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STATE OF MICHIGAN

COURT OF APPEALS

In re Conservatorship of MJP.

GARY PURSE,

Petitioner-Appellant,

v

MJP,

Appellee.

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No. 372825
Lenawee Probate Court
LC No. 24-153147-CA

Before: M. J. KELLY, P.J., and O'BRIEN and LIEVENSE, JJ.

PER CURIAM.

In this probate matter involving the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*., petitioner, Gary Purse, appeals as of right the order denying his petition for the appointment of a conservator for his mother, MJP. We affirm.

I. BASIC FACTS

In 1964, MJP married J Gilbert Purse and they owned a funeral home in Adrian and another in Tecumseh. MJP became the owner of both funeral homes after she and her husband divorced. Petitioner became the funeral director of the Adrian funeral home, and his twin brother, Barry Purse, became the funeral director of the Tecumseh funeral home. MJP owned several other properties, including a house next door to the Tecumseh funeral home (the Pottawatamie house), as well as another house near the Tecumseh funeral home (the Kilbuck house).

In November 2020, Barry physically assaulted MJP at the Tecumseh funeral home. In June 2022, Barry and Kristen Grodi, an employee at the Tecumseh funeral home, changed the Tecumseh name of the funeral home to the Purse Martinez Funeral Home. In August 2022, the Purse Group, Inc. (doing business as the J. Gilbert Purse Funeral home) filed a lawsuit (the embezzlement case) in Lenawee Circuit Court against Barry, Grodi, and the Purse Martinez Funeral Home LLC, alleging embezzlement. In an affidavit, MJP stated Barry did not own the Tecumseh funeral home

and was not permitted to keep any revenue for his personal benefit. In September 2022, the court in the embezzlement case granted a preliminary injunction. In September 2022, MJP conveyed from her trust (1) the Pottawatamie house and (2) the Kilbuck house through separate quitclaim deeds to herself and petitioner, as joint tenants with survivorship rights.

In January 2023, MJP dismissed the embezzlement case, and later allowed Barry to return to his position at the Tecumseh funeral home. In March 2023, MJP and her revocable living trust sued petitioner in Lenawee Circuit Court seeking to rescind the September 2022 quitclaim deeds (the rescission case), asserting petitioner was interfering with her ownership interests. In May 2023, MJP obtained a personal protection order against petitioner. In November 2023, MJP executed numerous "Lady Bird" deeds[1] for various properties to Barry. In December 2023, MJP and Barry conveyed by a quitclaim deed the Tecumseh funeral home, which they owned as joint tenants with survivorship rights, solely to Barry. MJP also conveyed by separate quitclaim deeds to Barry the Pottawatamie house and the Kilbuck house.

In April 2024, petitioner sought the appointment of a professional conservator for MJP, alleging she was a vulnerable adult who was unable to manage her property and business affairs. Petitioner asserted MJP was being exploited by Barry, and her property was at risk of being wasted or dissipated. MJP objected to the petition. Ariel M. Berger was appointed as lawyer-guardian ad litem. Berger opined that MJP "may be a vulnerable person and would benefit from having a conservator appointed, at least in a temporary capacity, to help her determine what claims she may have as it relates to her businesses and personal finances."

In May 2024, Peter A. Lichtenberg, Ph.D., ABPP, a mental health professional, reported to the court, having evaluated MJP's capacity. Dr. Lichtenberg noted MJP had neuropathy and required physical assistance for routine tasks. However, she scored "in the high average range" on a reading test for cognitive functioning and did not possess any language deficits. MJP was unimpaired on several other tests, including a general cognitive functioning test and a learning and memory test. Dr. Lichtenberg opined that MJP "has the cognitive abilities to manage her own financial affairs, and her accounts and property do not appear to be in jeopardy . . . ."

