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COURT OF APPEAL, FOURH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of J.G.,

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY

Petitioner and Respondent,

v.

J.G.,

Objector and Appellant.

D060972

Super. Ct. No. MH101136)

APPEAL from a judgment and order of the Superior Court of San Diego County,
Laura W. Halgren, Judge. Affirmed.

J.G. appeals a judgment and order reestablishing a conservatorship of her person pursuant to the Lanterman-Petris-Short Act (LPS Act) (Welf. & Inst. Code, § 5000 et

seq.).¹ She contends that the judgment and order is void because the petition of the San Diego County Health and Human Services Agency, Office of the Public Conservator (the Agency) seeking the reestablished conservatorship was not timely filed, thus depriving the superior court jurisdiction over the matter. We reject J.G.'s argument and affirm the judgment and order.

FACTUAL AND PROCEDURAL BACKGROUND

J.G., who is in her mid-60s, suffers from schizoaffective disorder. During her adult life, she has been hospitalized repeatedly and placed into conservatorship on numerous occasions. Most recently, a conservatorship for J.G. was established after a jury trial in July 2007 and she was placed in a locked treatment facility. J.G. remained at that facility when her conservatorship was reestablished in June 2008 and again in July 2009.

In June 2010, the Agency filed a petition to reestablish the conservatorship over J.G. again. The matter was originally set for a jury trial on July 19, 2010, but was continued twice, ultimately to September 7, 2010, based on the parties' stipulations. At trial, the jury found that J.G. was gravely disabled and the court entered a judgment reestablishing the conservatorship for a one-year period beginning September 9, 2010.

On August 9, 2011, the Agency filed the current petition to reestablish J.G.'s conservatorship for another year. J.G. filed a demand for a jury trial on August 26, 2011,

¹ All further statutory references are to the Welfare and Institutions Code except as otherwise noted.

and trial was set for September 7, 2011. At the hearing on September 7, 2011, the court continued the trial to September 27, 2011, to allow completion of an investigative report.²

Trial commenced on September 30, 2011, but the court declared a mistrial after the jury reported that it was unable to reach a verdict. Retrial commenced on October 3, 2011, and the following day, the new jury found that J.G. was gravely disabled. On October 5, 2011, the court entered the judgment and order reestablishing the conservatorship over J.G. for another year and ordering that she continue her placement in a locked facility. J.G. appeals.

DISCUSSION

The LPS Act governs the involuntary detention, evaluation and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled. (§ 5150 et seq.) It authorizes the superior court to appoint a conservator for one who is determined to be gravely disabled (§ 5350 et seq.), so that he or she may receive individualized treatment, supervision and placement. (§ 5350.1.) A person is "gravely disabled" within the meaning of the LPS Act if, as a result of a mental disorder, she "is unable to provide for . . . her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A); see generally *Conservatorship of John L.* (2010) 48 Cal.4th 131, 142.)

The LPS Act sets forth several requirements pertaining to notice, hearing and trial rights, and other matters relating to conservatorship proceedings. In particular, it requires

² The report prepared during this period opined that J.G.'s mental condition had not improved since the time of the 2007 conservatorship proceeding and recommended the reestablishment of the conservatorship for her.

that the Agency serve the proposed conservatee with the petition for appointment of a conservator and the citation for conservatorship at least 15 days before the scheduled hearing date and give the proposed conservatee notice of the privileges and rights subject to deprivation as part of the conservatorship. (§ 5350; Prob. Code, §§ 1823, 1824.) After the date of the petition, the court must appoint the public defender or another attorney to represent the proposed conservatee within five days and hold a hearing within 30 days. (§ 5365.)

The proposed conservatee has the right, within a specified period, to demand a court or jury trial on the issue of whether she is gravely disabled. (§ 5350, subd. (d).) At the trial, the party seeking the conservatorship must prove beyond a reasonable doubt that the proposed conservatee is gravely disabled and, in a trial by jury, the verdict finding such disability must be unanimous. (*Conservatorship of John L., supra*, 48 Cal.4th at p. 143.)

A conservatorship under the LPS Act automatically terminates after one year, unless the conservator files a petition to be reappointed at or before that time. (§§ 5361, 5362, subd. (b), 5365; Prob. Code, § 1824.) Where the hearing on a timely reestablishment petition is noticed to occur within the conservatorship period, the court has continuing jurisdiction to hear the petition even if there is "a temporary interruption in the chain of conservatorship," i.e., a short lapse between the expiration of the original conservatorship period and the completion of proceedings relating to the petition. (*In re Gandolfo* (1984) 36 Cal.3d 889, 896, fn. 2 [court retained jurisdiction despite a six week

lapse between the end of the prior conservatorship period and the hearing on the petition]; *Conservatorship of McKeown* (1994) 25 Cal.App.4th 502, 505 [similar, four days]; see also §§ 5361, 5363.)

