

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LOREAN T. MITCHEM, a legally
incapacitated person.

CAROL MORRIS,

Petitioner-Appellee,

and

GUARDIAN CARE, INC.,

Appellee,

v

CHRISELL AMES,

Respondent-Appellant.

UNPUBLISHED
March 22, 2005

No. 251342
Wayne Probate Court
LC No. 99-601606-CA

In the Matter of LOREAN T. MITCHEM, a legally
incapacitated person.

CAROL MORRIS and STEVEN GELLER,

Petitioners-Appellees,

and

PHOEBE COREY,

Appellee,

v

CHRISELL AMES,

Respondent-Appellant.

No. 251854
Wayne Probate Court
LC No. 99-601606-CA

Before: Owens, P.J., and Sawyer and White, JJ.

PER CURIAM.

These consolidated appeals are taken from certain orders of the probate court concerning the management of Lorean Mitchem's estate. Mitchem, who was at the time a legally incapacitated person, is now deceased. In Docket No. 251342, appellant, Mitchem's granddaughter, appeals from the probate court's July 17, 2003, order appointing a special fiduciary and removing her as successor conservator. In Docket No. 251854, appellant appeals from the probate court's October 6, 2003, order allowing the conservator's second and final accounting. We affirm.

In Docket No. 251342, appellant argues that the trial court abused its discretion by appointing a special fiduciary for Mitchem's estate and terminating her conservatorship. We disagree. A probate court's appointment or removal of a fiduciary is reviewed for an abuse of discretion. *Comerica Bank v Adrian*, 179 Mich App 712, 729; 446 NW2d 553 (1989). An abuse of discretion is found where a result is so "palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

As a preliminary matter, appellee Carol Morris argues that Mitchem's death arguably renders this issue moot. An issue is moot when an event occurs which renders it impossible for the reviewing court to fashion a remedy. *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). A question is not moot if it will continue to affect a plaintiff in some collateral way. *Id.* Here, the subject of the appeal is not moot because a conservator of a protected individual's estate may influence the appointment of the estate's personal representative by nomination, objection to another's appointment, or participation in determining the preference of devisees and heirs. MCL 700.3204.

The probate court may appoint a special fiduciary "[u]pon reliable information received from an interested person . . . or other informed source, including the court's files . . ." MCL 700.1309. The court also has the power to appoint a special fiduciary on its own initiative, on the notice it directs or without notice in its own discretion. MCR 5.204(A). Appointment of a special fiduciary suspends the power of the general fiduciary. MCR 5.204(B).

Here, the court indicated that it relied on the guardian ad litem's report when it decided to appoint a special fiduciary. The court, relying on its own extensive file and familiarity with this case, determined that no progress was being made in administering Mitchem's estate. The first conservator's account had been through several hearings, including at least one day of testimony by appellee Phoebe Corey for Guardian Care. The case had also been through case evaluation, without resolution. Appellant had not been satisfied by any of these proceedings. Additionally, when appellant's conservatorship was terminated, the cost of appellant's extensive litigation against appellee Guardian Care was nearing the value of the funds that appellant alleges were misappropriated. The guardian ad litem properly acted to avoid the potential waste of ongoing futile litigation by recommending that the court appoint a special fiduciary.

Appellant argues in this appeal that the trial court erred when it denied her objections to appellee Morris' report. Appellant did not provide this report for review. In any case, this issue

is not properly before this Court. A party must file a separate, timely claim of appeal if the party believes that he or she has been aggrieved by a subsequent probate order. MCR 5.801(A); MCR 7.203(A)(2); *McDonald v Stroh Brewery Co*, 191 Mich App 601, 609; 478 NW2d 669 (1991). Because the trial court did not issue a final order regarding appellant's objection to Morris' report, this Court is without jurisdiction to review the issue. *Id.*

In Docket No. 251854, appellant argues that the probate court improperly allowed appellee Guardian Care's second and final accounting. We disagree. A probate court's substantive decisions are reviewed for an abuse of discretion. *In re Rice Estate*, 138 Mich App 261, 270; 360 NW2d 587 (1984). A conservator must account annually to the court and must make proofs of income and disbursements reasonably available for examination by any interested person who requests to see them or as required by the court. MCL 700.5418; MCR 5.310(C)(2)(d). If an interested person files an objection without first examining the proofs and the court concludes that such an examination would help resolve the objection, the court *may* order the interested person to examine them before it hears the objection. MCR 5.310(C)(2)(d). If an objection is filed and not otherwise resolved, the court will hear and determine the objection. MCR 5.310(C)(1)(c)(iv).

Here, appellant filed objections to the accounting without viewing the proofs. Both the guardian ad litem and the special fiduciary reviewed the accounting and recommended that the court allow it. After case evaluation and several hearings held in an attempt to resolve appellant's objections, the probate court allowed the account. The court was not required to order appellee Guardian Care, to show appellant the proofs before allowing appellee Guardian Care's accounting. MCR 5.310(C)(2)(d).

Appellant also contends the court improperly allowed the accounting because it did not hold a hearing after the case evaluation award was rejected by appellee Guardian Care. MCR 2.403(N)(1) provides that if the evaluation of the case evaluation panel is rejected, the case proceeds to trial "in the normal fashion." This argument has no merit because the trial court did hold a hearing after the case evaluation award was rejected. The October 6, 2003, hearing was the final hearing on Guardian Care's accounting.

Affirmed.

/s/ Donald S. Owens

/s/ David H. Sawyer

/s/ Helene N. White