Petitioner filed an ex parte petition for a protective order and a restraining order, which the court denied. MJP moved ex parte (1) to terminate discovery and (2) for summary disposition under MCR 2.116(C)(8) and (C)(10). MJP asserted she could manage her business affairs and maintained that the petition was frivolous. Petitioner opposed the motions. The trial court granted the ex parte motion to terminate discovery, but denied the motion for summary disposition.

At a subsequent hearing, the trial court recited MCL 700.5401(3), as well as this Court's holding in *In re Townsend Conservatorship*, 293 Mich App 182, 190; 809 NW2d 424 (2011), that "being a vulnerable adult under the [Social Welfare Act (SWA), MCL 400.1 *et seq*.,] is a condition that is of a similar nature and quality as those listed in MCL 700.5401(3)(a)." The trial court found

[1] "A Lady Bird deed conveys an enhanced life estate that reserves to the grantor the rights to sell, commit waste, and almost everything else[.]" *Bill & Dena Brown Trust v Garcia*, 312 Mich App 684, 687 n 2; 880 NW2d 269 (2015) (quotation marks and citation omitted).

that there was preliminary evidence that MJP "could be considered a vulnerable person" under MCL 400.11(f). The trial court referenced Dr. Lichtenberg's report, finding there was prior physical abuse. The court determined that there was "a preliminary showing that [MCL 700.5401(3)(a)] has been met . . . ." The court indicated the "second" inquiry was "whether or not [MJP] will have property that would be wasted or dissipated unless proper management is provided . . . ." The trial court determined the case would "move forward" because there was evidence of "significant financial issues . . . that could impact [MJP's] ability to provide for herself." The court found it was established that "there has been some physical issues between these individuals and their mother . . . ." Further, the transferring of "all the financial assets" was uncontested. The trial court stated that MJP was "cognitively here with us so that is not the issue." The trial court summarized the question was "whether or not that arises [sic] to the level that it has put [MJP] in a position where she is unable to manage her affairs." The trial court found Dr. Lichtenberg was a "dominant expert," and also denied the request for a temporary conservator.

Dr. Lichtenberg was deposed *de bene esse* before the evidentiary hearing. He concluded that MJP did not need a conservator because she could "manage her finances" and possessed "the cognitive abilities to make informed decisions[.]" Dr. Lichtenberg knew about Barry's prior assault of MJP, calling it elder abuse and opining it was "quite significant." He recognized that all types of elder abuse, including financial abuse, were "very concerning." He noted MJP's vulnerabilities regarding health issues, but opined that she was able to manage her finances. Dr. Lichtenberg indicated that MJP had a "very positive" relationship with Barry. He added that MJP wished to divide her assets equally between Barry and petitioner.

At the evidentiary hearing, MJP, who was then 85 years of age, testified that petitioner "coerced" her into conveying the Pottawatamie house and the Kilbuck house in September 2022, and that she was actively working to rescind those deeds. She added that she had hired another lawyer to correct the deeds and that Barry owned the Pottawatamie and Kilbuck houses. She testified that neither Barry nor petitioner were directing her affairs, noting she was "of [her] own mind." MJP did not want a conservator appointed and she was "very much capable of anything" and "can make [her] own decisions." MJP further testified that Barry only "acted up" on one occasion, when they "had an altercation." She stated that petitioner forced her to pursue the embezzlement case. Although she admitted that a restraining order (i.e., the preliminary injunction) was entered in that case, and although she recognized that she had signed her affidavit in support of that lawsuit, she testified it was "under duress" when she did so.

Following the hearing, the trial court concluded, under MCL 700.5401(3)(a) and *In re Townsend Conservatorship*, there were "no grounds whatsoever in order to allow this proceeding to move forward any further." Under MCL 700.5401(3)(b), the court found MJP "has plenty of property and assets left," including full ownership of real property and other assets. The court held that MJP's decisions did not establish that she was a "victim of abuse to the extent that it has made her a vulnerable person and impacted her decision[]making." Accordingly, the court denied the petition.

