

STATE OF MICHIGAN
COURT OF APPEALS

In re Conservatorship of PAUL SANTO.

PAUL SANTO, a Protected Individual,

Appellant,

v

ADULT WELL BEING SERVICES, Conservator
for PAUL SANTO, a Protected Individual,

Appellee.

UNPUBLISHED

March 15, 2012

No. 302595

Wayne Probate Court

LC No. 2009-741900-CA

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Paul Santo appeals as of right the probate court order granting the petition of Santo's conservator, Adult Well Being Services ("conservator"), to abandon real property that was jointly owned by Santo and his sister Kathleen Santo. Because Paul Santo has not demonstrated any prejudice resulting from the alleged conflict of interest, we affirm.

The property in question is a vacant four-unit multi-family dwelling built in 1923 and located at 2484 Woodmere in Detroit. The property was in serious decay and was the subject of a nuisance suit by the city in 2009. The conservator was unable to obtain insurance for the property because of the need for numerous repairs. The estimated cost to repair the property was approximately \$45,000, which would have exceeded the value of the property. The conservator filed a petition requesting that the probate court allow the property to be donated or abandoned, or that the court issue an order directing it to expend funds to make repairs necessary to insure the property.

The probate court appointed a guardian ad litem for Paul Santo "and all other interested persons as provided by statute or court rule." The guardian ad litem submitted a report in which he asserted that repair or rehabilitation of the property would not be in the estate's best interests and "would be a cash drain." The report explained that the cost of repairs would be at least five or six times the value of the property and that vandals posed an obstacle to any repair effort. The report further stated that Kathleen Santo agreed that it was not worth investing money into the property and that a charitable deduction should be pursued, but that Paul Santo, although

agreeing that it would be foolish to invest money to renovate the property, wanted to retain the property and not attempt to sell or donate it. Following a hearing, the probate court issued an order allowing the conservator to abandon the property.

On appeal, Paul Santo argues that the probate court's order must be reversed because of a conflict of interest by the guardian ad litem in representing the interests of both him and Kathleen Santo. We disagree.

In general, a court's finding regarding a conflict of interest is a question of fact that we review for clear error. *Camden v Kaufman*, 240 Mich App 389, 399; 613 NW2d 335 (2000). In this case, however, the issue of an alleged conflict of interest was not raised in the probate court. Therefore, to be entitled to relief, Paul Santo must establish a plain error resulting in actual prejudice. See *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 601-602; 603 NW2d 824 (1999).

Paul Santo has not demonstrated or even discussed actual prejudice. The guardian ad litem's report advised the probate court on the different positions of Paul and Kathleen Santo regarding the disposition of the property. Paul Santo does not contend that the guardian ad litem failed to accurately state his position. Arguably, by contending that his limited capacity "restricted his ability to properly accumulate, evaluate, and present evidence at the hearing," Paul Santo implies that there was evidence that the guardian ad litem failed to marshal because of the alleged conflict of interest. However, Paul Santo does not identify any such evidence. Because Paul Santo has not provided any basis for concluding that he was actually prejudiced by an alleged conflict of interest inherent in the guardian ad litem's dual representation of both him and his sister, appellate relief is not warranted.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray