

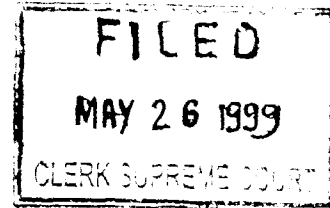
IN THE COURT OF APPEALS OF IOWA

No. 9-168 / 98-0476

KAREN K. YOUNTS,
Appellee,

vs.

MICHAEL W. MARTIN,
Appellant.



**IN THE MATTER OF THE CONSERVATORSHIP
OF MICHAEL MARTIN,**

MICHAEL MARTIN,
Appellant,

KAREN YOUNTS and KIRK SHEARER,
Appellees.

Appeal from the Iowa District Court for Pottawattamie County and the Iowa District Court for Mills County, James M. Richardson, Judge.

Appellant claims the district court erred in denying his motion to dismiss a petition for declaratory relief and in establishing an involuntary guardianship and conservatorship. **AFFIRMED IN PART; REVERSED IN PART.**

Deborah L. Petersen of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, for appellant.

Richard B. Maher, Omaha, Nebraska, for appellees.

Heard by Huitink, P.J., and Vogel and Zimmer, JJ. Sackett, C.J., takes no part.

ZIMMER, J.

Michael Martin appeals a Pottawattamie County District Court order denying his motion to dismiss a petition for declaratory relief. He also appeals the Pottawattamie County District Court's *sua sponte* imposition upon him of an involuntary guardianship and conservatorship in Mills County. He further appeals the Pottawattamie County District Court's invalidation of his notice of termination of farm tenancy. He finally appeals a Mills County District Court order imposing an involuntary guardianship and conservatorship. We affirm in part and reverse in part.

Michael Martin is the father of Karen Younts. At age eighty-two, Martin was suffering from senile dementia and other health problems. On February 12, 1997, he executed a durable power of attorney for health care decisions and a general power of attorney. The general power of attorney became effective when Martin's physician certified in writing that Martin could not handle his financial affairs because of senile dementia. Younts, a registered nurse, was given both the medical and general powers of attorney. The conferral of powers was for Martin's benefit alone and was not coupled with any interest running to Younts.

In August 1997, Martin threatened to terminate Younts' appointment as attorney-in-fact. He also threatened to terminate a farm tenancy arrangement in which he had participated with Younts and her husband for ten years. On August 27, 1997, Younts filed a petition for declaratory judgment and an application for injunctive relief in Pottawattamie County. She sought a declaration of her rights to serve as Martin's attorney-in-fact and injunctive relief to prevent him from engaging

in business transactions she had not authorized. She did not request an injunction to bar him from revoking the powers of attorney.

On August 28, 1997, the Pottawattamie County District Court entered a temporary restraining order (TRO) prohibiting Martin from issuing notice of termination of farm tenancy. Hearing on Younts' petition was ultimately set for November 21, 1997. On August 30, Martin served notice of termination of farm tenancy.

On November 12, 1997, Martin executed two documents revoking Younts' medical and general powers of attorney. According to the record, Younts was never served with notice of revocation because Martin felt he was barred from doing so by the Pottawattamie County District Court's prior TRO. When trial began on November 21, Martin introduced these revocations into evidence. Younts did not object to their admission into evidence, but specifically refused to acknowledge their legal effect. After Younts presented her case, Martin moved to summarily dismiss Younts' petition because he had revoked her powers of attorney and because she had failed to establish he was incompetent to make those revocations. The court took the motion under advisement.

On December 29, 1997, the Pottawattamie County District Court filed an order finding Martin had been incompetent to handle his business affairs since February 12, 1997. The court ruled the medical and general powers of attorney naming Younts as attorney-in-fact were valid. The court further concluded an involuntary guardianship and conservatorship should be established for Martin in Mills County with Younts

and Kirk Shearer (Martin's accountant) as co-guardians and co-conservators. Finally, the court held the notice of termination of farm tenancy served on August 30 was invalid. Martin subsequently motioned the court to amend and enlarge its findings and requested a new trial. These motions were denied. Martin thereafter filed his notice of appeal on March 16, 1998.

On February 9, 1998, Younts and Shearer filed a petition for the appointment of an involuntary conservator for Martin in Mills County District Court. The matter came on for hearing on May 11, 1998.¹ The court took judicial notice of the Pottawattamie case and found Martin needed a guardian and conservator. The Mills County District Court appointed Younts as guardian and Shearer and Younts as co-conservators. Martin appealed from that order as well, and his appeals from the two actions were consolidated.

On appeal, Martin raises several issues. He claims the Pottawattamie County District Court erred in failing to grant his motion to dismiss after he submitted revocations of the medical and general powers of attorney. He also claims the Pottawattamie County District Court exceeded its authority by granting, *sua sponte*, an involuntary guardianship and conservatorship, and by invalidating his notice of termination of farm tenancy. Finally, he argues the Mills County District Court erred in appointing a conservator and in appointing, *sua sponte*, a guardian. He also claims appointment of Younts to either of these roles was improper.

