

SUPREME COURT OF THE STATE OF MONTANA

In re the Guardianship and Conservatorship of G.O.

2016 MT 298N (Supreme Court of the State of Montana 2016) · No. DA 16-0011 · Decided November 15, 2016

SUMMARY

The Montana Supreme Court affirmed the District Court's order in a guardianship and conservatorship proceeding involving G.O. The court held that the decedent's brothers lacked standing to challenge changes to transfer-on-death beneficiary designations made while G.O. was alive. The court also upheld the District Court's findings concerning initial conservatorship expenses, concluding they were supported by credible bank-statement evidence.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Patricia Cotter; Patricia Cotter; Mike McGrath; Michael E. Wheat; Beth Baker; James Jeremiah Shea
JURISDICTION	Montana
DECIDED	November 15, 2016
DOCKET	DA 16-0011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the Montana Eighth Judicial District Court's findings of fact, conclusions of law, and order to pay costs and disburse conservatorship assets.
STANDARD OF REVIEW	Findings of fact are reviewed for clear error. A finding is clearly erroneous when it is not supported by credible evidence.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; expressly designated noncitable and not precedent.
PARTIES	Doug, Bruce v. Lisa

TOPICS

[guardianships](#) [conservatorship](#) [probate procedure](#) [appellate jurisdiction](#) [standard of review](#)

PRACTICE AREAS

[guardianship](#) [conservatorship](#) [probate](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether Doug and Bruce had standing to challenge the modification of transfer-on-death beneficiary designations while G.O. was still alive.
2. Whether the District Court's findings regarding the first month of conservatorship expenses were clearly erroneous because they allegedly lacked evidentiary support.

HOLDINGS

1. Would-be beneficiaries of a transfer-on-death designation have no present property interest before the account holder's death and therefore lack standing to challenge their removal as beneficiaries. Because G.O. was alive when the designations were modified, Doug and Bruce lacked standing, and the court declined to reach the merits.
2. The District Court's findings regarding the first month of conservatorship expenses were not clearly erroneous because bank statements from G.O. and Lisa's joint account constituted credible evidence supporting those findings.

KEY QUOTATIONS

“Because G.O. was still alive at the time the designation of the TOD beneficiaries was changed, Doug and Bruce do not have standing to challenge the TOD beneficiary modification in the June 2012 order.” (¶ 3)

“Because the bank statements are credible evidence that support the District Court’s findings, we conclude that the District Court’s findings are not clearly erroneous.” (¶ 4)

FACTUAL BACKGROUND

G.O. suffered from a rare form of cancer and diminishing mental capacity during the last years of his life. His wife, Lisa, petitioned for appointment of a guardian and conservator, and the District Court appointed her conservator and approved modification of transfer-on-death beneficiary designations on five investment accounts. After G.O.'s death, his brothers Doug and Bruce challenged the beneficiary modification and the District Court's findings regarding the first month's conservatorship expenses, which were based on bank statements from G.O. and Lisa's joint account.

PROCEDURAL HISTORY

The District Court appointed Lisa as conservator for G.O. and later approved modification of the transfer-on-death beneficiary designations on five investment accounts. After G.O.'s death, Doug and Bruce appealed the District Court's findings, conclusions, and order concerning conservatorship costs and asset disbursement, challenging both the beneficiary modification and the evidentiary basis for the first month of conservatorship expenses. The Montana Supreme Court declined to reach the beneficiary issue for lack of standing and affirmed the findings concerning expenses.

DISPOSITION

affirmed

CASES CITED

- In re Guardianship & Conservatorship of Anderson, 2009 MT 344, 353 Mont. 139, 218 P.3d 1220
- Roland v. Davis, 2013 MT 148, 370 Mont. 327, 302 P.3d 91

OPINION

PER CURIAM.

11/15/2016 DA 16-0011 Case Number: DA 16-0011 IN THE SUPREME COURT OF THE STATE OF MONTANA 2016 MT 298N IN RE THE GUARDIANSHIP AND CONSERVATORSHIP OF: G.O., An Incapacitated and Protected Person. APPEAL FROM: District Court of the Eighth Judicial District, In and For the County of Cascade, Cause No. ADG 12-014 Honorable Gregory G. Pinski, Presiding Judge COUNSEL OF RECORD: For Appellant: John E. Seidlitz, Jr., Seidlitz Law Office, Great Falls, Montana James P. O'Brien, O'Brien Law Office, P.C., Missoula, Montana For Appellee: Kirk D. Evenson, Marra, Evenson & Bell, P.C., Great Falls, Montana Submitted on Briefs: September 14, 2016 Decided: November 15, 2016 Filed: _____ Clerk Justice Patricia Cotter delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.

Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 G.O. died on March 3, 2013. In the last years of his life, G.O. suffered from a rare form of cancer and diminishing mental capacity.

On April 19, 2012, G.O.'s wife Lisa filed an emergency petition to appoint a guardian and conservator for G.O. The District Court appointed Lisa as G.O.'s conservator, and on June 27, 2012, granted Lisa's petition to modify G.O.'s transfer on death (TOD) beneficiary designations for five investment accounts. G.O.'s brothers, Doug and Bruce (Appellants), appeal from the Montana Eighth Judicial District Court's findings of fact, conclusions of law, and order to pay costs and disburse conservatorship assets.

Appellants raise two issues: first, they argue the District Court improperly made Lisa a TOD beneficiary on the five investment accounts; and second, they argue the District Court lacked evidence establishing the first month of conservatorship expenses, but made findings on these expenses anyway. ¶3 The designation of TOD beneficiaries of an investment account does not create a present property interest in the beneficiaries.

In re Guardianship & Conservatorship of Anderson, 2009 MT 344, ¶ 23, 353 Mont. 139, 218 P.3d 1220. Because the would-be beneficiaries lack a present property interest in the TOD prior to the

death of the account holder, they also lack standing to challenge their removal as beneficiaries. Anderson, 2 ¶ 26.

Here, Doug and Bruce were TOD beneficiaries of three of G.O.'s five investment accounts held at Ameriprise Financial Services, Inc. Although the present appeal nominally stems from the District Court's order to pay costs and disburse conservatorship assets, the alleged error actually occurred, if at all, in the District Court's June 27, 2012, order modifying the TOD beneficiary designations on all five of G.O.'s investment accounts.

Because G.O. was still alive at the time the designation of the TOD beneficiaries was changed, Doug and Bruce do not have standing to challenge the TOD beneficiary modification in the June 2012 order. Anderson, ¶ 26.

We therefore decline to reach the merits of their argument. ¶4 Regarding Appellants' second alleged error, the District Court relied on bank statements from G.O. and Lisa's joint account to establish the costs from the first month of the conservatorship.

Because Lisa was a co-owner of the account, the District Court rightly observed that she owed no fiduciary duties related to the use of the funds. Beyond the funds Lisa took from the joint account, the District Court did not find any additional costs during this first month of conservatorship.

We review a district court's findings of fact for clear error. Roland v. Davis, 2013 MT 148, ¶ 21, 370 Mont. 327, 302 P.3d 91. A finding is clearly erroneous when it is not supported by credible evidence. Roland, ¶ 21.

Because the bank statements are credible evidence that support the District Court's findings, we conclude that the District Court's findings are not clearly erroneous. ¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions.

In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's findings of fact are not clearly erroneous. ¶6 We affirm. /S/ PATRICIA COTTER We Concur: /S/ MIKE McGRATH /S/ MICHAEL E WHEAT /S/ BETH BAKER /S/ JAMES JEREMIAH SHEA 4