STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0969

In re: Guardianship of Robert E. Stransky, Ward

Filed June 17, 2008
Affirmed in part and reversed in part
Toussaint, Chief Judge

Anoka County District Court
File No. 02-P4-03-002560

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Robert E. Stransky, Lake Ridge Rehab & Special Care, 2727 Victoria Street, Roseville, MN 55113 (pro se respondent)

Considered and decided by Toussaint, Chief Judge; Willis, Judge; and Shumaker, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellants-interested persons Bruce and Mary Bombard, Elizabeth Erhart, Keith Lindstrom, Dave Nelsen, Kevin Carlson, Jeanette Tuzinski, Pete and Kim Tuzinski, John and Betty Weis, and Arlee and Ellen Carlson challenge the district court's orders granting respondent-guardian Sheila Stransky's petition for removal of her restrictions as guardian of respondent-ward Robert E. Stransky and awarding the guardian costs and fees. Because there were no irregularities in the proceedings and because the district court did not abuse its discretion and its findings were not clearly erroneous, we affirm the district court's orders lifting the guardian's restrictions and awarding her costs and disbursements. Because the district court abused its discretion by determining that appellants acted in bad faith, we reverse the district court's order granting the guardian attorney fees.

FACTS

Robert Stransky (the ward) and Sheila Stransky (the guardian) are married. The ward was diagnosed with brain cancer and in May 2000 had surgery to remove the malignant tumor, which resulted in the removal of one-fourth of his brain. As a result, the ward suffers from seizures and dementia.

In July 2003, the district court entered an order granting a voluntary petition for conservatorship of Robert Stransky and appointing Sheila Stransky as the as the conservator. Pursuant to the order, Sheila Stransky had restrictions placed on her conservatorship, such as: (1) allowing the conservatee's family to have access to his

medical records; (2) being precluded from restricting who can visit the conservatee; (3) allowing the conservatee to have unrestricted visits from family and friends, except for two persons; (4) allowing the conservatee to leave the facility for visits with family and friends; (5) allowing the conservatee to have overnight visits with family; (6) arranging for an independent neuropsychiatrist exam of the conservatee; and (7) allowing family members to attend the conservatee's medical appointments.

In June 2004, the district court, on its own motion and pursuant to changes made to the relevant statutes in the 2003 legislative session, issued new letters of guardianship but inadvertently failed to include the specific restrictions set forth in the previous order. Accordingly, counsel for Robert Stransky brought a motion to dissolve or amend the new letters of guardianship and filed a petition for restoration to capacity, or in the alternative, appointment of a new guardian, and change of residence. Sheila Stransky filed a petition in the district court to remove the restrictions on her powers as guardian.

On September 26, 2005, a motion hearing was held. The district court noted that "because of a change in statute, the Court Administrator's Office made a mistake in the nomenclature change on the order that was required by statute and not incorporating the restrictions that were previously in the previous order that I signed in 2003."

On October 24, 2005, the district court issued an order based on the September 26, 2005 hearing. Among other things, the district court appointed an attorney for the ward, an attorney for the "interested parties" (a group of 13 individuals who were joining the action), and ordered that the court clerk issue new letters of guardianship to reflect the restrictions contained in the original order.

Pretrial conferences were held on December 12, 2005, and January 23, 2006. The ward's petition for restoration to capacity or, in the alternative, a new guardian and his petition for an order directing a less-restrictive placement were withdrawn. At the second conference, the district court noted: "Then that leaves us essentially with the issue before the Court . . . in regards to what the appropriate placement and treatment for the ward, variously or at times referred to as least restrictive." Neither the court nor the parties mentioned the issue of lifting the guardian's restrictions at the second conference.

Next, appellants filed a motion in limine to "preclude the guardian from asking for a lifting of the restrictions on her powers." The guardian opposed the motion and argued it was made in bad faith.

At the start of trial, the district court noted that "this matter was initially placed on the calendar in regards to a request or petition by the guardian in regards to the modification of the powers." The court proceeded to deny appellants' motion in limine, stating that the issues had already been determined at the pretrial hearings and were therefore untimely.

