

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of JUNE SUSSER, a Protected Person.

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BETTY SAARI,

Petitioner-Appellee,

v

RONALD SUSSER,

Respondent-Appellant.

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UNPUBLISHED

July 10, 2001

No. 222270

Gogebic County Probate Court

LC No. 99-100085-CV

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Respondent Ronald Susser appeals as of right the probate court's order appointing Betty Saari as conservator of June Susser's estate. We affirm.

I. Basic Facts And Procedural History

In 1996, June Susser granted her son, Ronald Susser, power of attorney and appointed him as her patient advocate. According to Ronald Susser, during this time he and his mother jointly made decisions regarding her finances and home, and kept the money June Susser received from her late husband's estate in an account under both their names. Eventually, Ronald Susser said, acting on the advice of his mother's financial adviser and attorney, he used the power of attorney to sell his mother's stocks and bonds, worth about \$400,000 after taxes, and transferred the proceeds to himself. He did so ostensibly to help his mother reduce her estate for estate tax planning purposes.

Unfortunately, June Susser, who is now in her eighties, suffered a stroke in May 1998. Though Ronald Susser and his wife, Hazel Marie Susser,<sup>1</sup> lived in Alaska, they moved to Michigan temporarily to care for June Susser in her home in Ironwood. Additionally, Ronald

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<sup>1</sup> She is known as Marie Susser.

Susser took charge of his mother's finances. During this time, he saw a significant difference in his mother's personality. She was upset that she could not live alone or drive her car, and she became angry when her son and daughter-in-law made her take her medications.

The three Sussers continued to live together in Ironwood until January 26, 1999, when Ronald Susser and his wife accompanied June Susser to her appointment with her personal physician, James Rocco, M.D. What happened next is in dispute. Ronald Susser claims that Dr. Rocco suggested placing his mother in a nursing home. According to Marie Susser, she and her husband did not intend to put June Susser in a nursing home, but Dr. Rocco suggested they see what a nursing home was like. June Susser, however, denies that Dr. Rocco recommended visiting or placing her in a nursing home. After the Sussers left Dr. Rocco's office, they drove to visit a nearby nursing home, where June Susser became so upset at the thought that she was going to be left there that her son described as having gone "berserk."

Ronald Susser, who had a history of heart problems, suffered a heart attack that same day. June Susser's sister, petitioner Betty Saari, visited him in the hospital and offered to take June Susser into her home for thirty days. When Ronald Susser agreed, June Susser immediately moved to Saari's home. From that point forward, Ronald Susser was only able to see his mother while Saari was present. Saari monitored his telephone calls to his mother. The next day, Saari and Marie Susser took June Susser to see psychiatrist Alex Ziga, M.D., apparently at Dr. Rocco's recommendation, so that they could determine why she became so upset while visiting the nursing home.

In February 1999, June Susser revoked Ronald Susser's power of attorney and, five months later, she petitioned the probate court to appoint Saari conservator of her estate under MCL 700.461(c).<sup>2</sup> On August 10, 1999, Ronald Susser, as an interested person, moved for a continuance and also asked the probate court to appoint an independent physician to examine June Susser and appoint a guardian ad litem for her. The next day, the probate court granted the motion for a continuance on the grounds that Ronald Susser had not been properly served with notice, but denied the motion to appoint a guardian ad litem. The probate court addressed the request for an independent physician by appointing Dr. Rocco to file a report along with a copy of her medical records. The probate court scheduled the next hearing for August 30, 1999.

At the end of August 1999, Ronald Susser moved for another continuance because he had not yet received Dr. Rocco's report or his mother's medical records. He contended that he would need time to review these materials or to subpoena Dr. Rocco if necessary. However, his attorney apparently received the report and records on August 27, 1999, after filing the motion, but before the hearing. At the August 30, 1999, hearing, Ronald Susser's moved for a continuance so that he could continue to review Dr. Rocco's medical records and secure Dr. Ziga's records. The probate court denied the motion, stating:

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<sup>2</sup> The revised probate code, not the estates and protected individuals code, was in effect at the time of the proceedings in this case. See MCL 700.8101.

