STATE OF MICHIGAN

COURT OF APPEALS

In re Conservatorship of ROBERTA MORE ASPLUND.

KATHLEEN M. CARTER, Conservator of ROBERTA MORE ASPLUND, a legally protected person,

Petitioner-Appellee,

v

RANDALL ASPLUND,

Respondent-Appellant.

UNPUBLISHED
September 30, 2021

Nos. 351817; 352725; 353054
Washtenaw Probate Court
LC No. 17-001138-CA

Before: TUKEL, P.J., and SAWYER and CAMERON, JJ.

PER CURIAM.

In these consolidated appeals involving disputes over the conservatorship of Roberta More Asplund, Roberta's son, Randall Asplund,[1] appeals several probate court orders. For the reasons explained below, we affirm in part and dismiss in part.

I. BACKGROUND

This is not the first appeal that has been filed by Randall concerning Roberta's conservatorship. In a November 2020 unpublished per curiam opinion, this Court summarized the facts as follows:

> On August 21, 2017, Roberta suffered a brain aneurysm, which impaired her cognitive functions. She was 91 years of age at the time. Roberta's daughter,

[1] For ease of reference, we refer to members of the Asplund family by their first names.

> Karin Asplund, petitioned the probate court for the appointment of a conservator and a guardian with the agreement of her siblings, Randall and Richard Asplund. In December 2017, the probate court appointed Georgette David to be Roberta's guardian and appointed another person to be her conservator. The record showed that Roberta improved considerably after her surgeries to correct the aneurysm but that she was still cognitively impaired.
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> Beginning in January 2018, Randall filed the first of numerous petitions and other filings challenging the administration of Roberta's guardianship and conservatorship. There was evidence that Randall harassed Roberta's caregivers, challenged every action taken by Roberta's fiduciaries, and enlisted Roberta as an ally in his disputes with Karin, Richard, Roberta's caregivers, and her fiduciaries. The evidence tended to show that he manipulated Roberta and prevented her from adjusting to her life changes.
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> The probate court appointed Kathleen Carter to be Roberta's successor conservator in April 2018. Carter immediately took steps to reduce Roberta's financial obligations and to raise funds for her care. Because David moved Roberta into an assisted living facility, Carter took steps to sell the personal property that Roberta no longer needed. The record showed that Randall disagreed that Roberta needed a guardian or conservator, disagreed that she needed to be in an assisted living facility, and opposed Carter's decision to sell Roberta's personal property and real estate. [*In re Conservatorship of Roberta More Asplund (Asplund I)*, unpublished per curiam opinion of the Court of Appeals, issued November 24, 2020 (Docket Nos. 349388 and 349401), p 2.]

In August 2019, the probate court entered an order authorizing Carter to sell Roberta's real property for $460,000. Thereafter, on September 11, 2019, Randall's attorney filed a notice of lis pendens concerning the property. As a result of this, "the buyers suspended the closing, requested a mutual release from the sales contract on the property, and requested a return on their earnest money." After the sale could not be completed, Carter moved the probate court to cancel the notice of lis pendens. On September 23, 2019, the probate court granted the motion, concluding that neither Randall nor his attorney had an interest in the property.

In October 2019, Carter petitioned the probate court for authorization to execute a note, which would be secured by a mortgage on Roberta's real property. Carter explained that she had advanced more than $46,000 for Roberta's care and expenses and that the note and mortgage would ensure repayment of the advances.[2] The probate court approved the note and mortgage in an order entered on November 19, 2019. The probate court also approved Carter's first-annual accounting over Randall's objections in a November 19, 2019 opinion and order.

