IN THE COURT OF APPEALS OF IOWA

FILED
AUG 27 1986
CLERK SUPREME COURT

Filed August 27, 1986

IN THE MATTER OF THE CONSERVATORSHIP OF SARAH K. ELLERMAN and ALEX W. ELLERMAN,

JAMES B. FOX,

Appellant.

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JAMES B. FOX, Individually and as proposed conservator for Sarah K. Ellerman and Alex W. Ellerman, and as Trustee of the Trust created under the Last Will and Testament of Anita J. Fox,

Appellant,

vs.

KEITH L. ELLERMAN,

Appellee.

6-200
85-1325

Appeal from the Iowa District Court for Polk County (No. 46-20598) - George W. Bergeson, Judge.

Stepfather of minor children appeals from an order sustaining a motion to dismiss his petition asking to be appointed as conservator. **REVERSED AND REMANDED.**

Peter A. Keller and Ralph R. Brown, of McDonald, Keller, Brown & Kimple, Dallas Center, for petitioner-appellant.

Richard J. Howes and Charles F. Becker, of Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, for the respondent-appellee.

Considered by Donielson, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

Petitioner James Fox, the stepfather of Sarah Ellerman and Alex Ellerman, appeals from a district court order dismissing his petition asking to be appointed conservator for his stepchildren to manage their property located in Iowa and not subject to a special trust. He contends the district court erred by holding (1) it lacked subject matter jurisdiction to appoint a resident because the stepchildren were now Illinois residents; (2) the request for a conservatorship had to be denied because the stepchildren's Illinois residency caused the situs of jewelry, the subject of the trust, to be in Illinois even though its physical location was in Iowa, and (3) neither the existing trust nor the proposed conservatorship could give the district court authority to award visitation rights to the stepfather. In addition, Fox asserts the district court erred by looking beyond the pleadings and basing its dismissal on matters which are properly matters of proof.

Sarah Ellerman and Alex Ellerman are the minor children of Anita Ellerman Fox and Keith Ellerman. After the children were born the marriage between Anita and Keith was dissolved. The dissolution decree placed the children in Anita's custody. In 1979, Anita married James Fox and he became the children's stepfather.

In March, 1983, Anita died. Anita's will placed all of her property, except some jewelry, in a trust for the children's benefit, with Fox named as trustee. The jewelry noted was left to the children outright.

Following Anita's death Fox voluntarily relinquished custody of the children to Keith Ellerman, their natural father. Ellerman and the children then lived in Polk County, Iowa. For several months after the transfer of custody, the father permitted the stepfather to exercise visitation with the children. However,

the father later terminated this visitation and he has continued to deny the stepfather any visitation with the children.

In May, 1985, while Ellerman and the children still lived in Polk County, Iowa, Fox filed the present petition asking to be appointed conservator for the children. He asserted Ellerman and the children were planning to move to Chicago and the children's best interests called for the appointment of a conservator in Iowa to manage the children's property located in Iowa. Fox also asked that he be awarded visitation with the children so he could determine their needs in order to fulfill his prospective duties as conservator and his existing duties as trustee under Anita's will.

Ellerman moved to dismiss all portions of Fox's petition. The district court granted Ellerman's motion and dismissed Fox's petition in its entirety for want of jurisdiction and for failure to state a claim upon which relief could be granted.

The district court held because the children had moved to Illinois, the Iowa court lacked jurisdiction to appoint a conservator for them. The district court also held the request for a conservatorship had to be denied since the children's Illinois residence caused the situs of the property subject to a proposed conservatorship (the jewelry) to be Illinois, even though the property was physically located in Iowa. Finally, the district court held that neither the existing trust nor the proposed conservatorship could give the court authority to grant Fox visitation rights.

We look at the very narrow issue of whether the district court was correct in entertaining a motion to dismiss Fox's petition for appointment of a conservator based on lack of subject matter jurisdiction.

When the petition for appointment of conservator was filed and served the children were residents of Polk County. When hearing on Keith Ellerman's motion to dismiss was held the children lived in Illinois. However, at the hearing Ellerman did not introduce any evidence to show the children's current domicile.

The parties agree that when the petition was filed and service made the Polk County District Court had jurisdiction to entertain a petition for appointment of a conservator. Iowa Code §633.12 (1985) provides:

> The court of each county shall have original and exclusive jurisdiction . . .to appoint conservators and guardians of residents of the county.

When the petition was filed and service obtained the children were residents of Polk County, Iowa. At that point the Polk County District Court obtained complete jurisdiction. The district court, having obtained complete jurisdiction, retains it until final disposition of the cause. Jensen v. Jensen, 260 Iowa 371, 377, 147 N.W.2d 612 (1967). Therefore, we find the trial court erred in determining it lacked subject matter jurisdiction over Fox's petition for appointment of a conservator.

We also reject appellee's argument that In re Conservatorship of Lenz, 201 N.W.2d 72, 73 (Iowa 1972) controls this issue. Lenz is not controlling because there the district court held a Linn County conservatorship to be of no force where it had been stipulated that at all times the ward was a resident of Johnson County. Here it is admitted the children were residents of Polk County on the date Fox filed his petition in Polk County District Court. As such, the Polk County District Court obtained jurisdiction.

We determine the trial court has subject matter jurisdiction to entertain Fox's petition for appointment of a conservator. We further determine the dismissal of the other allegations set forth in the petition was premature. We

remand to the district court for hearing. In doing so we make no determination whether the relief Fox requested in the petition be granted.

REVERSED AND REMANDED.