STATE OF MICHIGAN

COURT OF APPEALS

Estate of JEFF J. BENTLEY, SR., by CAROLE HOCKEBORN, Personal Representative. Plaintiff-Appellee,	UNPUBLISHED November 12, 2013
v	No. 310801 Kent Circuit Court
RUBY BELL BENTLEY, Defendant-Appellant.	LC No. 11-010622-DO

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Defendant appeals by right the judgment of separate maintenance. We affirm.

Defendant and Jeff J. Bentley, Sr., were married in 1986. They began living separately in 2008 when defendant moved into a home in Wyoming, Michigan. In June 2011, adult protective services discovered that Bentley, who was 87 years old, living alone in his home in Grand Rapids, Michigan. It was further discovered that Bentley had a $10,900 past due heat bill and that his water was about to be turned off. Bentley also demonstrated a disorganized thought process and it was uncertain if he was taking his medication. In August 2011, Carole Hockeborn was appointed as Bentley's guardian and conservator.

Bentley and defendant owned three pieces of property, which included the home where Bentley had been living, a commercial building, and a parking lot. Taxes were delinquent on all of the properties dating back to 2009, and the city of Grand Rapids planned to foreclose on the properties in April 2012. Hockeborn discovered that the home was purchased through a land contract, which was in default with an outstanding balance of $20,000. The commercial building and the residential home both required significant repairs. Neither Bentley nor defendant could afford to pay for the repairs and past due property taxes and utilities.

On November 1, 2011, Hockeborn, in her capacity as Bentley's conservator, filed a complaint for separate maintenance on behalf of Bentley. Pursuant to a pretrial order, the properties were listed for sale and there was an offer to purchase all three for the amount of $325,000. A bench trial was held; and, at the time of trial, $80,000 was the total amount owed against all of the properties. Defendant opposed the sale of the parking lot and the commercial

building, arguing for a division of the assets that would allow her to keep the two properties. However, defendant and her business partner testified that they did not have the funding to pay for the building's repairs or the property taxes that were owed on each of the properties. The trial court entered a judgment for separate maintenance and ordered the sale of all three properties. It further ordered that Bentley would receive 45 percent of the proceeds and that defendant would receive 55 percent of the proceeds. This appeal followed.[1]

Defendant first argues that the trial court erred when entered the judgment for separate maintenance because there was insufficient evidence presented that the objects of matrimony had been destroyed. A trial court's findings of fact in an action for separate maintenance are reviewed for clear error. *Korth v Korth*, 256 Mich App 286, 288; 662 NW2d 111 (2003). "If either party in a marriage relationship is unwilling to live together, then the objects of matrimony have been destroyed." *Grotelueschen v Grotelueschen*, 113 Mich App 395, 398-399; 318 NW2d 227 (1982), superseded on other grounds by 10 USC 1408(c)(1). Further, evidence that the situation between the parties exceeded that of "normal marital bickering," *Winkelman v Winkelman*, 20 Mich App 305, 306; 174 NW2d 46 (1969), and that one party is unwilling to cooperate in saving the marriage, *Grotelueschen*, 113 Mich App at 399, supports a finding that the objects of matrimony have been destroyed.

The record supports that the parties lived separately since 2008, thus supporting that the parties were unwilling to live together. The record further supported that the parties had an abusive relationship throughout their marriage. In May of 2011 Bentley telephoned the police after defendant allegedly hit him in the head during an argument, thus supporting that the situation between the parties exceeded that of "normal marital bickering." Finally, defendant testified that, with the exception of her birthday, Bentley did not telephone her at all in the six months leading up to trial, thus supporting that he was unwilling to cooperate in salvaging the marriage. While defendant argues on appeal that she consistently contested that there had been a breakdown of the marital relationship, this "Court gives special deference to a trial court's findings when they are based on the credibility of witnesses." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The record supports that the trial court did not clearly err by determining that there was "a breakdown in the marriage relationship to the extent that the objects of matrimony [had] been destroyed and there remain[ed] no reasonable likelihood that the marriage [could] be preserved." MCL 552.7(4). Moreover, we find no merit to defendant's argument that the judgment for separate maintenance could not be entered because Hockeborn failed to specifically "recite" the language contained in MCL 552.7(4) at trial.

