of fraud. The majority also finds that the transfers from the conservatorship to the trust were fraudulent and therefore void. However, this argument was not addressed in the trial court's ruling and no 179(b) was filed by Cass County on this point. As such, we should not address the issue. *See Goodenow v.*

²The other title holders and Pauline as conservator also signed the deed.

City Council of Maquoketa, Iowa, 574 N.W.2d 18, 27 (Iowa 1998); *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206-07 (Iowa 1984) (issues must be presented to and ruled upon by trial court to be preserved for appeal). Furthermore, Cass County only goes so far in its brief as to assert that the transfers were “voidable.” Even if the orders were “voidable,” Cass County was still required to file a timely petition under Rule 252. *See Holmes v. Polk City Sav. Bank*, 278 N.W.2d 32, 34 (Iowa 1979) (stating that while a party may seek to have a void judgment vacated at any time, “the privilege of tardy application does not extend to set aside a voidable judgment”).

Unpreserved issues of due process. The majority further concludes that the orders were entered in violation of the due process rights of the county. This argument must fail for several reasons.

At the time the conservatorship was opened (May of 1989), and the remainder interest was transferred to the trust (June 26, 1989), Cass County was not providing funding for Eugene’s services at Cass, Inc. Therefore, Cass County was not a creditor of Eugene’s at either of these critical times and was not entitled to notice of either event. Cass County was not required to provide funding for Eugene’s services until July of 1992, three years after the initial court order authorizing the transfer of Eugene’s remainder interest into the trust. The fact that Eugene’s remainder interest in real estate was later converted to cash in 1995 is immaterial.

In addition, the due process issue was not addressed by the trial court and should not be addressed for the first time on appeal. *See In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1984) (holding that a even a due process challenge is deemed waived if raised for the first time on appeal).

Finally, the county offered no authority to support this argument. *See Hollingsworth v. Schminkey*, 553 N.W.2d 591, 596 (Iowa 1996) (“When a party, in an appellate brief, fails to state, argue, or cite to authority in support of an issue, the issue may be deemed waived.”) (citing Iowa R. App. P. 14(a)(3)).

Conclusion. While the majority attempts to fix what it views as an injustice, it does so by abrogating our rules of civil procedure and our rules of appellate procedure.

For all the reasons set forth in this dissent, I would affirm the decision of the district court.

No. 98-0418. [8-660] CASS COUNTY v. SANDHORST

Appeal from the Iowa District Court for Cass County, James M. Richardson, Judge. **AFFIRMED IN PART AND REVERSED IN PART.** Heard by Huitink, P.J., and Mahan and Zimmer, JJ., but decided en banc. Opinion by Mahan, J. Sackett, J., concurs specially; Vogel, J., dissents. (14 pages \$5.60)

Cass County appeals a district court's ruling approving the claim against the Eugene Sandhorst Conservatorship for services provided to Eugene Sandhorst but denying access to the assets of the Eugene Sandhorst Trust to pay the claim. Eugene is a forty-six-year-old man afflicted with Down's Syndrome. He had received public assistance for many years; Cass County expended the sum of \$31,021.56 for Eugene's

services from July 1992 until April 1997. Cass County terminated funding for Eugene's care after discovering he had assets separate from the conservatorship in a sum exceeding \$38,000. Eugene inherited these assets, a fractional remainder interest in real property, from his maternal grandfather in 1983. Eugene's mother, Pauline, was appointed his guardian and conservator in May 1989. In June 1989, she received permission from the court to transfer the conservatorship assets to a trust. In February 1995, the court authorized the sale of Eugene's fractional remainder and authorized the transfer of Eugene's share of the sale proceeds to the trust. **OPINION HOLDS I.**