In January 2020, Carter petitioned for renewed authorization to sell Roberta's real property, and Randall opposed the petition. The probate court held an evidentiary hearing later that same

[2] To the extent that Randall argues that it was improper for Carter to advance funds, his argument is without legal merit. See MCL 700.5423(2)(t) and MCL 700.5421(6)(e).

month. Evidence was presented concerning Roberta's continued need to sell the property and the reasonableness of the new price, which was $425,000. On January 24, 2020, the probate court entered two orders. One order authorized Carter to sell Roberta's real property to generate funds for her care and the other order prohibited Randall and his attorney from filing a notice of lis pendens on the property. The order specifically indicated that neither Randall nor his attorney had "a legal, equitable or possessory right to the property." Thereafter, the buyer withdrew the offer to purchase the property, and a different potential purchaser came forward. On February 18, 2020, the probate court entered an order, which amended its January 24, 2020 order. The February 18, 2020 order authorized Carter to sell Roberta's real property for $425,000 to a different purchaser. These appeals followed.[3]

II. SCOPE OF THE APPEALS

At the outset, we note that Randall states numerous claims of error involving orders other than the November 19, 2019, January 24, 2020, and February 18, 2020 orders on appeal. Randall asserts claims, for example, involving whether the probate court erred by failing to remove Carter and David as fiduciaries. "[W]hether this Court has jurisdiction is a question of law that this Court reviews de novo." *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009). "The jurisdiction of [this] Court . . . is governed by statute and court rule. This Court reviews de novo the proper interpretation of statutes and court rules as questions of law." *Id*. (citations omitted).

The Legislature provided this Court with jurisdiction to hear appeals of right from probate orders and judgments defined under the court rules as final orders. MCL 600.308(1); see also *In re Rottenberg Living Trust*, 300 Mich App 339, 353; 833 NW2d 384 (2013). As relevant to this appeal, a final order is an order that affects the "rights or interests of an interested person in a proceeding involving . . . a conservatorship or other protective proceeding[.]" MCR 5.801(A)(2). An order denying a petition to appoint or remove a fiduciary is a final order. MCR 5.801(A)(2)(a). Thus, the October 1, 2019 order, which denied Randall's petition to remove Carter and David, was a final order that had to be separately appealed by right within 21 days of the entry of that order.[4] See MCR 5.801(A)(2)(a); MCR 7.204(A)(1)(a). Importantly, Randall cannot claim an appeal from earlier final orders by appealing a later final order. See *Surman v Surman*, 277 Mich App 287,

[3] This Court assigned Docket No. 351817 to the appeal from the November 19, 2019 orders approving the first-annual accounting and approving the mortgage and note. This Court assigned Docket No. 352725 to the appeal from the January 24, 2020 order prohibiting Randall and his attorney from filing a notice of lis pendens on the real property. This Court assigned Docket No. 353054 to the February 18, 2020 order permitting the sale of the real property. This Court consolidated those appeals for the efficient administration of the appellate process. *In re Conservatorship of Roberta More Asplund*, unpublished order of the Court of Appeals, entered December 22, 2020 (Docket Nos. 351817, 352725, and 353054).

[4] Indeed, Randall did file an appeal as of right from the October 1, 2019 order, and this Court affirmed the probate court's denial of Randall's petition to remove Carter and David as fiduciaries. *In re Conservatorship of Roberta More Asplund (Asplund III)*, unpublished per curiam opinion of the Court of Appeals, issued November 24, 2020 (Docket Nos. 351166; 351168).

293-294; 745 NW2d 802 (2007); see also *Nowland v Rice's Estate*, 138 Mich 146, 148; 101 NW 214 (1904) (refusing to consider claims involving earlier orders because those orders became final and had to be separately appealed). Consequently, we decline to consider any claims of error involving an order other than the orders of November 19, 2019, January 24, 2020, and February 18, 2020.

Additionally, we note that Randall's briefs on appeal include assertions that suggest that the probate court committed evidentiary errors and violated due process. To the extent that Randall's brief might be understood to have asserted such claims, he has abandoned them by failing to separately state and number the claims, see MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132-133; 610 NW2d 264 (2000), and by failing to offer any meaningful discussion of the law or facts in support of any such claims, see *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). We will therefore not consider them.

III. ORDERS CONCERNING THE REAL PROPERTY (DOCKET NOS. 351817 AND 353054)

Randall argues on appeal that the probate court improperly approved the mortgage and note concerning the real property and improperly permitted the sale of the real property. This Court reviews de novo whether it has jurisdiction. *Chen*, 284 Mich App at 191. This Court also reviews de novo questions of standing. *In re Casey Estate*, 306 Mich App 252, 256; 856 NW2d 556 (2014).

MCR 7.203(A)(2) provides that this Court "has jurisdiction of an appeal of right *filed by an aggrieved party* from" "[a] judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule." (Emphasis added.) MCR 5.801 identifies probate court orders that are considered final and appealable by right to this Court, and it also provides an appeal of those orders by "an interested person *aggrieved* by the final order." (Emphasis added.)

An aggrieved party is one who is not merely disappointed over a certain result, but is one who "suffered a concrete and particularized injury." *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291; 715 NW2d 846 (2006). "[A] litigant on appeal *must demonstrate an injury arising from . . . the actions of the trial court* . . . rather than an injury arising from the underlying facts of the case." *Id.* at 292 (citation omitted; emphasis added). As stated in *Grace Petroleum Corp v Public Service Comm*, 178 Mich App 309, 312-313; 443 NW2d 790 (1989):

> An appeal can only be taken by parties who are affected by the judgment appealed from. There must be some substantial rights of the parties which the judgment would prejudice. *A party is aggrieved by a judgment or order when it operates on his rights and property or bears directly on his interest. To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency.* [Citations omitted; emphasis added.]

Importantly, this Court has already concluded that Randall lacks "any rights in Roberta's real property[.]" *In re Conservatorship of Roberta More Asplund (Asplund II)*, unpublished per curiam opinion of the Court of Appeals, issued November 24, 2020 (Docket No. 350447), p 2.

Specifically, in relation to Randall's appeal from the probate court's August 2019 order, which permitted Carter to sell the real property to a specific buyer for $460,000, this Court held as follows:

> Randall presented no evidence that he had an ownership interest or other property rights in Roberta's home; indeed, he does not even claim to have an ownership interest in Roberta's real property. He does claim that the estate owed him money, but an unsecured debt does not give Randall any rights in Roberta's real property that would entitle him to stop its sale. See, e.g., *Irwin v Meese*, 325 Mich 349, 351-352; 38 NW2d 869 (1949) (holding that an unsecured creditor may not invoke equity to restrain the sale of real property on the fear that the seller would not have sufficient funds to repay the debt after the creditor reduces it to judgment). An unsecured creditor is not aggrieved by an order authorizing the sale of real property because he or she does not have a direct interest in the property, and the sale of it would not adversely affect his or her interests; on the contrary, the sale of the asset might benefit the creditor by generating the funds with which to pay the creditor after any secured creditors are paid. See *In re Trankla Estate*, [321 Mich 478, 481-483; 32 NW2d 715 (1948)] (rejecting the contention that a former trustee was aggrieved by the order replacing him because the compensation owed to him did not give him a sufficient pecuniary interest to be considered aggrieved); see also *In re Critchell Estate*, 361 Mich 432, 450-455; 105 NW2d 417 (1960) (holding that a debtor was not aggrieved by the probate court's order because the debtor had no direct, legally protected interest in the estate that was adversely affected by the decree). The fact that he might inherit an interest in Roberta's real property after her death also does not make him an aggrieved party because that interest is contingent on a future event. See *In re Trankla Estate*, 321 Mich at 482 (stating that the aggrieved party must have a pecuniary interest beyond a mere possibility arising from some unknown and future contingency); cf. *In re Rodgers Estate*, 192 Mich 156, 162; 160 NW 753 (1916) (holding that a legatee of a decedent was aggrieved by an order authorizing the sale of the real property in which the legatee then had an interest). Randall's mere disappointment with the probate court's decision to authorize the sale did not render him aggrieved by the probate court's order. See *Federated Ins Co*, 475 Mich at 291. Because Randall was not aggrieved by the probate court's order, this Court lacks jurisdiction to consider his appeal of right from that order. See MCR 5.801(A); MCR 7.203(A); see also *Federated Ins Co*, 475 Mich at 291 & n 2 (stating that, under the court rules and caselaw, a person must be aggrieved by the lower court's order to invoke the appellate court's jurisdiction). Accordingly, we dismiss this appeal for lack of jurisdiction. [*Asplund II*, unpub op at 2-3.]