[1] Bentley died on November 16, 2012. Hockeborn was appointed his personal representative on February 15, 2013. This Court granted plaintiff-appellee's motion to substitute Hockeborn, as personal representative of Bentley, for Bentley as plaintiff-appellee. Unpublished order of the Court of Appeals entered November 4, 2013 (Docket No. 310801).

Defendant next argues that the trial court should not have been permitted to enter a order terminating the parties' rights in the marital property because Bentley was represented by a conservator and was unable to consent to the complete distribution of the marital estate. Because defendant failed to raise this argument below, it is not preserved. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Issues raised for the first time on appeal in a civil case are ordinarily not subject to review. *Id*.; *Nuculovic v Hill*, 287 Mich App 58, 63; 783 NW2d 124 (2010). Here, however, we review defendant's claim for plain error affecting substantial rights. *Rivette v Rose-Molina*, 278 Mich App 327, 328-329; 750 NW2d 603 (2008). The distribution of property in an action for separate maintenance is governed by statute. *Korth*, 256 Mich App at 291. Because the relevant statutory authority does not limit the trial court's ability to enter a judgment for separate maintenance terminating the parties' rights in marital property when the action was initiated a conservator, see discussion *infra*, we find that the trial court did not plainly err by entering the judgment. *Rivette*, 278 Mich App at 328. Defendant also argues that the trial court's ability to enter a judgment that terminated the parties' rights in the marital property is "unfair" and against public policy because it results in her no longer being considered a "surviving spouse" for purposes of inheriting from Bentley's intestate estate pursuant to MCL 700.2801(2)(c).[2] However, because this Court does not have the authority to considering whether legislation represents a wise or an unwise, prudent or imprudent, public policy, *Houston v Governor*, 491 Mich 876, 877; 810 NW2d 255 (2012), defendant's argument that the court rules permitting a conservator to file an action for separate maintenance and the statutory authority concerning the distribution of property are contrary to public policy is properly made before the Legislature and our Supreme Court. We decline to address it here.

Finally, there is no merit in defendant's argument that the trial court erred by finding that a guardian or conservator is permitted to file an action for separate maintenance on behalf of an incompetent spouse. Because the record establishes that Hockeborn filed the complaint in her capacity as conservator, not that of a guardian, we only review whether a conservator may bring an action for separate maintenance on behalf of an incompetent spouse. We review interpretation of statutes and court rules de novo. *In re Leete Estate*, 290 Mich App 647, 655; 803 NW2d 889 (2010). Statutes and court rules are interpreted according to their plain meaning. *Id*. at 655-656; *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). MCR 3.202(A) provides, in relevant part, that "incompetent persons may sue and be sued as provided in MCR 2.201." MCR 2.201(E)(1)(a) provides, in relevant part, that "[i]f a[n] . . . incompetent person has a conservator, actions may be brought and must be defended by the conservator on behalf of the . . . incompetent person." No limitation is placed on the conservator regarding the actions that may be brought by a conservator. The plain language of MCR 2.201(E)(1)(a) permits an incompetent person's conservator to bring an action on the incompetent person's behalf, and we will not read a limitation into the plain language of the court rule. *In re Leete Estate*, 290 Mich App at 655-656; *PIC Maintenance, Inc v Dep't of Treasury*, 293 Mich App 403, 410-411; 809 NW2d 669 (2011). Consequently, we find that the

[2] Plaintiff passed away after defendant filed her claim of appeal with this Court.

trial court did not err when it determined that Hockeborn was permitted to initiate the action for separate maintenance on behalf of Bentley as his conservator at the time the action was filed. MCR 3.202(A); MCR 2.201(E)(1)(a).

We affirm.

/s/ Jane E. Markey
/s/ Jane M. Beckering