

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:)	
THE CONSERVATORSHIP OF:)	CASE NO. 09 MA 58
)	
ANNE ADAMOSKY,)	O P I N I O N
CONSERVATEE.)	
)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court, Probate Division, Case No. 2009CN0001.
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JUDGMENT:	Reversed and Remanded.
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<u>APPEARANCES:</u>	
For Appellant:	Attorney Timothy Maloney 406 Gardenvue Drive Boardman, Ohio 44512

JUDGES:
Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: March 9, 2010

VUKOVICH, P.J.

¶{1} Appellant Anne Adamosky appeals the decision of the Mahoning County Probate Court transferring jurisdiction of her conservatorship to the Trumbull County Probate Court. The issue at the heart of this appeal is whether the probate court erred when it transferred jurisdiction without first holding a hearing to determine whether Adamosky had become a resident of Trumbull County. For the reasons expressed below, we find that it did commit error when it transferred jurisdiction without first holding a hearing to determine whether Adamosky was a resident of Mahoning County or Trumbull County. Thus, the judgment of the probate court is reversed and this cause is remanded for further proceedings.

STATEMENT OF THE CASE

¶{2} On February 20, 2009, Adamosky filed an application for appointment of conservator (Cheryl M. Lynn) pursuant to R.C. 2111.021, in Mahoning County Probate Court. Adamosky indicated in the application that her address is 920 Lyden Avenue, Youngstown, Ohio 44505. That same day one of the magistrates from the probate court spoke with Adamosky and found that her petition was voluntarily made and that the conservatorship was suitable. 02/20/09 Magistrate's Decision. The trial court adopted the magistrate's decision and "Letters of Conservatorship" were issued. 02/20/09 J.E.

¶{3} Following appointment of the conservator, on March 2, 2009, Adamosky filed a Report of Inventory. In that report she stated:

¶{4} "The Conservatee represents that she is the sole titled owner of her home located at and known for general mailing purposes as: 920 Lyden Avenue, within the City of Youngstown, County of Mahoning, and State of Ohio, 44505."

¶{5} ** * *

¶{6} "Ms. Adamosky was displaced from her residence on or about October 17, 2008 by the actions of one or more members of the City of Youngstown, Housing Department who 'red tagged' her home as 'unfit for human habitation' because of *inter alia*, large accumulations of trash and the smell of 'decaying flesh,' presumably from cats which were in and/or about her premises. Counsel understands that on the day

Ms. Adamosky was ejected from her home by the City's Housing Department employees, she was found, by a presently unknown individual(s), to be in need of immediate medical care and was transported involuntarily by ambulance to St. Elizabeth's Medical Care Facility. She has been involuntarily institutionalized since that date." 03/02/09 Report of Inventory.

¶{7} All filings discussed above, except the Letters of Conservatorship, were put under seal for confidentiality purposes on March 2, 2009, on Adamosky's Motion to Enseal the Records. The trial court then issued "Orders and Injunctive Orders Restricting Accounts." 03/2/09 J.E.

¶{8} The next filing occurred on March 25, 2009, when the trial court issued its "Judgment Entry Transferring Jurisdiction," which transferred the conservatorship to Trumbull County Probate Court. The judgment entry indicates that the issue came before the court on a request from Trumbull County Probate Court to transfer jurisdiction of the conservatorship to it. In finding that jurisdiction should be transferred, the Mahoning County Probate Court stated that Adamosky was no longer a resident of Mahoning County, but instead resided at Shepherd of the Valley in Trumbull County, Ohio. It also relied on an advisement that it had received, which indicated, that due to changing circumstances, an application for appointment of guardian for Adamosky would be filed in the Trumbull County Probate Court. Thus, given those facts and in the interest of judicial economy, the Mahoning County Probate Court found that "it would be in the best interest of the Trumbull County Probate Court to have jurisdiction over the within Conservatorship since it will also have jurisdiction over the guardianship case," and thus, transferred the conservatorship to Trumbull County Probate Court. 03/25/09 J.E.

¶{9} Adamosky timely appealed from the "Judgment Entry Transferring Jurisdiction." She also moved for the probate court to stay its judgment pending the disposition of this appeal; the trial court granted the request. 03/31/09 J.E.

