

STATE OF MICHIGAN
COURT OF APPEALS

In re Conservatorship of DAVID JAMES
SPRINGSTEAD.

MICHELLE BASURTO,

Appellant,

v

MARY SPRINGSTEAD, Conservator of DAVID
JAMES SPRINGSTEAD, a legally protected person,

Appellee.

MICHELLE BASURTO, as Next Friend of DAVID
JAMES SPRINGSTEAD,

Plaintiff-Appellee,

v

MARY SPRINGSTEAD,

Defendant-Appellant.

UNPUBLISHED

January 13, 2022

No. 355738

Eaton Probate Court

LC No. 13-049803-CA

No. 356286

Eaton Circuit Court

Family Division

LC No. 20-000488-DO

Before: SWARTZLE, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

Mary and David Springstead have been married for more than 45 years. David has dementia and Mary was appointed as his conservator in 2013. David traveled to California in early 2019 to visit his brother and sister-in-law. David did not return to Michigan; rather, Michelle Basurto, David’s niece who lives near David’s current residence in California, initiated two legal proceedings on his behalf. First, Basurto filed a petition to replace Mary as David’s conservator.

Second, shortly after filing that petition, Basurto also filed a divorce action acting as David's next friend. Mary opposed both proceedings and she succeeded in one, but not in the other. In Docket No. 355738, the trial court quashed Basurto's petition to modify or terminate the conservatorship, concluding that she lacked standing to file the petition. Basurto appeals that order by right. In Docket No. 356286, the trial court denied Mary's motion to dismiss the divorce action,¹ concluding that Basurto could act as David's next friend despite his conservatorship. Mary appeals that order by delayed leave granted.² We affirm in both cases.

I. BACKGROUND

In September 2013, Mary was appointed as David's conservator after he was diagnosed with dementia. David receives income from Social Security as well as pensions from the Veterans Administration and the city of Lansing. Mary manages these funds as David's conservator.

In February 2019, David traveled to California. Mary alleged that David went to California because he did not like the Michigan winters, but Basurto alleged that Mary sent David to live in California. David stayed with his brother and sister-in-law in California; Basurto lived nearby. While he was there, David decided he wanted to stay in California permanently and not return to Michigan.

In June 2020, Basurto filed a petition to terminate or modify the conservatorship. Basurto argued that Mary primarily used David's income to pay for Mary's living expenses rather than what was in David's best interests. Basurto requested that the trial court remove Mary as conservator and appoint Basurto as successor conservator. David filed a request to appoint Basurto as next friend two days later. The trial court appointed Basurto as David's next friend, and Basurto filed a verified complaint for divorce on David's behalf that same day.

During the hearing on Basurto's petition to terminate or modify the conservatorship, Mary's counsel argued that Basurto was not entitled to file the petition because she was not an "interested person" under MCL 700.1105(c) or MCR 5.125(C)(26). Basurto's counsel argued that MCL 700.1105(c) and MCR 5.125 were irrelevant to the issue of whether she had standing. Specifically, Basurto's counsel argued that MCR 5.125 only pertained to who must receive notice of a petition. The trial court concluded that Basurto did not "meet[] the definition of a sufficiently interested party in this case, either under the notice rules or under the other rules." The trial court also concluded that Basurto did not allege Mary was not meeting David's needs and, therefore, she failed to make a prima facie showing that there was good cause to remove Mary as conservator. Accordingly, the trial court quashed the petition to terminate or modify the conservatorship. Basurto then filed a motion for reconsideration, which the trial court denied.

¹ Although Mary labeled her motion as a "motion to dismiss" she later clarified that it was a motion for summary disposition under MCR 2.116(C)(8). As such, we will refer to it as a motion for summary disposition.

² *Springstead v Springstead*, unpublished order of the Court of Appeals, entered April 15, 2021 (Docket No. 356286).

In the separate divorce action, Mary filed a motion for summary disposition after the trial court quashed the petition to terminate or modify the conservatorship. Mary primarily argued that, as an incompetent person, David could not consent to have someone serve as his next friend and, therefore, his consent was “void” and had “no legal effect.” Mary also argued that, under MCR 2.201(E), because David had a conservator, only she was permitted to file the verified complaint for divorce. The trial court concluded that the court rules permitted Basurto’s appointment as David’s next friend and, therefore, it denied Mary’s motion for summary disposition. These appeals followed.

II. ANALYSIS

A. STANDARDS OF REVIEW

We review a probate court’s dispositional rulings for an abuse of discretion and the factual findings underlying a probate court’s decision for clear error. *In re Bibi Guardianship*, 315 Mich App 323, 328; 890 NW2d 387 (2016). “A trial court’s decision that an evidentiary hearing is not warranted is reviewed for an abuse of discretion.” *Kernen v Homestead Dev Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002). We review de novo issues of statutory interpretation and the interpretation of court rules. *In re Burnett Estate*, 300 Mich App 489, 494; 834 NW2d 93 (2013). Finally, whether a party has standing is a legal question that we also review de novo. *Trademark Props of Mich, LLC v Fed Nat’l Mtg Ass’n*, 308 Mich App 132, 136; 863 NW2d 344 (2014).

