

STATE OF MICHIGAN
COURT OF APPEALS

In re Conservatorship of ROBERTA MORE ASPLUND.

KATHLEEN M. CARTER, Conservator of
ROBERTA MORE ASPLUND, a legally protected
person,

UNPUBLISHED
November 24, 2020

Petitioner-Appellee,

v

RANDALL ASPLUND,

No. 350447
Washtenaw Probate Court
LC No. 17-001138-CA

Respondent-Appellant.

Before: SAWYER, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

In this appeal involving a dispute over the conservatorship of Roberta More Asplund,¹ Roberta’s son Randall Asplund appeals by right the probate court’s order of August 13, 2019, which authorized Roberta’s conservator, Kathleen M. Carter, to sell Roberta’s home. Because we conclude that Randall was not aggrieved by the probate court’s order, we dismiss this appeal for lack of jurisdiction.

After the probate court appointed a conservator for Roberta, the conservator held title to all Roberta’s property—real and personal—as her trustee. See MCL 700.5419(1). Roberta also generally became incapable of transferring her interest in the property to others. See MCL 700.5419(2); see also *Wies v Brandt*, 294 Mich 240, 247; 293 NW 773 (1940). Carter, as Roberta’s successor conservator, had the authority to dispose of Roberta’s personal property in a reasonable manner to accomplish the purpose of the estate without authorization of the probate court. See MCL 700.5423(2)(g). However, Carter could not sell Roberta’s home without prior

¹ For ease of reference, we refer to the members of the Asplund family by their first names.

authorization from the probate court. See MCL 700.5423(3). Before granting authority to sell Roberta's real property, the probate court had to hold a hearing, had to consider the value of the property, and had to find that the sale was in Roberta's best interests. MCL 700.5423(3).

In this case, Carter petitioned for authority to sell Roberta's home for \$460,000 to a specified buyer. The probate court held a hearing and found that the price was appropriate under the circumstances and that the sale was in Roberta's best interests. Accordingly, it entered an order authorizing the sale in August 2019.

Randall appealed the probate court's order as of right. Randall was an interested person. See MCR 5.125(C)(25)(b); MCR 5.125(C)(27)(b). Generally, an interested person may appeal an order defined to be a final order, such as an order approving the sale of real property, see MCR 5.801(A)(2)(j). But there is an important limitation on an interested person's ability to appeal: he or she must be "aggrieved" by the order. MCR 5.801(A) ("A party or an interested person aggrieved by a final order of the probate court may appeal as a matter of right as provided by this rule."); see also MCR 7.203(A)(2) (stating that this Court has jurisdiction to hear appeals of right filed by an aggrieved party as established, in relevant part, under a court rule). To be an aggrieved party, Randall must demonstrate that he suffered some injury arising from the actions of the trial court. See *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 292; 715 NW2d 846 (2006). An order causes injury to a party or interested person if it affects that person's rights or operates on his or her property; typically, the person affected must show that he or she has a pecuniary interest in the outcome. See *In re Trankla Estate*, 321 Mich 478, 482-483; 32 NW2d 715 (1948).

In this case, Randall presented no evidence that he had an ownership interest or other property rights in Roberta's home; indeed, he does not even claim to have an ownership interest in Roberta's real property. He does claim that the estate owed him money, but an unsecured debt does not give Randall any rights in Roberta's real property that would entitle him to stop its sale. See, e.g., *Irwin v Meese*, 325 Mich 349, 351-352; 38 NW2d 869 (1949) (holding that an unsecured creditor may not invoke equity to restrain the sale of real property on the fear that the seller would not have sufficient funds to repay the debt after the creditor reduces it to judgment). An unsecured creditor is not aggrieved by an order authorizing the sale of real property because he or she does not have a direct interest in the property, and the sale of it would not adversely affect his or her interests; on the contrary, the sale of the asset might benefit the creditor by generating the funds with which to pay the creditor after any secured creditors are paid. See *In re Trankla Estate*, 321 Mich at 481-483 (rejecting the contention that a former trustee was aggrieved by the order replacing him because the compensation owed to him did not give him a sufficient pecuniary interest to be considered aggrieved); see also *In re Critchell Estate*, 361 Mich 432, 450-455; 105 NW2d 417 (1960) (holding that a debtor was not aggrieved by the probate court's order because the debtor had no direct, legally protected interest in the estate that was adversely affected by the decree). The fact that he might inherit an interest in Roberta's real property after her death also does not make him an aggrieved party because that interest is contingent on a future event. See *In re Trankla Estate*, 321 Mich at 482 (stating that the aggrieved party must have a pecuniary interest beyond a mere possibility arising from some unknown and future contingency); cf. *In re Rodgers Estate*, 192 Mich 156, 162; 160 NW 753 (1916) (holding that a legatee of a decedent was aggrieved by an order authorizing the sale of the real property in which the legatee then had an interest). Randall's mere disappointment with the probate court's decision to authorize the sale did not

render him aggrieved by the probate court's order. See *Federated Ins Co*, 475 Mich at 291. Because Randall was not aggrieved by the probate court's order, this Court lacks jurisdiction to consider his appeal of right from that order. See MCR 5.801(A); MCR 7.203(A); see also *Federated Ins Co*, 475 Mich at 291 & n 2 (stating that, under the court rules and caselaw, a person must be aggrieved by the lower court's order to invoke the appellate court's jurisdiction). Accordingly, we dismiss this appeal for lack of jurisdiction.

Dismissed with prejudice. As the prevailing party, Carter may tax her costs. See MCR 7.219(A).

/s/ David H. Sawyer

/s/ Michael J. Kelly

/s/ Brock A. Swartzle