J.G. contends the trial court was without jurisdiction to reappoint the conservator because the underlying petition that initiated her fifth permanent conservatorship was granted on July 30, 2007, and the current petition, which sought to reestablish that conservatorship, was not filed until after July 30, 2011. However, her reliance on these facts as a basis for challenging the court's jurisdiction to hear the current petition is misplaced.

J.G.'s conservatorship immediately preceding the current reestablishment petition resulted from a judgment dated September 9, 2010, and the Agency filed the current petition to reestablish the conservatorship for another year on August 9, 2011, well before the existing conservatorship was due to expire (September 8, 2011). Although the hearing on the petition was not completed until the court entered judgment reestablishing the conservatorship on October 5, 2011, existing statutory and case law establish that the court had continuing jurisdiction over the petition during the entire period. (*In re Gandolfo, supra*, 36 Cal.3d at p. 896, fn. 2; *Conservatorship of McKeown, supra*, 25 Cal.App.4th at p. 505; §§ 5361, 5363.)

Notwithstanding these authorities, J.G. contends that this court's decision in *Conservatorship of Martha P.* (2004) 117 Cal.App.4th 857 supports her position. There, the Agency filed a timely petition to reestablish the conservatorship over conservatee

Martha P. and the matter was set for a hearing prior to the expiration of the existing conservatorship. (*Id.* at p. 862.) To permit further investigation and for various other reasons, the hearing was continued several times, to dates occurring after the existing conservatorship period had expired. (*Ibid.*) The Agency thereafter concluded that Martha was not gravely disabled and sought to dismiss its conservatorship petition under Code of Civil Procedure section 581. (*Id.* at pp. 862-863.) Over Martha's objection, the trial court issued an order granting the Agency's request. (*Id.* at p. 865.)

On appeal, Martha contended that the trial court erred in allowing the Agency to dismiss the petition. (*Conservatorship of Martha P., supra*, 117 Cal.App.4th at pp. 865-866.) This court disagreed, holding that the Agency had the right to voluntarily dismiss its conservatorship petition and that, once the Agency did so, the trial court lacked jurisdiction to take any further action on the matter. (*Id.* at pp. 865-872.) The opinion concluded:

"In this case, when the public conservator tendered or filed the voluntary dismissal of the subject reestablishment petition, that petition was effectively withdrawn, leaving no petition to reestablish Martha's conservatorship that had statutorily terminated at the end of one year. (§§ 5361–5362.) At that time, the court was without jurisdiction to take any action other than to 'issue a decree terminating conservatorship.' (§ 5362.)" (*Id.* at p. 872.)

J.G. points to this language, contending that because her fifth conservatorship was instituted on July 30, 2007, her reestablished conservatorships thereafter automatically terminated on July 30 of each year, thus rendering the current petition untimely and

depriving the trial court of jurisdiction to reestablish the conservatorship over her.³ J.G.'s argument, however, assumes that if a reestablishment petition is granted after the expiration of the earlier conservatorship petition, the conservatorship created thereby relates back to the original expiration date and thus has a duration of less than a year from the date of the judgment granting it.

Such an assumption is belied by the language of section 5361, which specifies that a "[c]onservatorship . . . shall automatically terminate one year *after the appointment of the conservator by the superior court*", an event that occurs when the court grants the reestablishment petition. (See *Conservatorship of James M.* (1994) 30 Cal.App.4th 293, 297 [recognizing that "the expiration of a prior conservatorship does not divest the court of power to reappoint the conservator"].) Pursuant to this statute, the conservatorship reestablished in September 2010 continued until September 2011, making the Agency's August 2011 petition to reestablish the conservatorship timely. Accordingly, J.G.'s contention that the trial court lacked jurisdiction to reestablish her conservatorship is without merit.

³ J.G. makes a related argument that "some previous period or periods of [her] current conservatorship were unlawfully extended." Notably, however, she has not (1) identified any specific period in which the conservatorship was improperly extended, (2) cited us any evidence to establish that an unlawful extension occurred or (3) provided any authority establishing that she is entitled to challenge her current conservatorship based on a defect that occurred in an earlier such proceeding.

DISPOSITION

The judgment and order reappointing the conservator is affirmed.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.