

STATE OF MICHIGAN
COURT OF APPEALS

In re MARTHA HOCKENBERRY, a Protected
Person.

JAMES R. HOCKENBERRY,

Petitioner-Appellant,

v

MARTHA HOCKENBERRY,

Respondent-Appellee.

UNPUBLISHED

September 17, 2002

No. 234705

Wayne Probate Court

LC No. 2001-631097-CV

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Petitioner appeals as of right from a probate court order dismissing his petition for conservatorship for lack of personal jurisdiction. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

On February 12, 2001, petitioner James R. Hockenberry filed a petition seeking to be appointed conservator for his mother, whom he alleged was unable to effectively manager her property and business affairs because she had Alzheimer's disease. He stated that his mother, respondent Martha Hockenberry, resided at Henry Ford Village (HFV) in Wayne County, but served her at an address in Vero Beach, Florida, apparently contending that other relatives were attempting to thwart service of process by moving his mother. Respondent objected to the petition, stating that she had moved to Florida on February 15, 2001, with no intent to return to Michigan.

The probate court held a hearing on April 30, 2001. Martha Radke, petitioner's cousin and respondent's niece, testified that on February 11, petitioner visited respondent at HFV. Respondent told petitioner that she was going to Florida "and she was upset with him because he wasn't pleased." After the visit, petitioner asked to speak to Radke alone "and let me know that he didn't want her going to Florida." He reportedly "stated that he was going to be trying to get her committed to Northville here, that he could become her guardian conservator." Radke told him "you'll need to check with the lawyer because I'm her power of attorney." Thereafter, at respondent's request, Radke instructed the staff at HFV either not to allow petitioner to see respondent or not to allow him to remove her from the facility. Radke said she did not recall telling petitioner that she wanted to resign her power of attorney.

Radke also testified that the plane ticket for the trip to Florida was purchased sometime in December 2000. “[I]t was a one-way ticket and it was left open-ended.” Respondent was planning to leave on January 17, but Radke said that she “worked closely with [respondent’s] psychiatrist and it was decided we had her on new medications and we had to give those medications a month trial.” A new ticket was purchased for respondent to fly to Florida. Radke did not recall when the ticket was purchased, but said it “was well before I even saw Jim” on February 11. The flight was scheduled for February 16. Later, on March 22, Radke notified HFV of the move. She removed all of respondent’s belongings the next day. She stated that she had never been served with any papers in connection with the petition and apparently had not been aware the petition had been filed.

Petitioner testified that he and Radke met in respondent’s room at HFV on February 11 before speaking privately. He knew that respondent had talked about visiting her sister in Florida, but did not know she had actually planned a trip until Radke “mentioned that tickets had been purchased and they were not refundable.” Petitioner told Radke “that I didn’t feel that it would be a good idea for my mother to leave the facility for reasons of safety.” He was concerned

[t]hat she would be unsupervised. We didn’t know if she would take her medication. We had a very tough time trying to get her to take medication initially and was very resentful of this, very resentful of having to see a physician.

Petitioner recalled that Radke “told me that it had been very difficult for her” and said “that she felt she had enough of it and it was pretty tiring for her.” Petitioner said he visited respondent the following day (Sunday), and filed the petition on Monday.¹ Although petitioner said he had visited with respondent after February 11, he later said he did not have any contact with her after that date.

Petitioner also stated that when he attempted to serve the papers on respondent, he “was still barred from entry.” He did not know if respondent was actually at HFV at that time. Sometime later, HFV staff “confirmed” that respondent was in Florida and had left sometime in February. “They felt it was just a trip, that she would only be gone for a couple weeks. That’s all I was informed of.” Petitioner said he did not believe respondent had an intent to relocate to Florida or even to request a plane ticket to Florida.

Petitioner testified that sometime before October 2000, he and respondent discussed the possibility of having him appointed as her conservator. Respondent met with an attorney to discuss power of attorney and financial arrangements. Apparently, the attorney drafted and respondent signed something giving petitioner power of attorney, but he was not aware of it until after the fact. It was not clear from his testimony whether he learned of the appointment before or after February 11, when Radke said she had power of attorney.

¹ According to the calendar, February 11, 2001, was a Sunday. It is unclear if the February 11 meeting actually occurred on Saturday, February 10, or if petitioner visited respondent and filed the petition on the same day.

Radke was recalled and testified that she was one of the trustees of the Martha Hockenberry trust and one of the beneficiaries. Though not admitted in evidence, the witnesses referred to several documents, including: (1) the HFV lease executed November 22, 2000; (2) notations in another document indicating that as of February 9 respondent “has [been] wanting to move to Florida [with her] sister,” and the writer later referred to this move as a “trip”; and (3) a report from respondent’s guardian ad litem (GAL) indicating that respondent told the GAL that Vero Beach “was her permanent home,” said that she had registered to vote in Indian River County, produced her voter’s registration card, said that she had opened bank accounts and rented a safe deposit box at a local bank, and had arranged to have her social security checks deposited there, but in which the GAL questioned “whether Mrs. Hockenberry understood what she was doing or signing or the consequences of executing the trust in November 2000.”

The court probate took the matter under advisement and later issued a written opinion, stating:

The last issue, then, is domicile. Mr. Hockenberry cites several factors which he believes demonstrates [sic] the intent of his mother to remain a Michigan resident, including her long-term lease at Henry Ford Village, her long-standing joint bank account with her son, and the February 9, 2001, notation on Mrs. Hockenberry’s mental health services psychiatric follow-up note “. . . wanting to move to Florida with sister . . .” as an indication of not her present intent but an intent some time in the future.

