

SUPREME COURT OF SOUTH DAKOTA

In re Guardianship and Conservatorship of Dean A. Nelson

2017 S.D. 68 (S.D. 2017) · No. #28050 · Decided November 1, 2017

SUMMARY

The South Dakota Supreme Court reviewed a circuit court order authorizing a conservator to replace Dean A. Nelson's will and eliminate his wife's lifetime interest in one-half of the residuary estate. The court held that although SDCL 29A-5-420 permits a conservator to amend a protected person's will, the circuit court must make adequate factual findings based on evidence, particularly concerning the decision the protected person would have made. The court reversed the authorization because the record lacked sufficient evidence and findings.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Severson, Justice; Gilbertson, Chief Justice; Kern, Justice; Jensen, Circuit Court Judge, sitting for Zinter, Justice; Giles, Circuit Court Judge, sitting for Wilbur, Retired Justice
JURISDICTION	South Dakota
DECIDED	November 1, 2017
DOCKET	#28050
DISPOSITION	reversed
PROCEDURAL POSTURE	Elizabeth Nelson appealed the circuit court's order authorizing Dean Nelson's conservator to adopt a new will eliminating Elizabeth's one-half lifetime interest in the residuary estate.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. A circuit court's factual determinations in guardianship proceedings are reviewed for clear error, and the decision to authorize a conservator to amend a will is reviewed for abuse of discretion. The abuse-of-discretion review must be based on adequate factual findings supported by evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Elizabeth Nelson v. Dean A. Nelson, Chet Groseclose, Georgia K. Hanson, Angela L. Nix

TOPICS

conservatorship

guardianship procedure

estate planning

appellate procedure

standard of review

PRACTICE AREAS

guardianship and conservatorship

estate planning

probate

QUESTIONS PRESENTED

1. Whether the circuit court erred in authorizing Dean Nelson's conservator to amend his will to eliminate Elizabeth Nelson's interest in one-half of the residuary estate.
2. What standards of review apply to a circuit court's authorization of a conservator's amendment of a protected person's will.

HOLDINGS

1. A circuit court's decision to authorize a conservator to amend a protected person's will is reviewed for abuse of discretion, while the underlying factual determinations are reviewed for clear error and statutory interpretation is reviewed de novo.
2. The circuit court abused its discretion and clearly erred by authorizing the conservator to amend Dean Nelson's will without adequate factual findings based on evidence, particularly evidence establishing the decision Dean would have made.

KEY QUOTATIONS

“But while the court is required to consider these nine factors, it has discretion in weighing them.” (§ 13)

“It was clearly erroneous for the circuit court to make these important determinations changing Dean’s estate plan without adequate factual findings based on evidence.” (§ 17)

“Thus, the circuit court’s decision to authorize the Conservator to change the will was an abuse of discretion due to the lack of adequate factual findings.” (§ 18)

FACTUAL BACKGROUND

Dean Nelson's 2008 will and subsequent 2012 and 2013 estate plans consistently provided Elizabeth, his wife, with a lifetime interest in one-half of his residuary estate through a trust. After Dean was diagnosed with Alzheimer's disease, his conservator petitioned to replace the estate plan with a will distributing the entire residue equally among Dean's four daughters. The circuit court approved the change despite receiving no witness testimony or documentary exhibits sufficient to establish Dean's wishes or the other statutory factors governing a conservator's exercise of testamentary powers.

PROCEDURAL HISTORY

Dean Nelson's conservator petitioned the Sixth Judicial Circuit Court to replace Dean's existing estate plan and eliminate Elizabeth's residuary trust. After a 2013 compromise will, the conservator renewed the request in 2016. Following a hearing at which no witnesses testified and no exhibits were introduced other than the conservator's tenth report, the circuit court approved the proposed will. Elizabeth appealed.

DISPOSITION

reversed

CASES CITED

- Milstead v. Johnson, 2016 S.D. 56, ¶ 7, 883 N.W.2d 725, 729
- In re Conservatorship of Didier, 2010 S.D. 56, 784 N.W.2d 486
- In re Conservatorship of Gaaskjolen, 2014 S.D. 10, ¶ 9, 844 N.W.2d 99, 101
- In re Guardianship of Stevenson, 2013 S.D. 4, ¶ 22, 825 N.W.2d 911, 916
- Guardianship & Conservatorship of Fischer, 2008 S.D. 51, ¶ 6, 752 N.W.2d 215, 217
- In re Conservatorship of Irwin, 2007 S.D. 41, ¶ 14, 732 N.W.2d 411, 414
- In re Guardianship and Conservatorship of Miles, 2003 S.D. 34, ¶ 11, 660 N.W.2d 233, 236
- Tisdell v. Beadle Cty. Bd. of Comm'rs, 2001 S.D. 149, ¶ 5, 638 N.W.2d 250, 252-53
- In re Estate of Roehr, 2001 S.D. 85, ¶ 4, 631 N.W.2d 600, 601
- Thurman v. CUNA Mut. Ins. Soc'y, 2013 S.D. 63, ¶ 11, 836 N.W.2d 611, 616

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