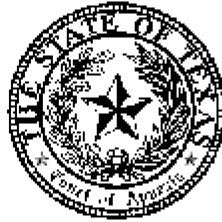
Reversed and Rendered and Opinion filed January 18, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-00619-CV

LORETTA JACKSON BETTS, Appellant

V.

BONNIE JACKSON BROWN, Appellee

On Appeal from the Probate Court Number One
Harris County, Texas
Trial Court Cause No. 300,501

O P I N I O N

On August 19, 1998, Bonnie Jackson Brown ("Brown") filed an application for the appointment of a guardian of the person and estate of Margaret W. Jackson ("Jackson"). Loretta Jackson Betts ("Betts") filed a contest to the appointment of Brown as guardian of the ward and sought appointment of herself as guardian of the estate. Brown and Betts are both daughters of the ward.

On February 24, 1999, Brown filed a motion in limine under Probate Code section 642, challenging Betts' standing to commence or contest a guardianship proceeding on the grounds that Betts had an interest adverse to that of Jackson. Subsequently, on April 9, 1999, Betts filed a motion in limine

pursuant to section 642, asserting that Brown lacked standing to commence or contest a guardianship proceeding, and notified Brown that the trial on the motion in limine was scheduled for April 14, 1999. On April 13, 1999, Brown filed a response alleging insufficient notice of trial. On April 14, 1999, the trial court considered both motions in limine. The trial court found that both Brown and Betts had interests that were adverse to Jackson, and therefore lacked standing under section 642. On August 27, 1999, Randall Lamb was appointed Guardian of the Person and Estate of Jackson.

Following the trial court's determination on the motions in limine, Brown made a request for findings of fact and conclusions of law. Betts made no such request. In the trial court's findings of fact and conclusions of law regarding Brown, the trial court concluded:

1. Bonnie Jackson Brown and Margaret W. Jackson had a fiduciary relationship, which made Bonnie Jackson Brown accountable for her dealings with Margaret W. Jackson's bank account.
2. By dealing in cash obtained from Margaret W. Jackson's bank account, Bonnie Jackson Brown was obligated to maintain receipts for expenditures made on Margaret W. Jackson's behalf.
3. Bonnie Jackson Brown was unable to account for the checks she wrote to Cash on Margaret W. Jackson's bank account.
4. Bonnie Jackson Brown had no Court authority to pay her legal fees from Margarete W. Jackson's account
5. Bonnie Jackson Brown's handling of Margaret W. Jackson's bank account in 1998 and 1999 created an interest that is adverse to Margaret W. Jackson.

Brown and Betts both contend that with regard to their own standing under section 642, the trial court erred in finding that they had an interest adverse to Jackson. Brown and Betts, however, assert that each others' interests are adverse to the interests of Jackson. Specifically, Brown asserts that Jackson's obligation under a consumer guaranty and consumer pledge agreement to secure a note of Betts constitutes an interest adverse to the ward. Betts counters with the assertion that checks written from Jackson's account, following her incapacity, for the benefit of Brown's daughter, and for unexplained cash withdrawals, clearly constitute an interest that is adverse to the ward.

The guardian of Jackson's person and estate contends that the whole issue of standing under section 642 of the Probate Code is moot, as a result of him being appointed permanent guardian of Jackson. Specifically, the guardian asserts that the justiciable controversy related to the appointment of a guardian for Jackson has been concluded, and therefore, no controversy exists.

Brown, additionally, alleges that the trial court's failure to give her forty five days' notice of the trial on the motion in limine violated her fundamental right to due process. We, however, need not address this point of error, having found that the judgment of the trial court is reversed.

I. MOOTNESS

"The mootness doctrine prohibits courts from deciding cases unless the issues are 'live' and the parties have a cognizable interest in the outcome. *See Rocky v. King*, 900 F.2d 864, 867 (5th Cir. 1990); *Tarrant County, Texas Commissioners Court v. Markham*, 779 S.W.2d 872, 876 (Tex. App.—Fort Worth 1989, writ denied).

The guardian contends that a ruling by this Court in favor of either Betts or Brown on the standing issue will not change the outcome of this matter. The guardian reasons that because the trial court entered an order appointing him permanent guardian, the issue of who has standing to be appointed guardian is moot. We disagree. The trial court's ruling under section 642 of the Probate Code effectively precluded Brown and Betts from participating in the appointment of a guardian for their mother. Additionally, section 642 encompasses more than who has standing to apply to be appointed guardian. Section 642 provides:

> (b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:
>
> (1) file an application to create a guardianship for the proposed ward or incapacitated person;
>
> (2) contest the creation of a guardianship for the proposed ward or incapacitated person;
>
> (3) contest the appointment of a person as a guardian of the person or estate, or both, of the proposed ward or incapacitated person; or
>
> (4) contest an application for complete restoration of a ward's

capacity or modification of a ward's guardianship.