The Court views each of these factors as Mrs. Hockenberry’s intent at the time she performed them (that is, when she executed the lease, opened a joint bank account, and perhaps even when she first purchased a ticket in December 2000 to fly to Florida). However, the fact that Mrs. Hockenberry was placed in the Alzheimer’s facility instead of the open facility in which she believed she would reside at Henry Ford could most certainly make her change her mind about fulfilling that long-term lease, although it does not foreclose the possibility that she would merely move to another facility in Michigan following her visit to her sister’s home. Similarly, someone on an extended visit to Florida may wish to establish a relationship with both a local bank and a local doctor. This is a rather common practice for “snowbirds” who are domiciled in Michigan but winter in Florida. However, the Court can envision no reason for Mrs. Hockenberry to register to vote in Florida unless her intent was to establish her domicile there. In fact, that [sic] court surmises that the change of voting registration was perfected for the express purpose of demonstrating to the Court the intent to change domicile. This Court finds that action, coupled with the new medical and banking relationships and the intent expressed to the Guardian ad Litem, sufficient to demonstrate a true change of domicile.

The Court finds that Mrs. Hockenberry’s domicile had changed to that of Florida at the time of personal service upon her.

Thus, in this appeal, we must decide whether the Wayne County Probate Court had personal jurisdiction over respondent.

II. Standard Of Review

Whether a court has personal jurisdiction over a party is a question of law, which this Court reviews de novo.² However, to the extent that jurisdiction as a legal matter depends on the probate court's factual findings concerning domicile, our review is for clear error.³

III. Jurisdiction

Under the estates and protected individuals code, the probate court has jurisdiction over a proceeding for conservatorship.⁴ The courts of record have general personal jurisdiction over a person who is present in the state when process is served, who is domiciled in the state when process is served, or who consents to jurisdiction.⁵

The probate court did not obtain jurisdiction over respondent under MCL 600.701(1) because she was not served with process while personally in this state.⁶ While petitioner claims that respondent consented to jurisdiction, he has effectively abandoned this claim by failing to brief its merits or to cite any authority in its support.⁷

Turning to MCL 600.701(2), which allows personal jurisdiction over people domiciled in Michigan, we note that domicile and residence are synonymous when used in statutes conferring jurisdiction.⁸ Domicile is the place where a person is legally deemed to live, which may or may not coincide with the individual's actual dwelling place.⁹ "The issue of a person's domicile is principally a question of intent, and is resolved by reference to all the facts and circumstances of the particular case,"¹⁰ such as "presence, abode, property ownership, and other facts"¹¹ Because intent is the key factor,¹² "[p]roof of domicile does not depend on any particular fact, but on whether all the facts and circumstances taken together tend to establish it. All acts indicative of purpose must be carefully scrutinized."¹³

² See *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 427; 633 NW2d 408 (2001).

³ See *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111; 553 NW2d 353 (1996).

⁴ MCL 700.1302(c).

⁵ MCL 600.701(1)-(3).

⁶ See *Haefner v Bayman*, 165 Mich App 437, 441; 419 NW2d 29 (1988).

⁷ See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

⁸ See *Curry v Jackson Circuit Court*, 151 Mich App 754, 757-758; 391 NW2d 476 (1986), citing *Leader v Leader*, 73 Mich App 276, 280; 251 NW2d 288 (1977).

⁹ See *Kubiak v Steen*, 51 Mich App 408, 413; 215 NW2d 195 (1974).

¹⁰ *Curry*, *supra* at 759.

¹¹ *Leader*, *supra* at 281.

¹² *Id.*

¹³ *Curry*, *supra* at 759.

The evidence showed that respondent intended to reside at an assisted living facility in Dearborn, but soon became unhappy there and expressed an intent to move to Florida to live with her sister. She planned to leave in January 2001, but the trip was delayed for medical reasons and rescheduled for mid-February. A plane ticket was purchased before the petition was filed and respondent left a few days after the petition was filed. Respondent's niece, who assisted with the move, knew that petitioner intended to file the petition, but apparently did not know that it had been filed at the time respondent left Michigan. Respondent moved into her sister's home in Vero Beach, Florida, opened bank accounts there, arranged to have her social security checks deposited at the local bank, began seeing a local physician, and registered to vote in Indian River County. She also told the guardian ad litem that Vero Beach was her "permanent residence." These factors suggest that respondent chose to move her domicile to Florida.

On the other hand, it appeared from the GAL's report that respondent had varying degrees of lucidity. The GAL questioned whether she understood the significance of certain documents signed in November 2000. In addition, the assisted living facility was not notified of the move, and respondent's possessions were not removed from her apartment there, until a month after she left for Florida. The reason for that delay was not disclosed. These factors weigh against a finding that respondent actually chose to move her domicile to Florida. On the whole, however, when viewed collectively, the limited evidence presented to the probate court does not give us a basis from which to conclude that the probate court clearly erred in determining that respondent was domiciled in Florida at the time she was served with the petition. Thus, as a matter of law, the probate court properly concluded that it lacked personal jurisdiction over respondent.

Additionally, there is no merit in petitioner's contention that the probate court could exercise personal jurisdiction over respondent under the long-arm statute.¹⁴ It is not enough that respondent may have rented an apartment in Michigan and may have had other property in the state; petitioner must show that his cause of action arose out of that relationship.¹⁵ There was no such showing here.

We also decline to address petitioner's claim that the probate court erred in denying his request for discovery. Petitioner failed to present the issue as required under the court rules,¹⁶ making review inappropriate.¹⁷

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly

¹⁴ MCL 600.705(3).

¹⁵ *Schneider v Linkfield*, 40 Mich App 131, 134-135; 198 NW2d 834 (1972), aff'd 389 Mich 608 (1973).

¹⁶ See MCR 7.212(C)(5).

¹⁷ See *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996).