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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0649
A08-1346

The Guardianship of the Person of: Tiffany Marie Jakubek, Ward (A08-649),
In re Public Guardianship of: Tiffany Marie Jakubek, Public Ward (A08-1346).

Filed February 3, 2009
Affirmed
Kalitowski, Judge

St. Louis County District Court
File No. 69-P5-02-600353

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Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

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

KALITOWSKI, Judge

Appellant-ward Tiffany Marie Jakubek contends that the district court abused its discretion in appointing a public guardian because: (1) her father, respondent Jeffrey

Jakubek (Mr. Jakubek), has statutory priority, and (2) the district court did not explicitly find that no family member or other qualified individual was willing to assume guardianship responsibilities. We affirm.

D E C I S I O N

Mr. Jakubek is the father of appellant, a 25-year-old woman who suffers from epilepsy and a diminished mental capacity. Appellant's mother, respondent Heather Persgard, was appellant's guardian from August 2002 until January 2008. In October 2007, Mr. Jakubek petitioned for appointment as appellant's successor guardian. On January 29, 2008, the day of the guardianship hearing, respondent Persgard resigned as appellant's guardian and nominated a public guardian as her successor. Dana Swift, a social worker for St. Louis County and appellant's case manager, supported the appointment of a public guardian. Testimony was taken and on March 5, 2008, the district court issued an order appointing a public guardian as respondent Persgard's successor guardian.

Appellant claims that the district court abused its discretion in ordering the appointment of a public guardian because her father, Mr. Jakubek, has statutory priority under Minn. Stat. § 524.5-309 (2008), and because the district court did not make an explicit finding that no family member or other qualified individual is willing to assume guardianship responsibilities. Respondent county contends that the district court acted within its discretion because it was in appellant's best interest to appoint a public guardian instead of appellant's father and that the court made the requisite finding that there was no other suitable family member to consider for guardianship appointment.

"The appointment of a guardian is a matter within the discretion of the district court and will not be disturbed absent a clear abuse of that discretion." *In re Guardianship of Autio*, 747 N.W.2d 600, 603 (Minn. App. 2008). "A reviewing 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." *In re Guardianship of Wells*, 733 N.W.2d 506, 510 (Minn. App. 2007) (citing Minn. R. Civ. P. 52.01) (other citation omitted), *review denied* (Minn. Sept. 18, 2007). Thus, we defer to the district court's conclusion that appointing Mr. Jakubek as appellant's guardian was not in appellant's best interests, unless the district court's findings supporting that conclusion are clearly erroneous.

"Before a district court is presented with a petition for public guardianship, Minnesota law generally requires that the commissioner and the petitioner consider whether qualified family members are willing to assume guardianship." *Autio*, 747 N.W.2d at 603. "Public guardianship or conservatorship is the most restrictive form of guardianship or conservatorship and should be imposed only when no other acceptable alternative is available." Minn. Stat. § 252A.01, subd. 1(b) (2008). The district court must find that no appropriate alternatives to public guardianship exist that are less restrictive of the person's civil rights and liberties. Minn. Stat. § 252A.101, subd. 5(a)(4) (2008). The district court must also recognize the priority for current caretakers, adult children, and parents of proposed wards when considering guardianship appointment. *Autio*, 747 N.W.2d at 603 (citing Minn. Stat. § 524.5-309(a)(1), (4), (5) (2006)). Here,

under Minnesota law, Mr. Jakubek, as appellant's father, has statutory priority for appointment as her guardian. Minn. Stat. § 524.5-309(a)(5).

A district court, however, has broad statutory authority when appointing a guardian and need not appoint a family member as guardian if it determines that the best interests of the ward will not be served by appointing the family member. Minn. Stat. § 524.5-309(b). "'The best interests of the ward should be the decisive factor in making any choice on his behalf.'" *Autio*, 747 N.W.2d at 603 (quoting *In re Guardianship of Schober*, 303 Minn. 226, 230, 226 N.W.2d 895, 898 (1975) (other quotation omitted)). And because Minnesota law "does not require a heightened standard of proof in guardianship proceedings, a party opposing the appointment of a person with priority under the Uniform Guardianship and Protective Proceedings Act need only establish by a preponderance of the evidence that appointment is not in the best interests of the ward." *Wells*, 733 N.W.2d at 512. Therefore, to defeat Mr. Jakubek's statutory priority, respondent county needed to prove by a preponderance of the evidence that the appointment of Mr. Jakubek was not in appellant's best interests.

We conclude that the district court's decision not to appoint Mr. Jakubek is supported by the record and is not clearly erroneous. The district court made detailed findings about appellant's needs, her current situation, and about Mr. Jakubek. Mr. Jakubek testified that he had only had six to ten in-person contacts with appellant over the past two years. The district court found that Mr. Jakubek's direct contacts with appellant were "not particularly lengthy" and that "he has had no real day-to-day contact" with her. The district court also found that Mr. Jakubek's contacts with appellant were

not “sufficient for Mr. Jakubek to have a real understanding of [appellant’s] situation.” We conclude that based on the record, the district court’s findings are not clearly erroneous.

This court gives due regard to the district court’s determinations regarding witness credibility. *Wells*, 733 N.W.2d at 510. The district court found that, “[d]espite his statements about what he will do if awarded guardianship, the Court felt that Mr. Jakubek’s testimony was designed to tell the Court what he felt it wanted to hear and not what was actually going to happen if he were awarded guardianship.” The district court noted the inconsistencies between Mr. Jakubek’s in-court testimony and his words and actions in communicating with Ms. Swift. And the district court found that instead of being supportive of appellant’s mother, Mr. Jakubek blamed her for appellant’s issues, including putting appellant on medications that led to appellant’s disability. We conclude that based on Ms. Swift’s and Mr. Jakubek’s testimony, the district court’s finding that Mr. Jakubek’s testimony was not credible is not clearly erroneous.

Appellant argues that the district court’s concerns about Mr. Jakubek moving appellant out of Minnesota and into Wisconsin are unfounded. Appellant notes that Mr. Jakubek indicated that he would move from Wisconsin to Minnesota if necessary and further stated that he has no plans to relocate appellant away from Minnesota in the immediate future. But the district court did not base its decision on the possibility that appellant might be moved to Wisconsin. Although the district court briefly noted Mr. Jakubek’s willingness to move to Minnesota to care for appellant, the court expressed more concern with Mr. Jakubek’s belief that appellant’s mother and social worker had

not acted in appellant's best interests. The district court found that Mr. Jakubek "believes that everyone has just argued with [appellant] so far [and] he has not had a psychologist or anyone else meet with [appellant] or checked into the waiver process in Wisconsin." We conclude that this finding is supported by Mr. Jakubek's testimony and is not clearly erroneous.

The district court also found that Mr. Jakubek has an unrealistic perception of appellant's needs and disability, that he feels that social services has been involved for too long, and that he believes services for appellant have been accelerating when they should decelerate. This finding is supported by the testimony of Mr. Jakubek and Ms. Swift. Ms. Swift testified that Mr. Jakubek has concerns about the medications appellant has taken and that he believes the medication may have actually led to her disability. Mr. Jakubek testified that appellant has been in a lot of programs and that "she was in a facility back in 2003, and here we are in 2007 and she's made full circle and she's right back in a facility again." Mr. Jakubek also testified that he has not had a chance to fully and thoroughly review the medical findings on appellant's disability. Thus, we conclude that the district court's finding that Mr. Jakubek does not thoroughly and accurately perceive appellant's needs and disability is not clearly erroneous.

Appellant also argues that the district court erred in not making a finding, pursuant to Minn. Stat. § 252A.101, subd. 5, that "no appropriate alternatives to public guardianship . . . exist that are less restrictive of the person's civil rights and liberties," and that, pursuant to Minn. Stat. § 252A.06, no family member or other qualified individual is willing to assume guardianship responsibilities. But following respondent

Persgard's resignation as guardian, Mr. Jakubek was the only person who had a priority for appointment. And after the district court determined that it was not in appellant's best interests to have Mr. Jakubek appointed as her guardian, there were no other available family members to consider for appointment. Thus, we conclude that the district court made the requisite findings to support its conclusion that public guardianship was appropriate.

In sum, the record supports the district court's determination that although Mr. Jakubek has statutory priority, the preponderance of the evidence indicates that it is not in appellant's best interest to have him appointed as her guardian, and that a public guardian is in the best interest of appellant.

Affirmed.