[T]he reason I am doing that is because the very limited issue before the Court right now is whether or not the Court determines Ms. Susser has sufficient mental capacity to make an intelligent choice. I have some medical on file to that effect. I am really going to make a determination on what I hear from her or anybody else in this courtroom today as to that limited purpose. I want to make it absolutely clear this is not res judicata as to any determination of her total mental health in the matter. There is not any determination that is going to shut the door on any arguments of undue influence or otherwise.

The probate court assured Ronald Susser that he would eventually receive Dr. Ziga's records regarding June Susser's visit, but that this could occur later because they had "no great bearing on the issue today." Nevertheless, during the hearing, Ronald Susser's attorney, Marvin Marks, objected to introducing two letters from Dr. Rocco without his testimony and reiterated that he did not have Dr. Ziga's records, suggesting that June Susser's attorney had those records in the courtroom. The probate court, referring to the fact that the objection was to the admissibility of Dr. Rocco's letters, responded that Marks was going off on a tangent, and overruled the objection to the letters. Marks then interjected, "I would like to move to have Mr. Cossi [June Susser's attorney] produce Dr. Ziga's [sic] records, which he has." However, the probate court replied:

Yeah, you're going to get them, but you are not going to get them right now. Again I denied the Motion for Continuance feeling that they are of limited relevance at this time. You absolutely are, I am gonna order when we are all done here that you do get them. So you will get them but I, you know, we are belaboring the record gentlemen, with all these points. Maybe we are getting a few things out in the open that need to get out, but let's get back to the point, any other questions?

In line with the probate court's comment that it intended to judge June Susser's mental capacity to make an intelligent choice of a conservator, the probate court and both attorneys asked her numerous questions intending to reveal her level of competency. In response to these questions, June Susser was able to explain that she understood a conservator was someone who would watch over her money and that her attorney recommended that she ask to have one appointed for her. However, she also said that her goal in seeking a conservator was to prevent her son from placing her in a nursing home because she wanted to continue to live in her own home, albeit with some assistance. She knew her son's name, her age, and her location, but did not know her address and at one point mentioned returning to her old home in New Jersey, which was being sold. She accurately explained where she had been living, where she was currently living, why the move occurred, and she was able to identify her daughter-in-law. June Susser recognized her financial advisor's name and was able to explain his job. She was able to explain her finances in a general manner during direct examination, but apparently became confused later, making clearly conflicting statements. She denied granting her son her power of attorney, but later identified her signature on the document that gave him that authority. It is not clear from the record to what extent her ability to hear, rather than her competency, affected her testimony.

Ronald Susser testified that his mother was not competent to make her own decisions because she was often forgetful and was also under Saari's undue influence. Marie Susser gave more equivocal testimony, first stating that June Susser was "mentally competent," later indicating that June Susser needed someone to ensure she took her medications. Marie Susser also indicated the stroke had "affected some of her ability to reason," and that it was up to the probate court to determine whether she was mentally competent.

The probate court determined that June Susser was sufficiently mentally competent to make an intelligent choice regarding the identity of her conservator, Saari was an intelligent choice, and it was irrelevant whether her reasons for being angry at her son were "irrational." The probate court declined to state whether the decision was a final order for appeal purposes. "I have ruled on the conservator at this point," the court said, "and I don't see that changing in the short run as long as that is her pick, unless Dr. Zigga [sic] had made massive medical findings that are contrary to Dr. Rocco's." The probate court also refused to hear evidence regarding Saari's alleged undue influence, stating it was not relevant to whether to appoint Saari as conservator. In the order appointing Saari as conservator, the court also ordered June Susser to provide the court with Dr. Ziga's medical records within fifteen days for an in-camera review.

