

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of CHRISTINE MCNEAL.

TERI A. JORDAN, Personal Representative of the
Estate of CHRISTINE MCNEAL,

Appellee,

v

DAVID MCNEAL,

Appellant,

and

HARTFORD FIRE INSURANCE COMPANY,

Appellee.

UNPUBLISHED
September 13, 2007

No. 271371
Wayne Probate Court
LC No. 2001-634958-CA

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Appellant David McNeal appeals as of right from a probate court order suspending his fiduciary powers. We affirm.

Appellant's sole issue on appeal is a generalized claim that the court denied appellant his due process rights. There is no indication that this claim was raised and addressed below and thus it has not been preserved for appeal. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000). Therefore, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

The court is authorized to remove a conservator for good cause upon notice and hearing. MCL 700.5414. According to court rule, the court must notify the fiduciary, his attorney, and each surety of the nature of the deficiency and a notice to correct or appear for a conference. MCR 5.203(A). If the fiduciary fails to perform the duties required within the time specified, the court may suspend his powers. MCR 5.203(D).

It appears from the file that the court did not follow these procedures. However, it is not clear if appellant's position of conservator was terminated for cause pursuant to statute and court rule or in accordance with the settlement agreement wherein appellant agreed that he was to be discharged as conservator. "Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 558; 564 NW2d 532 (1997). In any event, it appears that the issue is moot. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). Because the protected person died in July 2004, there was no longer a need for a conservator, the protected person's estate having come under the protection of the personal representative in a separate but related decedent's estate case. Thus, it does not appear that this Court can fashion any remedy because appellant cannot be reinstated as conservator.

Appellant also claims that the trial court erred in granting Hartford's petition for indemnification because the company failed to present any facts supporting the allegations in the petition. It is unclear whether appellant challenges the legal sufficiency of the petition itself or the evidence presented at the hearing on the petition, and he has not explained the nature of the deficiency. "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). Further, to the extent appellant challenges Hartford's right to indemnification, the bond apparently contained an indemnification provision and contractual indemnification agreements are enforceable as are any other contracts. *Hubbell, Roth & Clark, Inc v Jay Dee Contractors, Inc*, 249 Mich App 288, 291; 642 NW2d 700 (2002).

Appellant's remaining claims relate to proceedings in the separate decedent's estate case and are not properly subject to review of an order entered in the conservatorship case, and we therefore decline to consider them.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder