

NOTICE

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FILED

August 25, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 160079-U

NO. 4-16-0079

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Matter of the Guardianship of)	Appeal from
Imogene McDonald, a Disabled Adult,)	Circuit Court of
MARIE WHEELER,)	Greene County
Petitioner-Appellant,)	No. 15P1
v.)	
NORMAN McDONALD,)	Honorable
Respondent-Appellee.)	James W. Day,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court's denial of the nonparty's petition in this guardianship case. The appellate court determined that the nonparty should not have been allowed to intervene.
- ¶ 2 In January 2015, Norman McDonald filed a petition to (1) adjudicate his wife, Imogene McDonald, as disabled and (2) appoint Norman as her guardian. Later that month, the trial court granted the petition.
- ¶ 3 In October 2015, Marie Wheeler filed a petition in the guardianship case, referring to herself as an "intervening petitioner." Wheeler requested that the trial court order Norman to transfer Imogene's interests in certain property to Wheeler. The court later denied Wheeler's petition.
- ¶ 4 Wheeler appeals. We affirm, concluding that Wheeler failed to file a motion to intervene and that, even if she had, the motion would have been denied.

¶ 5

I. BACKGROUND

¶ 6 In January 2015, Norman filed a "petition for adjudication of disability and appointment of guardian." See 755 ILCS 5/11a-8 (West 2014). In the petition, Norman claimed that his wife, Imogene, was a disabled adult. Norman requested that the trial court adjudicate Imogene disabled and appoint Norman as guardian of her person and estate.

¶ 7 The trial court appointed Thomas H. Piper as Imogene's guardian *ad litem*. See 755 ILCS 5/11a-10(a) (West 2014) ("The court shall appoint a guardian ad litem to report to the court concerning the respondent's best interests ***."). In February 2015, Piper filed an answer to Norman's petition, along with a report. The report stated that Imogene had suffered a stroke and was "basically non-verbal." She was living with Norman and appeared to be receiving adequate care. In Piper's opinion, she was unable to physically care for herself and unable to understand the concepts involved in financial decisions. As a result, Piper recommended that the court appoint a guardian for Imogene's person and estate. Piper stated that he knew of no reason why Norman should not be appointed Imogene's guardian.

¶ 8 Later that month, the trial court granted Norman's petition for adjudication of disability and appointment of guardian. Accordingly, the court appointed Norman as guardian of Imogene's person and estate.

¶ 9 In October 2015, Marie Wheeler filed a petition containing two counts: (1) "petition to release ward's interest in real estate" (count I) and (2) "petition to release ward's interest in insurance policies" (count II). The petition described Wheeler as an "intervening petitioner." Count I alleged that Wheeler owned and lived in real property subject to a mortgage in Roodhouse, Illinois. Wheeler asserted that the property value and the amount owed on the mortgage were each approximately \$18,000. Wheeler asserted further that in August 2010, she conveyed

the premises to herself and Imogene as joint tenants with rights of survivorship. Wheeler explained that she made herself and Imogene joint tenants so Imogene would "have the premises upon [Wheeler's] death and be able to enjoy the use of the premises." However, because of Imogene's subsequent health problems, she was no longer able to enjoy the property or to assume the mortgage payments after Wheeler's death. Further, Norman had communicated to Wheeler that he did not want to acquire the property after Wheeler's death. Wheeler, therefore, requested that the trial court grant Norman authority to transfer Imogene's interest in the property to Wheeler.

¶ 10 Count II of Wheeler's petition asserted that she owned two life insurance policies naming Imogene as the beneficiary. Wheeler named Imogene as the beneficiary with the expectation that upon Wheeler's death, Imogene would use the policy proceeds to carry out Wheeler's burial wishes. However, Imogene was now incapable of carrying out those wishes, and Norman told Wheeler that he was unwilling to carry them out in Imogene's stead. Wheeler therefore requested that the trial court grant Norman leave to assign Imogene's interest in the policies to Wheeler so she could find a suitable beneficiary to carry out her burial wishes. (The petition did not explain why Wheeler could not unilaterally change the policy's beneficiary.)

¶ 11 Later that month, the trial court conducted a hearing on Wheeler's petition. An attorney appeared on Wheeler's behalf, and Piper appeared as Imogene's guardian *ad litem*. Wheeler testified essentially in accordance with the facts alleged in her petition. She also testified that she granted Imogene an interest in the real property so Imogene could take care of Wheeler if Wheeler became ill. Norman testified that he did not object to transferring the interest in the real property and the insurance policies back to Wheeler.

