

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF THERESA GORNEY

THERESA GORNEY,

Petitioner-Appellant,

v

LARRY L. RONNING, Conservator of the ESTATE
of THERESA GORNEY,

Respondent-Appellee.

UNPUBLISHED

September 27, 1996

No. 185414

LC No. 95 06 GDCV

Before: Saad, P.J., and Corrigan and R.A. Benson,* JJ.

PER CURIAM.

Petitioner appeals by right the order extinguishing her life estate in a residence. We affirm.

In 1980, petitioner Theresa Gorney, who was at that time 75 years old, transferred legal interest in her Manistee home to respondent Larry Ronning and his wife, but retained a life estate in the property. In 1995, petitioner executed a durable power of attorney designating Ronning as her attorney in fact. Petitioner, now 91 years old, has resided in a medical care center since May 1994. She is not able to care for herself and suffers from memory impairment. Petitioner's doctor opined that she would not be able to return her home because she could not care for herself.

In January, 1995, Ronning petitioned the Probate Court to appoint him as guardian and conservator for petitioner, and asked the court to extinguish petitioner's life estate in the residence because she lacked the funds to maintain it. The court-appointed guardian ad litem recommended that the court appoint Ronning as guardian and conservator. The guardian ad litem, however, advised the court to limit Ronning's powers to prevent him from selling petitioner's life estate in the residence because she objected to its sale and hoped to return home someday. In February 1995, the court

* Circuit judge, sitting on the Court of Appeals by assignment.

appointed Ronning as guardian and conservator and ordered the extinguishment of petitioner's life estate.

In March 1995, attorney Thaddeus Gorny,¹ nephew of petitioner's deceased husband, moved to vacate the order. Although he did not file an appearance with the probate court, Gorny asserted that he represented petitioner on the basis of a 1993 conversation when she allegedly asked him to represent her. Gorny did not represent any of petitioner's heirs and was not an interested party. After a hearing, the court denied the motion. Petitioner appeals.

Although Gorny's appearance in this action raises a standing issue, neither the probate court nor the appellee challenged his appearance. We will not review the standing issue because the appellee did not raise the issue in his brief, and the trial court did not address it. *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996).

Petitioner argues that the court erred in ordering the extinguishment of her life estate, and asks that this Court set aside the order under MCR 2.612(C)(1)(c). We will not set aside an order because of fraud, misrepresentation or misconduct of a party absent an abuse of discretion. *Michigan Bank-Midwest v D J Reynaert, Inc*, 165 Mich App 630, 642-643; 419 NW2d 439 (1988).

Courts may exercise power over the estates of persons under a disability as indicated, in part:

- (1) The court has the following powers which may be exercised directly or through a conservator with respect to the estate and affairs of protected persons:

* * *

(c) After a hearing, and upon determination that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court, for the benefit of the person and members of the person's household, has all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will. . . . [MCL 700.468; MSA 27.5468.]

Petitioner argues that the extinguishment of her life estate was not in her best interests. While we are sensitive to the petitioner's desire to retain her residence, we agree with the probate court that petitioner's best interests are served by the life estate extinguishment. Petitioner's only income is \$724 in social security benefits. Petitioner has no savings. Petitioner is not able to care for herself. Petitioner's spouse is deceased and she has no children. Of her thirteen nieces and nephews, eleven filed waivers in this case.

Although petitioner asserts that she could return to her home provided she had live-in care, she does not have the funds to pay for such care. The residence, which is vacant, has a market value of approximately \$25,000. It would require substantial repairs before it could generate rental income. It requires maintenance and upkeep that petitioner cannot afford. Under the circumstances, the value of

petitioner's life estate is negligible and the court need not hold a full evidentiary hearing. *Rapaport v Rapaport*, 185 Mich App 12, 16-17; 460 NW2d 588 (1980).

Moreover, the fact that petitioner deeded the residence to Ronning while retaining a life estate indicates that she intended that Ronning receive the property when she could no longer live in the home. Thus, this case is distinguishable from *Schuman v Schuman*, 217 Mich 184; 185 NW2d 717 (1921), where the life tenant and his wife still lived in the home. The court in this case extinguished the life estate to benefit petitioner and to prevent the property from burdening petitioner's meager finances.

Although Ronning will benefit financially from the sale of petitioner's residence, that benefit is tempered by Ronning's management of petitioner's financial affairs for seventeen years. The record does not reflect that Ronning is attempting to sell the residence for his benefit.

Petitioner's remaining issues were neither raised below nor addressed by the probate court. Accordingly, they were not preserved for review, and we decline to discuss them. *Vander Bossche v Valley Pub*, 203 Mich App 632, 641; 513 NW2d 225 (1994).

Affirmed.

/s/ Henry William Saad
/s/ Maura D. Corrigan
/s/ Robert A. Benson

¹ Gorny's name is spelled differently than petitioner Gorney's name.