## II. Discovery

### A. Standard Of Review

Ronald Susser first contends that the probate court erroneously denied him discovery of June Susser's medical records.<sup>3</sup> This Court reviews issues concerning discovery for an abuse of discretion.<sup>4</sup>

### B. Analysis

The court rules concerning discovery apply to probate proceedings.<sup>5</sup> MCR 2.302(B)(1) defines the scope of discovery generally, providing:

Parties may obtain discovery regarding *any matter, not privileged, which is relevant to the subject matter involved in the pending action*, whether it relates to

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<sup>3</sup> Ronald Susser also argues that the probate court erred by appointing June Susser's personal physician to prepare a medical report on her health. However, he failed to present this issue for appeal by listing it in his statement of questions presented. MCR 7.212(C)(5). Therefore, we decline to address this issue. See *Greathouse v Rhodes*, 242 Mich App 221, 240; 618 NW2d 106 (2000). Furthermore, his statement of this issue suggests that he intended to argue that the probate court erred in refusing to consider Dr. Rocco's and Dr. Ziga's medical records before determining that June Susser was able to choose her own conservator. However, he has made no substantive argument on this point. Accordingly, we concluded that he has abandoned this issue. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

<sup>4</sup> See *Baker v Oakwood Hospital Corp*, 239 Mich App 461, 478; 608 NW2d 823 (2000).

<sup>5</sup> MCR 5.301.

the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.<sup>6]</sup>

MCR 2.314(A) specifically states that medical information, including medical records, not subject to privilege are discoverable when relevant under MCR 2.302(B)(1). The records Ronald Susser sought, which belonged to Dr. Rocco and Dr. Ziga, passed the relevance threshold because June Susser's mental condition was at issue, at least to the limited extent that her capacity to make an intelligent choice of conservator was in question. Further, she waived any privilege she had in those records by not asserting the privilege when the probate court ordered her to produce her medical records.<sup>7</sup>

In reality, as even Ronald Susser acknowledges, the probate court granted him discovery of Dr. Rocco's medical records concerning June Susser when he requested them at the August 11 hearing. Ronald Susser or his attorney actually received those records twelve business days later, three days before the August 30 hearing. His true complaint regarding discovery of Dr. Rocco's records relates to the time in which he had to review the records. In other words, Ronald Susser's primary challenge regarding Dr. Rocco is the probate court's refusal to grant a second continuance, not whether he was denied his rights under the court rules to discover these records. Critically, however, he has not asked us to consider whether the probate court erred in denying the motion for a second continuance, making it unnecessary for us to address this argument.<sup>8</sup>

Ronald Susser's true discovery issue concerns only Dr. Ziga's records regarding June Susser. Though Ronald Susser evidently knew that his mother had visited Dr. Ziga well before August 1999, he did not request these medical records until the August 30 hearing. Assuming that June Susser's attorney had Dr. Ziga's records at the hearing, as Ronald Susser claimed, they had some minimal relevance to whether June Susser could intelligently choose her own conservator. The probate court even acknowledged that the records were of some relevance in indicating that it intended for Ronald Susser to receive them in the future. Thus, with the question of privilege having been waived, these relevant medical records were discoverable.

However, the probate court did not conclude that Dr. Ziga's records were protected from Ronald Susser's discovery demand under MCR 2.302(B)(1). Rather, interpreted reasonably, the probate court's remarks on the record indicate that it had concluded that the tardy demand for the records did not merit interrupting the hearing. Further, the probate court seemed to view the late

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<sup>6</sup> Emphasis added.

<sup>7</sup> MCR 2.314(B)(1).

<sup>8</sup> MCR 7.212(C)(5); *Greathouse, supra*.

request for the records as an effort to obtain the continuance despite its previous ruling denying the continuance. Courts have the discretion to deny a discovery request because it is untimely.<sup>9</sup> Further, courts have the discretion to prevent a party's dilatory tactics from disrupting the proceedings.<sup>10</sup> Thus the untimeliness of the demand coupled with the probate court's reasonable interpretation of the purpose of the discovery demand indicates that the probate court did not err in delaying Ronald Susser's access to the record until after the hearing concluded.

Of equal importance is Ronald Susser's failure on appeal to indicate how the delayed access to the record affected the fairness or result of the proceedings. Though he has now had the opportunity to review Dr. Ziga's record, he has never explained how the records would have affected the probate court's ruling or the way the probate court conducted the hearing, thereby prejudicing him. Consequently, even if error, we cannot conclude that the probate court's decision is inconsistent with substantial justice.<sup>11</sup>

### III. Mental Competency

#### A. Standard Of Review

Ronald Susser challenges the probate court's finding that June Susser was mentally competent to choose her own conservator. This Court reviews a probate court's decision regarding appointment of a conservator for an abuse of discretion.<sup>12</sup> However, a probate court's factual findings are entitled to deference, which requires us to review those findings for clear error.<sup>13</sup>

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<sup>9</sup> See *Klabunde v Stanley*, 384 Mich 276, 281-282; 181 NW2d 918 (1970).

