

STATE OF MICHIGAN
COURT OF APPEALS

In re HOPE POOLED INCOME SPECIAL NEEDS
TRUST

FRANK STROPICH,

Appellant.

UNPUBLISHED
June 21, 2012

No. 300882
Chippewa Probate Court
LC No. 10-026159-PO

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Appellant Frank Stropich appeals as of right the probate court's order denying his petition for a protective order to permit inheritance funds to be placed into a special needs trust. Because the probate court did not abuse its discretion by appointing a conservator in lieu of granting Stropich's petition, we affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Stropich is a disabled individual within the meaning of 42 USC § 1382c(a)(3)(A). He suffers from schizophrenia, chronic COPD, and elevated lipids. Because of his schizophrenia, he lives in an adult assisted living facility and receives Social Security income, together with a number of means-tested government benefits, including Supplemental Security income and Medicaid. These benefits cover his health care expenses and adult assisted living facility charges.

In 2010, Stropich inherited \$300,000 from his aunt. He was approximately 75 years old at that time, and his mental disability rendered him unable to manage his financial affairs on his own. Accordingly, Stropich's niece retained counsel to determine how the inheritance could best be utilized for Stropich's benefit. It was determined that a special needs trust (SNT) was the best way to ensure that the inheritance would be used to improve Stropich's quality of life while also protecting his government benefits. The determination was based on the fact that the amount inherited would disqualify Stropich from receiving Supplemental Security income and Medicaid benefits, and would lead to an increase in the amount of his means-tested adult assisted living charges. See 42 USC § 1382(a). Creating an SNT could avoid the loss of benefits and increase in housing costs because an SNT is not considered income for the purposes of determining

government benefits. At the age of 75, Stropich was eligible to benefit from an SNT under 42 USC § 1396p(d)(4)(C), which pertains to:

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

(i) The trust is established and managed by a nonprofit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

Accordingly, Stropich, through his attorney, filed a petition with the probate court for a protective order to permit his inheritance funds to be placed into the Hope Pooled Income Special Needs Trust. The probate court denied the petition, reasoning as follows:

Well, the Court's gonna find that, you know, obviously Mr. Stropich is the petitioner here and I'm not confident that he's capable of understanding what was asked for and prepared by his attorney. He did not sign that document, he is unclear as to what the trust agreement is. It is clear from a casual reading by the court that the trust proceeds upon his death do not revert to any of his heirs. It appears from the petition that there's a substantial sum of money and just because one can, doesn't necessarily mean one should, execute this document. I think it's very appropriate that his needs can be met from these funds, I think a conservatorship is more than adequate to prepare and protect him and see that it used [sic] for his care, well being and needs. There is no testimony other than clothes and maybe a bicycle being purchased as being special needs that he might need, uh and purchase of cigarettes. He has certainly managed to live on supplemental social security income for all this period of time. This is obviously a significant sum of money that would more than meet his needs, pay for his care and allow a conservator, when one would be appointed, to properly manage his affairs for his benefit. I don't believe he [is, from what I heard him testify here today, capable of making an informed decision that he wants to, in effect, disinherit his heirs. He converses monthly by letter with his one niece. I] don't understand who precipitated this. It is clear he did not and for all those reasons, the court is not satisfied that it's appropriate or in the best interest to authorize the

execution of this trust and therefore the request for a protective order will be denied.

II. STANDARD OF REVIEW

We review for clear error a probate court's factual findings. *In re Estate of Bennett*, 255 Mich App 545, 549; 662 NW2d 772 (2003). "A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id.* We review for an abuse of discretion a probate court's substantive decisions. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). An abuse of discretion occurs when the court "chooses an outcome outside of the range of reasonable and principled outcomes." *Id.*

III. ANALYSIS

MCL 700.5401(1) authorizes a court, following notice and a hearing, to "appoint a conservator or make another protective order" in certain circumstances. Pursuant to MCL 700.5401(3),

[t]he court may *appoint a conservator or make another protective order* in relation to an individual's estate and affairs if the court determines both of the following:

(a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.

(b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money. [Emphasis added.]

Further, MCL 700.5408 provides, in relevant part:

(1) If it is established in a proper proceeding that a basis exists as described in section 5401 for affecting an individual's property and business affairs, *the court, without appointing a conservator*, may authorize, direct, or ratify a transaction necessary or desirable to achieve a security, service, or care arrangement meeting the protected individual's foreseeable needs. *Protective arrangements include*, but are not limited to, payment, delivery, deposit, or retention of money or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, contract for life care, deposit contract, or contract for training and education; or an addition to or *establishment of a suitable trust*.

(2) If it is established in a proper proceeding that a basis exists as described in section 5401 for affecting an individual's property and business affairs, *the court*,

without appointing a conservator, may authorize, direct, or ratify a contract, trust, or other transaction relating to the protected individual's property and business affairs if the court determines that the transaction is in the protected individual's best interests. [Emphasis added.]

It is undisputed that Stropich's mental illness renders him incapable of managing his own finances and that he has property that will be wasted or dissipated without proper management. Therefore, the criteria set forth in MCL 700.5401(3) are satisfied. Pursuant to MCL 700.5401 and MCL 700.5408, the probate court was authorized to either "appoint a conservator or make another protective order," such as permitting Stropich's inheritance funds to be placed in a trust. The court opted to appoint a conservator in lieu of granting the petition to allow the funds to be placed in an SNT and clearly articulated its reasoning on the record. The court's reasoning included its finding that Stropich did not appear to understand what the petition requested or how the SNT would operate, including the fact that creating an SNT would effectively disinherit his heirs. A review of the record supports this finding. Although Stropich will become ineligible for the means-tested governmental assistance that he currently receives, as the probate court recognized, the inheritance is a significant amount of money that will "more than meet his needs" for the foreseeable future, and a conservator will ensure that the funds are managed for Stropich's benefit. Thus, we cannot conclude that the probate court's decision to appoint a conservator in lieu of allowing the funds to be placed in an SNT was outside the range of reasonable and principled outcomes. *In re Temple Marital Trust*, 278 Mich App at 128.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens