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OPINION OF THE CONNECTICUT PROBATE COURT

IN THE MATTER OF ESTEBAN GABINO RUIZ RODRIGUEZ

PROBATE COURT, TORRINGTON DISTRICT

JANUARY 26, 2017

EDITOR'S SUMMARY & HEADNOTES

Petitioner filed a Motion for "Special Findings" in connection with his application for the appointment of a voluntary conservator, asking the Court to make "Special Immigrant Juveniles Status" ("SIJS") findings. Although the Court found that the probate court meets the statutory definition of a "juvenile court" under Connecticut law for purposes of a SIJS finding, the Court held that it is not permitted to make the SIJS findings in connection with a conservator proceeding. The Court reasoned that its equitable powers extend only as far as its statutory jurisdiction allows. Accordingly, the Court denied Petitioner's Motion for "Special Findings."

1. Jurisdiction: Probate Court

Probate courts are courts of limited jurisdiction and have only those powers given to them by statute, or necessarily implied in order to carry out their statutory jurisdiction.

2. Jurisdiction: Probate Court

Pursuant to Conn. Gen. Stat. §§ 45a-608n, 45a-608o, the Connecticut legislature has provided specific statutory authority for probate courts to make Special Immigrant Juveniles Status findings only in certain specified cases, including proceedings to remove a parent as guardian of

a minor child, to appoint a guardian or co-guardian for a minor child, to terminate parental rights to a minor child, or to approve the adoption of a minor child.

Opinion

Petitioner has filed a Motion for "Special Findings" pursuant to Conn. Gen. Stat. § 45a-608n(b) (2016) in connection with his application for the appointment of a voluntary conservator pursuant to Conn. Gen. Stat. § 45a-646 (2016). The Motion asks the Court to make what are known as "Special Immigrant Juveniles Status" ("SIJS") findings. Because the Court finds that Conn. Gen. Stat. § 45a-608n does not apply to conservator matters, therefore, the Motion is denied.

SIJS is a federal immigration program that permits foreign children in the United States who have been abused, abandoned, or neglected; and who are unable to be reunited with a parent, to apply for and obtain a green card so that they can live and work permanently in the United States. *See* Special Immigrant Juveniles (SIJS) Status, https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status (last visited January 25, 2017). To be eligible for SIJS, an individual must be under the age of twenty-one-years, unmarried, and have an order from a state "juvenile court", as defined by federal law, that includes the following findings:

1. That the individual is a dependent of the court or legally placed with a state agency, a private agency, or a private person; and
2. it is not in the individual's best interests to return to his/her home country (or the country he/she last lived in); and
3. the individual cannot be reunited with a parent because of abuse, abandonment, neglect, or a similar reason under state law.

8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (2016).

For purposes of the SIJS program, a "[j]uvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a) (2016). Petitioner argues that because this Court has jurisdiction to make such determinations under Connecticut law in the context of the removal and appointment of guardians for minors and the termination of parental rights to minors, it meets that definition and is a "juvenile court" for purposes of SIJS. The Court agrees that its statutory authority under Connecticut law brings it within the purview of that definition, although it must be noted that under federal law an alien is eligible for classification as a special immigrant if under twenty-one-years of age, 8 C.F.R § 204.11(c)(l) (2016), and the Court's authority over minor children expires at age eighteen. *See* Conn. Gen. Stat. § 1-ld (2016). Petitioner acknowledges this disconnect between federal and Connecticut law, hence his application for the appointment of a voluntary conservator, a proceeding only available to adults

over the age of eighteen years. Simply meeting that definition, however, does not permit the Court to make the findings necessary to an SIJS application.

[1] Probate courts are courts of limited jurisdiction and have only those powers given to them by statute, or necessarily implied in order to carry out their statutory jurisdiction. *Prince v. Sheffield,* 158 Conn. 286, 293-94 (1969). The probate courts have no common law jurisdiction and may act only as authorized by statute. *Palmer v. Hartford National Bank & Trust Co.*, 160 Conn. 415, 428 (1971). "[A] court which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation." *In re the Adoption of Baby Z*, 247 Conn. 474, 486 (1999) (citation omitted). "[J]urisdiction . . . is a question of law and cannot be waived or conferred by consent . . . ." *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 547 (1995).

[2] The Connecticut legislature has provided specific statutory authority for probate courts of this state to make SIJS findings only in certain specified cases, including proceedings to remove a parent as guardian of a minor child, appoint a guardian or co-guardian for a minor child, terminate parental rights to a minor child, or approve the adoption of a minor child. Conn. Gen. Stat. §§ 45a-608n, 45a-608o. There is no statutory authority for a probate court to make SIJS findings in connection with a conservator proceeding.

The legislative intent to limit a probate court's authority to make SIJS findings to those specifically enumerated types of cases is also clearly expressed by Conn. Gen. Stat. § 45a-608n(a), which states:

> [f]or the purposes of this section and section 45a-608o, a minor child shall be considered dependent upon the court if the court has (1) removed a parent or other person as guardian of the minor child, (2) appointed a guardian or coguardian for the minor child, (3) terminated the parental rights of a parent of the minor child, or (4) approved the adoption of the minor child.

Petitioner argues that the Court holds equitable powers that would enable it to make SIJS findings in this case, notwithstanding the express, limited authority granted by the statute. The Court disagrees.

It is true that probate courts have those powers necessarily implied in order to carry out their statutory jurisdiction, *Prince* at 293-94; *Union & New Haven Trust Co. v. Sherwood*, 110 Conn. 150 (1929); however, Petitioner views those implied powers more expansively than is allowed. Here, Petitioner is arguing that the Court exercise its implied powers not simply to carry out its statutory jurisdiction, but to create statutory jurisdiction where there is none. That would, in effect, usurp the authority of the legislature to

establish the Court's jurisdiction. The "implied powers" doctrine does not allow the Court to go that far.

Petitioner also argues that the Court should exercise its authority under Conn. Gen. Stat. § 45a-608n because a voluntary conservatorship is "the functional equivalent of a custodianship of a minor," since an action concerning the care and custody of a minor and the conservatorship of an adult are both controlled by a "best interest" standard. Petitioner's Memorandum, at 7. That argument is based on a misreading of Connecticut case law.

Petitioner posits that *DeNunzio v. DeNunzio*, 151 Conn. App. 403 (2014), stands for the proposition that the "best interest" standard controls conservatorship matters and is the "overarching principle" when analyzing the factors for the appointment of a conservator. That argument ignores the fact that on appeal our Supreme Court held that the statutory factors found in Conn. Gen. Stat. § 45a-650(h) (2016) for the appointment of a conservator "wholly supplant any 'best interests' consideration," *DeNunzio v. DeNunzio*, 320 Conn. 178, 188 (2016), and that a respondent's "best interests" are neither a factor nor an overarching guide in selecting a conservator. *Id.* at 192.

In conclusion, the Court does not have the authority under Conn. Gen. Stat. § 45a-608n to make SIJS findings in connection with a voluntary conservatorship, nor does its implied power to carry out its statutory jurisdiction under that statute permit such an exercise of authority.

And it is ORDERED AND DECREED that:

The Petitioner's Motion for "Special Findings" be and hereby is DENIED. Dated at Torrington, Connecticut, this 26th day of January 2017.

/s/

Michael F. Magistrali, Judge