TEX. PROB. CODE ANN. § 642(b) (Vernon Supp. 2000). The trial court's order on Brown's and Betts' motions in limine provided that Brown and Betts lacked standing to participate in those guardianship proceedings described in parts (1), (2), and (3) of section 642(b). The order, however, made no determination with regards to part (4) of section 642(b). If we determine that the trial court erred in finding that Brown and Betts lacked standing under section 642, either Brown or Betts would become eligible for appointment under section 759 as a successor guardian. *See* TEX. PROB. CODE ANN. § 759 (Vernon Supp. 2000). Therefore, Brown's and Betts' standing under section 642 of the Probate Code presents a live controversy for our review.

II. STANDARD OF REVIEW

The issue of whether a party has standing to participate in a guardianship proceeding is a question of law. *See Cleaver v. George Staton Co.*, 908 S.W.2d 468, 472 (Tex. App.—Tyler 1995, writ denied); *see also Womble v. Atkins*, 331 S.W.2d 294, 297 (Tex. 1960) (holding that whether or not a person has an interest in an estate is reviewed *de novo* by the Court of Appeals). "Although we may not review the factual sufficiency of the trial court's conclusions of law, we may review the correctness of the conclusions as drawn from the facts." *A&W Industries, Inc. v. Day*, 977 S.W.2d 738, 741 (Tex. App.—Fort Worth 1998, no pet.). A conclusion of law that is incorrect does not require the reversal of a judgment if the judgment is otherwise correct. *Id.*; *Able v. Able*, 725 S.W.2d 778, 780 (Tex. App.—Houston [14th Dist.] 1987, writ ref'd n.r.e.). "The trial court's conclusions of law are reviewable *de novo* as a question of law, and will be upheld on appeal if the judgment can be sustained on any legal theory supported by the evidence." *A&W Industries*, 977 S.W.2d at 741.

In the absence of findings of fact and conclusions of law, the trial court is presumed to have found the necessary facts in support of the judgment if there is any probative evidence to support such findings. *See Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989).

The trial court, at the request of Brown, made findings of fact and conclusions of law regarding

Betts' motion in limine under section 642. Betts, however, made no request for findings of fact and conclusions of law regarding Brown's motion in limine. Therefore, we review the conclusions of law made by the trial court regarding Brown *de novo*, sustaining the judgment on any legal theory supported by the evidence. *See A&W Industries*, 977 S.W.2d at 741. Moreover, because no findings of fact or conclusions of law were requested by Betts, we presume that the trial court found the facts necessary to support the judgment if any probative evidence supports those findings. *See Roberson*, 768 S.W.2d at 281. Brown and Betts complain on appeal that the trial court erred in finding that they lacked standing under section 642 of the Texas Probate Code.

III. SECTION 642

The issue of what constitutes an interest adverse to the interest of a ward under section 642, is an issue of first impression in Texas. There are no Texas cases interpreting the scope and effect of section 642. The Probate Code, however, does provide guidance. Under section 603, "the laws and rules governing estates of decedents apply to and govern guardianships." TEX. PROB. CODE ANN. § 603 (Vernon Supp. 2000).

To have standing to contest a will, the contestant must show some interest in the estate of the testator that will be affected if the will is admitted to probate. *See Abrams v. Estate of Ross*, 250 S.W. 1019, 1021 (Tex. Comm. App. 1923). "In the absence of such interest a contestant is a mere meddlesome intruder." *Abrams*, 250 S.W. at 1021. "It is not the policy of the State of Texas to permit those who have no interest in a decedent's estate to intermeddle therein." *Womble v. Atkins*, 331 S.W.2d 294, 297 (Tex. 1960). A similar policy is reflected in *Allison v. Walvoord*, 819 S.W.2d 624 (Tex. App.—El Paso 1991, orig. proceeding [leave denied]) decided prior to the enactment of section 642 of the Texas Probate Code. In *Allison*, the court was asked to determine whether plaintiffs in an underlying suit against the proposed ward, had standing to contest the appointment of a limited guardian. 819 S.W.2d at 625. The court relying on the phrase "all persons interested in the welfare"[1] of the proposed ward found that

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[1] Act of August 29, 1977, 65th Leg., R.S., ch.449, §1, *repealed by* Act of September 1, 1993, 73 rd Leg., R.S., ch.905, §15, & ch. 957, §75(2).

