

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 5, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-0102

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE MATTER OF THE GUARDIANSHIP OF JOSEPHINE
B.,**

MARK W. P.,

APPELLANT,

v.

**ATTORNEY PATRICK STANGL, GUARDIAN AD LITEM,
SOUTH MADISON COALITION OF THE ELDERLY, AND
DANE COUNTY LONG TERM SUPPORT CASE MANAGER,**

RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
ROBERT A. DeCHAMBEAU, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

PER CURIAM. Mark W. P. appeals from an order in this guardianship proceeding for Josephine B. The issue is whether the trial court

obtained jurisdiction during earlier proceedings in this matter. We conclude that the court had jurisdiction and therefore affirm.

In December 1994, a Dane County Department of Human Services agent filed a petition for guardianship of Josephine's estate, and the court appointed a professional guardian recommended by the department. In February 1996, the South Madison Coalition of the Elderly (the Coalition) filed a petition for appointment of a guardian of Josephine's person, and for protective placement. That petition alleged that Josephine, then age ninety-one, was mentally incompetent and unable to care for herself. The petition identified a sister and nephew as the presumptive and apparent adult heirs and interested persons in the matter. Additionally, the Coalition sent them notice of the proceeding, which resulted in a stipulated guardianship order protectively placing Josephine and appointing a professional guardian. However, seven other presumptive adult heirs of Josephine were not identified and therefore did not receive notice of the proceeding. Neither did twelve other people who subsequently claimed to be interested persons, including Mark who is Josephine's great-nephew.

In 1997, the guardian had Josephine removed from her family home. This disturbed several family members, and Mark petitioned the court on their behalf for an order removing the guardian and replacing her with a relative. Mark also challenged the court's jurisdiction to issue the 1996 order, given the Coalition's failure to identify and give notice to most of the presumed heirs. The court concluded that it had jurisdiction. The appeal is taken from that ruling.

Section 880.08(1), STATS., requires the petitioner in a guardianship proceeding to serve notice of the proceeding on all presumptive adult heirs whose names and addresses are known to the petitioner or can with reasonable diligence

be ascertained. Mark contends that the Coalition failed to exercise reasonable diligence in locating Josephine's heirs, and that its failure deprived the court of jurisdiction to proceed on the Coalition's petition. We disagree with the latter proposition. Mark concedes that the trial court had subject matter jurisdiction. *See* § 880.02, STATS. And, at most, the failure to notify all of the heirs deprived the court of personal jurisdiction only over those unserved heirs. *See In re Estate of Phillips*, 92 Wis.2d 354, 362, 284 N.W.2d 908, 913 (1979) (failure to notify proper parties in probate proceedings renders orders and judgments void as to those unnotified parties). It did not deprive the court of jurisdiction over Josephine, who did receive proper notice of the proceedings, and therefore did not restrict the court's authority to appoint a guardian and order protective placement for her. Consequently, the trial court properly rejected Mark's challenge to its exercise of jurisdiction.

We affirm the trial court's order on the grounds stated above. Our decision makes it unnecessary to address whether the Coalition used reasonable diligence in identifying and locating Josephine's presumptive heirs. We note that nothing in this opinion precluded Mark from pursuing his present petition to have Josephine's present guardian discharged and a new guardian appointed. *See* § 880.34(3), STATS.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)(5), STATS.

