IN THE COURT OF APPEALS OF IOWA

No. 6-370 / 95-620

FILED
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CLERK SUPREME COURT

IN THE MATTER OF THE CONSERVATORSHIP OF DAISY H. GRIDLEY,
An Adult,

WAYNE GRIDLEY,
Appellant,

vs.

STEVEN A. JENSEN and JAMES L. PEDERSON,
Appellees.

Appeal from the Iowa District Court for Union County, James W. Brown, Judge.

Wayne Gridley appeals denial of his application for removal of the co-conservators of his mother's estate. **AFFIRMED.**

James R. Cook of Law Office of James R. Cook, Des Moines, for appellant.

Arnold O. Kenyon, III of Steffes, Kenyon & Nielsen, P.C., Creston, for appellees.

Considered by Habhab, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Wayne Gridley appeals the denial of his application for removal of the co-conservators of his mother's estate. He contends: (1) one of the co-conservators has a conflict of interest; (2) the co-conservators neglected their duties in failing to report to the court in a timely fashion; (3) Wayne was not given notice before an order approving an annual report was entered; and (4) the conservator failed to account for the ward's interest in a cow-calf operation and failed to properly inventory the ward's home. We affirm.

I. ***Scope of Review.*** In questions involving the removal of an executor by the probate court, we review the entire record under an abuse of discretion standard. *In re Estate of Myers,* 229 Iowa 170, 171, 294 N.W. 235, 235 (1940); *In re Estate of Randeris,* 523 N.W.2d 600, 604 (Iowa App. 1994). We examine the record de novo to determine whether an abuse of discretion can be found. *Schildberg v. Schildberg,* 461 N.W.2d 186, 190 (Iowa 1990). We are not bound by the findings of the trial court, but give them weight, especially when the credibility of a witness is involved. *In re Estate of Bruene,* 350 N.W.2d 209, 211 (Iowa App. 1984).

II. ***Background Facts.*** In March of 1988, a voluntary conservatorship was established for Daisy H. Gridley, with her son, Wayne Gridley, the petitioner and appellant, as conservator. A few months later, Wayne voluntarily resigned as conservator. Steven A. Jensen and Arnold O. Kenyon, II, both attorneys, were

appointed as substitute co-conservators. Another brother, Marven, who had farmed the ward's land for many years, had been represented by Jensen; hence, the addition of Kenyon to balance the already apparent conflict of interest. In November of 1992, Kenyon resigned and James L. Pederson, also an attorney but with no prior legal connection to any of the parties, was appointed as co-conservator.

During Wayne's tenure as conservator, an initial inventory of assets was filed showing the ward had a one-half interest with Marven in a cow-calf operation consisting of 75 cows and 4 bulls. In March of 1991, after Wayne questioned the lack of accounting regarding the cow-calf operation, Judge Darrel Goodhue ordered Marven to provide the co-conservators with a complete accounting for the ward's share of the cow-calf operation from March 1988, when the conservatorship was established, to December 31, 1990. The co-conservators were to file the accounting by January 25, 1991. No accounting was filed until January 4, 1995, several months after the petition for removal of co-conservators was filed.

III. ***Removal of Conservators.*** The grounds for the removal of a fiduciary are spelled out by statute and include mismanagement of the estate and failure to perform any duty imposed by law. Iowa Code § 633.65 (1993). *In re Estate of Randeris*, 523 N.W.2d 600, 606 (Iowa App. 1994). The trial court has broad discretion in deciding whether to remove an executor and trustee. *Schildberg,* 461 N.W.2d at 191; *In re Estate of Lovell,* 344 N.W.2d 576, 579 (Iowa App. 1983). A conflict of interest may support removal as well as unwarranted hostility between the executor and trustee and

the beneficiaries which seriously interferes with the effectiveness of the trust. *Schildberg*, 461 N.W.2d at 192-93.

The conflict of interest with Jensen has been resolved. Although not so ordered, Jensen consented to step down as co-conservator as the trial court saw a conflict of interest in Jensen's continued service to the conservatorship.

Failure to obey the 1991 court order and promptly file an accounting of the cow-calf operation was a concern to the trial court. The conservators' explanations of the delay were marginal and the trial court noted its displeasure in the dilatory response to a court order. However, after reviewing the late filed report of Pederson, the court found no prejudice resulted from the delay. We find no abuse of discretion in denying removal of the conservators.

Wayne further contends he should have received notice before the Order Approving Annual Report was entered January 4, 1994. We find this contention to be without merit. Wayne could have filed a Request for Notice pursuant to Iowa Code section 633.42. No notice was required to be given to him absent such request. Iowa Code §§ 633.670, 633.671.

Finally, Wayne argues the failure to inventory personal property and provide an accounting for the cow-calf operation,[1] pursuant to Judge Goodhue's 1991 order, were grounds for sanctions including removal of the conservators. The trial court

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[1]There were no allegations of conversion in the application for removal of co-conservators.

found both of these areas were satisfactorily investigated by Pederson and included in his report in January of 1995. As there was satisfactory compliance with the prior order of the court, the trial court overruled Wayne's motion to remove the conservators. We find no abuse of discretion and affirm the trial court.

AFFIRMED.