II. CONSERVATORSHIP

A. STANDARD OF REVIEW

Petitioner contends that the trial court abused its discretion by denying the petition for a conservatorship of MJP's estate when (1) it focused on MJP's capacity instead of whether she was vulnerable and at risk of being exploited, and (2) MJP was not credible. This Court "reviews for an abuse of discretion a probate court's dispositional rulings and reviews for clear error the factual findings underlying a probate court's decision." *In re Bibi Guardianship*, 315 Mich App 323, 328; 890 NW2d 387 (2016).

> A probate court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes. A probate court's finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding. [*Id*. at 329 (quotation marks and citations omitted).]

B. ANALYSIS

A conservator is a type of fiduciary. MCL 700.1104(e). Article V of EPIC "provides protection for individuals under disability." *In re Brody Conservatorship*, 321 Mich App 332, 336; 909 NW2d 849 (2017). MCL 700.5401 governs the standards for appointing a conservator and states, in relevant part:

> (3) The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:
>
> (a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.
>
> (b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money.

A petitioner must establish a basis for the appointment of a conservator "by clear and convincing evidence[.]" MCL 700.5406(7).

"MCL 700.5401(3)(a) specifically identifies eight conditions that may affect an individual's ability to manage his or her property and business affairs effectively: mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance." *In re Townsend Conservatorship*, 293 Mich App at 188 (quotation marks omitted). However, "the use of the phrase 'for reasons such as' in MCL 700.5401(3)(a) does not limit the appointment of conservators only for individuals who have" one of the eight listed conditions. *Id*. Rather, "any circumstance not listed

in MCL 700.5401(3)(a) that prohibits an individual from effectively managing his or her property and business affairs must be of a similar nature and quality as the eight conditions listed in the statute to justify the appointment of a conservator." *Id*. at 189.

The *Townsend* Court held that "the condition of being a vulnerable adult under the SWA is a condition that is of a similar nature and quality as those listed in MCL 700.5401(3)(a)." *In re Townsend Conservatorship*, 293 Mich App at 190. The Court explained:

> "Vulnerable" is defined as "a condition in which an adult is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age." MCL 400.11(f). "Adult" is defined as "a vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited." MCL 400.11(b). And "exploitation" is defined as "an action that involves the misuse of an adult's funds, property, or personal dignity by another person." MCL 400.11(c). . . . In particular, to establish vulnerability under the SWA, the individual must have a mental, physical, or advanced-age-related impairment. These components of vulnerability are sufficiently similar to the mental and physical conditions listed in MCL 700.5401(3)(a) to allow the SWA definition of "vulnerable adult" to be categorized as being of a similar nature or quality. [*In re Townsend Conservatorship*, 293 Mich App at 190-191.]

In this case, the trial court did not improperly focus on MJP's capacity, nor did it ignore the question of whether she was a vulnerable adult at risk of exploitation. The petition alleged that MJP was unable to manage her property and business affairs because she was a vulnerable adult being exploited by Barry and that her property was at risk of being wasted or dissipated. Petitioner admitted that MJP was mentally competent, but alleged that she was unable to manage her "property and affairs effectively" because of her "age or physical infirmity." At a hearing, the court determined that MCL 700.5401(3) and *In re Townsend Conservatorship* were controlling. The court recited the definition of a "vulnerable adult" under the SWA, noting it constituted a condition under MCL 700.5401(3)(a). The court conclude that the question was whether MJP "could be considered a vulnerable person . . . as a result of her significant physical impairments and because there is evidence that both of her sons . . . have taken advantage of that."

The court concluded there was "a preliminary showing" that MCL 700.5401(3)(a) was met, and the second inquiry was whether MJP's estate "would be wasted or dissipated unless proper management is provided . . . ." Thereafter, the trial court found that there was evidence of "some significant financial issues . . . that could impact [MJP's] ability to provide for herself." Specifically, the court found "there has been some physical issues between these individuals and their mother," the transferring of "all the financial assets" was uncontested, and MJP's cognitive abilities were "not at issue." The court noted the case would have been dismissed but for the family dynamics at issue.

