STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2022

In re: Conservatorship of James W. Kleven

Filed November 4, 2008
Affirmed as modified
Johnson, Judge

Hennepin County District Court
File No. 27-GC-PR-07-293

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin, Judge.

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

JOHNSON, Judge

The City of Minneapolis condemned the home owned and occupied by James W. Kleven. Kleven took no steps to regain possession. A social worker petitioned the district court for the appointment of a limited guardian of Kleven's person and a conservator of Kleven's estate. After an evidentiary hearing, the district court granted the petition and appointed First Fiduciary Corporation (FFC) to be Kleven's limited guardian and

conservator. Kleven appeals. We conclude that the district court did not clearly err in its findings of fact and did not abuse its discretion by appointing a limited guardian and conservator, although we also conclude that the conservator's powers are slightly overbroad. Therefore, as modified, we affirm.

FACTS

Kleven is a 66-year-old single man with no children. He has a degree in engineering from the University of Minnesota. In 1976, when he was approximately 34 years old, Kleven moved into his parents' home in south Minneapolis, where he lived until 2007. He lived with both parents until his mother died in the mid-1990s and with his father until his father moved to an assisted-living facility in 2001. When his father died in 2004, Kleven inherited his parents' home through his father's will. It appears from the district court record that Kleven also inherited several hundred thousand dollars in cash or securities from his father but that he supports himself by doing odd jobs and yard work for neighbors.

On March 1, 2007, Ernest Kulas, an adult-protection worker with the Hennepin County Human Services Department, received a report that Kleven may be in need of assistance. Kulas went to Kleven's home and met with him twice that month. Kulas learned that Kleven had refused to pay his property taxes and had refused to pay his water bills. Kleven told Kulas that he was withholding payment for taxes and utilities because he believed that Hennepin County and the City of Minneapolis owed him apologies due to incidents that had occurred during the previous two decades. Specifically, Kleven was offended by being taken involuntarily to a medical facility, by being arrested by

Minneapolis police officers while riding his bicycle, and by having possessions removed from his backyard.

A few days later, Kulas contacted Anita Raymond, a social worker with Volunteers of America, and requested that she conduct an assessment to determine whether Kleven needed a guardianship and a conservatorship. Raymond learned that Kleven's property tax bills had not been paid since 2004 and that he had outstanding water bills of more than $400. She also learned that all of Kleven's utilities had been disconnected. Raymond repeatedly asked Kleven to pay his bills, but he refused. Kleven told Raymond what he had told Kulas, that he would not pay the property taxes and utility bills until he received apologies from the county and the city.

On May 7, 2007, Valerie Asante, a city housing inspector, searched Kleven's home pursuant to an executive search warrant, apparently to investigate a report of unlawful conditions. There is no information in the record as to how Asante became aware of Kleven or why she obtained the search warrant. Kleven was not home when Asante executed the warrant, so Asante gained entry to the house with the assistance of police officers, who broke down a door. Asante and Kulas entered the house and, according to Kulas, had to "lift [their] legs over the debris [covering the floor] to find isolated pockets of floor that [they] could plant [their] legs upon." According to Kulas, the entire first floor of the house was in this condition. Kulas and Asante did not go into the basement "for safety reasons" because the steps were covered with items. As a result of the search, the city condemned the house and boarded up the doors and windows, making entry impossible.

On June 7, 2007, Raymond filed a petition in the district court for the appointment of a limited guardian of Kleven's person and a conservator of Kleven's estate. Kleven, through appointed counsel, opposed the petition. A referee held an evidentiary hearing at which Raymond, Kulas, Kleven's brother Donald Kleven, and Kleven himself testified. The evidentiary record indicates that, since being barred from his home, Kleven has been homeless. Raymond testified that other persons have informed her that Kleven sometimes sleeps in the garages, vehicles, or backyards of people for whom he does yard work or in his own backyard. Kleven refused to answer questions regarding his sleeping arrangements, maintaining that he would have a place to live and sleep if the city had not forced him out of his home. It appears that, since the condemnation, there has been no additional contact between Kulas and Kleven.

On August 14, 2007, the referee and the district court judge issued an order appointing FFC as limited guardian and conservator. Kleven appeals. FFC has appeared in this court as respondent.

D E C I S I O N

A district court's decision to appoint a guardian or a conservator is a matter within the discretion of the district court and will not be disturbed absent a clear abuse of that discretion. *In re Conservatorship of Geldert*, 621 N.W.2d 285, 287 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001) (guardianship); *In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 63 (Minn. App. 1990) (conservatorship). In reviewing a district court's findings of fact, this court is limited to determining whether the district court's findings are

clearly erroneous, giving due regard to the district court's determinations regarding witness credibility. Minn. R. Civ. P. 52.01; *Lundgaard*, 453 N.W.2d at 60-61.

I. Guardianship

Kleven first argues that the district court erred by establishing a limited guardianship. A district court may appoint a guardian "only if it finds by clear and convincing evidence that: (1) the respondent is an incapacitated person; and (2) the respondent's identified needs cannot be met by less restrictive means." Minn. Stat. § 524.5-310(a) (2006). An incapacitated person, for purposes of the guardianship statute, is defined as:

> an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance.

Minn. Stat. § 524.5-102, subd. 6 (2006). The powers of a guardian may be limited if the district court "determines that a guardian is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this section." Minn. Stat. § 524.5-313(c) (2006).

In this case, the district court appointed FFC to be Kleven's limited guardian, conferring only the power and duty to "[t]ake reasonable care of [Kleven's] clothing, furniture, vehicles, and other personal effects." The district court did so after finding that "[c]lear and convincing evidence has established that [Kleven] is an incapacitated person with reference to his tangible personal property." The district court further found that a less restrictive means of meeting Kleven's needs was not available, pointing out that Kleven

"would likely not cooperate with anyone providing such assistance, such as an attorney in fact."

We begin by analyzing whether the petitioner established the first requirement for the appointment of a guardian, that Kleven is an "incapacitated person." Although the petition alleged that Kleven suffers from a mental illness, no evidence was presented to prove that allegation. FFC concedes that the district court's conclusion that Kleven is an "incapacitated person" is based solely on circumstantial evidence. More specifically, FFC argues that Kleven's incapacity is evidenced by his inability to comprehend that he should take the necessary steps to regain access to his home or by an irrational refusal to take those steps.

The evidentiary record generally supports the district court's finding that the first floor of Kleven's home was full of tangible belongings. But the record is unclear as to what types of things Kleven possesses there. Kulas referred to a "collection of material" and provided more specificity only by mentioning stereo speakers and describing the material generally as what "one would find in a retail store." Raymond referred to the things as "items" and "clutter." Although the district court referred to potential health hazards, there is nothing specific in the record that indicates why the possessions would pose any risk to Kleven's health. There was no testimony about the condition of the second floor or the basement.

Petitioner did not prove that Kleven is incapacitated because of the condition of his home. Although such evidence is relevant, it is insufficient to prove that Kleven was "lacking sufficient understanding or capacity" or was unable to meet his daily needs before

the intervention of the county and the city. More relevant to the appointment of a limited guardian is Kleven's ability or inability to manage his housing situation after the county and the city became involved. In analyzing that evidence, the question whether Kleven's home actually deserved condemnation is beyond the scope of our review. We must assume that the county and the city acted properly in their dealings with Kleven and lawfully determined that he could not continue to occupy his home. Thus, we analyze Kleven's conduct in light of the situation he faced after Raymond, the county, and the city presented him with choices that had consequences with respect to his shelter and safety.

The evidence shows that Kleven has engaged in a pattern of behavior that has caused him to be deprived of the use of his home. As a result, it appears that he does not have a stable residence or a safe place to sleep. The parties dispute whether Kleven lacks the capacity to make decisions related to shelter or safety or, on the other hand, whether he has the capacity but simply has chosen to make decisions that are different from the decisions that most similarly situated persons would make. There is little doubt that Kleven has conducted himself in a manner that is different from the vast majority of home-owning Minnesotans. Kleven's appointed counsel argued at oral argument that, notwithstanding community norms, Kleven should retain the basic freedom to make his own personal decisions. Counsel also argued that Kleven was not incapacitated before the condemnation and is not incapacitated now but simply wishes to be left alone. Counsel further argued that the condemnation, which gave rise to the petition for a limited guardianship, was a coordinated effort by the city and the county to force Kleven to pay his taxes and utility

bills. Again, we are not reviewing the actions of the city and the county. Rather, our task is to evaluate the evidence concerning Kleven's ability to care for himself.

The applicable statute appears to incorporate some degree of community norms by inquiring whether a person has "sufficient understanding or capacity to make or communicate *responsible* personal decisions." Minn. Stat. § 524.5-102, subd. 6 (2006) (emphasis added). The most applicable senses of the definition of the word "responsible" are "[a]ble to make moral or rational decisions," "[t]rustworthy or dependable; reliable," and "[b]ased on or showing good judgment or sound thinking." *The American Heritage College Dictionary* 1185 (4th ed. 2007). We believe that Kleven's actions do not conform to this definition. In light of the standard established by the statute, and in light of the evidence in the district court record, we conclude that the district court did not clearly err by finding that Kleven is incapacitated.

Kleven contends that the district court erred by relying on Raymond's testimony concerning the condition of the inside of his home even though Raymond never actually entered the house. Raymond admitted on cross-examination that she never entered Kleven's home but merely peered through a front window. Nonetheless, the evidentiary record includes the testimony of Kulas, who did enter the home, at least as far as the first floor. Furthermore, as stated above, the condition of Kleven's home is of secondary importance. Kleven also contends that finding of fact number 2 is clearly erroneous because it states that Kulas visited his home in March 2007. Kulas originally testified that he entered the house on that date pursuant to the executive search warrant, but he later corrected himself by saying that the correct date was May 7, 2007. The district court's order recited the incorrect

date. These minor errors do not affect the district court's decision and, thus, do not require reversal. *See Rosendahl v. Nelson*, 408 N.W.2d 609, 612 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987).

We conclude that the evidence is sufficient to prove the first requirement for a guardianship, that Kleven is an incapacitated person. *See* Minn. Stat. § 524.5-310(a)(1). The second requirement for a guardianship is that "the respondent's identified needs cannot be met by less restrictive means." Minn. Stat. § 524.5-310(a)(2). Kleven's brother, Donald Kleven, testified that he was unaware of any alternative to a limited guardianship. Donald Kleven testified that Kleven had resisted suggestions about improving the condition of his home and was likely to resist more forceful efforts by members of his family. In fact, Donald's attempt to remove some things from the home several years ago, without Kleven's permission, resulted in a physical altercation between the two men. This evidence supports the district court's finding that less restrictive means are unavailable.

In sum, the district court did not clearly err in its findings of fact and, furthermore, did not abuse its discretion by appointing FFC to be a limited guardian for Kleven. *See In re Geldert*, 621 N.W.2d at 287. The district court's order promotes the goal identified by all parties and all witnesses -- that Kleven be able to live in his home again. We believe that Kleven would be well served by expeditious action, especially in light of the impending change of seasons. At oral argument, FFC's counsel stated that the tasks necessary for Kleven to move back into his home could be completed within approximately thirty days if there is no objection from Kleven. We assume that counsel referred to Kleven's statutory right to object to a proposed disposition of his property within ten days after being notified

by FFC and to petition to the district court for review of the limited guardian's proposed actions, in which event a hearing and court approval would be necessary. *See* Minn. Stat. § 524.5-313(c)(3). We also note FFC's agreement that the goals of this action could be accomplished by moving Kleven's personal property to a commercial storage unit. FFC's counsel noted a possible concern as to whether the costs of storage services would be wasteful. Although such a cost may not be prudent in other situations, the district court record reflects that Kleven has a strong emotional attachment to his possessions and the financial resources to pay for storage. Based on the present record, we do not perceive that FFC is required to dispose of Kleven's possessions rather than store them.

II. Conservatorship

Kleven also argues that the district court erred by establishing a conservatorship. Upon a petition, and after notice and a hearing, a district court may appoint a conservator over an individual's estate if the court determines that:

> (i) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance . . . ; and
>
> (ii) by a preponderance of the evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual . . . .

Minn. Stat. § 524.5-401(2) (2006). A district court may appoint a conservator only if the court finds that "the [individual's] identified needs cannot be met by less restrictive means." Minn. Stat. § 524.5-409(a)(3) (2006).

The district court found that Kleven's property taxes have not been paid since 2004 and that his utilities had been disconnected for nonpayment. The district court also found that Kleven refuses to pay the utility bills and taxes until the city and county apologize to him for perceived wrongs, which the district court found was "delusional." The district court found that the property is in danger of being forfeited due to the non-payment of the taxes. The district court concluded that "[c]lear and convincing evidence has established that [Kleven] is unable to manage property and business affairs because of an impairment to receive and evaluate information or make decisions." The court further concluded that Kleven's "identified needs cannot be met by less restrictive means." As a result, the district court appointed FFC as conservator over Kleven's estate with the power and duty to:

> (a) Pay the reasonable charges for the support, maintenance and education of [Kleven] in a manner suitable to [Kleven's] station in life and the value of his estate;
>
> (b) Pay out of [Kleven's] estate all just and lawful debts of [Kleven];
>
> (c) Possess and manage the estate of [Kleven], collect all debts and claims in favor of [Kleven], or with the approval of the Court, compromise them, institute suit on behalf of [Kleven] and represent him in court proceedings, and invest pursuant to [sections] 48A.01 and 501B.151, all funds not currently needed for debts, charges and management of the estate;
>
> (d) Approve or withhold approval of any contract, except for necessities, which [Kleven] may make or wish to make; [and]
>
> (e) Apply on behalf of [Kleven] for any assistance, services of benefits available to [Kleven] through any unit of government[.]

The key issues are, first, whether Kleven "is unable to manage property and business affairs because of an impairment in [his] ability to receive and evaluate information or make decisions" and, second, whether Kleven "has property that will be wasted or dissipated unless management is provided." Minn. Stat. § 524.5-401(2). With respect to the first issue, the evidence is sufficient to prove that Kleven lacks the "ability to receive and evaluate information or make decisions." *Id*. In addition to the reasons stated above in part I, Kleven testified that after the house was condemned, he instructed the post office to hold his mail but never actually retrieved any accumulated mail for a three-month period preceding the hearing.

With respect to the second issue, the evidence is sufficient to prove that Kleven "has property that will be wasted or dissipated unless management is provided." *Id*. The district court found that Kleven's home was at risk of being forfeited for unpaid taxes. This finding is supported by the testimony of both Raymond and Kulas, who stated that Kleven was in danger of losing his house due to his nonpayment of property taxes. The district court also found that Kleven has unknown property that is at risk of being escheated to the State of Illinois. This finding is supported by the testimony of Donald Kleven, who stated that he attempted to help Kleven collect the unclaimed property in Illinois, but Kleven resisted those efforts.

Kleven contends that the district court erred because there was no evidence of the amount of unpaid property tax payments and no evidence of the amounts of his delinquent utility bills. Raymond testified that Kleven's outstanding water bill is approximately $400, but Kleven is otherwise correct that there was no evidence of specific amounts. But the

specific amounts are not material. The material fact is that Kleven is in danger of losing his home due to his inaction.

Kleven also contends that the evidence was insufficient because there was no medical evidence to prove an impairment for purposes of the conservatorship. Kleven cites no authority for his contention that medical evidence is required to support a finding of an impairment. The statutory language contains no such requirement. As is true with respect to the guardianship, the condition required by the statute may be proved by circumstantial evidence.

In light of the evidence in the record, the district court did not clearly err in its findings of fact and, furthermore, did not abuse its discretion by appointing FFC to be a conservator of Kleven property. *In re Geldert*, 621 N.W.2d at 287. It appears, however, that the conservator powers conferred on FFC are overbroad in light of the narrow goal of allowing Kleven to regain possession and use of his home. A conservator shall be granted "only those powers necessitated by the protected person's limitations and demonstrated needs." Minn. Stat. § 524.5-409(c). "While a conservator generally has extensive powers, an exercise of authority encumbering a conservatee's autonomy and civil rights is allowable only to the extent necessary to provide for needed care and services." *In re Medworth*, 562 N.W.2d 522, 523 (Minn. App. 1997); *see also In re Guardianship of Mikulanec*, 356 N.W.2d 683, 686 (Minn. 1984) (noting that powers of the guardian "should be kept to the bare minimum necessary to care for the ward's needs"). Despite the grant of power to "[p]ay the reasonable charges for the support, maintenance and education of [Kleven]" and to "[p]ossess and manage the estate of [Kleven] . . . and invest . . . all funds not currently

needed," the conservator should not take actions beyond what is necessary to allow assets to be used to pay Kleven's valid debts and to restore Kleven's home to habitability. FFC need not, for example, reevaluate Kleven's investments or make other money-management decisions and need not commit Kleven's resources to other expenditures that he deems unnecessary to his support and maintenance. Thus, FFC's conservator powers are modified accordingly.

Affirmed as modified.