Notice. Pauline asserts we do not have jurisdiction to review the issue presented because Cass County had not filed a petition to vacate or modify the contested orders pursuant to Iowa Rule of Civil Procedure 252. It is undisputed Cass County was not served with notice involving the three orders and did not become aware of the assets until early 1997. The record clearly indicates Cass County could not have directly appealed the granting of the three orders. In addition, it would have been impossible for Cass County to file a petition to vacate or modify under rule 252 because the County did not become aware of the assets for two years after entry of the 1995 order. However, in a conservatorship, orders obtained without notice are not final and are reviewable by the district court at any time prior to the entry of the order approving the final report under Iowa Code sections 633.36 and 633.37. In addition to the statutory considerations, there are also due process implications which must be addressed. We conclude Cass County has a statutory and due process right to seek review of the three orders. **II. Validity of the Transfers.** It is the public policy of the State of Iowa that the knowing transfer of a legal or equitable property interest with the intent to obtain or enable the transferor to obtain public assistance is prohibited. It is undisputed the trust was created for the purpose of maintaining Eugene's eligibility for public assistance. We do not address the issue of criminal behavior. However, we find the actions in setting up the trust violate public policy and conclude Cass County should be able to invade the trust assets to satisfy the claim. **SPECIAL CONCURRENCE ASSERTS:**

I concur with the majority that a May 1, 1995 transfer of cash from Eugene Sandhorst's conservatorship to a trust was a void transfer and should be rescinded. Cass County filed a claim in the Conservatorship of Eugene Sandhorst seeking to establish a claim for reimbursement. The conservatorship answered alleging, among other things, on May 1, 1995, an order issued authorizing transfer of \$36,534.97 to a trust naming Donnis Kessler as trustee, and the trust was not available to Eugene. The County now appeals. The dissent to the majority opinion correctly points out the pleadings and procedures are hardly clear. Yet, the record reflects the County's claim on appeal was fully tried and both the trustee and conservator were before the district court. The undisputed facts are on May 1, 1995, the conservator transferred money to the trust for the purpose of maintaining Eugene's eligibility for public assistance. The transfer was made without notice to the County, a known creditor. I agree with the majority this transfer should be voided. **DISSENT ASSERTS:** While I wholeheartedly agree with the public policy voiced by the majority, we cannot abandon our rules of civil and appellate procedure in order to achieve this result. The majority interprets Iowa Code

No. 98-0418. [8-660] CASS COUNTY v. SANDHORST(continued)

sections 633.36 and 633.37 to provide that no order entered in a conservatorship is final until the conservatorship is closed and a final report is filed. However, this interpretation could lead to impractical results. If the orders approving the periodic reports are not final orders, subject to our rules of civil procedure, then an aggrieved person would have the ability to revisit an order entered years, even decades earlier. I would find Iowa Code section 633.34 controls and requires Cass County to follow the rules of civil procedure. As Cass County did not file a timely petition to vacate or modify any of the contested orders pursuant to Iowa Rules of Civil Procedure 252 and 253, I would find that we do not have authority to review the orders. The majority's conclusion that Cass County should have received notice of the sale of real estate in 1995 is illusory because no property from the conservatorship was sold. Only that property which had been transferred to the trust in 1989, subject to a life estate in Pauline, was sold. The majority also finds that the transfers from the conservatorship to the trust were fraudulent and therefore void. However, this argument was not addressed in the trial court's ruling and no 179(b) was filed by Cass County on this point. As such, we should not address the issue. The majority further concludes that the orders were entered in violation of the due process rights of the county. However, at the time the conservatorship was opened (May of 1989), and the remainder interest was transferred to the trust (June 26, 1989), Cass County was not providing funding for Eugene's services at Cass, Inc. Therefore, Cass County was not a creditor of Eugene's at either of these critical times and was not entitled to notice of either event. Cass County was not required to provide funding for Eugene's services until July of 1992, three years after the initial court order authorizing the transfer of Eugene's remainder interest into the trust. The fact that Eugene's remainder interest was converted to cash in 1995 is immaterial. Finally, the due process issue was not preserved for appeal and the county offered no authority to support this argument. For all of these reasons, I would affirm the decision of the district court.