FIRST ASSIGNMENT OF ERROR

¶{10} "THE TRIAL COURT VIOLATED R.C. 2111.471 WHEN IT TRANSFERRED JURISDICTION TO TRUMBULL COUNTY PROBATE COURT BECAUSE ADAMOSKY WAS NOT A RESIDENT OF TRUMBULL COUNTY."

SECOND ASSIGNMENT OF ERROR

¶{11} “THE TRIAL COURT VIOLATED R.C. 2111.02(A) WHEN IT TRANSFERRED JURISDICTION TO TRUMBULL COUNTY PROBATE COURT FOR THE PURPOSE OF ESTABLISHING A GUARDIANSHIP BECAUSE ADAMOSKY WAS NOT A RESIDENT OF TRUMBULL COUNTY.”

THIRD ASSIGNMENT OF ERROR

¶{12} THE TRIAL COURT ERRED IN CONDUCTING A HEARING ON ITS DECISION TO TRANSFER JURISDICTION FROM MAHONING COUNTY TO TRUMBULL COUNTY WITHOUT FIRST GIVING NOTICE OF THAT HEARING AND A MEANINGFUL OPPORTUNITY TO BE HEARD IN OPPOSITION TO THE TRANSFER TO ADAMOSKY, AND THEREBY DENYED [SIC] ADAMOSKY MEANINGFUL ACCESS TO THE COURTS OF THIS STATE IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTION 6, ARTICLE I, OHIO CONSTITUTION.”

FOURTH ASSIGNMENT OF ERROR

¶{13} “THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION IN TRANSFERRING JURISDICTION OVER THE CONSERVATORSHIP FOR ADAMOSKY TO THE TRUMBULL COUNTY PROBATE COURT, AFTER A SUPPOSED HEARING THEREUPON, WITHOUT FIRST GIVING NOTICE TO ADAMOSKY TOGETHER WITH A MEANINGFUL OPPORTUNITY TO BE HEARD THEREON, BASED UPON THE TRIAL COURT’S ERRONEOUS DETERMINATION THAT ADAMOSKY HAD CHANGED HER RESIDENCE TO SHEPARD [SIC] OF THE VALLEY WITHIN TRUMBULL COUNTY.”

¶{14} The assignments of error are addressed together. They contend that the probate court erred when it transferred the conservatorship to Trumbull County without first holding a hearing to determine if Adamosky’s residency had changed, that it erred in transferring the conservatorship to Trumbull County because Adamosky was not a resident of Trumbull County, and that it erred when it transferred the matter without first determining that the transfer was in Adamosky’s best interest.

¶{15} R.C. 2111.021 is the statute controlling conservatorships. It states that a “competent adult who is physically infirm may petition the probate court of the county

in which he resides, to place, for a definite or indefinite period of time, his person, any or all of his real or personal property, or both under a conservatorship with the court.” It also provides that upon finding that a conservatorship is voluntary and suitable, “all sections of the Revised Code governing a guardianship of the person, the estate, or both, whichever is involved, except those sections the application of which specifically is limited by the petitioner, and all rules and procedures governing such a guardianship, shall apply to the conservatorship, including, but not limited to, applicable bond and accounting requirements.” R.C. 2111.021.

¶{16} Thus, R.C. 2111.471 titled “Transfer of guardianship on removal of ward from county” is applicable to Adamosky. In this section it states:

¶{17} “If the ward for whom a guardian has been appointed removes to another county within this state and acquires a new residence or legal settlement therein, the probate court having jurisdiction over the guardian and the ward, may, on its own motion, or on motion of the guardian or any interested party, with the consent of the probate court of the county to which such ward was removed, transfer the jurisdiction over said guardian and ward to such probate court, provided it appears that such transfer would be in the best interest of the ward.” R.C. 2111.471.

¶{18} While the decision to transfer jurisdiction is discretionary, this statute provides that three factors must be present for a probate court to justly transfer jurisdiction of a conservatorship. See *In Re: Guardianship of Daugherty* (Mar. 9, 1984), 7th Dist. Nos. 83-C-24 and 83-C-29 (stating that a transfer is discretionary with the court even where the ward has moved and the other court has consented to jurisdiction). First, the conservatee must have acquired a new residence or legal settlement in a different county. Second, the probate court where the conservatorship is to be transferred to consents to the transfer. Third, the transfer must be in the conservatee’s best interest. Here, Adamosky does not dispute that the Trumbull County Probate Court consented to the transfer. Instead, she is arguing that the Mahoning County Probate Court: 1) did not determine whether she had acquired a new residence or legal settlement prior to transferring the cause, and 2) did not determine whether the transfer was in her best interest.