<sup>10</sup> See, generally, *Model Laundries & Dry Cleaners v Amoco Corp*, 216 Mich App 1, 4-5; 548 NW2d 242 (1996) (denying attorney fees was not abuse of discretion because of the plaintiffs' delay); *In re Conley*, 216 Mich App 41, 45-46; 549 NW2d 353 (1996) (probate court did not abuse discretion in denying motion for substitute counsel because the respondent's counsel had performed adequately and substitution would disrupt proceedings); *Curylo v Curylo*, 104 Mich App 340, 345-347; 304 NW2d 575 (1981) (the defendant's delaying tactics justified the time it took the trial court to issue an opinion and therefore did not merit a new trial).

<sup>11</sup> See MCR 2.613(A) (only error that is "inconsistent with substantial justice" merits reversing a lower court's decision in a civil case under the harmless error rule); see also MCR 5.761 (other rules governing probate proceedings apply to conservatorship proceedings unless contradicted in court rules subchapter 5.760); MCR 5.001 (other rules of civil procedure apply in probate proceedings).

<sup>12</sup> *In re Williams*, 133 Mich App 1, 10-11; 349 NW2d 247 (1984) (emphasizing that MCL 700.470 stated that the probate court "may" appoint a conservator); see also MCL 700.641(a) (the probate court "may" appoint a conservator).

<sup>13</sup> See *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

## B. Defining Competency

In challenging the probate court's findings regarding June Susser's competency, Ronald Susser points to factors that allegedly support his conclusion that his mother is not mentally competent, borrowing heavily from the law on testamentary capacity. First, he contends that June Susser did not understand the nature of the proceedings in the probate court. Second, he claims that she could not determine the extent of her estate without prompting.

Neither case law nor the revised probate code define the standard for mental competency to choose a conservator. Black's Law Dictionary (6th ed) defines mental competence (or capacity) as a "term that contemplates the ability to understand the nature and effect of the act in which a person is engaged and the business he or she is transacting." Michigan law generally adheres to this definition of mental competence, for instance noting that "[a] mentally incompetent person is one who is so affected mentally as to be deprived of sane and normal action or who lacks sufficient capacity to understand in a reasonable manner the *nature and effect of the act he is performing*."<sup>14</sup>

In one form or another, this definition of mental competence arises in a variety of legal contexts. For example, the mental competence necessary to make a contract requires the individual entering into the contract "to understand in a reasonable manner the nature and effect of the act in which the person is engaged."<sup>15</sup> This competence to contract not only affects arms-length business relations, but the intimate relationship established with a civil contract to marry.<sup>16</sup> Similarly, to be competent to designate a new beneficiary of an insurance policy, the insured must "understand the business in which the insured was engaged, to know and understand the extent of the insured's property, how the insured wanted to dispose of it, and who are dependent upon the insured."<sup>17</sup> To have testamentary capacity, the mental competence to dispose of property through a will, "an individual must be able to comprehend the nature and extent of his property, to recall the natural objects of his bounty, and to determine and understand the disposition of property which he desires to make."<sup>18</sup> In other words, to be competent, a testator must know what property she owns, to whom she wishes to give the property, and how the will disposes of the property.<sup>19</sup>

While Ronald Susser contends that this definition of testamentary capacity is the appropriate standard to apply when determining whether a person is competent to choose a

<sup>14</sup> *May v Leneair*, 99 Mich App 209, 214; 297 NW2d 882 (1980) (emphasis added).

<sup>15</sup> *Erickson*, *supra* at 332.

<sup>16</sup> See *May*, *supra* at 215; see, generally, *Romatz v Romatz*, 355 Mich 81, 84; 94 NW2d 432 (1959).

<sup>17</sup> *Erickson*, *supra* at 333.

<sup>18</sup> *In re Sprenger's Estate*, 337 Mich 514, 521; 60 NW2d 436 (1953), citing *In re Walker's Estate*, 270 Mich 33; 258 NW 206 (1935).

