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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Conservatorship of the Person of
RAYMOND JACK.

JOSEPH ROLANDO JACK,
Petitioner and Appellant,

v.

RAYMOND JACK,
Objector and Respondent.

A136325

(City & County of San Francisco
Super. Ct. No. PCN-11-294489)

Petitioner Joseph Rolando Jack appeals from orders of the probate court denying his petition to appoint a probate conservator for the person and estate of his father Raymond Jack (father) and to compel the deposition of father, and from an order granting father's motion to expunge a notice of lis pendens which the petitioner filed against his father's former home. By the time of the hearing on these motions, father had moved with his new wife to Georgia and petitioner construes the court's order denying the conservatorship petition as based on the erroneous view of the court that it had lost jurisdiction as a result of the move. The probate court was under no such misapprehension. Its orders reflect the well-supported conclusion that the appointment of a conservator at that time was not justified.¹

¹ After briefing in this matter was complete, and on the eve of oral argument, respondent for the first time asserted that the orders from which this appeal has been taken are not appealable. (Prob. Code, § 1301.) This appears to be correct, and this court therefore exercises its discretion to treat the appeal as an application for the issuance of an extraordinary writ.

Background

Petitioner is the youngest of eight children born to father and his former wife of some 42 years, who died in 1995. In August 2010, father, then 76 years of age, married Loretta Jack (Loretta). In his petition for appointment of a conservator, filed on April 8, 2011,² petitioner alleged, among other things, that Loretta, a then 51-year-old woman, “has preyed upon [father] by feigning affection for [him] Loretta has isolated [father] from his family. [Father] once had very close relationships with his children and siblings. The relationships are broken. No one can stop by the house and visit anymore. . . . Loretta has convinced [father] that she is the only one who loves him and even recently married him. She has now convinced him to sell the home he has lived in for all these years to move with her to Georgia, away from his friends and family. She controls his bank accounts and other assets. Prior to the marriage, she stole over \$30,000.00. . . . Loretta has now come along and taken advantage of [father’s] age, decline in health and vulnerability.” The petition was supported by declarations from several of father’s other children, to much the same effect. Because father had indicated his intention to sell his family home and move to Georgia to live near Loretta’s family, on April 11 petitioner filed a “Notice of Pendency of Action,” claiming that the proposed conservatorship would affect title to the home.

Father promptly filed objections to the petition prepared by his personal attorney, Gary R. Lieberman, who appeared on father’s behalf. When interviewed by a court investigator, father advised the investigator that he did not wish to be represented by court-appointed counsel since he was represented by Mr. Lieberman. Nonetheless, the court appointed another attorney, Trisha Friedeberg, to represent him and at an initial hearing before a court commissioner, on June 30, 2011, the commissioner refused to recognize Mr. Lieberman as father’s attorney. Hence, father, by Mr. Lieberman, filed a motion to recognize Mr. Lieberman as his attorney in the matter. Petitioner opposed the

² Because of certain defects in the petition pointed out by the court commissioner at the hearing on June 30, 2011, an amended petition was filed on July 21, 2011.

motion, but at a hearing on September 20, 2011, attended by father, the court granted the motion and relieved Ms. Friedeberg as court-appointed counsel.

In anticipation of the initial hearing before the commissioner on June 30, 2011, the conservatorship investigator submitted an extensive report pursuant to Probate Code section 1826. The 19-page report sets forth, among other relevant information, a thorough explanation of the background of the proceedings and the information obtained in interviews with father, Loretta, petitioner, and numerous other children and relatives of father. The interviews revealed both the concerns of family members leading to the filing of the conservatorship petition and corresponding grievances of father and Loretta with most of father's children. The investigator reported that during her unscheduled visit with father, he "fully engaged in a private and lengthy interview in his living room. He appeared appropriately dressed and correctly recalled his date of birth and current date. He showed mild confusion about specific dates, such as the current year and birth order of his younger children. He seemed comfortably seated in an armchair where he was watching television. The living room was clean, organized, and nicely furnished. [¶] [Father] was alert and fully oriented as he listened to the advisements regarding the proposed conservatorship and expressed objections to it." The investigator concluded that father "is a talkative gentleman who has started a new stage in life with his bride . . . who seems to be providing good care in the comfort of their home. Unfortunately, he no longer maintains a close relationship with many of his family members due to his desire to protect her from their disparaging remarks and behavior. . . . [¶] There are allegations that some of [father's] family members have taken advantage of his generosity over the years. . . . [¶] . . . [¶] At this time, there does not appear to be sufficient information regarding the allegations of financial abuse and caregiver neglect. . . . [¶] It seems that [father] is overwhelmed with the various allegations against his new wife and the questions about his decision-making capability. Although he seems to have a little difficulty recalling dates and certain past events, he seems happy about his care and living situation. He has denied the allegations of financial abuse at the hands of his former girlfriend . . . and Loretta [¶] Without a filed capacity declaration, there is a

lack of medical information to indicate that [father] suffers from cognitive defects to the extent that he requires a conservatorship.”

On October 24, 2011, petitioner filed an ex parte application for an order prohibiting father from moving to Georgia with Loretta. Father opposed the motion. The record does not contain an order reflecting the court’s disposition of the motion, but it is apparent from subsequent entries that the motion was denied. On October 28, petitioner filed an ex parte application for an order to compel father to return to California. The record on appeal also fails to reflect the disposition of this motion but it is again apparent that the motion was not granted.

On January 10, 2012, after father had moved to Georgia and established permanent residence there, petitioner filed a motion to compel father’s attendance at a deposition. On February 28, father filed a motion to expunge the lis pendens that petitioner had placed on father’s prior home, which was restricting father’s ability to sell the property. Both motions came on for hearing at the same time as the hearing on the petition to appoint a conservator, April 26, 2012. The court denied the petition to appoint a conservator and the motion to compel father’s deposition. It granted the motion to expunge the lis pendens.

The probate court’s order denying the petition for appointment of a conservator provides the following explanation for the ruling: “The court considered the report of the conservatorship investigator filed June 29, 2011. The investigation confirms that Mr. Jack objected to the conservatorship and objected to the conservator. No party has submitted a capacity declaration to the court. Mr. Jack appeared at three hearings in this conservatorship proceeding. Mr. Jack has consistently opposed a conservatorship. Petitioner’s request to prohibit Mr. Jack from moving out of state was previously denied by the court. There was no temporary conservatorship and Mr. Jack remained free to determine his residence. Mr. Jack indicated his intention to move with his wife to the State of Georgia and did so. The court investigator has confirmed that Mr. Jack is residing in Georgia where he intends to remain. Counsel for petitioner recently travelled to Georgia, is aware of Mr. Jack’s location and residence, and confirmed at the April 26,

2012 hearing that she contacted Mr. Jack. [¶] Any request to establish a conservatorship is properly brought in the state where Mr. Jack resides. Although a citation was served, under Probate C. § 2352, when a conservatorship has been granted, a probate court has authority to fix the residence of a conservatee in another state. If the residence is established in another state then the court may require that proceedings be commenced in the place of new residence when the conservatee has resided in the new place of residence for a period of four months or longer, or a shorter period specified in the order. No conservatorship has been granted but Mr. Jack wishes to reside in Georgia. This court has no basis to determine that he should not be able to do so. Therefore, any proceedings for conservatorship are properly brought in the state of Mr. Jack's residence. Hence, the petition for conservatorship is denied."

Discussion

According to petitioner, "the main issue in this case is whether the trial court had jurisdiction over the matter even after the proposed conservatee . . . was removed from the state by his abuser. The court never reached the merits of the case due to proposed conservatee's removal from the jurisdiction the following day after service of a deposition subpoena on the suspect." Although a portion of the court's order may be read to suggest that the court believed that the conservatorship petition was not properly before the court because at the time of the hearing father was no longer a resident of California, this is not a fair reading of the order. The court did not question its own jurisdiction to rule on the matter and in denying the petition it is clear that it considered the merits of the petition.

The court obtained jurisdiction by service of the petition and citation upon father, and in all events jurisdiction was obtained by father's appearance in the proceedings. (*Conservatorship of Jones* (1986) 188 Cal.App.3d 306, 309.) There is no question but that the procedures applicable to conservatorship proceedings were followed, including the preparation and submission of a court investigator's report as required by Probate Code section 1826. In opposing petitioner's motion to compel father to return to California for his deposition, his attorney's declaration, although asserting that the venue

was no longer proper, acknowledged the jurisdiction of the court and argued: “There is absolutely no evidence that [father] is in need of a conservatorship. The court investigation report makes such a finding. There was an adult protective services investigation very early on in the case, which similarly found no basis for petitioner’s allegations of elder abuse, and the case was summarily closed. There are no less than three (3) medical reports which all indicate that [father] is perfectly able to handle his own affairs and make health care decisions.”³ The court was neither asked to, nor did it, dismiss the petition for lack of jurisdiction.

After reviewing the results of the court investigator’s thorough investigation, the court denied petitioner’s motion to prohibit father’s move to Georgia, either denied or simply failed to grant the motion to require his return, and when the petition finally came on for hearing in April 2012 reaffirmed its view that father was not in need of a conservator and was entitled to make his own decisions as to where to live, whether to sell his former home, and otherwise to conduct his life as he saw fit. Based on all the information before it concerning father’s then-current physical and mental condition, the court denied the petition on the merits. Its order should be read to indicate that in view of father’s change of residence, any future questions concerning the need for a conservator must be brought in the courts of Georgia, where he now resides.

In view of the court’s findings and conclusions, the court did not abuse its discretion in denying the motion to compel father to appear for his deposition and properly granted the motion to expunge the lis pendens.

³ The following paragraph of the declaration reads: “Regardless of the fact that this court may have jurisdiction over the case, it is very clear that this court is not the proper venue to hear the case, and should not therefore be requested to make an order compelling [father’s] attendance at a deposition, or otherwise participate in any judicial process in California.”

Disposition

Treating the appeal as a petition for an extraordinary writ to set aside the three orders from which the appeal purportedly was taken, the petition is denied.

Pollak, J.

We concur:

McGuiness, P. J.

Jenkins, J.