

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF TIANA SEVILLE.

TONYA PHILLIPS, Co-personal Representative
of the ESTATE OF TIANA SEVILLE,

Appellant,

v

ANDREW SEVILLE, Co-personal Representative
of the ESTATE OF TIANA SEVILLE,

Appellee.

UNPUBLISHED
September 10, 2019

No. 348819
Eaton Probate Court
LC No. 19-054869-DE

Before: METER, P.J., and FORT HOOD and BOONSTRA, JJ.

PER CURIAM.

Appellant, Tonya Phillips, appeals by right the trial court’s order appointing both herself and appellee, Andrew Seville, as co-personal representatives of their daughter’s estate. We reverse and remand for the appointment of a suitable third party as personal representative of the decedent’s estate.

I. BACKGROUND

Phillips and Seville divorced in 2000. Their daughter, Tiana Seville, died in January 2019 after her moped was struck by a snowplow. Both parents sought individual appointment as personal representative of the estate. Phillips filed an initial petition to be appointed personal representative, but Seville filed an objection to this petition and requested that he be appointed personal representative or, alternatively, that the two parents be appointed co-personal representatives or a neutral third party be appointed.

The trial court held a hearing on Phillip’s petition and Seville’s objection. The parties agreed with the trial court that they held equal priority to the appointment and the arguments—made primarily through the parties’ briefs and offers of proof—focused on whether either party

was suitable to serve as personal representative. The record demonstrates that the parties' relationship was wrought with contention and that the parties were subject to a no-contact order. Phillips argued that Seville was previously violent toward her and his children and that Seville was only interested in Tiana's estate to profit from a wrongful-death lawsuit. For his part, Seville argued that Phillips had engaged in criminal conduct, had mismanaged her own finances, and had poisoned his relationship with his daughter.

A portion of the hearing focused on Tiana's funeral. Seville alleged that Tiana's funeral had been "handled through a GoFundMe account" and that he had contributed \$500 to the \$11,688 raised. Phillips' counsel stated that the account had not been used to pay for the funeral, but that Phillips had paid for the funeral with her own funds. Seville accused Phillips of falsely informing the funeral director that he lived outside the state to prevent him from participating in the funeral arrangements, appears to suggest that Seville improperly retained funds from the GoFundMe account, and suggested that Phillips lacked the financial savvy to administer the estate.

The trial court held that the parties would be appointed as co-personal representatives and stated that:

[i]f the parties find that that's not reasonable or that's not doable, for whatever reason they can't agree and the case still needs to proceed forward, then it will be up to the parents either to agree on a neutral or to petition this Court to appoint a neutral if you can't agree on one. So, that's going to be option two.

Phillips then moved for reconsideration of this order. The trial court denied the order, concluding that Phillips had failed to demonstrate a palpable error by which it had been misled. The trial court explained that it had appointed the parties as co-personal representatives because the parties held "strong animosity towards each other" and it "was not convinced that either of them individually could objectively and fairly administer the estate." This appeal followed.

II. ANALYSIS

On appeal, Phillips argues that the trial court abused its discretion in appointing co-personal representatives. We review for an abuse of discretion the trial court's decision regarding the appointment or suitability of a personal representative. See *In re Kramek Estate*, 268 Mich App 565, 575-576; 710 NW2d 753 (2005); *In re Duane v Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007). An abuse of discretion occurs when the trial court chooses an outcome outside the range of reasonable and principled outcomes. *In re Duane*, 274 Mich App at 397.

The Estates and Protected Individuals Code ("EPIC"), MCL 700.1101 *et seq.*, governs the administration of estates in Michigan. Under the code, interested persons may petition the trial court for a formal determination of the priority or qualification of a prospective personal representative. MCL 700.3414. Generally, personal representatives are appointed in the following order of priority:

- (a) The person with priority as determined by a probated will including a person nominated by a power conferred in a will.

(b) The decedent's surviving spouse if the spouse is a devisee of the decedent.

(c) Other devisees of the decedent.

(d) The decedent's surviving spouse.

(e) Other heirs of the decedent. [MCL 700.3203(1).]

An interested person may object to the appointment of a personal representative, MCL 700.3203(2), but carries the burden of establishing the unsuitability of the prospective personal representative, *In re Hutton Estate*, 191 Mich App 292, 294; 477 NW2d 144 (1991). An individual is unsuited to serve as personal representative when, *inter alia*, their appointment is not in the best interests of the estate. See *In re Stan Estate*, 301 Mich App 435, 446-447; 839 NW2d 498 (2013) (concluding that any ground justifying removal of a personal representative qualifies as a ground to object to the initial appointment); MCL 700.3611(2)(a) (permitting removal of a personal representative when removal is in the best interests of the estate).

The parties agree that, as heirs to their daughter's estate, MCL 700.3203(1)(e), neither party held priority to be appointed as the personal representative of the estate. The trial court found, however, that each party was unsuited in their individual capacity to serve as personal representative because neither party could be trusted to reliably represent the interests of the other.¹ The trial court attempted to remedy this problem by appointing the parties as co-personal representatives, meaning that they would have to agree on decisions affecting the estate.

Trial courts may, however, only appoint co-personal representatives if the intended parties agree to the shared status. See MCL 700.3203(3) ("If 2 or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment."). Here, neither party agreed to renounce their priority and at least Phillips did not agree to serve in a shared capacity with Seville. Accordingly, the trial court was precluded from appointing Phillips and Seville as co-personal representatives. Having reviewed the record in this case, we agree with the trial court that neither party was suited to individually administer the estate. Accordingly, because no other person with priority stepped forward to

¹ We reject Phillips argument that the trial court failed to address the suitability of the potential representatives. The record indicates that the trial court found that the parties' contentious relationship rendered neither party suitable to serve as individual personal representative of the estate. Moreover, because this contention was obvious from the parties' filings and the proceedings before the trial court, we decline to remand this case, as Phillips suggests, for an evidentiary hearing on suitability. See *Kernen v Homestead Development Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002) (noting that, "if the parties created a sufficient record to review the issue, an evidentiary hearing is not required.")

seek appointment, the trial court was obligated to appoint a third person to serve as the personal representative of the estate.²

Reversed and remanded for the appointment of a third-party personal representative. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Karen M. Fort Hood
/s/ Mark T. Boonstra

² We note that, even if it were possible under EPIC to appoint co-personal representatives against their wishes, doing so in this case would not be in the best interests of the estate. The parties' inability to agree with each other and the fact that both parties were represented by counsel presents a significant likelihood that co-representation would prolong the administration of the estate and drain any assets of the estate, which appear to be limited to any potential recovery in a wrongful death suit.