¶{19} We begin our analysis with the change of residence or legal settlement factor. Residence has been defined by its ordinary meaning as “a place of dwelling.” *In re Fore* (1958), 168 Ohio St. 363, 371. It “requires the actual physical presence at some abode coupled with an intent to remain at that place for some period of time.” *State ex rel. Florence v. Zitter*, 106 Ohio St.3d 87, 2005-Ohio-3804, ¶19. The term “residence” connotes an element of permanency rather than a location where one simply visits for a period of time. *In re Guardianship of Fisher* (1993), 91 Ohio App.3d 212, 215. If a change of residence is involuntary, the residence remains the place before the forced move. *Zitter*, 106 Ohio App.3d 87, 2005-Ohio-3804, at ¶19.

¶{20} “[L]egal settlement’ connotes living in an area with some degree of permanency greater than a visit lasting a few days or weeks.” *Id.* It requires some degree of permanency greater than a visit lasting a few days or weeks. *Fisher*, 91 Ohio App.3d at 216.

¶{21} The Mahoning County Probate Court found in its “Judgment Entry Transferring Jurisdiction” that Adamosky was no longer a resident of Mahoning County, but was instead residing at Shepherd of the Valley in Trumbull County. However, nothing in the probate court’s record affirmatively supports this conclusion. The only residence Adamosky ever claimed in this case was the 920 Lyden Avenue, Youngstown, Mahoning County address. None of the filings before the Mahoning County Probate Court contain a Trumbull County address for Adamosky. Furthermore, none of the papers filed indicate that she had an intent to change her residency from Mahoning County to Trumbull County. Adamosky does allege in her March 2, 2009 Report of Inventory that she was ejected from her home on 920 Lyden Avenue by the Youngstown City Housing Department, involuntarily transported to St. Elizabeth’s Medical Care Facility, and involuntarily institutionalized. 03/02/09 Report of Inventory. However, neither that filing nor any other filing indicates where Adamosky was allegedly involuntarily institutionalized. Even if she was involuntarily institutionalized in Trumbull County, her residency from Mahoning County would not change, because, as stated above, when a change of residence is involuntary the residence remains the place before the forced move.

¶{22} Without further evidence indicating that Adamosky had an intent to change her residence and that she in fact was residing in Trumbull County, the Mahoning County Probate Court should not have transferred jurisdiction. Basic principles of due process required the Mahoning County Probate Court, at the least, to hold a hearing to determine whether Adamosky's residence had changed. The determination of residency, by the definitions espoused above, requires more proof than one court being informed from another court that the residency of a conservatee has changed.

¶{23} Thus, the probate court's decision to transfer the conservatorship is reversed and remanded. Given the claim that Adamosky was involuntarily institutionalized and that the record shows that her only address is for Mahoning County, the probate court should hold a hearing to determine whether Adamosky's residency has changed.

¶{24} Furthermore, on remand if the court finds that her residency has changed, it still must consider whether the transfer to Trumbull County was in **her** best interest. As stated above, pursuant to R.C. 2111.471, a transfer can occur when both residency has changed and when it is found that the transfer is in the best interest of the conservatee. In the judgment, the Mahoning County Probate Court stated:

¶{25} "The Court further finds that for judicial economy it would be in the best interest of the Trumbull County Probate Court to have jurisdiction over the within Conservatorship since it will also have jurisdiction over the guardianship case." 03/25/09 J.E.

¶{26} While it was not improper for the court to consider judicial economy when determining whether to transfer the matter, this statement is not rendering a determination on whether the transfer is in the best interest of Adamosky. Furthermore, no where else in the judgment does the probate court express that it would be in the best interest of Adamosky to have the conservatorship transferred to Trumbull County or that it even considered Adamosky's best interest when determining whether to transfer the conservatorship.

¶{27} Therefore, for all the above reasons, we find merit with Adamosky's assignments of error.

CONCLUSION

¶{28} For the foregoing reasons, we find merit with Adamosky's assignments of error. As such, the judgment of the trial court is hereby reversed and this cause is remanded to the trial court to hold a hearing to determine Adamosky's residency.

Donofrio, J., concurs.

DeGenaro, J., concurs.