STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1727

In re the Guardianship of: Rodney Patterson, Ward.

Filed September 1, 2009
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-GC-PR-06-232

Roderick N. Hale, 310 Fourth Avenue South, #1150, Minneapolis, MN 55415 (for appellant Rodney Patterson)

Mary Ferris Jensen, 310 Fourth Avenue South, #1150, Minneapolis, MN 55415 (for respondent Glorina Fruetel)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Willis, Judge.*

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

KALITOWSKI, Judge

Appellant-ward Rodney Patterson contends that the district court erred in denying his petition for termination of his guardianship because (1) the evidence was not clear and convincing that he continued to need a guardian and (2) the district court's order continuing the guardian's powers was overbroad. We affirm.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

D E C I S I O N

In December 2006, the district court found by clear and convincing evidence that appellant was an incapacitated person in need of a guardian with all statutory powers over appellant. The December 2006 guardianship order incorporated a judicial finding from October 2006 that appellant was chemically dependent. In March 2007, appellant petitioned for restoration to capacity and to remove respondent Thomas Allen Consulting, Inc. as his guardian. In July 2008, the district court treated appellant's petition for restoration as a petition for termination of the guardianship, denied the petition, and filed an order appointing Clarence L. Coffindaffer as a limited successor guardian.

I.

Appellant argues that there was insufficient evidence to support the district court's conclusion that termination of guardianship is not in appellant's best interests. And appellant argues for the first time on appeal that the district court erred by failing to indicate that it was applying the clear-and-convincing standard of proof in reaching its conclusion.

The record indicates that the district court was not presented with an argument regarding the proper evidentiary standard. And this court will generally not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Moreover, our review of the record indicates that there was clear and convincing evidence to support the district court's determination that continuation of the guardianship is in appellant's best interests. Therefore, any failure by the district

court to explicitly recite that it was applying the clear-and-convincing standard of proof is harmless.

This court reviews decisions related to the best interests of protected persons for an abuse of discretion. *In re Conservatorship of Brady*, 607 N.W.2d 781, 784 (Minn. 2000). "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).

The district court properly determined that, despite appellant's presentation of a prima facie case for termination, the evidence established that appellant continues to require the assistance of a guardian to help him: (1) with his medical care; (2) to ascertain the necessary information before making significant decisions or arrangements; and (3) with the eventual transfer to a suitable residence with adequate funding.

Appellant currently resides in Duluth at TBI residential group home (TBI). Before residing at TBI, appellant lived in a Caremaxx group home, from which he was dismissed due to "safety issues plus non-compliance." Appellant's medical services cost approximately $16,000 per month, and his room and board is $757 per month. Appellant is presently on medical assistance and is indigent. Appellant is confined to a wheelchair, suffers from diabetes, requires a colostomy bag, and has permanent bowel and urinary problems. Appellant also suffers from a brain injury to his frontal lobe and has been diagnosed with cognitive dysfunction that has been most likely exacerbated by long-term drug use. Appellant was also diagnosed with antisocial personality disorder, as exhibited

by his "inability to see how the other person would be affected by . . . his actions, [and] his inability to relate to the other person as having . . . the same rights as he does." He has frequently refused care and treatment for infected wounds caused by sitting in his wheelchair. Appellant also takes antipsychotic medication and has a long history of hallucinations and paranoia.

The district court heard testimony that appellant's brain injury has resulted in poor decision-making, impulsivity, and lack of insight, and found that appellant continually "denies being cognitively impaired as a result of the assault" despite testimony from medical personnel to the contrary. This court gives due regard to the district court's determinations regarding witness credibility. *Wells*, 733 N.W.2d at 510. The district court noted appellant's testimony that he is aware of his medical, physical, and mental conditions. But the district court credited the testimony of appellant's nurse, Lori Huffman, which detailed appellant's poor decision-making abilities, his demands for unnecessary and inappropriate medical treatment, and the effect of his traumatic brain injury, which has resulted in increased impulsivity and poor decision-making abilities with regard to his physical health. And the district court also credited the testimony of Glorina Fruetel, appellant's former guardian, that appellant needs assistance in making suitable arrangements for the same reasons that Ms. Huffman testified to. Further, the district court credited the testimony of Joanell Boevers, a clinical nurse specialist, who opined that although appellant does not have the cognitive impairments that are typical of traumatic-brain-injury patients, appellant's impulse control could be better, he has made some bad choices, and he needs 24-hour nursing care for his physical health.

Based on the extensive, detailed testimony cataloguing appellant's need for guardianship, we conclude as a matter of law that clear and convincing evidence supports the district court's decision to deny appellant's petition for termination of guardianship.

II.

Appellant argues that the district court's order continuing the guardian's powers was overbroad and unsupported by the evidence. We disagree.

This court reviews decisions related to the best interests of protected persons for an abuse of discretion. *Brady*, 607 N.W.2d at 784. "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." *Wells*, 733 N.W.2d at 510.

A guardian shall be granted "only those powers necessitated by the ward's limitations and demonstrated needs." Minn. Stat. § 524.5-310 (c) (2008); *see also In re Guardianship of Mikulanec*, 356 N.W.2d 683, 687 (Minn. 1984) (stating that powers of the guardian "should be kept to the bare minimum necessary to care for the ward's needs").

Here, the district court ordered that appellant's guardian has the power to:

> (a) Have custody of the Ward and to establish the Ward's place of abode within or without the State;
> (b) Provide for the Ward's care, comfort and maintenance, including food, clothing, shelter, health care, social and recreational requirements, and, if appropriate, training, education and rehabilitation;
> (c) Give any necessary consent to enable, or to withhold consent for, the Ward to receive necessary medical or other professional care, counsel treatment or service;

> (d) Approve or withhold approval of any contract except for necessities, which the Ward may make or wish to make;
> (e) Apply on behalf of the Ward for any assistance, services, or benefits available to the Ward through any unit of government;
> (f) Exercise supervisory authority over the Ward in a manner which limits [his] civil rights and restricts [his] personal freedoms only to the extent necessary to provide needed care and services[.]

On this record we conclude that the district court did not abuse its discretion in granting the guardian these powers.

The district court based its order on the testimony of Ms. Fruetel and Ms. Huffman. Ms. Fruetel testified that the least-restrictive guardianship appointment would involve assistance with processing of treatment plans, financial circumstances, health care, and medical decisions. Ms. Fruetel opined that appellant's current residence, TBI, is an appropriate place for him to spend three to six months before looking for another placement. Ms. Huffman testified that appellant would not have been admitted to TBI without the help of his guardian and that appellant's mental and physical health and decision-making have improved because of his guardian's assistance.

Based on this testimony and evidence detailing appellant's earlier difficulties with his health and interpersonal conflicts at the Caremaxx group home, we conclude that the district court's grant to the guardian of the power to determine appellant's place of abode and to provide for appellant's care, comfort, and maintenance was not overbroad. And based on detailed testimony by Ms. Huffman regarding appellant's mismanagement of his government assistance, we conclude that it was not an abuse of discretion to grant to the guardian power over appellant's contracts and government benefits.

In sum, the record supports granting the guardian all of the powers conferred by the district court.

Affirmed.