STATE OF MINNESOTA
IN COURT OF APPEALS
A10-407

In re Guardianship of the Person of Samson Dean Meyer.

Filed September 7, 2010
Affirmed
Lansing, Judge

Cottonwood County District Court
File No. 17-P6-03-000319

Stephen J. Lindee, Lindee Law Firm LLC, St. James, Minnesota (for appellant Samson Dean Meyer)

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Considered and decided by Lansing, Presiding Judge; Wright, Judge; and Connolly, Judge.

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

LANSING, Judge

In this appeal from an order denying a motion to terminate his guardianship, Samson Meyer raises two issues. First, he asserts that he no longer needs a guardian and, second, he argues that the guardianship is not in his best interest. Because Meyer has failed to establish a prima facie case for termination of the guardianship and the record

supports the district court's conclusion that guardianship continues to be in Meyer's best interest, we affirm.

F A C T S

Cottonwood County petitioned for the appointment of a guardian for Samson Meyer in September 2003, when Meyer was eighteen years old. The guardianship petition was based on Meyer's mental and physical impairment that resulted from a severe head injury in a snowtubing accident when Meyer was nine years old. The physical impairment included paraplegia, inability to use his left hand, and inability to care for his basic needs. Meyer was able to live with his family through his teenage years; but his father's death, his mother's severe mental illness, and his stepfather's physical injuries precluded his family from providing continuing supervision.

A psychological assessment completed when Meyer's guardianship was established in 2003 showed that he was oriented to "person and place" and capable of a full range of emotional expression. The assessment indicated, however, that his nonverbal reasoning functioned at a level "similar to an individual who suffers from mental" disability; his verbal processing was in the borderline range; his performance on behavioral-skills testing and motor-skill functioning was at a level similar to a five-month-old infant; his socialization skills were comparable to the range of a six year old; his communication skills were in the range of an eight year old; and his daily-living skills were at a preschool level. The assessment concluded that Meyer's deficits were "too severe to enable him to make healthy choices with his life," and that Meyer "need[s] ongoing assistance from a social worker and will need a guardian to make his decisions."

Based on the evidence submitted at the 2003 hearing, the district court concluded that Meyer was an incapacitated person and appointed a guardian, with full guardianship powers. Meyer's guardian was previously a high-school guidance counselor and has additional experience exercising legal responsibilities for disabled persons. At first, Meyer lived at a residential facility in Windom and continued in the local high school's special-education program. He was involved in school activities and social and religious groups. He expressed an interest in attending college and majoring in business. At his residence, he ran up a $1,000 Internet bill, and his guardian helped him reduce it to an amount that Meyer was eventually able to pay.

Meyer moved to a residential facility in Willmar in August 2005 as part of a plan to take classes in Ridgewater Community Technical College's rehabilitative-skills program. He was unable to enroll in 2005, but began employment in Willmar through Crossroads, a training and rehabilitation service. In 2006 and 2007, Meyer enrolled in a study-skills class at Ridgewater and attended with help from residential staff. Meyer wanted to take more than one class, but his guardian would not approve additional classes. Meyer did not do his assignments and received only narrowly passing grades. Following a period of academic probation, the school declined to allow Meyer further enrollment. Over time, Meyer became less involved with the Crossroads program. In addition, he did not consistently do the staff-prescribed exercises, which were part of living at the residential facility. Throughout this period, the guardian's annual reports indicated no change in Meyer's mental, physical, or social condition.

In July, 2009, Meyer moved back to Windom to facilitate visitation with his parents. At his new residence, he had access to a television and purchased video games. He resisted the requirement for his guardian's approval for any expenditure over $100. He was also displeased with the staff at the Windom facility because they emphasized exercises and imposed consequences—reduced television or video-game time—for failure to participate. Meyer began employment in Windom in a program that assisted people with disabilities, but he did not like his job.