At the conclusion of trial, the district court announced its decision to lift the restrictions on the guardian. In a June 2, 2006 order memorializing its on-the-record decision, the district court stated that the restrictions placed on the guardian by the previous court order were no longer in the ward's best interests. Accordingly, the court granted the guardian "the power and duty to exercise all of the rights and powers on behalf of the Ward under Minn. Stat. § 524.5-313 subd. (c)" including the right to "[r]estrict the persons who may visit (including the complete prohibition of visitation by

any one or more persons), and restrict or otherwise direct the manner and terms of visitation for any one or more persons."

Following trial, the guardian filed a motion for sanctions, costs and disbursements, and attorney fees. Appellants filed a motion asking the district court to declare that the guardian be prohibited from restricting their visitation with the ward and also moved to amend the June 2, 2006 findings of fact, conclusions of law, and order or, in the alternative, moved for a new trial.

On March 16, 2007, the district court issued its order awarding the guardian costs, disbursements, and attorney fees based on the conclusion that the "interested parties" were "petitioners" within the meaning of Minn. Stat. § 524.5-502(b) (2006) and had acted in bad faith. The district court denied all other motions.

D E C I S I O N

Appellants essentially make four arguments: (1) the issue of removing the guardian's restrictions was not properly before the district court; (2) the district court's decision to lift the guardian's restrictions was an abuse of discretion; (3) the district court erred in denying appellants' posttrial motions; and (4) the district court erred in granting the guardian's motions for costs and disbursements and attorney fees.

I.

Appellants' argument that the guardian-restrictions issue was not properly before the district court during trial is twofold: (1) the district court erred in "reconsidering" and "reversing" the October 24, 2005 order, which held that the restrictions on the guardian's power were to remain in effect; and (2) the district court erred in changing the issue to be

litigated at trial without proper notice to appellants. Appellants raised these arguments in their posttrial motion for a new trial, which the district court denied. The district court exercised its discretion in denying appellants' motion for a new trial, and we will not disturb the district court's decision absent an abuse of that discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

Appellants claim that the district court's erroneous consideration of the guardian-restrictions issue constitutes an irregularity in the proceedings that entitles them to a new trial under Minn. R. Civ. P. 59.01. The rule provides: "A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes: (a) Irregularity in the proceedings of the court . . . whereby the moving party was deprived of a fair trial."

Appellants' argument, that the district court erred in "reconsidering" and "reversing" the October 24, 2005 order, assumes that the October 24, 2005 order was a final order on the guardian-restrictions issue. Appellants argue that because the guardian did not renew her petition for removal of restrictions after the October 24 order, the issue was not properly before the court at trial. We disagree.

In its order denying appellants' posttrial motion, the district court rejected appellants' contention, noting that the October 24, 2005 order "was not issued after any type of hearing on the merits." We agree that the October 24, 2005 order was not a final decision on the merits of the guardian-restrictions issue. At the motion hearing, the district court acknowledged that a mistake was made when the new letters of guardianship were issued. Thus, although new letters of guardianship were issued with

the original restrictions, this was merely a corrective action rather than a final decision on the merits of the guardian-restrictions issue. Additionally, in the October 24 order, the district court did not expressly rule on the motion to "amend the restrictions on the Guardian's powers" and stated: "All other matters presented for decision by this Court are suspended."

Next, appellants argue that the district court erroneously changed the issue to be litigated at trial from the least-restrictive-placement issue to whether the guardian's restrictions should be lifted, without proper notice to appellants. Without such knowledge, appellants argue that they were denied a fair trial.

In its order denying appellants' posttrial motion for a new trial, the district court rejected appellants' argument, stating: "To suggest that the issue was changed by this Court after the commencement of the trial, and without notice, requires one to ignore the extensive pretrial discussions had both in chambers and in open court." A review of the record indicates that appellants were aware that the ward withdrew his petition for an order directing a less-restrictive placement at the January 23, 2006 pretrial conference. The only remaining motion before the court prior to trial was the guardian's petition for a removal of her restrictions. Appellants did not renew the motion or file a new motion for a less-restrictive environment. Accordingly, any belief that the court would rule on a motion that had been withdrawn and not renewed was unreasonable.