"those with an adverse interest can hardly qualify as being persons interested in protecting his well being." *Allison*, 819 S.W.2d at 627. "Basically, their [the contestants'] interest is in obtaining a substantial judgment against Mr. Allison which could only adversely affect his welfare." *Id.* at 626.

The Texas Legislature seems to have adopted the "well-being" language found in *Allison*. Under section 602, "a court may appoint a guardian . . . only as necessary to promote the well-being of the person." TEX. PROB. CODE ANN. § 602 (Vernon Supp. 2000). Given the rational used in *Allison*, and the language found in section 602, an interest is adverse to an interest of a proposed ward under section 642 when that interest does not promote the well-being of the ward. Said another way, the interest must adversely affect the welfare or well-being of the proposed ward. Applying this test to the facts before us, we must now determine if the trial court correctly determined Brown and Betts had interests adverse to the well-being of Jackson.

A. Brown

As mentioned previously, findings of fact and conclusions of law were made regarding Betts' motion in limine under section 642 contesting the standing of Brown. The trial court made two findings of fact, in particular, which support its determination that Brown had an interest adverse to an interest of the ward. One, the trial court found that:

> Although Ms. Brown produced receipts for the expenditure of a portion of the cash received from Mrs. Jackson's bank account, Ms. Brown was unable to (i) fully account for any checks written to Cash, or (ii) explain the expenditures or produce any receipts for other checks written to Cash from Mrs. Jackson's bank account.

Two, the trial court found that "Ms. Brown paid her own legal fees from Mrs. Jackson's bank account without court authority." The trial court concluded "Ms. Brown's handling of Mrs. Jackson's bank account in 1998 and 1999 created an interest that is adverse to Mrs. Jackson." While this conclusion might support Brown's disqualification as guardian under section 681 of the Probate Code, we can not conclude that Brown's interest so adversely affected the well-being of the ward as to deny her standing under section

642.[2] Unlike the contestants to the guardianship proceeding in *Allison*, whose sole interest in contesting the guardianship was against the well-being of the proposed ward, it cannot be said that Brown was not concerned with Jackson's well-being. The record reflects that prior to the initiation of these guardianship proceedings, Brown in fact did care for Jackson. Jackson stayed with Brown, Brown took Jackson to her doctor's appointments, and Brown actively sought out residential facilities that could care for Jackson. Brown's interest did not rise to such a level as to be against the well-being of Jackson. The trial court erred in finding that Brown lacked standing under section 642.

B. Betts

Betts, unlike Brown, never requested findings of fact and conclusions of law. As mentioned previously, we therefore presume that the trial court found the necessary facts to support the judgment if there is any probative evidence to support the judgment. The evidence in the record, however, does not support a finding that Betts' interest was adverse to the well-being of Jackson. The record indicates that Jackson and her late husband guaranteed a loan for Betts in the amount of $210,000.00. In guaranteeing this loan, Jackson and her late husband executed consumer pledge agreements granting the lender a security interest in assets held by Northern Trust Bank of Texas. This may be sufficient to disqualify Betts as guardian under section 681, but it fails to meet the adverse interest requirement under section 642. There is no evidence in the record to demonstrate an interest on behalf of Betts that would be contrary to

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[2] A person may not be appointed guardian if the person is:
(5) a person indebted to the proposed ward unless the person pays the debt before appointment;
(6) a person asserting a claim adverse to the proposed ward or the proposed ward's property, real or personal . . . .

TEX. PROB. CODE ANN. § 681 (Vernon Supp. 2000). It may very well be true that both Brown and Betts are indebted to Jackson, and are disqualified to be appointed guardian under section 681. However, by saying that this indebtedness acts as an adverse interest under section 642 clearly contravenes the purpose of the legislature. Reading section 642 and section 681 together, the legislature contemplated that a person indebted to the proposed ward would be allowed to participate in the guardianship proceeding, but may be disqualified to serve as guardian. Moreover, it is not clear that a person, because of a debt owed to the proposed ward, would not still be capable of serving as the guardian of the person, while being disqualified from serving as the guardian of the estate. For these reasons, the mere fact that Brown and Betts are indebted to Jackson is insufficient to create an adverse interest justifying the denial of standing under section 642.

promoting the well-being of Jackson. The trial court, therefore, erred in holding that Betts had an interest adverse to the ward.

V. CONCLUSION

We reverse the judgment of the trial court and render judgment that Brown and Betts have standing under section 642 of the Probate Code.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed January 18, 2001.

Panel consists of Chief Justice Murphy and Justices Amidei and Hudson.[3]

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[3] Former Justice Maurice Amidei sitting by assignment.