¹ The parties stated during oral argument they had agreed the record developed in the prior action in Pottawattamie County District Court would be used for the conservatorship action in Mills County.

I. Revocation of Powers of Attorney.

A. Scope of Review. We review Martin's claims to correct for errors at law. *See* Iowa R. App. P. 4; *Iowa Tel. Ass'n v. City of Hawarden*, 589 N.W.2d 245, 250 (Iowa 1999). The district court's decision not to grant a motion to dismiss must rest on legal grounds.

B. Merits. We agree with Martin the Pottawattamie County District Court should have granted his motion to dismiss when the revocations were submitted to the court at trial and Younts was thus made aware of those revocations. It is irrelevant, as Younts contends, that Martin may not have had the capacity to make such revocations. Under Iowa Code chapter 144B, Martin, as the principal in the power of attorney relationship, is presumed to have the capacity to revoke a durable power of attorney for health care. *See* Iowa Code §§ 144B.1(6), .8(2) (1997). Accordingly, "a durable power of attorney for health care may be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to mental or physical condition." Iowa Code § 144B.8(1) (1997). Thus, Martin's revocation of the medical power of attorney was valid.

Martin's revocation of the general power of attorney was similarly also valid. The power of attorney agreement specifically states it may be revoked at any time by Martin. General powers of attorney may be revoked at any time with or without cause. *See* 3 Am. Jur. 2d *Agency* § 43 (1986). As this agreement conferred only mere bare agency authority, it is revocable at Martin's will or even caprice. *Id.*

II. Appointment of Guardian and Conservator by Pottawattamie County District Court.

A. Scope of Review. Actions for the involuntary appointment of guardians and conservators are tried as law actions. *See* Iowa Code §§ 633.33, 633.555, 633.569 (1997); *In re Conservatorship of Leonard*, 563 N.W.2d 193, 194–95 (Iowa 1997). Our review is therefore for errors at law. *See* Iowa R. App. P. 4; *In re Conservatorship of Leonard*, 563 N.W.2d at 195. Because our review is for errors at law, we affirm only if there is substantial evidence to support the district court's findings. *See* Iowa R. App. P. 14(f)(1); *In re Conservatorship of Leonard*, 563 N.W.2d at 195.

B. Merits. We determine the Pottawattamie County District Court exceeded its authority under Iowa Code chapter 633 by appointed Younts and Shearer as co-guardians and co-conservators for Martin as part of its ruling on Younts' petition for declaratory judgment. Neither party petitioned for the appointment of a guardian or conservator in Pottawattamie County. The issue of whether a guardian or conservator should be appointed for Martin was not before the court through pleadings and was not adjudicated by consent of the parties. Before a guardianship and conservatorship may be established, a proposed ward must be advised of the nature and purpose of the proceedings as well as his rights in those proceedings. *See* Iowa Code §§ 633.561(4)(a)–(b), .575(4)(a)–(b) (1997). Because the requirements of the probate code for opening a guardianship and conservatorship were not met, we reverse the portion of the Pottawattamie County District Court order which ordered

a conservatorship and guardianship be established in Mills County and which appointed Younts and Shearer as co-guardians and co-conservators.

III. Invalidation of Martin's Notice of Termination of Farm Tenancy.

Martin claims the notice of termination was not properly before the district court and therefore the court should not have made a determination as to its validity. We agree the district court should refrain from addressing issues not actually presented to it. However, in this case we determine any error in the district court's consideration of the validity of the notice of termination was harmless.

The TRO specifically and clearly barred Martin from "issuing notice of termination of farm tenancy . . . until such times as a decision is entered in this matter, declaring rights in the Power of Attorney granted Karen K. Younts pending hearing" ² This order was entered August 28, 1997. Martin served notice of termination of farm tenancy on August 30, 1997. These facts are not disputed. Consequently, as a matter of law, his notice was in clear violation of the court's restraining order. Any error by the district court in considering this matter was harmless.

IV. Appointment of Guardian and Conservator by Mills County District Court.

² The parties do not challenge the validity of the district court's TRO entered on August 28, 1997, nor do we find any reason to question that order. We assume the TRO was properly entered.

A. Scope of Review. Our review of involuntary guardianship and conservatorship actions is discussed above in section II(A).

B. Merits. Younts and Shearer petitioned only for the appointment of a conservator. We determine the Mills County District Court should not have appointed a guardian for the same reasons the Pottawattamie County District Court should not have appointed a guardian. The district court exceeded its authority in establishing a guardianship for Martin in the absence of a petition to appoint a guardian for him. Accordingly, we reverse that portion of the Mills County District Court order.

Martin does not argue the district court exceeded its authority in establishing the involuntary conservatorship. Therefore, we will affirm if there is substantial evidence to support the district court's findings that a conservatorship is warranted. See Iowa R. App. P. 14(f)(1); *In re Conservatorship of Leonard*, 563 N.W.2d at 195.