While appellants claim that the pretrial conferences left them with the impression that there was an agreement not to litigate the guardian-restrictions issue at trial, they did not make a record to this effect. Without a record, we cannot rely on appellants' simple

assertion that the guardian-restrictions issue would not be litigated. *See* Minn. R. Civ. App. P. 110.03 (stating that if no report of any part of proceedings at hearing or trial was made, appellant may prepare statement of proceedings from best-available means and file with district court for approval or modification).

Further, when the district court made the announcement at the outset of trial that the issue to be decided was modification of the guardian's powers, appellants did not ask for a continuance. Near the end of trial, counsel for appellants stated that the "issue before the Court is whether or not this Court should modify the order appointing general conservator of the person with restrictions that was filed on July 22, 2003."

Finally, to the extent appellants are arguing that they received defective notice, appellants were not parties to the action until after the guardian filed her motion to lift the restrictions. Appellants cannot point to any authority requiring the motion be "re-served" on parties who join an action *after* it has commenced.

Accordingly, appellants failed to establish that the district court's consideration of the guardian-restrictions issue at trial was an irregularity in the proceeding, and therefore the district court did not abuse its discretion.

II.

Second, appellants argue that the district court abused its discretion in removing the guardian's restrictions because the record does not support the conclusion that doing so was in the ward's best interests. Because the district court's determination of what is in the ward's best interests is an ultimate issue deduced from facts in the record, we review for an abuse of discretion. *In re Conservatorship of Brady*, 607 N.W.2d 781,

784 (Minn. 2000). We must give due regard to the district court's determinations regarding witness credibility. Minn. R. Civ. P. 52.01; *In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 61 (Minn. App. 1990).

The Minnesota Uniform Guardianship and Protective Proceedings Act provides: "The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide support, care, education, health, and welfare has so changed as to warrant that action." Minn. Stat. § 524.5-317(b) (2006). Here, the district court found that the guardian had "dutifully and responsibly performed her fiduciary duties on behalf of the Ward"; that the restrictions placed on the guardian had directly interfered with her "ability to provide for the Ward's personal needs for medical care, nutrition, clothing, shelter, safety or supervision"; and that the restrictions had "placed the Ward in harmful and dangerous situations that the Guardian was powerless to rectify or prevent."

The district court's findings and decision are reasonably supported by the record. As to the finding that the guardian fulfilled her fiduciary duties, several witnesses testified that there were no deficiencies in the care provided. Specifically, the witnesses testified that the guardian's interaction with the ward and his doctors was appropriate, that she took proper steps when she had concerns about the ward, and that she had not taken any actions contrary to medical advice.

The district court's finding that the restrictions placed on the guardian had directly interfered with the guardian's ability to provide for the ward's personal care is also

reasonably supported by the record. For example, a director of the facility where the ward resides testified that, after certain people visited the ward, he became "more aggressive, more agitated, more hostile towards his care, toward [the guardian], towards just his overall well-being." Additionally, the ward's primary-care physician testified that there was some deterioration in the ward's behavior after a certain friend visited him.

Finally, the district court's finding that the guardian's restrictions placed the ward in harmful and dangerous situations is reasonably supported by the record. The facility director testified that visitors had shown the ward the code to the exit door, which gave him the ability to escape from the secured facility and that certain visitors had taken the ward out of the facility to meet with other medical professionals without providing notice to anyone. The facility director stated that the visitors' conduct put the ward at risk because he is diabetic and needs to eat his meals at certain times and because seeing multiple professionals without notification may confuse or interfere with the ward's current treatment. The facility director agreed that it would be beneficial for the guardian to have the ability to control who visits.

The district court's findings were reasonably supported by the record, and the district court did not abuse its discretion in deciding that lifting the guardian's restrictions was in the ward's best interests.