Meyer filed a petition for restoration to capacity in November, 2009. The district court appointed a visitor to meet with Meyer and to report to the court on the relief requested in the petition. The visitor filed a report with the court that commented positively on Meyer's general appearance, orientation, and demeanor. The report stated that Meyer has an adequate vocabulary but that his speech is slow, deliberate, and difficult to understand. The report further stated that Meyer's current incapacity and disability are "consistent with past and current reports in the court file." It concluded that the guardianship, with all powers granted, continued to be appropriate because Meyer "remains a very vulnerable person with [a] serious physical disability and borderline mental capacity."

At a hearing on the petition, Meyer asserted that he was capable of making decisions necessary to meet his needs. He stated that he wanted to handle his own money, and he hoped to move to California to get a customer-service job at Best Buy. In his earlier discussion with the visitor, Meyer said that he would like a job testing video games, which could pay "six figures." Meyer's attorney argued that, even if the

guardianship continued, the guardian's powers should be limited to give Meyer "the opportunity to have more input in how he lives his life, what he does with his money, where he lives, and things like this."

Meyer's social worker testified for the county and addressed Meyer's current challenges and behavior. She said that when Meyer had been given opportunities to take limited responsibility for his own wellbeing—for example, doing his exercises or making arrangements for transportation to activities—he had not been successful. She stated that he underestimated his need for daily care, and she expressed doubt that he would be able to attend to his daily needs without a guardian's supervision. She stated that Meyer needs a guardian to make day-to-day decisions that are in his own best interest.

The district court found that Meyer had failed to demonstrate the present capacity to make responsible life decisions, to provide for his daily needs, or to manage his medical care and finances. The district court also found that Meyer had not shown that he no longer needed a guardian, and that sustaining the existing guardianship served his best interest. Following the district court's order denying Meyer's petition for restoration to capacity, Meyer appeals.

D E C I S I O N

The guardianship statute authorizes the district court to appoint a guardian if it finds by clear and convincing evidence that (1) the subject of the guardianship is an incapacitated person and (2) the person's "identified needs cannot be met by less restrictive means." Minn. Stat. § 524.5-310(a) (2008). Once established, a guardianship terminates only at the death of the ward or by court order. Minn. Stat.

§ 524.5-317(a) (2008). A ward may petition the district court to terminate a guardianship "if the ward no longer needs the assistance or protection of a guardian." *Id.* (b) (2008). The district court may also "modify the type of appointment or powers granted to the guardian" if the current protection is excessive or if a change in the ward's "capacity to provide for support, care, education, health, and welfare" warrants that action. *Id.* If the petitioner presents evidence establishing a "prima facie case for termination" of the guardianship, the court shall order termination "unless it is prove[d] that continuation of the guardianship is in the best interest of the ward." *Id.* (c) (2008).

A district court's decision relating to the appointment or modification of a guardianship is reviewed under an abuse-of-discretion standard. *See In re Conservatorship of Brady*, 607 N.W.2d 781, 784 (Minn. 2000) (reviewing district court's exercise of discretion and determination of best interest); *see also In re Guardianship of Kowalski*, 478 N.W. 790, 792-96 (Minn. App. 1991) (reviewing district court's choice of guardian). Our review of the district court's findings of fact, which provides the bases for its exercise of discretion, is limited to clear-error review, and we must defer to the district court's decisions on witness credibility. *In re Guardianship of Wells*, 733 N.W.2d 506, 510 (Minn. App. 2007) (citing Minn. R. Civ. P. 52.01).

The threshold issue in this appeal is whether Meyer presented a prima facie case for termination or modification of his guardianship. We construe the statute to require a petitioning ward initially to present evidence that his circumstances or capacities have

changed since the guardianship was established. *See Coker v. Ludeman*, 775 N.W.2d 660, 664-65 (Minn. App. 2009) (stating that commitment statute requires person petitioning for transfer or discharge to produce evidence that satisfies statutory criteria), *review dismissed* (Minn. Feb. 24, 2010). Specifically, the statute provides that the court may terminate the guardianship if the ward "no longer" needs a guardian. Minn. Stat. § 524.5-317(b). A ward therefore establishes a prima facie case for termination by offering proof that the facts that justified the guardianship are no longer true. Similarly, the court may modify the type of appointment or the guardian's powers if the extent of the powers "previously" established are "currently excessive" or if changes to the ward's capacities warrant modification. *Id.*

The record supports the district court's determination that Meyer has not established a prima facie case under the statute. Meyer argues that he no longer needs a guardian because the guardianship's "necessity has run its course." He contends that he has demonstrated that he understands his physical limitations, can maintain employment and manage his money, can arrange for medical care or government assistance as needed, and can contract on his own. He highlights the court-appointed visitor's statements that he is oriented, well-groomed, and communicative.

In denying Meyer's petition, the district court relied on the standards under the statute that state that an adult is an incapacitated person if he "is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions" and "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. § 524.5-101, subd. 6 (2008).

Meyer's assessment from 2003 explicitly states that a guardian was necessary because of his severe physical and mental impairment caused by his brain injury. The guardians' annual reports since that time have indicated no significant change in Meyer's physical or mental limitations, and the 2009 visitor's report is consistent with the previous annual reports.

Meyer's behavior and his decision-making reflect these limitations. The social worker testified that Meyer underestimates the amount of care that he needs, gauging it at "about two hours a day," instead of the nearly continuous care that is necessary. The record also shows that Meyer has difficulty managing money, and the social worker's testimony indicates that a significant debt was only resolved through the guardian's intervention.

Meyer's record of employment and his participation at Ridgewater supports a conclusion that his self-assessment of capacity is at odds with his actual capacity. When staff members have attempted to give Meyer even minimal responsibility for exercise or activities, he has failed to follow through or to participate fully. Although the record indicates an ability to socialize with peers and with the court-appointed visitor, the 2003 assessment expressly indicates that Meyer's capacity for communication exceeds his capacity for nonverbal reasoning, and the 2009 visitor

reached the same conclusion. Even accounting for verbal ability, Meyer still functions at or near levels of mental disability in all areas.

The record shows that Meyer was incapacitated under the statute at the inception of his guardianship, and he has failed to show that his circumstances and capacities have changed since then. We discern no clear error in the district court's findings, including its determination that Meyer failed to produce evidence that he no longer needs a guardian or that the powers of the guardian should be modified.

Based on his assertion that he established a prima facie case for termination of his guardianship, Meyer also argues that guardianship is not in his best interest. *See* Minn. Stat. § 524.5-317 (c) (stating court shall terminate guardianship upon prima facie showing unless continuation is in best interest of ward). Meyer discusses his best interest in terms of his personal dissatisfaction and frustration, stating that he does not want to be treated "like a child" and that his institutional environment is preventing him from developing and demonstrating his capacity to make his own decisions.

Although Meyer's failure to make a prima facie case for termination or modification is the threshold issue, the record also supports the district court's conclusion that guardianship continues to be in Meyer's best interest. Meyer's mental and physical functioning has not changed since his 2003 assessment. The 2009 visitor noted Meyer's frustration with guardianship but concluded that he "remains a very vulnerable person with serious physical disability and borderline mental capacity." His physical limitations in particular require an extensive amount of personal care. The social worker expressed

concern that Meyer's care would suffer if left on his own and stated that "he needs to continue to have a [g]uardian to help him make decisions in his best interest."

In addition, the record indicates that the guardianship is not unduly oppressive. The social worker testified that the guardian allows Meyer to participate in decisions so long as Meyer's health or safety is not compromised. The social worker also said that the staff of Meyer's residential facility has tried to give him limited opportunities to take more responsibility but cited examples of how he failed "to actively participate in doing the things he needs to do." Although Meyer generates ambitious plans, the social worker observed that "his ability to follow through or to make those plans or actions happen has not changed." The guardianship continues to ensure Meyer's welfare without impeding his opportunity to show improved capacity or responsibility. The record supports the district court's conclusion that guardianship continues to be in Meyer's best interest. The district court did not abuse its discretion by denying Meyer's petition to terminate his guardianship.

Affirmed.