Third District Court of Appeal

State of Florida

Opinion filed April 29, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2541
Lower Tribunal No. 15-3951

Charles Waldon,
Appellant,

vs.

In Re: Guardianship of Charles Waldon,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Mindy S. Glazer, Judge.

Golden Glasko & Assoc., P.A., and William H. Glasko, for appellant.

Thomas-McDonald Law Firm, P.A., and Aislynn Thomas-McDonald, for appellee.

Before SALTER, LINDSEY and LOBREE, JJ.

LOBREE, J.

Charles Waldon (the "ward") appeals from the probate court's order appointing his daughter, Carla Alger ("Alger"), as limited guardian of his person and

property, alleging abuse of discretion due to purported conflicts of interest between them. The ward contends that the existence of a Georgia restraining order against Alger at the time of the evidentiary hearings below, as well as her foreclosure suit on the mortgage of another daughter, where he is named co-defendant due to his junior mortgage interest, created conflicts of interest that precluded her appointment.[1] For the following reasons, we affirm.

Factual and Procedural History

The ward and his wife were declared incapacitated and in need of limited legal guardians in 2015. Elena George ("George"), one of their daughters, was then appointed as his guardian, and arranged for the ward's care. Alger was appointed as guardian of their mother. Later that same year, George gave permission to their sister, Sandra Dunn ("Dunn"), to take the ward out to lunch one day. Upon their failure to return home, George contacted the authorities. Three days later, the ward telephoned that he was winterizing his cabin in Georgia with his two other daughters, Inez Howard ("Howard") and Glenda Waldon.

In October 2015, George traveled to Georgia in an effort to bring the ward back, but he refused. The courts in Georgia did not recognize the Florida order appointing George as guardian because it was not properly domesticated. In

[1] The ward does not dispute that the statutory criteria for appointment of a guardian were otherwise met.

September 2015, the ward reported alleged physical abuse and financial exploitation by Alger, her husband, and the ward's former caretaker, Monte Graham ("Graham"), to the Georgia Division of Aging Services, which forwarded the allegations to Miami-Dade County police, recommending Alger's prosecution. In November 2015, the ward filed suit in Georgia against Alger, her husband, and Graham, sought injunctive relief and damages for alleged breach of fiduciary duties and deprivation of personal property, and obtained an ex parte order enjoining Alger and her husband from threatening, contacting, or attempting to remove the ward from Georgia.

In January 2016, George obtained an order in the proceedings below to show cause why Howard, Glenda Waldon, and Dunn should not return the ward to her in Florida without delay. The sisters failed to return the ward. George continued to pay the ward's bills but resigned as guardian in 2017. That year, Alger petitioned for appointment as the ward's guardian.

In September 2018, at a hearing in Georgia, the ward testified that he resided in Walker County by himself and received social security and food stamps. He also asserted that Alger and her husband took everything he owned, including his firearms and other valuable personal property, that they had attempted to remove him from Georgia against his will, and parked a vehicle so as to block his in an attempt to prevent his escape. The ward testified that he would not return to Florida, partly because he was afraid of being put in jail. The Georgia trial court granted

Alger's motion to dismiss the suit on the basis of forum non conveniens, finding the proceedings below in Florida to be the more appropriate exercise of jurisdiction.[2]

At hearings in August and September 2018, in consideration of the petition to appoint Alger as guardian, the lower court heard testimony from several witnesses, but not the absent ward. Alger testified that she had business experience, had taken a guardianship course, and was already the guardian of her mother, the ward's wife, and managed their property. Melissa Cila, her niece, testified about poor conditions in which the ward lives in Georgia and to Alger's honest intentions in seeking appointment. Howard opposed Alger and sought to be appointed guardian herself, and their two other sisters testified on Howard's behalf. Howard testified that Alger was currently foreclosing on a mortgage on a property Howard owned, and in which the ward and his wife held junior mortgage liens, and that Howard, the ward and his wife were defendants in that action. Copies of the Georgia restraining order and abuse report were also introduced.[3]

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[2] During the pendency of this appeal, the Georgia Court of Appeals partially reversed the lower court's dismissal of the ward's suit, reinstating the default judgment entered against Graham, but affirming the dismissal as to Alger and her husband. See Waldon v. Alger, 835 S.E.2d 312, 317 (Ga. Ct. App. 2019).