Because Randall has again failed to present evidence to support that he had an ownership interest or other property rights in the real property aside from a "mere possibility arising from some . . . future contingency," *Grace Petroleum Corp*, 178 Mich App at 312-313, we conclude that Randall is not an aggrieved party. Therefore, Randall is not entitled to appeal the November 19, 2019 order approving the mortgage and note and the February 18, 2020 order permitting the

sale of the property as of right.[5] MCR 7.203(A)(2); MCR 5.801(A). Thus, his claims relating to those orders must be dismissed.

For these reasons, we dismiss Randall's appeal in Docket No. 353054. We also dismiss his claims of error involving the note and mortgage brought in Docket No. 351817.

IV. ORDER PROHIBITING RANDALL FROM FILING A NOTICE OF LIS PENDENS (DOCKET NO. 352725)

Randall argues that the probate court impermissibly prohibited him from filing a notice of lis pendens. We disagree.

A probate court has the discretion to enter injunctive relief on a party's motion. See *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 110; 593 NW2d 595 (1999). A probate court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *In re Redd Guardianship*, 321 Mich App 398, 403; 909 NW2d 289 (2017).

"[A] lis pendens is designed to warn persons who deal with property while it is in litigation that they are charged with notice of the rights of their vendor's antagonist and take subject to the judgment rendered in the litigation." *Richards v Tibaldi*, 272 Mich App 522, 536; 726 NW2d 770 (2006) (quotation marks and citation omitted). In this case, it is undisputed that Roberta held fee simple title to the real property at issue. The proceeding did not involve a dispute over rights in the property that might then affect the legal rights of any purchaser who might be interested in purchasing the property. Indeed, the proceeding involved whether it was proper for the probate court to authorize the sale of Roberta's real property. Because Randall did not have an interest in the property and because he was not permitted to act as Roberta's fiduciary at any relevant time, the probate court did not abuse its discretion by prohibiting Randall from filing a notice of lis pendens.

V. ORDER APPROVING THE FIRST-ANNUAL ACCOUNTING (DOCKET NO. 351817)

Randall next argues that the probate court erred when it accepted Carter's first-annual accounting without holding an evidentiary hearing to consider Randall's objections. We disagree that Randall is entitled to relief.

A. STANDARDS OF REVIEW

Appeals from a probate court decision are on the record, not de novo. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). This Court reviews for clear error the findings of fact underlying the probate court's application of the law. *In re Gerstler Guardianship*, 324 Mich App 494, 507; 922 NW2d 168 (2018). A finding is clearly erroneous when, although there might be evidence to support it, this Court's review of the entire record has left the Court with the definite and firm conviction that the probate court erred. *Reed Estate v Reed*, 293 Mich

[5] To the extent that Randall attempts to assert arguments on behalf of Roberta, this is improper and such arguments will not be considered.

App 168, 173-174; 810 NW2d 284 (2011). Finally, this Court reviews the probate court's dispositional rulings for an abuse of discretion. *In re Redd Guardianship*, 321 Mich App at 403.

This Court also reviews de novo whether the probate court properly interpreted and applied the relevant statutes and court rules. *Franks v Franks*, 330 Mich App 69, 86; 944 NW2d 388 (2019). Court rules, like statutes, are interpreted according to their plain meaning. *Patel v Patel*, 324 Mich App 631, 639-340; 922 NW2d 647 (2018).