¶ 12 After the close of evidence, Piper argued that Norman had a fiduciary duty to look after the financial well-being of Imogene. Piper noted that the insurance policies were valued at

approximately \$15,000 and the debt on the real property was \$18,000. Piper explained that if Imogene retained her rights in those assets, she could apply the insurance proceeds to nearly pay off the debt on the real property and be left with a significant asset.

¶ 13 Wheeler argued that she and Imogene had created an arrangement between friends that would allow Imogene to abide by Wheeler's wishes. Wheeler argued that equity allowed the court to order Norman to convey the interests back to Wheeler.

¶ 14 The trial court expressed doubt that Wheeler could intervene in a guardianship action. In addition, the court was skeptical that a guardian could "just give *** back" a ward's interests while complying with the guardian's fiduciary duties. The court explained as follows:

"I mean it's pretty obvious [Wheeler] wanted Imogene to have the property. She wanted Imogene to be the beneficiaries [sic] of the policies. And now she's coming in and saying, 'Well, Imogene has had a stroke so give me back the property. Give me back the insurance. Things didn't work out the way I planned it.' That's true, I agree, but I—I just don't think the court has authority to order the guardian to re-convey a piece of joint tenancy property or re-convey—not re-convey but to whatever you want to call it as far as the insurance policies are concerned. *** I just—if you could show me in the statute where the court can allow or order a guardian to return these things to the person who gave them, I might reconsider but I—I just can't do this."

The court denied Wheeler's petition.

¶ 15 In November 2015, Wheeler filed a motion to reconsider. In it, Wheeler argued

that her grant to Imogene of interests in the real property and the insurance policies was undertaken with the expectation that Imogene would act as Wheeler's agent or trustee. Wheeler also argued that her actions created a resulting trust. Wheeler requested that the trial court declare a resulting trust in the real property and the insurance proceeds in favor of Wheeler and to order the reconveyance of those interests to Wheeler.

¶ 16 In January 2015, the trial court entered an order denying Wheeler's motion to reconsider. The order began as follows:

"Procedurally, this is a very unique case. The term 'case' is used loosely. There is no plaintiff, there is no defendant, there is no respondent, no summons, no complaint, no time to respond, no discovery, only an 'intervening petitioner' who filed no motion for leave to intervene. Notice of the hearing was given only to the guardian ad litem, Thomas Piper, and to the attorney who prepared the petition to have [Imogene] declared to be in need of a guardian."

The court determined that no resulting trust was created by the transfer of the real property or the insurance proceeds. Therefore, it denied Wheeler's motion to reconsider.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, Wheeler argues that the trial court should have granted her petition and ordered Norman to transfer Imogene's interests in the life insurance proceeds and the real property back to Wheeler. We disagree.

¶ 20 We begin by acknowledging, as did the trial court, the extremely unusual nature

of this case. Wheeler, who refers to herself as an "intervening petitioner," was never explicitly granted permission to intervene by the trial court, and, in fact, the record does not reflect that Wheeler ever *asked* for permission to intervene. Instead, she skipped that step and went straight to filing a substantive motion. Even more problematic than a nonparty filing a substantive motion without first being granted permission to intervene is the fact that Wheeler filed this motion in a guardianship action that had concluded approximately nine months earlier. As a result, we share the trial court's uncertainty as to this action. Not surprisingly, no appellee has filed an appellate brief in this case.

¶ 21 Had Wheeler filed a petition to intervene in this case, the trial court would have rightly denied it. Section 2-408 of the Code of Civil Procedure (735 ILCS 5/2-408 (West 2014)) sets forth the situations in which a nonparty may intervene in an action. A nonparty may intervene as of right in the following situations:

"(1) when a statute confers an unconditional right to intervene; or
(2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or a court officer." 735 ILCS 5/2-408 (West 2014).

None of these criteria applied to this case. No statute conferred upon Wheeler a right to intervene; Wheeler had no interest in the guardianship action, which, in any event, had already concluded; and no distribution or other disposition of property was set to take place within the

guardianship action.

¶ 22 A party may intervene by permission in the following situations: "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." 735 ILCS 5/2-408 (West 2014). Again, neither of these criteria applies to Wheeler. No statute granted her a conditional right to intervene, and the action—which had already concluded—presented no common question of law or fact. Thus, intervention was not available, and the trial court properly denied Wheeler's petition.

¶ 23

III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the trial court's judgment.

¶ 25 Affirmed.