[3] Alger's counsel correctly objected to the abuse report's admission on the basis of hearsay, and the lower court erroneously denied the objection. Even if admissible, the report's unredacted portions did not contribute anything that the ward or others had not already testified about, that: he considered Alger dangerous; she attempted to physically remove him to Florida; and she allegedly stole his property. However, confronted with the testimony of the ward's doctor, the lower court gave greater

In November 2018, the lower court rendered the order on appeal appointing Alger as guardian. The court found that Alger was better qualified to be guardian, and that her appointment was in the best interests of the ward, noting their biological relation. The order noted that Alger "met the legal requirements to serve as her father's Guardian" "upon the filing of an FDLE report showing no felony convictions." The court further observed:

> The Court has also reviewed the Ward's testimony in a transcript from the court in Georgia where Ward obtained a restraining Order against [Alger]. The proceedings were conducting [sic] in a very questionable way in which it appeared due process may not have been afforded to [Alger].

Howard was found unsuitable to be guardian partly based on her facilitation of the ward's transportation to Georgia without notice to the prior guardian George, and her failure to return him, contrary to the court's standing order to show cause. The court also found that Howard had a conflict of interest because she owed money to the ward.

Standard of Review

"An appellate court reviews a probate court's appointment of a guardian under an abuse of discretion standard." Acuna v. Dresner, 41 So. 3d 997, 999 (Fla. 3d DCA

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weight to the latter's findings on the decline of the ward's faculties, as well as others' testimony.

2010). Because "judicial discretion is never unbridled," it is "subject to the test of reasonableness; i.e., it must be supported by logic and justification for the result, founded on substantial competent evidence." In re Guardianship of Sitter, 779 So. 2d 346, 348 (Fla. 2d DCA 2000). Moreover, "we must view the facts below in a light most favorable to sustaining the determination of the trial court." Lopez v. Perez, 221 So. 3d 1204, 1205 n.1 (Fla. 3d DCA 2016).

Analysis

The lower court's exercise of discretion in appointing Alger as the guardian was pursuant to section 744.312, Florida Statutes (2018).[4] A court may not appoint

[4] Section 744.312, governing considerations in appointment of guardian, provides in pertinent part:

> (2) . . . the court may appoint any person who is fit and proper and qualified to act as guardian, whether related to the ward or not. The court shall give preference to the appointment of a person who:
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> > (a) Is related by blood or marriage to the ward;
> > (b) Has educational, professional, or business experience relevant to the nature of the services sought to be provided;
> > (c) Has the capacity to manage the financial resources involved; or
> > (d) Has the ability to meet the requirements of the law and the unique needs of the individual case.
>
> (3) The court shall also:
>
> > (a) Consider the wishes expressed by an incapacitated person as to who shall be appointed guardian.

a guardian in any circumstance in which a conflict of interest has arisen. § 744.446(1)-(2), Fla. Stat. (2018);[5] see also § 744.309(3), Fla. Stat. (2018). A conflict of interest is "[a] real or seeming incompatibility between one's private interests and one's public or fiduciary duties." *Conflict of Interest*, Black's Law Dictionary (9th ed. 2009). If a transaction involves a conflict of interest between a guardian and ward, the transaction is prohibited, regardless of the fairness to the ward or whether the transaction is in the best interests of the ward. See Sun Bank & Tr. Co. v. Jones, 645 So. 2d 1008, 1018 (Fla. 5th DCA 1994). The order appointing a guardian must

[5] Section 744.446 provides:

> (1) It is essential to the proper conduct and management of a guardianship that the guardian be independent and impartial. The fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law. The guardian may not incur any obligation on behalf of the guardianship which conflicts with the proper discharge of the guardian's duties.
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> (2) Unless prior approval is obtained by court order, or unless such relationship existed prior to appointment of the guardian and is disclosed to the court in the petition for appointment of guardian, a guardian may not:
>
> > (a) Have any interest, financial or otherwise, direct or indirect, in any business transaction or activity with the guardianship;
> >
> > (b) Acquire an ownership, possessory, security, or other pecuniary interest adverse to the ward . . .

be consistent with the incapacitated person's welfare and safety, and must be the least restrictive appropriate alternative. § 744.2005(3), Fla. Stat. (2018).