<sup>19</sup> *Walker*, *supra* at 37.

conservator, we disagree. The definition of testamentary capacity requires the testator to know the full extent of her property and to whom she wishes to give it so that she will understand whether the will in question disposes of the property accordingly.<sup>20</sup> A person seeking appointment of a conservator under MCL 700.461 does not necessarily seek to dispose of her property, making the requirement that she know the full extent of her property, to whom she wishes to give it, and how any resulting document accomplishes this goal irrelevant.

Instead, we can apply the general definition of mental competence as the ability to understand the nature and effect of the act contemplated to the language of MCL 700.461(c) itself. Incorporating the language in that statute in this definition results in the following definition of competence in this context. A person competent to request a conservator under MCL 700.461 must be able to recognize that, “due to age or physical infirmity,” she or he “is unable to manage his or her property and affairs effectively,” and that the conservator, if appointed, will handle the person’s property and affairs.

This definition of competence, while true to the circumstances addressed in MCL 700.461, also avoids two pitfalls inherent in applying the definition of testamentary competence in this specific conservatorship context. Conservatorships under MCL 700.461 attempt to allow individuals who may have limited business<sup>21</sup> skills because of age or physical infirmity to seek help with those affairs, whether the age or physical infirmity concerns the ability to sell property, manage investments, pay bills, or even handle a bank account. Case law draws a distinction between the capacity to dispose of property in a will and the capacity to engage in business activities, which presumably requires a different set of mental skills.<sup>22</sup> If we were to hypothesize which set of skills were more complex, and therefore more easily lost because of age or physical infirmity, we would be inclined to conclude that people tend to lose the mental competence to handle their business affairs before they lose the mental competence to determine who should receive their property after death.

The significance of this observation is that if courts apply the testamentary competence test to individuals seeking a conservator under MCL 700.461(c), to find that the individuals require a conservator would likely have a negative effect on their ability to execute a will *and* deny individuals who do not meet the threshold for testamentary competence the assistance of a conservator. In other words, if we applied the testamentary competence test in the context of MCL 700.461(c) in order to appoint a conservator, probate courts would have to find that that the person seeking a conservator was so mentally unsound that he or she would never be able to execute a will. Conversely, in order to preserve the person’s ability to execute the will, a probate

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<sup>20</sup> *Id.*

<sup>21</sup> We use the word “business” broadly.

<sup>22</sup> See, e.g., *Coy v Doney*, 241 Mich 308, 311; 217 NW 23 (1928) (Wiest, J., concurring in result) (“Shortly after the deed was given, it is true, a guardian was appointed, but that was not because of mental infirmity but for lack of business capacity.”); *Erickson, supra* at 333, citing *Henderson v Henderson*, 206 Mich 36; 172 NW 623 (1919) (“A person may be incapable of conducting his business successfully and still not be mentally incompetent.”).

court would be hard pressed to find the mental incompetence necessary to appoint a conservator. The language of MCL 700.461(c) does not contemplate forcing probate courts to make this sort of Hobson's choice. Rather, MCL 700.461(c) applies to individuals who are "mentally competent." The definition of competence to choose a conservator we utilize avoids this dilemma by focusing narrowly on the ability of the person seeking a conservator to understand whether he or she has a need for a conservator and understands the role that the conservator plays, allowing mentally competent individuals to receive necessary help from a conservator without direct implications for testamentary competence.

By applying this definition to the facts in the case at hand, we have no reason to conclude that the probate court's findings were clearly erroneous. The record reveals that June Susser does suffer from some confusion and, perhaps, a hearing impairment. However, she was able to state that she felt she needed someone to help her with her affairs and that she understood what a conservator would do for her. These were the minimum requirements for the probate court to conclude that June Susser was competent to choose a conservator.

Though Ronald Susser points out that his mother stated that she thought having a conservator would help her keep him from placing her in a nursing home, we cannot infer from the cold record that June Susser was incompetent solely from this testimony. It is possible to interpret her testimony to mean that she thought that, with her sister's assistance as her conservator, she would be able to live independently longer because Saari would take care of her more difficult affairs. If her testimony should be interpreted to mean that she believed that having a conservator appointed would convince Ronald Susser to stop trying to control her affairs, we do not see the illogic of this as a tactical move; we can understand how June Susser might doubt her son's intentions after he took her to visit a nursing home, even on Dr. Rocco's advice. In any event, the reason for the evident tension between mother and son had no effect on the probate court's determination that she was competent to choose a conservator for herself.<sup>23</sup> Furthermore, it would be unrealistic to expect that a person who has made the deliberate choice to seek a conservator because she recognizes that she needs help would be perfectly clear on every question put to her at a hearing. The record simply does not portray June Susser as so confused that we would ignore the probate court's superior ability to assess through firsthand observation her demeanor, appearance, the clarity of her speech, and other factors that likely influenced its determination that she is competent to make an intelligent choice of conservator.

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<sup>23</sup> We borrow briefly from the law relating to wills because we believe it expresses the law's focus on family feuds as evidence of incompetence particularly well. "[C]apricious and arbitrary dislikes, unjust suspicions against relatives or mistaken beliefs as to their feelings and designs toward the testator and his property, however visionary, or belief of acts or facts which have any evidential basis, do not constitute insane delusions." *In re Estate of Sarras*, 148 Mich App 171, 178; 384 NW2d 119 (1986).

## IV. Undue Influence

### A. Standard Of Review

Ronald Susser argues that the probate court improperly refused to hear evidence that Saari exercised undue influence over June Susser and that the evidence of undue influence he introduced at the hearing was sufficient to demonstrate that his mother was incompetent to choose a conservator. This Court will not reverse a probate court's decision regarding the existence of undue influence unless clearly erroneous.<sup>24</sup> However, this Court reviews de novo probate court decisions regarding questions of law.<sup>25</sup>

### B. Presumption

Though discussed in the context of a will contest, this Court has succinctly stated the law regarding undue influence:

To establish undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency, and impel the grantor to act against the grantor's inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, is not sufficient.

A presumption of undue influence arises upon the introduction of evidence that would establish (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary, or an interest represented by the fiduciary, benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction.<sup>[26]</sup>

Ronald Susser did not provide direct evidence of Saari's alleged undue influence over June Susser. He relied instead on the presumption of undue influence, pointing to the way Saari monitored his interaction and communication with his mother, the fact that Saari had become his mother's sole caretaker, and his mother's allegedly independent decision to revoke his power of attorney and appoint Saari in his place.

Even assuming that Saari's influence over June Susser was somehow suspect, Ronald Susser's critical failure is that he has not shown how Saari benefited from being appointed her sister's conservator. Being appointed conservator would not offer Saari any benefit she did not already have under the power of attorney, which was not subject to the probate court's scrutiny,

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<sup>24</sup> *Erickson, supra* at 334.

<sup>25</sup> *In re Austin Estate*, 218 Mich App 72, 74; 553 NW2d 632 (1996).

<sup>26</sup> *Erickson, supra* at 331 (citations omitted).

because a conservator has additional duties and no additional powers.<sup>27</sup> In fact, whether acting under court order as a conservator or pursuant to the power of attorney, Saari would not be entitled to any specific benefit in acting as her sister's fiduciary.<sup>28</sup> The cases in which courts find undue influence tend to involve situations in which the benefit to the fiduciary is actual, not hypothetical.<sup>29</sup> In contrast, the record in this case does not provide any reason to believe that Saari has or will abuse this position of trust by seeking or obtaining a benefit from the arrangement. Further, June Susser rebutted any presumption of undue influence when she testified that her own attorney, not Saari herself, suggested who should be named as her conservator.

Affirmed.

/s/ David H. Sawyer

/s/ Michael R. Smolenski

/s/ William C. Whitbeck

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<sup>27</sup> See MCL 700.477-700.485.

<sup>28</sup> See, generally, *In re Conant Estate*, 130 Mich App 493, 498; 343 NW2d 593 (1983).

<sup>29</sup> See, e.g., *In re Swantek Estate*, 172 Mich App 509, 512-514; 432 NW2d 307 (1988); *In re Leone Estate*, 168 Mich App 321, 325; 423 NW2d 652 (1988).