

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of RICHARD T. SAHLIN, Deceased.

ERIC SAHLIN, BRUCE SAHLIN, GLENN
SAHLIN and BRIDGET VAN ARNEM,

UNPUBLISHED
May 18, 1999

Petitioners-Appellants,

v

No. 207222
Oakland Probate Court
LC No. 96-252701 SE

STEPHEN GREENHALGH and NBD BANK, as
Co-Personal Representatives of the Estate of
RICHARD T. SAHLIN, Deceased, CHRISTINE
SAHLINE EASTERBROOK and AMY E.
PETERMAN,

Respondents-Appellees.

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Petitioners appeal as of right from the probate court's order appointing respondent, Stephen I. Greenhalgh, as permanent, co-personal representative of the estate of Richard T. Sahlin. We affirm.

Decedent, Richard T. Sahlin, provided in his will that NBD and Greenhalgh be appointed as co-personal representatives of his estate. Four of decedent's five children became petitioners in this action because they opposed Greenhalgh's appointment. The probate court appointed NBD and Greenhalgh as temporary co-personal representatives on October 25, 1996. Approximately one year later, after a hearing, the court made the appointment permanent.

A probate court's decision to remove a fiduciary will not be reversed unless there is an abuse of discretion. *Comerica Bank v Adrian*, 179 Mich App 712, 729; 446 NW2d 553 (1989). By implication, the standard of review for an appointment of a fiduciary is also that of abuse of discretion, especially where, as here, that person has already served in that capacity on a temporary basis for approximately one year.

It is the purpose of the probate court to give effect to a testator's intent as determined by the language of the will. *In re Woodworth Trust*, 196 Mich App 326, 327; 492 NW2d 818 (1992). If a probate court does not find a named personal representative to be unsuitable based on circumstances of which the decedent was unaware, the court should appoint the named representative. MCL 700.164(2); MSA 27.5164(2).

Petitioners first argue that the probate court erred in appointing Greenhalgh because Greenhalgh's services are unnecessary or wasteful. There is no authority to support the proposition that a probate court can find a co-personal representative "unsuitable" on the basis that the other co-personal representative could function alone. Further, petitioners do not allege any circumstances of which decedent was not aware that make Greenhalgh's service any less necessary at this time than when decedent executed his will. Therefore, we conclude that this argument is without merit.

Petitioners next argue that Greenhalgh is unsuitable as a personal representative because there is a history of personal antagonism between him and them, and because their possible malpractice suit against him creates a conflict of interest. Antagonism between a personal representative and beneficiary of an estate is not sufficient to require removal of the personal representative when he has not mismanaged the estate. *In re Sumpter Estate*, 166 Mich App 48, 54-55; 419 NW2d 765 (1988). Further, an unproved charge of malpractice "cannot be permitted to force the removal of a fiduciary." *Id.* at 56.

In the case at bar, petitioners never alleged that Greenhalgh had mismanaged the estate in any way during the year in which he had served as temporary personal representative. Therefore, their antagonism toward him is insufficient grounds for removing him from that position or failing to make his appointment permanent as the will decreed. It was not unfair to petitioners for the probate court to honor the will in this matter. First, as in *Sumpter*, there is another co-personal representative so that petitioners are not forced to deal with Greenhalgh on a continuous basis. See *id.* at 56. Petitioners do not object to NBD; in fact, they petitioned the probate court to appoint NBD as sole personal representative. Moreover, not all of decedent's beneficiaries feel animosity toward Greenhalgh. See *id.* Petitioners' oldest sister, Christine Sahlin Easterbrook, who joined NBD and Greenhalgh as respondents in this suit, wants decedent's wishes honored.

There is no conflict of interest in this case, because petitioners have not filed a claim and may never do so. Rather, they have made only vague references to a possible future malpractice action against Greenhalgh and his law firm for actions taken before Greenhalgh became a personal representative. On the record before us, petitioners have not met their burden of proving that Greenhalgh is unsuitable and should not have been appointed permanent co-personal representative. Accordingly, we hold that the probate court did not err in making Greenhalgh's appointment permanent.

Affirmed.

/s/ Jane E. Markey
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff