2013 WL 9806587 (Minn.App.) (Appellate Brief)
Court of Appeals of Minnesota.

In Re: GUARDIANSHIP AND CONSERVATORSHIP OF HELEN LOUISE DURAND, Ward/Protected Person.

No. A13-1415.
November 4, 2013.

Appellant's Reply Brief

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***i** TABLE OF CONTENTS

***ii** TABLE OF AUTHORITIES

CASES

***1 ARGUMENT**

I. MINN. STAT. § 524.2-212 IS CONSTITUTIONAL UNDER MINNESOTA'S EQUAL PROTECTION CLAUSE.

Minnesota's equal protection clause does not forbid all classifications. Rather, similarly situated individuals must be treated similarly. Protected spouses under conservatorship are not similarly situated to other spouses. While the precise legal challenge raised by Respondents has not been decided in Minnesota, our statutory scheme recognizes a valid distinction exists between protected persons and other persons. The Minnesota Legislature has created a rigorous process for ascertaining who is a protected person, what powers a conservator will have, in addition to when court oversight is necessary in exercise of the court's exclusive jurisdiction over the **financial** affairs and estate of the protected person. The statutory scheme is discussed in detail in Appellant's Brief. (App. Br. at 13-16, 17-19.)

Minn. Stat. § 524.2-212, which requires district court approval of a conservator's decision to elect against the will of a deceased spouse, must be viewed in the context of this statutory scheme. Yet neither Respondent ADMI nor Respondent Durand even mentions the statutory scheme. This omission undercuts the validity of their arguments. Minnesota law is clear that whether those classified by the law are similarly situated is a threshold question. If classification is between persons who are not similarly situated, this Court's analysis ends. Because a protected spouse is not similarly situated to other spouses, section 524.2-212 creates a constitutionally permissible category.

***2** Additionally, court oversight of a conservator's request to file an elective share petition is rational because it is relevant to the statute's legitimate purpose. All elective share petitions result in a hearing and court order. Similarly, the conservator of a protected spouse must provide notice, obtain a hearing and court order, as well as demonstrate that the elective share petition is supported by (a) the **financial** needs of the protected person and (b) the best interest of the "natural bounty" of the protected person's affections. Both statutory factors are often relied upon by other spouses in deciding whether to elect against a decease spouse's express wishes. Also, application of these two factors allows the court to ensure that the elective share petition addresses the **financial** needs of the protected person. In other words, the elective share petition is not either overlooked to the protected spouse's detriment or pursued merely to augment the ward's estate and countermand the decedent's intent. Court oversight over the elective share petition, therefore, ensures that the petition is filed in the best interests of the protected spouse.

A. Protected Spouses Are Not Similarly Situated To Spouses Who Are Able To Manage Their Own Financial Affairs.

Minnesota's elective share law is premised on a genuine and reasonable distinction between protected spouses and other spouses because protected spouses have been adjudicated as unable to manage property and business affairs by clear and convincing evidence. (See authorities cited in App. Br. at 17-18.) Respondent Durand appears to refuse to recognize the legal determination and argues that "[t]here is no ***3** difference between the needs of surviving spouses who are protected persons and those who are not protected persons." (Durand Br. at 2.)

Similarly, Respondent ADMI makes sweeping and somewhat emotional generalizations that it hopes will satisfy this Court. For example, in discussing the first prong of the State v. Russell test, ADMI asserts, "A spouse under conservatorship is no less of a spouse than a spouse able to make their own **financial** decisions." (ADMI Br. at 13.) Later, ADMI challenges that the statute rests on "an archaic understanding of a disability and guardianship, one in which it does not recognize individuals with disabilities as having rights or value in society." (ADMI Br. at 17.) ADMI confuses social respect and individual affection

for the protected spouse, both of which are carefully promoted by Minnesota's statutory scheme, with discrimination against disabled persons.

While a spouse under conservatorship does not have the same legal rights or abilities as a spouse who is able to make her own **financial** decisions, the statutory scheme protects the spouse from **exploitation** and discrimination. In fact, the Legislature enacted a bill of rights for protected persons to specifically recognize that a protected person "retains all rights not restricted by court order and these rights must be enforced by the court." Minn. Stat. § 524.5-120. In other words, a protected person's rights are compromised only as stated in the court order appointing a guardian and conservator and no more than necessary given the protected person's limitations. Minn. Stat. § 524.5-417(b) (providing court may grant conservator "only those powers necessary to provide for the demonstrated needs of the protected person").

