Filed 2/9/16 Fener v. Superior Court CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JONATHAN FENER et al., as Guardians etc.,

Plaintiffs and Appellants,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Defendant and Respondent;

ESTATE OF SYDNEY GOLD FENER,

Real Party in Interest.

No. B263949

(Los Angeles County Super. Ct. No. SP008148)

APPEAL from an order of the Superior Court of Los Angeles County. Daniel S. Murphy, Judge. Affirmed.

Reed & Reed, Martin S. Reed and Darren G. Reed for Plaintiffs and Appellants.

No appearance for Defendant and Respondent.

The guardians of a minor's estate filed a petition in the probate court for an order authorizing them to transfer all of the minor's money from a blocked account at a bank to an account at an investment firm. The probate court denied the petition. The guardians contend the probate court misinterpreted governing law. We disagree and affirm.

FACTS

Appellants Jonathan and Robyn Fener are the parents of Sydney Gold Fener, a minor. In June 2010, the probate court entered an order appointing Jonathan and Robyn as guardians of their daughter's estate[1] for the purpose of collecting a life insurance death benefit payment in the gross amount of $296,000, and depositing the funds into a blocked account at Bank of America. The order further provided that, because the funds were to be deposited into a blocked account, a guardian's bond was not required. In July 2010, the court issued letters of guardianship under Probate Code section 2590 specifying the guardians' powers; those powers were to collect the insurance funds, "and to deposit said funds in a blocked account at Bank of America . . . ."

In September 2014, the guardians filed a petition in the probate court for authority to transfer all of Sydney's money out of the blocked account at Bank of America and into an account at Morgan Stanley.[2] At that time, the Bank of America blocked account held approximately $197,000. The petition explained that Bank of America was paying an interest rate on Sydney's account that was "barely greater than 0%" and that, with Sydney being "just 10 years of age," her account would earn "virtually no income" over the years until she was given access to her money. Further, the petition proffered that, by allowing the guardians to open a Morgan Stanley account, they would be able to "diversify" Sydney's money into "more than one banking institution" and into "allowable securities" within the meaning of Probate Code section 2574. The petition's implicit

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[1] We hereafter refer to Jonathan and Robyn Fener collectively as the guardians.

[2] The petition referred to a "blocked account" at Morgan Stanley. We see nothing before us indicating what was meant by a blocked account at an investment firm. Apparently, the petition meant an investment account from which withdrawals could not be made.

proposition was that Sydney's money would earn a greater return were it held someplace other than in the Bank of America blocked account.

On November 25, 2014, the guardians' counsel argued the petition to the probate court. At the conclusion the hearing, the court denied the petition, ruling that the money "should remain in an FDIC-insured account." In making its decision, the court agreed with counsel that the stock market had "gone up" between 2010 and 2014, but noted that it had also "gone down a whole bunch" in the years before that time period. When counsel asked whether there was anything additional that he could bring to the court's attention on the matter, for example, an "expert report," the court replied that they were simply going to "have a difference of opinion" as to what was best to do with the money being held for Sydney.

On June 11, 2015, the probate court signed and entered a formal order denying the guardians's petition.[3]

DISCUSSION

The guardians contend the probate court's order denying the petition to withdraw Sydney's money from the Bank of America blocked account must be reversed because the court erred by interpreting Probate Code section 2574 (section 2574) to give the court the "authority to . . . apply its own personal investment strategies" for Sydney's money in place of the strategies chosen by the guardians. We find the guardians have failed to show error.

Section 2574 provides:

> "(a) Subject to subdivision (b), the guardian [of an estate] . . . , without authorization of the court, may invest funds of the estate pursuant to this section in: . . . [¶] (3) Securities listed on an established stock or bond exchange in the United States which are purchased on such exchange. . . .

[3] In May 2015, the guardians filed a notice of appeal from the probate court's order entered on "11/25/2014." We have liberally construed the notice of appeal to be from the ensuing formal written order entered on June 11, 2015.

"(b) In making and retaining investments made under this section, the guardian . . . shall take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the guardianship . . . ."

Section 2574 provides that guardians *may* be vested with the discretion to make investment decisions for the estate. The section is applicable, of course, when a probate court has specifically authorized such investment powers to be exercised or has ordered a general guardianship; otherwise, the powers granted to the guardian are those specified in the letters of guardianship. (Prob. Code, § 2590.)

The probate court in the current matter ordered Sydney's money to be held "in a blocked account." A blocked account means that a minor's money is ordered to be deposited "in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court." (See Prob. Code, § 3413, subd. (a).)[4] The record before us does not show why the probate court elected to order that Sydney's money be placed in a blocked account. But because the probate court did so, the discretionary investment powers that section 2574 vests in the guardian of a person's estate, "without authorization of the court," are inapplicable in this case. Here, the guardians petitioned for an order granting them authority to transfer money out of a blocked account at a bank into an account at an investment firm. In other words, they were essentially petitioning to change the very nature of the guardianship. The guardians made no offer to post a bond in the event they mismanaged the investment account.

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[4] Probate Code section 3413, subdivision (a) provides that, when there is money belonging to a minor, the court may order that a guardian of the estate be appointed, and may order that the money either be paid to the guardian to be managed for the benefit of the minor or "be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court."

The guardian's opening brief on appeal does not explain what standard of review applies to an order denying a guardian's petition for authority to transfer money out of a blocked account and into an investment account, and we decline to address this issue. Having incorrectly relied on their section 2574 interpretation claim, the guardians have not otherwise shown error.

DISPOSITION

The probate court's order is affirmed. Each party to bear its own costs on appeal.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.