

SUPREME JUDICIAL COURT OF MAINE

Guardianship of Cardner

709 A.2d 731 (Me. 1998) · Decided April 23, 1998

SUMMARY

Nelson Johnson appealed a Maine probate court order requiring him to cooperate in transferring annuity payments and other assets to Edward Cardner’s guardian. The Maine Supreme Judicial Court held that Johnson submitted to the probate court’s jurisdiction by filing a demand for notice, participating through counsel, and seeking court confirmation of an agreement protecting him from liability, and it affirmed the judgment.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Dana, Justice; Clifford; Dana; Lipez; Roberts; Rudman; Saufley; Wathen
JURISDICTION	Maine
DECIDED	April 23, 1998
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nelson Johnson appealed a Waldo County Probate Court judgment ordering him to cooperate in transferring Edward Cardner's assets, including annuity payments, to Cardner's guardian.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; precedential.
PARTIES	Nelson Johnson v. Carmela Dufour

TOPICS

- guardianship procedure
- personal jurisdiction
- standing
- probate procedure
- appellate procedure

PRACTICE AREAS

- guardianships
- probate
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

- Whether Johnson submitted to and was bound by the personal jurisdiction of the probate court through his participation in the guardianship proceedings and his request for court protection.

2. Whether Johnson had standing to challenge the probate court's authority to order the scholarship fund to hold an annuity payment in escrow.

HOLDINGS

1. Johnson submitted to the probate court's jurisdiction by filing a demand for notice, participating through counsel, and seeking court confirmation of an agreement protecting him from potential liability; he was therefore bound by the court's orders.
2. Johnson lacked standing to assert the scholarship fund's rights because he was attempting to raise the rights of a third party.

KEY QUOTATIONS

“Having sought the court’s protection in this manner, Johnson has submitted to its jurisdiction.” (732)

FACTUAL BACKGROUND

Edward Cardner granted Nelson Johnson, a New Jersey attorney, a durable power of attorney. Johnson used Cardner's funds to purchase a \$200,000 annuity naming a New Jersey nonprofit corporation as payee, although Cardner opposed that use of his funds. After Cardner moved to Maine, Dufour sought appointment as his guardian and conservator, and Johnson participated in the probate proceedings through counsel, filed a demand for notice, and sought court confirmation of an agreement intended in part to limit his liability. The probate court ultimately treated the annuity as an asset of Cardner's estate and ordered Johnson to cooperate in transferring the annuity payments to Cardner.

PROCEDURAL HISTORY

Carmela Dufour petitioned for appointment as Cardner's guardian and conservator in the Waldo County Probate Court. Johnson participated through Maine counsel, filed a demand for notice, negotiated an agreement concerning the transfer of Cardner's assets, and objected to a motion concerning the annuity. The probate court later found Johnson to be an interested person bound by its orders and ordered him to cooperate in transferring the annuity payments. The Supreme Judicial Court of Maine affirmed.

DISPOSITION

affirmed

CASES CITED

- *Donn-Griffin v. Donn*, 615 A.2d 253, 254-55 (Me. 1992)
- *Common Cause v. State*, 455 A.2d 1, 6 (Me. 1983)

OPINION

DANA, J.

DANA, Justice. [¶ 1] Nelson Johnson appeals from the judgment of the Waldo County Probate Court (Barrett, J.) ordering him to cooperate in the transfer of Edward Cardner's assets to Cardner's guardian. Johnson contends that the court lacked personal jurisdiction over him. Finding no merit in Johnson's contention, we affirm the judgment. [¶ 2] Cardner granted a durable power of attorney to Johnson, a New Jersey attorney, in 1994.

Apparently without Cardner's involvement, in 1995, Johnson formed a New Jersey nonprofit corporation named the Ed and Tex Cardner Scholarship Fund to be operated by a five-member board of directors that included Johnson. Johnson was also its registered agent.

In 1996, with Cardner's funds, Johnson purchased a \$200,000 annuity naming the corporation as payee. Cardner received no beneficial tax treatment as a result of this purchase and testified at the guardianship hearing that he opposed the use of his funds in this manner. [¶3] In June 1996 Cardner moved to Maine to live with his sister-in-law, Carmela Dufour. Shortly thereafter Johnson began sending \$1,000 each month to Dufour for Cardner's care. *732[¶4] In 1997 Dufour petitioned for an appointment as Cardner's guardian and conservator.

At that time Johnson retained Maine counsel, who filed a notice of appearance with the court on Johnson's behalf. After being informed by the court that a notice of appearance had no effect in a probate proceeding, Johnson's counsel filed a demand for notice with the court, stating that Johnson was interested in the estate as a holder of Cardner's durable power of attorney. [¶5] Following a hearing attended by Johnson's counsel, the court appointed Dufour as temporary conservator, and Johnson and Dufour began negotiating the transfer of Cardner's assets to Dufour.

Johnson ultimately agreed to turn over the Cardner assets within his control on two conditions: the written agreement include a provision that purported to absolve Johnson of any liability he might have with regard to the purchase of the annuity; and Dufour submit the agreement to the court for confirmation. [¶ 6] Johnson's counsel attended the hearing on Dufour's guardianship petition in May 1997 and hired a court reporter to record it.

At the hearing Dufour submitted a motion requesting that the court order Johnson to cooperate in changing the payee of the annuity to Cardner during his lifetime. Johnson's counsel objected to the motion, stating that the court had no authority over the scholarship fund.

The court deferred making a decision concerning the fund and requested that Johnson and Dufour submit any memoranda, pleadings or documentation they wanted the court to consider in relation to the issue. The court appointed Dufour as Cardner's guardian and confirmed the agreement between Dufour and Johnson. [¶ 7] After the hearing, Johnson informed the court that he would not participate in any further proceedings involving the scholarship fund.

Following a hearing without Johnson or his counsel, the court found the annuity to be an asset of Cardner's estate and Johnson to be an interested person who was bound by the court's orders. The

court ordered Johnson to cooperate and execute all documents needed to transfer the annuity payments to Cardner during his lifetime.

The court also ordered that the next yearly annuity payment be held in escrow until it could be transferred to Cardner. [¶ 8] The sole issue on appeal is whether Johnson is bound by the court's orders.¹ Dufour argues that Johnson submitted to the court's jurisdiction by virtue of his actions.

We agree. [¶ 9] Johnson filed a demand for notice with the court stating that he was "interested in the estate." Having filed this demand for notice, he received notice of all proceedings and his counsel attended all proceedings, except the last hearing dealing with the scholarship fund. Johnson also required Dufour to submit for confirmation the agreement limiting his liability for his purchase of the annuity.

Johnson clearly sought this confirmation as a means of protecting himself from liability for his management of Cardner's estate. Having sought the court's protection in this manner, Johnson has submitted to its jurisdiction. See *Donn-Griffin v. Donn*, 615 A.2d 253, 254-55 (Me.1992). [¶ 10] Johnson also contends that the court erred in finding him to be an "interested person" subject to its jurisdiction, see 18-A M.R.S.A. §§ 1-201(20), 1-401, 3-106 (1998), and that the court could not assert jurisdiction over him pursuant to Maine's long-arm statute, see 14 M.R.S.A. § 704-A (1980 & Supp.1997).

Because Johnson sought the court's protection, and thereby submitted to its jurisdiction, it is not necessary to address these contentions. The entry is: Judgment affirmed.. Johnson also argued that the court did not have jurisdiction over the scholarship fund and thus lacked authority to order the fund to hold the then-upcoming annuity payment in escrow. Johnson asserts on appeal that his involvement with the proceedings is only as an individual.

A litigant cannot assert a third party's rights, and therefore Johnson has no standing to argue on behalf of the fund. *Common Cause v. State*, 455 A.2d 1, 6 (Me.1983).