A guardian may not generally acquire an ownership, possessory, security, or other pecuniary interest adverse to the ward pursuant to section 744.446(1)(b). Here, at the time of appointment, the guardian did hold a senior mortgage in property that she had sued to foreclose on and in which the ward also owned a junior interest. However, under these facts, where no pecuniary transaction was at issue, the ward was sued only as a necessary party, and there was no indication that the guardian's interest would prevent her from giving her father the same care she had given to her mother, this did not create a sufficient conflict.[6]

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[6] See, e.g., Arent v. Arent, 32 N.W.2d 660, 661-62 (Iowa 1948) (holding that lower court did not abuse its discretion in appointing estranged wife as husband's guardian despite wife's ownership of mortgage on husband's property); In re Estate of Bedford, 158 Cal. 145, 146-47 (Cal. 1910) (holding that, where appointed guardian had adverse property interests to minor ward, degree of hostility of interest did not require reversing the appointment); 38 C.J.S. Guardian & Ward § 24 (2018) (property interest that is adverse to minor is insufficient to preclude appointment of guardian, where there is "no indication that financial considerations would prevent his or her giving the child proper care, nurture, and attention").

Florida law does not immediately invalidate appointments in the event of suit between guardians and wards, but instead requires the appointment of a guardian ad litem, whose petition for the guardian's removal, if made, is to be granted only upon a finding of conflict. This shows that lawsuits are not, per se, a sufficient conflict, and that surrounding circumstances must determine this. See 28 Fla. Jur. 2d Guardian and Ward § 135 (2014). Section 744.441 provides "fiduciary standards courts traditionally impose on guardians in dealing with their ward's property," which can only be breached through transactions made by the guardian involving the ward's property. See Jones, 645 So. 2d at 1018; see also Webster & Moorefield,

Further, section 744.446(2) clearly prefaces its prohibition with the clause "unless prior approval is obtained by court order, or unless such relationship existed prior to appointment of the guardian and is disclosed to the court." The alleged conflict raised here predated the appointment and was later disclosed. Alternatively, the lower court approved of it, by declining to find it preclusive of appointment. Nothing in the record or the law suggests that no reasonable judge would have found the alleged conflicts of interest here to have been insufficient, as the lower court did. Cf. In re Guardianship of Jones, 243 So. 3d 503, 505-06 (Fla. 2d DCA 2018) (affirming appointment waiving limitations set by section 744.312(4)(b) after an evidentiary hearing and detailed order setting forth specific findings supported by competent substantial evidence in the record).

When the facts are viewed in favor of sustaining the appointment, we must not disturb such findings where, as here, they are supported by the record. See Manassa v. Manassa, 738 So. 2d 997, 998 (Fla. 1st DCA 1999); see also In re Guardianship of Lawrence, 563 So. 2d 195, 197 (Fla. 1st DCA 1990) (affirming lower court's acceptance of report alleging guardian's breach of fiduciary duty only because supported by other competent, substantial evidence).

P.A. v. City Nat'l Bank of Miami, 453 So. 2d 441, 443-44 (Fla. 3d DCA 1984). However, this was clearly not the case here.

As to the Georgia restraining order, the trial court's finding giving it no weight because of a perceived, underlying lack of due process is not supported by the record. However, "if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support judgment in the record." Dade Cty. Sch. Bd. v. Radio Station WQBA, 731 So. 2d 638, 644 (Fla. 1999). Although this order existed at the time of the hearings, it was subsequently nullified upon the dismissal of the suit in Georgia, which took place before the lower court's order was rendered. As of the time the order on appeal was rendered, therefore, no conflict of interest could have existed by virtue of a nonexistent order. Even if evidence of the Georgia order should have carried some weight below, while it existed, it would have been evidence of the ward's perceptions of the guardian's dangerousness, likelihood of suffering harm if placed in her care, and preference not to live with her, without the weight of a domesticated order. Because other testimony, medical and otherwise, rebutted all three things and was found more credible by the lower court, it did not err in failing to find that the prior order created a conflict, or in her determination of the ward's welfare. Compare Ahlman v. Wolf, 413 So. 2d 787, 788 (Fla. 3d DCA 1982) ("Mrs. Hand's apparent wishes to that effect expressed in her petition for voluntary guardianship are entitled to consideration . . . but are far from controlling."), with Comerford v. Cherry, 100 So. 2d 385, 391 (Fla. 1958) ("[The ward's] welfare is the 'pole star' by which courts are guided in all such cases,

whether the contention be between father and mother or between them and a third person or between others.”). As there was no disqualifying conflict of interest and competent, substantial evidence supports the trial court’s exercise of discretion, Alger’s appointment as guardian is affirmed.

Affirmed.