After the evidentiary hearing, the court denied the petition. The court found that, although there were concerns regarding MJP's decision-making being impaired by the "relationship dynamics between [MJP] and her sons," there was no "pervasive pattern of abuse that would cause [MJP] to make, regularly, decisions that are contrary to her interests because of those relationship

dynamics[.]" The court concluded none of the conditions under MCL 700.5401(3)(a) were present and further, under *In re Townsend Conservatorship*, there were "no grounds whatsoever in order to allow this proceeding to move forward." Next, under MCL 700.5401(3)(b), the court found the element was not "shown even on a preliminary basis." MJP "has plenty of property and assets left," including full ownership of real property and other assets. Consequently, the court found that MJP has the resources "she needs in order to take care of herself and that she is managing them accurately."

The court concluded that there was no justification for an "analysis again on a transaction-by-transaction basis of [MJP's] private financial affairs." The court explained that a conservatorship case was not the forum to "force a person to expose all of his or her financial records." The court determined that the mere fact MJP did not always remember certain incidents was not indicative of there being a "pattern of abuse[.]" The court addressed the severity of the "serious incidents" involving MJP, Barry, and petitioner, but found that there was no causal connection between any such incidents and MJP's decisions. The court found MJP's decisions did not establish that she was a "victim of abuse to the extent that it has made her a vulnerable person and impacted her decision[]making." The court explained: "This proceeding was for any kind of demonstration that the pattern that was identified by one or two incidents was overwhelming to the extent that it impaired [MJP's] ability to make her own decisions, and that has not been presented in any way, shape or form." The court noted that it did not need to decide whether MJP's decisions were "responsible." Finally, the court found MJP credible, noting that she was capable of answering the questions presented to her.

The trial court's findings regarding MJP's credibility were not clearly erroneous. We must give "particular deference to the trial court's superior position to determine witness credibility." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 172; 848 NW2d 95 (2014). Petitioner broadly asserts MJP lied at the evidentiary hearing about her need for a conservator, and that there was ample evidence that Barry verbally and physically harmed MJP. However, MJP testified repeatedly that she did not want a conservator appointed and that she "can make [her] own decisions." She stated that neither Barry nor petitioner were directing her affairs, noting that she was "of [her] own mind." It is undisputed that Barry physically assaulted and battered MJP in November 2020, causing injuries that were not insignificant. MJP admitted to Dr. Lichtenberg that Barry injured her, but she did not tell her doctors or police the truth. MJP testified that altercation was the only occasion that Barry physically harmed her, and he was apologetic afterward.

MJP also testified that petitioner forced her to convey to him the Pottawatamie house and the Kilbuck house in September 2022. MJP stated she was afraid of petitioner, who bullied her to "get at" Barry. MJP contended that petitioner has threatened to kill her and forced her to pursue the embezzlement case. MJP explained she retained a lawyer to put her properties in her name, or her name and Barry's name jointly, further noting the Pottawatamie house and the Kilbuck house were "in Barry's name." MJP understood that she owned, during her lifetime, any and all properties conveyed to Barry by "a lady bird deed." MJP explained that a lawyer had "straightened out the deeds for [her]," and she was satisfied with their current status. She denied Barry was telling her what to do with her property. MJP confirmed her ongoing litigation against petitioner in the rescission case.

The record supported that, in November 2023, MJP executed numerous lady bird deeds to Barry. In December 2023, MJP and Barry conveyed by a quitclaim deed the Tecumseh funeral home, which they owned as joint tenants with survivorship rights, solely to Barry, as well as the Pottawatamie house and the Kilbuck house. The trial court stated that the questioning regarding the deeds "don't paint [MJP] in the best light, but it does not rise to the level of any kind of diagnosis or other evidence that would allow me to put someone else in charge of everything she owns."