***4** Courts and conservators take great care to respect and preserve a protected person's rights. With regard to disposition of a protected person's property and other important property rights, the Legislature determined that a hearing and court order are appropriate. Minn. Stat. § 524.5-411 (requiring a court hearing and order before a conservator may execute decisions regarding the protected person's gifts, expectant interests, contract, insurance policies, joint tenancies, and wills). (*See also* App. Br. at 19.)

The legal distinction between protected spouses and other spouses with regard to the disposition of property is based at least in part on the genuine concern that a protected spouse is not competent to supervise or direct someone acting on her behalf. Indeed, this is exactly the finding that supported the district court's appointment of ADMI as conservator of Helen Durand. In its appendix, ADMI includes the Findings of Fact, Conclusions of Law and Order for appointment of ADMI as Conservator of Helen Louise Durand. Specifically, the district court found:

> The court finds that Helen Louise Durand lacks the capacity to make decisions in her own best interest relative to her late husband's estate, both probate and non-probate and both in and outside of a trust set up by her late husband and the case being probated in Dakota County District Court and specifically that *she lacks the ability to understand legal advice, to work with an attorney in her own best interest and to make a decision based upon the advice of an attorney.*

(ADMI App. 16, emphasis added; see also id. at 19.)

ADMI also argues that this Court should ignore case law from the Colorado and Montana Supreme Courts that have held protected spouses are not similarly situated to other spouses and court approval of an elective share petition is consistent with equal ***5** protection. *See Sweeney v. Summers*, 571 P.2d 1067 (Colo. 1977); *Matter of Merkel's Estate*, 190 Mont. 78, 618 P.2d, 872 (Mont. 1980) (discussed in App. Br. at 19-21.)[1] ADMI points out that neither state uses the strict equal protection test found in State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991). It is correct to say that Russell is not precedent for Colorado or Montana, but this truism hardly undercuts the basis for the legal conclusion that protected spouses are not similarly situated to other spouses.

Minnesota's rational basis test and the federal test do not differ with regard to the substantial similarity prong. Instead, the key difference in the Minnesota test is that our courts will not "hypothesize a rationale basis to justify a classification, as the more deferential federal standard requires." *State v. Garcia*, 683 N.W.2d 294, 299 (Minn. 2004) (quoting Russell, 477 N.W.2d at 889). This is the second prong of the *Russell test*, as ADMI recognizes in its own brief. (ADMI Br. at 14.)

Consequently, the Colorado and Montana Supreme Court decisions are persuasive authority for the legal conclusion that, as stated in Merkel's Estate, the classification of protected person is supported by the state's belief that is should "'take care of those who, by reason of mental incapacity, cannot take care of themselves."' 618 P.2d at 875. See also Sweeney, 571 P.2d at 1070.

ADMI also argues that Colorado and Montana's parallel statutes do not include the second prong that is found in Minnesota's statute. While an accurate description of ***6** difference between the states' laws, the difference is not meaningful to this Court's

constitutional analysis. If anything, the second prong of section 524.2-212 allows a court to more fully oversee the conservator's request to elect against the will because it allows the court to consider both the **financial** needs of the protected person and the best interests of the protected person's natural bounty.

B. A Rational Basis Supports The Legislature's Decision To Require A Court Hearing And Specific Findings Before A Conservator May File An Elective Share Petition.

Even assuming that this Court concludes that protected spouses are similarly situated to other spouses, it will uphold section 524.2-212 if it is supported by a rational basis. The first prong of the Russell test has been discussed above. The second and third prongs are whether the classification is "relevant to the purpose of the law" and whether the purpose is "one that the state can legitimately attempt to achieve." 477 N.W.2d at 888. ADMI and Durand fail to adequately support the district court's decision under either the second or third prong.

1. Minn. Stat. § 524.2-212's Classification Is Relevant To The Purpose Of An Elective Share Petition.

Regarding the relevance of the two-factors adopted for court review of a conservator's elective share petition, ADMI claims that "If" the Legislature's purpose is to provide support for the protected person and consider the best interests of the natural bounty of the protected person's affection, "then" the Legislature must impose these two-factors and require court approval for "all" surviving spouses. (ADMI Br. at 15, emphasis original.) ADMI posits the same argument in urging this Court to reject the ***7** Michigan Court of Appeal's decision holding that court oversight of a conservator's elective share petition is relevant to the statute's purpose because it checks what may be the conservator's automatic decision to augment the protected person's estate without consideration of other factors. Estate of Eggleston, 698 N.W.2d 892, 900 (Mich. Ct. App. 2005). (ADMI Br. at 18.)

ADMI's position begs the question whether court oversight of a conservator's elective share petition is connected to the distinctive needs of the protected person who is electing against a decedent's will. The connection is evident. A rational spouse may seek legal advice and decide to elect against the will and override her loved one's wishes for either of the two reasons identified in the statute - or for other reasons. As ADMI notes, "these spouses possess the unqualified right to elect even if purely motivated by greed." (ADMI Br. at 19.) Durand questions what is the "distinctive need peculiar to surviving spouses who are protected persons," yet fails to discuss the protected spouse's legal incapacity to manage or control her **finances** or business affairs. (Durand Br. at 3.)

Respondents do not contend that a protected spouse can competently decide whether to elect against a will on any basis or supervise her attorney or conservator in doing so. Indeed, while a rational spouse may decide to forgo the pecuniary advantage of an elective share petition in order to honor her spouse's testamentary wishes, a protected spouse cannot legally do so. (See authorities cited in App. Br. at 24-25.) Moreover, Respondents do not dispute that, as noted in Eggleston, a conservator may decide to file an elective share petition to enhance the protected person's estate, even though the **financial** needs of the protected person are already met. 698 N.W.2d at 899.

***8** The Legislature's decision to require court review and approval of a conservator's request to file an elective share petition is a constitutionally permissible method of ensuring that the petition is supported by the **financial** need of the protected spouse and in the best interests of her natural bounty. While these are not the full range of reasons available to other spouses who elect against a will, both are rational reasons that strike a balance between protecting the spouse and enforcing the testamentary wishes of the decedent. Both goals are well-recognized and supported by public policy but are sometimes in conflict. (See authorities cited in App. Br. at 13-15.) This conflict may go unchecked if a conservator's recommendation is not subject to court approval.

Respondents appear to assume that a conservator "steps into the shoes" of a protected spouse and, therefore, should be permitted to file an elective share petition for any and all reasons. This assumption is inconsistent with Minnesota law, which has held that a conservator does not succeed to a protected spouse's rights and instead has fiduciary obligations to the protected person.

Hoverson v. Hoverson, 216 Minn. 237, 241, 12 N.W.2d 497, 500 (1943); see also Minn. Stat. § 524.5-417(c)(3) ("The standard of a fiduciary should be applicable to all investments by a conservator."); Hagen v. Rekow, 253 Minn. 341, 345, 91 N.W.2d 768, 771 (1958) (holding guardian is not "alter ego" of protected person and cannot act with personal discretion). The application of section 524.2-212's two-factor analysis gives the conservator and the court guidance on how fiduciary obligations should be exercised before filing an elective share petition.

Given the court's exclusive jurisdiction over the protected spouse's estate and **financial** decisions, court oversight of a conservator's elective share request is appropriate ***9** as is the application of the two-factors selected by the Legislature. In short, Minn. Stat. § 524.2-212's classification is relevant to the law's purpose.

2. Minn. Stat. § 524.2-212's Purpose Is Legitimate.

ADMI argues, without further explanation, that section 524.2-212 "do[es] nothing to advance the protection of the protected person. Rather, it imposes an unjustifiable burden on the protected person." (ADMI Br. at 19.) Durand makes a similar argument. (Durand Br. at 4.) To some extent, this argument contradicts Respondents' contention that if the Legislature seeks to ensure that elective share petitions are consistent with the two statutory purposes, then it must "require courts to approve all surviving spouses' elections against wills." (ADMI Br. at 19, emphasis original; see also Durand Br. at 5) This is the same position taken by the referee and it implies that the referee recognizes the two statutory factors are rationally based. If it is constitutional to impose these factors on all spouses, then the factors themselves are not an affront to equal protection. (App. Br. at 30-31.)

