STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of the Estate of
DENISE ELLEN AQUINO,
a Legally Incapacitated Person.

ESTATE OF DENISE ELLEN AQUINO,

Petitioner-Appellee,

v

RENATO AQUINO and DENISE ELLEN AQUINO, Individually,

Respondents-Appellants.

UNPUBLISHED
February 13, 1998

No. 198576
Wayne Probate Court
LC No. 93-518528

Before: Markman, P.J., and McDonald and Cavanagh, JJ.

MARKMAN, P.J. (concurring).

Although I concur with the majority's conclusion that this matter should be reversed and remanded, I write separately because I believe that the issue is a closer one than the majority opinion might be read to suggest.

A probate court may remove a conservator for good cause upon notice and hearing. MCL 700.475; MSA 27.5475. Respondent challenges whether notice was given and whether a proper hearing was held. The petition to terminate the conservatorship was technically brought by counsel purporting to represent only Denise and not respondent. On appeal, petitioner argues that in reality, the petition was brought by respondent because Denise had not been declared competent at that time and therefore, could not have brought a petition herself. MCL 700.490; MSA 27.5490, however, provides that "[t]he protected person, the protected person's personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship." See also MCL 700.447; MSA 27.5447 (a ward may move to terminate guardianship). Therefore, Denise was capable of bringing the petition to terminate the conservatorship. Denise, however, is not the

appropriate party to this appeal because the probate court's decision not to terminate the conservatorship is not the subject of this appeal. The issues presented on appeal relate only to whether respondent was properly removed given the court's decision not to terminate the conservatorship.

Notice must be reasonably calculated to apprise interested parties of the pendency of the action and must afford them an opportunity to present objections. *Vincencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 504; 536 NW2d 280 (1995). Respondent assisted Denise in picking an attorney, was present during her meetings with counsel and was present at the applicable hearings. Respondent, therefore, was not unaware of the pendency of the motion and had the opportunity to present his position. Respondent's reliance on *In re Williams*, 133 Mich App 1; 349 NW2d 247 (1984), and other cases cited therein, is misplaced as that case dealt with an interested party who failed to receive any notice that a guardian was to be appointed for her father. *Id.*, 6-7. Here, termination of the conservatorship would necessarily involve the removal of respondent as the conservator of the estate. By raising the issue of whether the conservatorship should continue, Denise invoked the probate court's exclusive jurisdiction "to determine the need for a conservator" and "to determine how the estate of the protected person which is subject to the laws of this state shall be managed . . ." MCL 700.462; MSA 27.5462. Given this jurisdiction over the management of the estate, the probate court also had jurisdiction to "give appropriate instructions or make any appropriate order," including at least arguably the removal of respondent as conservator. MCL 700.476(c); MSA 27.5476(c). Although respondent may not have had specific notice of the nature of the guardian ad litem's objections to the termination of the conservatorship and to respondent's continuance in that role, respondent did have notice that the propriety of his continued conservatorship over Denise's estate was in question.

Respondent is also hard-pressed to deny that the probate court held an evidentiary hearing. Due process requires that a party have an opportunity to be heard in a meaningful time and manner. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). Respondent was present at the hearing and testified with regard to the lack of any need for continued conservatorship. Respondent was also questioned regarding his possible influence over Denise and his role in the creation of the proposed trust. These questions properly related both to the propriety of respondent's actions as conservator and the possible termination of the conservatorship, as Denise's petition clearly stated that her intent upon such termination was to make respondent trustee over her funds. The terms of the proposed trust would have granted respondent powers beyond those that he possessed as conservator and would have removed his actions from the court's oversight. Respondent had the opportunity to respond to those questions and to defend his competency to act as a fiduciary for Denise. If the guardian ad litem had filed a petition for respondent's removal, the same evidence would have been presented and the probate court would again presumably have found that good cause was shown for removal. Further, the probate court did not rule until a month after the evidentiary hearing. If respondent felt that he had been deprived of the opportunity to present additional evidence beyond his testimony, such a request could have been made to the probate court at the initial evidentiary hearing or before the court ruled.

Despite these circumstances, ultimately I believe that, having acted beyond the scope of the original request to terminate the conservatorship, the probate court's authority to "make any

appropriate order" is not sufficiently broad to encompass an order removing a conservator. Rather, in view of the existence of MCL 700.476(c); MSA 27.5476(c), I believe that the probate court was obligated to strictly abide by the specific procedures set forth in this statute in effecting such a removal. *Cf*., *In re Norris*, 151 Mich App 502, 511; 391 NW2d 391 (1986).

I would also retain jurisdiction.

/s/ Stephen J. Markman