Petitioner argues, without any statutory support, caselaw, or other authority, that Dr. Lichtenberg was required to specifically analyze whether MJP was being exploited by Barry. He also contends that Dr. Lichtenberg was required to opine as to factors in "the Vulnerable Adult incident report." To the extent petitioner argues the trial court erred by not considering the Vulnerable Adult Incident Form, petitioner provided no basis to suggest that was a requirement under the statute or any caselaw. Moreover, petitioner's assertion that Dr. Lichtenberg solely focused on MJP's cognitive functioning is mistaken, and the trial court did not err by relying on his report and deposition. Dr. Lichtenberg performed numerous tests on MJP, including cognitive functioning, which she passed. However, Dr. Lichtenberg also interviewed MJP and discussed her ability to manage her finances, finding MJP's "financial decision-making abilities were intact." Dr. Lichtenberg also reviewed the affidavits attached to the petition. He concluded MJP "has tumultuous and at times dangerous relationships with her sons," but otherwise has "intact cognitive functioning."

Dr. Lichtenberg asserted his conclusion that MJP did not need a conservator was accurate because she could "manage her finances" and possessed "the cognitive abilities to make informed decisions[.]" Dr. Lichtenberg knew of Barry's prior assault and battery of MJP, identified it as elder abuse and recognized that it was "quite significant." He also recognized that all types of elder abuse, including financial abuse, were "very concerning." Dr. Lichtenberg testified that MJP had a "very positive" relationship with Barry. Dr. Lichtenberg stated that they "made amends." He further noted MJP's vulnerabilities regarding health issues, but still opined that she was able to independently manage her finances. Dr. Lichtenberg stated MJP reported petitioner "hit her" once.

Dr. Lichtenberg stated MJP wished to divide her assets equally between Barry and petitioner. Dr. Lichtenberg agreed that Gary and MJP had a joint tenancy for the Adrian funeral home. In response to a question regarding why Barry received the complete ownership of the Tecumseh funeral home, the Pottawatamie house, and the Kilbuck house, while petitioner only received a joint tenancy in the Adrian funeral home, Dr. Lichtenberg explained the value of the Adrian funeral home was higher because it "was much busier." A confidential resource list prepared by MJP's counsel for the evidentiary hearing also supported the trial court's findings.

Next, petitioner asserts a claim of judicial bias, requesting a new judge if the matter is remanded. This issue was not raised in the trial court. See *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023) (quotation marks and citation omitted) ("In civil cases, Michigan follows the raise or waive rule of appellate review. Under that rule, litigants must preserve an issue for appellate review."). Further, under MCR 7.212(C)(5), "[e]ach question must be expressed and numbered separately and be followed by the trial court's answer to it or the statement that the trial court failed to answer it and the appellant's

answer to it." Petitioner has not properly presented this as an issue for this Court's review within the statement of questions presented. See *Grand Rapids Employees Indep Union v City of Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999) ("Because this issue was not raised in the statement of questions presented, [the appellant] has failed to properly present this issue for our review."). As such, we decline to address this waived issue.

Petitioner also asserts the trial court afforded too much weight to Dr. Lichtenberg's expert testimony and report and effectively delegated its decision-making authority to an expert. However, because petitioner did not challenge Dr. Lichtenberg's credibility as a witness or the reliability of his report in the trial court, nor assert the trial court delegated its decision-making authority to Dr. Lichtenberg, this issue was waived on appeal. See *Tolas Oil & Gas Exploration Co*, 347 Mich App at 289.

Petitioner next contends he was deprived of his right to procedural due process during the evidentiary hearing because the trial court did not allow him to call additional witnesses. Again, however, because petitioner did not assert a due-process violation in the trial court, the issue was waived. See *id*. Regardless, based upon the record, the trial court did not abuse its discretion in limiting witnesses.

Affirmed.

/s/ Michael J. Kelly
/s/ Colleen A. O'Brien
/s/ Andrew J. Lievense