“We review de novo a trial court’s decision to grant or deny a motion for summary disposition.” *Sherman v City of St Joseph*, 332 Mich App 626, 632; 957 NW2d 838 (2020) (citations omitted). MCR 2.116(C)(8) mandates summary disposition if “[t]he opposing party has failed to state a claim on which relief can be granted.” *Harbor Watch Condo Ass’n v Emmet Co Treasurer*, 308 Mich App 380, 384; 863 NW2d 745 (2014). “When deciding a motion brought under this section, a court considers only the pleadings.” *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

B. PETITION TO TERMINATE OR MODIFY THE CONSERVATORSHIP (DOCKET NO. 355738)

In Docket No. 355738, Basurto argues that the trial court abused its discretion by quashing the petition to terminate or modify the conservatorship on the basis that she did not have standing to file the petition. In general, standing requires “one to have in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.” *MOSES, Inc v Southeast Mich Council of Governments*, 270 Mich App 401, 414; 716 NW2d 278 (2006) (cleaned up).

The removal of a conservator is governed by the Estates and Protected Individuals Code, MCL 700.1101 *et seq.* MCL 700.5409(1) provides probate courts the authority to appoint an individual or entity to serve as a legally incapacitated person’s conservator based on order of

priority. If it is in the protected individual's best interests, the court may "pass over a person having priority and appoint a person having a lower priority or no priority." MCL 700.5409(2).

"A person interested in the welfare of an individual for whom a conservator is appointed may file a petition in the appointing court for an order to . . . [r]emove the conservator and appoint a temporary or successor conservator." MCL 700.5415(1)(d). "The court may remove a conservator for good cause, upon notice and hearing" MCL 700.5414. MCL 700.1105(c) provides:

"Interested person" or "person interested in an estate" includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and *by the supreme court rules*. [Emphasis added.]

"Within Subchapter 5.100 of our court rules, which sets forth rules of pleading and practice that apply in probate court, our Supreme Court has promulgated MCR 5.125, which is captioned, 'Interested Persons Defined.' " *In re Rhea Brody Living Trust (On Remand)*, 325 Mich App 476, 484; 925 NW2d 921 (2018), vacated in part on other grounds 504 Mich 882 (2019). MCR 5.125(C) provides, in relevant part:

Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

* * *

(25) The persons interested in an application for appointment of a conservator for a protected individual by a conservator appointed in another state or for the petition for the appointment of a conservator or for a protective order are:

- (a) the individual to be protected if 14 years of age or older,
- (b) the presumptive heirs of the individual to be protected,
- (c) if known, a person named as attorney in fact under a durable power of attorney,
- (d) the nominated conservator,
- (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending, and
- (f) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to manage the protected individual's finances.

(26) The persons interested in a petition for the modification or termination of a guardianship or conservatorship or for the removal of a guardian or a conservator are

(a) those interested in a petition for appointment under subrule (C)(20), (22), (23),³ or (25) as the case may be, and

(b) the guardian or conservator.

In *In re Rhea Brody Living Trust (On Remand)*, 325 Mich App at 486, this Court analyzed MCL 700.1105(c) and MCR 5.125 and concluded that:

Read in concert, MCL 700.1105(c) and MCR 5.125 demonstrate that the interested-person inquiry is decidedly flexible and fact-specific. The identity of the interested persons can change not only over time but also depends on the nature of the proceedings and the relief requested. Moreover, MCR 5.125(D) unambiguously provides that there may be circumstances in which a probate court must determine whether an individual—one who does *not* qualify as an interested person under any of the statutory definitions or under the other subparts of MCR 5.125—nevertheless qualifies as an interested person under the facts presented in the given case.

In this case, contrary to Basurto’s argument, MCL 700.1105(c) and MCR 5.125—not MCL 700.5409(1)—govern whether she has standing to file the petition to terminate or modify the conservatorship. Basurto does not argue that she was an “interested person” under MCL 700.1105(c) or a person interested in a petition to terminate or modify a conservatorship under MCR 5.125(C)(26). Basurto does not satisfy either provision because she is not David’s fiduciary or heir and she does not live with or provide for him. Additionally, there is no evidence that Basurto is a devisee under David’s will or his trust. Similarly, nothing in the record establishes that Basurto has any property interest in David’s estate. While Basurto may be a successor beneficiary of David’s life insurance policy, she has not argued on appeal that she is, in fact, a successor beneficiary or that such beneficiary status is sufficient to be an “interested person.” Consequently, any such argument is abandoned. See *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015). Finally, Basurto does not argue on appeal that she otherwise qualifies as an “interested person” under MCR 5.125(D). Thus, any such argument is abandoned. See *id.* Accordingly, Basurto does not have standing to modify or terminate the conservatorship, and the trial court did not abuse its discretion by quashing the petition.

In light of the resolution of this issue, we need not address Basurto’s additional argument that the trial court should have held an evidentiary hearing before determining whether there was good cause to remove Mary as conservator.

³ Neither MCR 5.125(C)(20), (22), nor (23) is applicable in this case.

C. MOTION FOR SUMMARY DISPOSITION IN THE DIVORCE ACTION (DOCKET NO. 356286)

In Docket No. 356286, Mary argues that Basurto was not entitled to file the verified complaint for divorce as David's next friend and, therefore, the trial court abused its discretion by denying her motion for summary disposition in the divorce action. "An action for a divorce may be brought by a wife or a husband" MCL 552.11. But incompetent persons cannot sue on their own behalf. See *Klida v Braman*, 278 Mich App 60, 72; 748 NW2d 244 (2008).

Actions for divorce are governed by subchapter 3.200 of the Michigan Court Rules. See MCR 3.201(a). MCR 3.202(A) provides, in relevant part, that "incompetent persons may sue and be sued as provided in MCR 2.201." MCR 2.201(E)(1) addresses representation for minors and incompetent persons and provides, in relevant part:

(a) If a minor or incompetent person has a conservator, actions may be brought and must be defended by the conservator on behalf of the minor or incompetent person.

(b) If a minor or incompetent person does not have a conservator to represent the person as plaintiff, the court shall appoint a competent and responsible person to appear as next friend on his or her behalf, and the next friend is responsible for the costs of the action.

Additionally, MCR 2.201(E)(2) addresses the appointment of a representative and provides, in relevant part:

(a) Appointment of a next friend or guardian ad litem shall be made by the court as follows:

* * *

(ii) if the party is a minor under 14 years of age or an incompetent person, on the nomination of the party's next of kin or of another relative or friend the court deems suitable, accompanied by a written consent of the person to be appointed; or

* * *

(b) The court may refuse to appoint a representative it deems unsuitable.

Mary argues that Basurto could not act as David's next friend in the divorce action because he already had a conservator, Mary. In doing so, Mary essentially argues that if an incompetent person already has a conservator, then that person cannot also have a next friend for purposes of a lawsuit. Conservators and next friends represent different interests for an incompetent person. The Estates and Protected Individuals Code defines "conservator" as "a person appointed by a court to manage a protected individual's estate." MCL 700.1103(h). In contrast, *Black's Law Dictionary* (11th ed) defines "next friend" as "[s]omeone who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff, but who is not a party to the lawsuit and is not

appointed as a guardian.” See also *Matter of Estate of Powell*, 160 Mich App 704, 713; 408 NW2d 525 (1987).⁴ “Since ‘estate’ is defined by the code as the *property* of the person whose affairs are subject to its provisions, the duties of a conservator and next friend are not identical or even necessarily overlapping.” *Id.* (citations omitted).

MCR 2.201(E)(1)(a) provides that the conservator “may” file an action on behalf of the incompetent person. “[T]he term ‘may’ is typically permissive” *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008). “[A] necessary corollary to the plain meaning rule is that courts should give the ordinary and accepted meaning to . . . the permissive word ‘may’ unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.” *Davis v Secretary of State*, 333 Mich App 588; 963 NW2d 653 (2020), quoting *Browder v Int’l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982) (ellipsis in original). As explained by this Court in *Matter of Estate of Powell*, 160 Mich App at 716, MCR 2.201(E) “mandates appointment of a next friend if a minor does not have a conservator to represent him. Nowhere does the rule suggest, by negative inference, that the court shall not appoint a next friend if a minor has a conservator to represent him.” In that case, this Court concluded that the trial court acted within its discretion when it allowed an incompetent minor to be represented by a next friend even though the minor also had a conservator. *Id.* at 717. The analysis from *Matter of Estate of Powell* is equally applicable here. MCR 2.201(E) grants the trial court discretion to appoint a next friend for an incompetent person even if the incompetent person already has a conservator. The trial court did not abuse its discretion by appointing a next friend for David even though Mary was already his conservator. Consequently, because Basurto, as David’s next friend, was entitled to file the verified complaint for divorce, the trial court did not abuse its discretion by denying Mary’s motion for summary disposition. As noted during this panel’s oral argument, however, we take no position on whether Basurto is a proper next friend, whether Basurto has an inherent conflict of interest in serving in this role, or any other aspect of who should serve as a next friend in this circumstance.

III. CONCLUSION

For the reasons stated in this opinion, we affirm the trial court’s orders quashing the petition to terminate or modify the conservatorship in Docket No. 355738 and denying Mary’s motion for summary disposition in Docket No. 356286.

/s/ Brock A. Swartzle
/s/ Kirsten Frank Kelly
/s/ James Robert Redford

⁴ “Although cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), they nevertheless can be considered persuasive authority.” *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012) (citation omitted).