III.

Third, appellants challenge the district court's denial of their posttrial motions. "To justify the reversal of a refusal to make amended findings, it is not enough to show that there was evidence to justify the proposed amended findings." *Antell v. Pearl*

Assurance. Co., 252 Minn. 118, 134, 89 N.W.2d 726, 737 (1958). Instead, the district court's "findings are entitled to the same weight as the verdict of a jury and will not be reversed on appeal unless they are manifesting and palpably contrary to the evidence." *Id.* We will not disturb the district court's decision to deny a new trial absent an abuse of discretion. *Halla Nursery*, 454 N.W.2d at 910.

In a posttrial motion, appellants requested that the district court declare the visitation restrictions instituted by the guardian following trial voided. In denying the motion, the district court restated its conclusion that the removal of the guardian's restrictions were in the best interests of the ward and that the guardian was imposing visitation restrictions consistent with the June 2, 2006 order. As discussed in section II above, the district court did not abuse its discretion in finding that removal of the guardian's restrictions was in the ward's best interests, and accordingly the district court did not err in denying appellants' posttrial motion on the same issue.

Appellants also argue that the district court abused its discretion by not amending a number of findings of fact, statements regarding procedural history, conclusions of law, and the order. The district court reviewed each contested finding, statement of procedural history, conclusion of law, and the order and fully explained its reasons for not amending. The district court's reasons are supported by the record.

Following trial, appellants also raised the issues addressed in section I of this opinion, that is, whether the district court erred in reconsidering the October 24, 2005 order and changing the issue to be litigated after the commencement of trial. Having determined that the district court did not "reconsider" the October 24 order and having

decided that the guardian-restrictions issue was properly before the district court, the court did not abuse its discretion in denying appellants' motion on these issues. Similarly, the district court properly denied appellants' motion for a continuance for the purpose of developing the least-restrictive-placement issue because the issue to be litigated at trial had been the removal of guardian's restrictions.

Appellants also argued posttrial that the district court erred in excluding certain testimony at trial. Determinations of the admissibility of evidence are within the district court's discretion and will not be reversed absent an abuse of that discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). To obtain a new trial based on evidentiary error, a claimant must show that the erroneous ruling resulted in prejudice. *Id.* at 46.

Appellants argue that the district court erred in excluding the testimony of a social worker who made an assessment regarding the ward's living arrangements, even though she was present, ready to testify, and her report had been discussed by another witness. At trial, appellants made an offer of proof and read into the record the social worker's entire report. The district court excluded her testimony on the basis that it was irrelevant, stating: "I am not going to further lengthen this hearing by entertaining alternative placement testimony." Because the issue at trial was limited to the guardian's restrictions, the district court did not abuse its discretion in excluding the social worker's testimony.

Appellants also argue that the district court erred in excluding the testimony of an administrator of the facility where the ward had previously resided. But the district court

noted that there "was never an attempt on either day of trial to call [the administrator] as a witness. Further, there was no offer of proof made as to what [the administrator] would testify about." Appellants do not dispute these facts; accordingly, the district court did not err in its conclusion regarding the administrator's testimony.

Finally, appellants challenged the district court's conclusion that the non-attendance of the ward at trial did not deprive appellants of a fair trial. Appellants cite no support for this argument, and the district court did not abuse its discretion in its decision to deny the motion.

IV.

Fourth, appellants argue the district court erred in granting the guardian's motion for costs, disbursements, and attorney fees. "An award of costs and disbursements has generally been allowed within the sound discretion of the trial judge. As such, we review for an abuse of that discretion." *Kellar v. Von Holtum*, 605 N.W.2d 696, 703 (Minn. 2000) (citations omitted). Statutory construction is a question of law reviewed de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998).

