

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Davis v. King

686 So. 2d 763 (Fla. Dist. Ct. App. 1997) · No. No. 96-0506 · Decided January 17, 1997

SUMMARY

The Florida Fifth District Court of Appeal affirmed orders determining Mary H. Masters incapacitated and appointing Sandra Lee King as plenary guardian. The court held that substantial competent evidence rebutted the statutory presumption favoring the preneed guardians because conflicts of interest rendered Jessie Elizabeth Davis and her mother unqualified to serve. The court concluded that the trial court acted within its discretion in appointing King.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Antoon, J.; Peterson, C.J.; Thompson, J.
JURISDICTION	Florida
DECIDED	January 17, 1997
DOCKET	No. 96-0506
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from orders determining incapacity and appointing a plenary guardian; opinion issued on motion for rehearing.
STANDARD OF REVIEW	Abuse of discretion, with the trial court's factual findings reviewed for support by substantial competent evidence.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Jessie Elizabeth Davis v. Sandra Lee King

TOPICS

- guardianship procedure
- guardianships
- appellate procedure
- standard of review

PRACTICE AREAS

- Guardianship
- Probate
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly refused to appoint the preneed guardians despite the statutory rebuttable presumption favoring their appointment.
2. Whether the trial court abused its discretion in finding Davis and Stauffer unqualified because of conflicts of interest and appointing King as plenary guardian.

HOLDINGS

1. The statutory presumption arising from production of a preneed guardianship declaration is rebuttable, and the trial court was not required to appoint a designated preneed guardian who was found unqualified to serve.
2. The trial court acted within its discretion in refusing to appoint Davis or Stauffer and appointing King to perform the fiduciary responsibilities of guardian.

KEY QUOTATIONS

“Production of the declaration in a proceeding for incapacity shall constitute a rebuttable presumption that the preneed guardian is entitled to serve as a guardian. The court shall not be bound to appoint the preneed guardian if the preneed guardian is found to be unqualified to serve as guardian.” (764)

FACTUAL BACKGROUND

Mary H. Masters, age 88, executed a preneed declaration naming Jessie Elizabeth Davis as guardian and Davis's mother, Peggy Stauffer, as alternate guardian. Davis moved in with Masters, used Masters's money to pay off the mortgage on Davis's home, purchased Masters's approximately \$150,000 property for \$85,000 on favorable terms, and was present when withdrawals were made from Masters's depleted bank account. The trial court also found that Stauffer's close relationship with Davis created a conflict because Stauffer might not pursue claims the guardianship had against Davis.

PROCEDURAL HISTORY

Sandra Lee King petitioned to determine the incapacity of Mary H. Masters. Jessie Elizabeth Davis intervened under section 744.3045, Florida Statutes, asserting that she should be appointed plenary guardian because Masters had designated Davis and Davis's mother as preneed guardians. After hearing evidence, the trial court found Davis and her mother unqualified because of conflicts of interest and appointed King as guardian. Davis appealed, and on rehearing the appellate court withdrew its prior opinion and affirmed.

DISPOSITION

affirmed