Whether an involuntary conservatorship may be established requires a finding that the proposed ward's "decision-making process is so impaired he or she is not able to care for his or her own personal safety and is not able to provide necessities of life." See *In re Guardianship & Conservatorship of Teeter*, 537 N.W.2d 808, 810 (Iowa App. 1995) (citing *In re Guardianship of Hedin*, 528 N.W.2d 567, 576–77 (Iowa 1995); see also *In re Conservatorship of Leonard*, 563 N.W.2d at 196 (implicitly approving application of the *Hedin* guardianship standard to the involuntary appointment of a conservator under Iowa Code section 633.566). The proposed ward must, "[b]y reason of mental, physical or other incapacity," be "unable

to make or carry out important decisions concerning the proposed ward's financial affairs." Iowa Code § 633.566; *In re Conservatorship of Leonard*, 563 N.W.2d at 195.

We determine there is substantial evidence in the record showing Martin is so impaired. Four doctors offered medical opinions as to Martin's ability to handle his financial affairs, care for his own personal safety, and provide necessities of life. They stated Martin suffered from dementia, significant mental disorder, and memory difficulties. Two doctors stated Martin could not handle his own monetary decisions and financial affairs. Another questioned Martin's ability to manage complex financial decisions and suggested he should have help making such decisions. A fourth doctor recommended Martin rely upon caretakers for providing medications, nutrition, and safety. During trial, the court observed Martin to be confused during his testimony. For these reasons, we agree with the district court's conclusion that sufficient evidence exists to support appointment of an involuntary conservator to govern Martin's financial affairs. Additionally, we determine Younts and Shearer are sufficiently qualified to assume these responsibilities.

V. Conclusion.

In summary, we reverse that portion of the Pottawattamie County District Court order which established a conservatorship for Martin and which appointed Younts and Shearer as co-guardians and co-conservators. We also reverse the portion of the Mills County District Court order which established a guardianship. We affirm

the decisions of the district court on all other issues. We remand for further proceedings consistent with this ruling.

AFFIRMED IN PART; REVERSED IN PART.

No. 98-0476. [9-168] YOUNTS v. MARTIN

Appeal from the Iowa District Court for Pottawattamie County, and the Iowa District Court for Mills County. James M. Richardson, Judge. **AFFIRMED IN PART; REVERSED IN PART.** Heard by Huitink, P.J., and Vogel, and Zimmer, JJ. Sackett, C.J., takes no part. Opinion by Zimmer, J. (9 pages \$3.60)

On February 12, 1997, Martin executed a durable power of attorney for health care decisions and a general power of attorney. Younts was given both the medical and general powers of attorney. Younts later petitioned for declaration of her rights to serve as Martin's attorney-in-fact and injunctive relief to prevent him from engaging in business transactions she had not authorized. On August 28, 1997, Pottawattamie County District Court entered a temporary restraining order (TRO) prohibiting Martin from issuing notice of termination of farm tenancy. On August 30, Martin served notice of termination of farm tenancy. Martin later also executed two documents revoking

Younts' medical and general powers of attorney. Martin thereafter introduced these revocations into evidence at the hearing on Younts' petition. Martin moved to summarily dismiss Younts' petition because he had revoked her powers of attorney and because she had failed to establish he was incompetent to make those revocations. The Pottawattamie County District Court thereafter (1) found Martin incompetent to handle his business affairs; (2) ruled the medical and general powers of attorney were valid; (3) concluded an involuntary guardianship and conservatorship should be established for Martin in Mills County with Karen and Kirk Shearer (Martin's accountant) as co-guardians and co-conservators; and (4) held invalid the notice of termination of farm tenancy. Younts and Shearer subsequently petitioned for the appointment of an involuntary conservator in Mills County District Court. The court appointed Younts as guardian and Shearer and Younts as co-conservators. **OPINION HOLDS: I. Revocation of Powers of Attorney.** We agree with Martin the Pottawattamie County District Court should have granted his motion to dismiss when the revocations were submitted to the court at trial and Younts was thus made aware of those revocations. It is irrelevant, as Younts contends, that Martin may not have had the capacity to make such revocations. See Iowa Code §§ 144B.1(6), .8(1)–(2) (1997). Martin's revocation of the general power of attorney was also valid. The power of attorney agreement specifically states it may be revoked at any time by Martin. General powers of attorney may be revoked at any time with or without cause. **II. Appointment of Guardian and Conservator by Pottawattamie County District Court.** The court exceeded its authority when it appointed, *sua sponte*, Younts and Shearer as co-guardians and co-conservators. **III. Invalidity of Martin's Notice of Farm Tenancy.** The district court properly found Martin's August 30 notice violated the August 28 TRO. **IV. Appointment of Guardian and Conservator by Mills County District Court.** The district court exceeded its authority in establishing a guardianship for Martin. We reverse this portion of the court's order. However, sufficient evidence exists to support appointment of an involuntary conservator. Younts and Shearer are sufficiently qualified to assume these responsibilities.