The district court awarded the guardian $200 in costs and $7,566.51 in disbursements. The $200 was properly awarded pursuant to Minn. Stat. § 549.02, subd. 1(2) (2006) (stating that costs shall be allowed to plaintiff in amount of $200). Additionally, the district court did not abuse its discretion in awarding disbursements under section 549.04, which states, "In every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred." Minn. Stat. § 594.04, subd. 1 (2006). Appellants do not challenge the reasonableness of the

amounts awarded; instead, they argue they are the prevailing party according to the October 24, 2005 order, which they maintain denied the guardian's request to lift the restrictions. We have rejected this argument in section I. Accordingly, appellants' argument fails, and the district court properly exercised its discretion in awarding costs and disbursements to the guardian.

The district court also awarded the guardian $30,228.61 in attorney fees after considering the time and labor required, the experience and knowledge of the lead counsel, the complexity and novelty of the problems involved, the extent of responsibilities assumed and results obtained, and the sufficiency of the assets available to pay for the services. The Minnesota Uniform Guardianship and Protective Proceedings Act provides that if "the court determines that a petitioner, guardian, or conservator has not acted in good faith, the court shall order some or all of the fees or costs incurred in the proceedings to be borne by the petitioner, guardian, or conservator not acting in good faith." Minn. Stat. § 524.5-502(b) (2006). "Costs and attorney fees may be awarded against a party who acts in bad faith, asserts a frivolous claim or unfounded position or commits a fraud upon the court." *Glarner v. Time Ins. Co.*, 465 N.W.2d 591, 597 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991).

Appellants argue the district court erred in awarding attorney fees under the statute because they are not "petitioners" and did not act in bad faith. The district court concluded that appellants were petitioners under the statute because they sought relief from the court by: (1) obtaining party status in the litigation; (2) arguing that they were maintaining a motion for a change to a less-restrictive environment for the ward; (3)

resisting the guardian's motion to have the restrictions removed; and (4) bringing a motion to remove the visitation restrictions. Additionally, the district court noted that appellants fully participated in the litigation by: (1) initiating and participating in paper discovery; (2) commencing and participating in depositions; (3) attending pretrial conferences; and (4) filing motions in limine and witness lists. Further, while "petitioner" is not defined in the statute, "petition" is defined as "a written request to the court for an order after notice." Minn. Stat. § 524.1-201(37) (2006). We agree with the district court that appellants "certainly submitted a written request to this Court for an order on more than one occasion during this litigation." The district court's decision did not err in concluding that appellants were "petitioners" as relevant to the language of Minn. Stat. § 524.5-502(b).

Next, the district court determined that appellants acted in bad faith because, even though the ward withdrew his petitions, they "insisted upon litigating the issue of the 'least restrictive placement' of the Ward without formally filing their own petition or formally renewing the petition of the Ward." The district court also concluded that appellants' insistence that they were not "petitioners" and their motion to declare no restrictions was evidence of bad faith.

We conclude that the district court abused its discretion in awarding attorney fees based on bad faith. Despite our conclusion that appellants were on notice of the issue to be litigated, their confusion appears genuine, and we cannot say that their confusion was in bad faith. *Cf. Ottman v. Fadden*, 575 N.W.2d 593, 598 (Minn. App. 1998) (declining award of attorney fees when no bad faith was found, despite argument that appellant had

persisted in advancing legal positions not well grounded in fact or law). Further, we note that litigants are allowed to make various posttrial motions. While it appears that appellants should have brought their motion to remove restrictions as a motion for amended findings of fact, conclusions of law, and order, or as a motion for a new trial, we do not believe appellants brought their motion in bad faith. While appellants' position that the guardian's restrictions should not have been lifted is ultimately incorrect, it cannot be said that their disagreement with the district court's conclusion was in bad faith. *See In re Application of Mrosak*, 415 N.W.2d 98, 102 (Minn. App. 1987) ("The mere fact that the action is not well-founded in law is not sufficient to render an award of attorney fees appropriate."), *review denied* (Minn. Jan. 28, 1988). Likewise, although appellants' argument that they were not "petitioners" within the meaning of the statute is erroneous, there is no evidence that they made it in bad faith. We reverse the district court's award of attorney fees to the guardian.

Affirmed in part and reversed in part.