B. ANALYSIS

MCR 5.409(C)(1) and (5) state that conservators must file an annual accounting with a copy of corresponding financial institution statements or a verification of funds on deposit. Additionally, "the account must be served on interested persons, and proof of service must be filed with the court. The copy of the account served on interested persons must include a notice that any objections to the account should be filed with the court and noticed for hearing." MCR 5.409(C)(1). MCR 5.310(C)(2)(c) requires that the content of the accounting include the following:

> The accounting must include notice that (*i*) objections concerning the accounting must be brought to the court's attention by an interested person because the court does not normally review the accounting without an objection; (*ii*) interested persons have a right to review proofs of income and disbursements at a time reasonably convenient to the personal representative and the interested person; (*iii*) interested persons may object to all or part of an accounting by filing an objection with the court before allowance of the accounting; and (*iv*) if an objection is filed and not otherwise resolved, the court will hear and determine the objection.

On July 3, 2019, Carter filed her first-annual accounting. Carter itemized the cash advances that she had made on Roberta's behalf, and she itemized Roberta's assets, income, and expenses. The form that was filed by Carter complied with the notice requirements. Indeed, the accounting provided that interested persons had the right to object and that the court would hold a hearing if the objections were not otherwise resolved. Carter petitioned the probate court to approve the accounting and filed a notice of hearing for August 12, 2019. Carter submitted an addendum to the accounting on July 12, 2019. On July 26, 2019, Carter filed a proof of service, which reflected that Randall and other interested persons were served with the first-annual accounting, the petition, and the accompanying documents on July 26, 2019.

Randall filed a written objection to the accounting on August 9, 2019. He claimed that Carter did not provide him with notice and that she did not mail the accounting until July 26, 2019. He also complained that the accounting did not include itemized billings and that Carter and David's fees were excessive given that their plan for Roberta's care was unnecessary. Randall moved the probate court to disallow the fees. Randall did not request a hearing on his objections and did not file a notice of hearing, presumably because he was provided with notice that a hearing was scheduled for August 12, 2019. However, the hearing that was scheduled for August 12, 2019, was cancelled, and Carter filed an addendum to the first-annual accounting on October 8, 2019.

Carter attached detailed records of her and David's expenses and fees. A hearing on Randall's objections was never held.

On November 19, 2019, the probate court entered an order, which reflected that the first-annual accounting "ought to be allowed" and that the fees and costs were reasonable. In an accompanying opinion, the probate court noted that Randall had "filed an objection[.]" The probate court further noted that Randall "had previously filed to modify the guardianship and modify/terminate the conservatorship." As a result of these petitions, the probate court held multiple evidentiary hearings between January and August 2019. When considering the petition to authorize the accounting and Randall's objections, the probate court determined that "[t]he record has been fully developed" and that "none of [Randall's] complaints [were] supported by the evidence." The probate court then recognized that Carter had rectified the technical deficiencies involving the proof of service, itemization, and the submission of supporting documentation. Finally, the probate court rejected Randall's argument that the fees were excessive, holding as follows:

> The fees are high and they are high nearly entirely due to the actions of Randall Asplund. The initial fees associated with the transfer of the conservatorship through the voluminous pleadings and hearings in this matter are all associated with Randall Asplund. The initial conservator resigned because of his behavior, the home health care workers refused to return to work because of his behavior, the house has not sold because of his behavior, Roberta is in a higher level of care because of his behavior. He cannot cause the high fees and then object to them.
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> The Court appointed an attorney for Ms. Asplund to review the accounts. No other objections were received.

Based on this, the probate court found that it was proper to dispense with oral argument and to approve the first-annual accounting based on the existing record, which was voluminous.

Randall argues that the probate court was required to hold an evidentiary hearing on his objections under the court rules. Assuming without deciding that the relevant court rules required the probate court to hold an evidentiary hearing on Randall's objections, we conclude that any error would be harmless. It is clear from the probate court's opinion and order that it reviewed Randall's objections, some of which stemmed from technical errors that were resolved following the filing of Randall's objections. Specifically, the lower court record establishes that Carter submitted the required itemizations and documentation and filed the required proof of service with the court. Additionally, the record overwhelmingly supports that Roberta required a conservator and a guardian, and evidence was presented at the evidentiary hearings to support that the living arrangements and services provided to Roberta were necessary and therefore not excessive and unduly expensive. Review of the itemized bills submitted by Carter and David establishes that the fees charged by Carter and David were related to services that they had performed on behalf of Roberta in relation to their fiduciary roles. Moreover, as noted by the probate court, a vast majority of the fees resulted from Randall's actions and from petitions that were filed by Randall throughout the course of the accounting period. Importantly, Randall does not explain or rationalize what other argument or evidence he would have put forth had the probate court held a hearing.

Therefore, on this record, any error in the probate court's decision to resolve the objections on the basis of the existing record and without holding a separate hearing was harmless. We do not reverse on the basis of harmless error. See MCR 2.613(A). See also *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 529; 730 NW2d 481 (2007). Additionally, based on the record evidence, which is voluminous, we conclude that the probate court did not abuse its discretion by approving the first-annual accounting.

To the extent that Randall argues that the probate court relied on incredible witnesses when approving the first-annual accounting and that the probate court improperly focused on Randall's conduct during the proceeding, this Court must give regard to the probate court's special opportunity to judge the credibility of the witnesses who appeared before it. MCR 2.613(C). This Court defers "to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Redd Guardianship*, 321 Mich App at 412 (quotation marks and citation omitted). Additionally, this Court considered similar arguments when reviewing Randall's appeal from the probate court's October 1, 2019 decision to deny Randall's petition to remove Carter and David as fiduciaries. *In re Conservatorship of Roberta More Asplund (Asplund III)*, unpublished per curiam opinion of the Court of Appeals, issued November 24, 2020 (Docket Nos. 351166; 351168), pp 2, 8-11. In rejecting these arguments, this Court stated as follows:

> The probate court had extensive experience with Randall, Karin, Richard, Carter, and David—among others—that spanned months of litigation in addition to their appearances at the evidentiary hearing. These interactions provided the probate court with ample opportunity to judge the witnesses' credibility, and this Court is not in a position to second-guess the probate court's assessment of the weight and credibility to be given the witnesses. [*In re Redd Guardianship*, 321 Mich App at 412.]
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> Randall also complains that the probate court transformed the nature of the hearing from one involving the suitability and competency of Carter and David into one involving allegations against him. The record showed, however, that Randall's conduct was the driving force behind the majority of David and Carter's decisions. The probate court was well aware of the long history of disputes involving Randall, as [catalogued] in the lower court proceedings, and it took judicial notice of those proceedings. See MRE 201; *Knowlton v Port Huron*, 355 Mich 448, 452; 94 NW2d 824 (1959) (recognizing that a court may take judicial notice of the files and records of the court in which he or she sits). The testimony and evidence established that from the earliest moments in the guardianship and conservatorship Randall was a challenge for those persons who were trying to care for Roberta. The guardian ad litem (GAL) originally assigned to investigate Roberta's situation reported that, even before the appointment of any guardian or conservator, Randall had already been in conflict with Richard over Roberta's estate, and the GAL also noted that the staff at the rehabilitation facility where Roberta was recovering from her aneurysm had described Randall as very challenging.

> The record showed that Randall fought every decision made by anyone involved in Roberta's care, no matter how routine the decision might be.
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> * * *
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> Given the history of Randall's interference, it was neither surprising nor inappropriate that the probate court allowed Carter and David to present evidence about Randall's conduct. The evidence was relevant and admissible as evidence in defense of their actions as Roberta's conservator and guardian. See MRE 401; MRE 402. [*Asplund III*, unpub op at 8-9, 11.]

VI. CONCLUSION

We dismiss Randall's appeal in Docket No. 353054, and we affirm in Docket No. 352725. For Docket No. 351817, we dismiss Randall's claims involving the note and mortgage, and affirm the probate court's order accepting Carter's first-annual accounting.

Affirmed in part and dismissed in remaining part.

/s/ David H. Sawyer
/s/ Thomas C. Cameron

TUKEL, P.J. did not participate.