In responding to the first statutory factor, the **financial** needs of the protected person, ADMI attempts to distinguish legal authority cited in Appellant's opening brief by arguing that this Court should disregard cases using "antiquated language" because society has evolved and "states that were never questioned as unconstitutional can be validly challenged today." (ADMI Br. at 16.) Antiquated language is hardly a compelling reason to overturn precedent. *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005) ("We are extremely reluctant to overrule our precedent under principles of stare decisis" and require a "compelling reason" to do so) (quoting ***10** Oanes v. Allstate Ins. Co., 617 N.W.2d 401, 406 (Minn. 2000). Neither *In re Robinson's Estate*, 88 Minn. 404, 93 N.W. 314 (1903) nor *In re Wentworth's Estate*, 452 N.W.2d 714 (Minn. Ct. App. 1990), decided the constitutional question before the Court today. However, both decisions recognize the importance of considering the **financial** needs of the protected spouse in approving an elective share petition.

The second statutory factor allows the court to approve an elective share petition based on the best interests of the "natural bounty" of the protected person. (See discussion regarding meaning of "natural bounty" and facial challenge, App. Br. at 27-28.) The best interests of the protected person's heirs is not only a **financial** calculation but also requires a court to evaluate a protected person's known wishes and the impact of election rights on family harmony. Robinson's Estate, 88 Minn. at 410, 93 N.W.2d at 316. The second statutory factor ensures that elective share petitions are reviewed based on a deeper analysis than the protected person's **financial** needs. (App. Br. at 29-30.) Both statutory facts are legitimate purposes for the state to achieve.

C. This Court Should Disregard ADMI's Groundless Assertions About The Decedent's Estate Plan.

In the first paragraph of the statement of case, ADMI attempts to distract the Court with baseless claims that decedent's estate plan "was destroyed by the actions" of Appellant who "liquidated" decedent's joint-tenancy accounts with Durand "just months" before his death. (ADMI Br. at 2.) ADMI then attempts to paint Durand's suit in a favorable light by claiming that Durand is seeking an elective share "to recoup the assets that were intended for her." (Id.) Because the constitutionality of the statute is a question ***11** of law, this Court may simply disregard ADM's assertions as irrelevant to this appeal. (See authorities cited in App. Br. at 12.)

To the extent this Court chooses to examine these claims, it should conclude that they lack merit. First, as noted in Appellant's opening brief, Durand's assets are substantial and acquired by transfers from Krebes during the marriage. (App. Br. at 8, n.4.) ADMI has disputed the value of Durand's assets but not that they were acquired from Krebes during the marriage.

Second, ADMI grossly mischaracterizes Krebes-Lufkins' role in transfers that her father made many months before he died. Initially, there is no question that Mr. Krebes was fully competent at the time. Additionally, Krebes-Lufkin's sworn statement, included in ADMI's appendix, relates how and when Krebes transferred assets in June 2009. Krebes initiated a transfer and completed it independently of Krebes-Lufkin, whose role was limited to driving him and holding open the door for Krebes' walker. (ADMI App. 37-41, 44-45.) Krebes also gave Krebes-Lufkin and her brother a substantial gift of cash for tax reasons - the gift was with the approval of legal counsel and done in counsel's office. (Id. at 53-54.) There is no reason for this Court to consider ADMI's statements regarding changes made by Krebes of his own volition.

*12 CONCLUSION

Respondents ADMI and Durand do not meet their heavy burden to demonstrate that Minn. Stat. § 524.2-212 is unconstitutional. The statute rests on a classification that withstands review under Minnesota's equal protection clause because protected spouses are not similarly situated to other spouses. Additionally, the two-factor analysis imposed by the statute is rationally based and relevant to the statute's legitimate purpose. Court oversight of a conservator's request to file an elective share petition is consistent with the court's exclusive jurisdiction over a protected spouse's **financial** affairs and an appropriate exercise of the Legislature's constitutional powers.

Footnotes

1 Later in its brief, ADMI repeats this argument with respect to the Michigan Court of Appeals' decision in *Estate of Eggleston*, 698 N.W.2d 892 (Mich. Ct. App. 2005). (ADMI Br. at 17-18.)

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