**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1848**

In re the Guardianship and/or Conservatorship
of Millicent S. Ficken.

**Filed September 16, 2008**
**Reversed**
**Halbrooks, Judge**

Ramsey County District Court
File No. 62-PR-06-1011

Mary R. Vasaly, Maslon Edelman Borman & Brand, LLP, 3300 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402; and

Patricia M. Cavey (pro hac vice), Tammi, Cohn & Cavey, 405 East Lincoln Avenue, Milwaukee, WI 53207 (for appellant Millicent S. Ficken)

Luther M. Amundson, Maser & Amundson, PA, 6601 Lyndale Avenue South, Suite 320, Minneapolis, MN 55423 (for respondent John Ficken)

Kim Ruckdaschel-Haley, Robert A. McLeod, Amy R. Mason, Lindquist & Vennum, PLLP, 80 South 8th Street, Suite 4200, Minneapolis, MN 55402 (for respondent Fiduciary Foundation, LLC)

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Collins, Judge.*

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

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

**HALBROOKS,** Judge

In this conservatorship proceeding, appellant challenges the district court's conclusion that it had subject-matter jurisdiction to impose a conservatorship under Minn. Stat. § 524.5-106 (2006), contending that the district court erroneously construed the statute to apply to her and her property even though she is domiciled in Wisconsin and has no property to speak of within Minnesota. Because we conclude that Minn. Stat. § 524.5-106 does not provide the district court with jurisdiction over appellant's conservatorship proceeding, we reverse.

## FACTS

Appellant Millicent Ficken, 75, is a resident of and domiciled in the State of Wisconsin. Appellant is a zoologist with a Ph.D.; she lives in her own home in Grafton, which is located north of Milwaukee. In addition to her home, appellant possesses various bank accounts and financial investments.

During the 2006 Thanksgiving holiday, appellant traveled to Minnesota to visit her two adult children, Carolyn Powers and respondent John Ficken (Ficken). On November 26, 2006, appellant consumed more than the prescribed dosage of her medication and collapsed at the Minneapolis/St. Paul International Airport while waiting to fly back to Wisconsin. Appellant describes this incident as a misunderstanding and the result of her adverse reaction to the medication. Powers and Ficken believe that appellant overdosed on the medication because of her impaired judgment caused by a manifestation of some dementia. Regardless, appellant was hospitalized as a result of the incident.

While appellant was hospitalized, various medical tests and evaluation were performed. Alvin Holm, M.D., and Nathan Frink, M.D., both diagnosed appellant with frontal temporal dementia, a progressive disease. Dr. Holm stated that appellant's prognosis is poor, her judgment and reasoning are impaired, and that her condition subjects her to "grave risk for serious injury." Dr. Frink concluded that appellant "is not capable of making decisions for herself." Both physicians recommended that Powers and Ficken seek guardianship of appellant, and both also issued statements supporting a guardianship. Appellant was eventually discharged from the hospital to the Presbyterian Home of North Oaks.

Ficken petitioned for an emergency guardianship and conservatorship on December 12, 2006. A hearing on the petition was held before the district court on January 3, 2007. The district court issued an order the next day, establishing an emergency guardianship and conservatorship. By agreement of the parties, Jeffrey Kittleson of respondent Fiduciary Foundation, LLC, was named the temporary guardian and conservator. The district court also set a trial date of February 22, 2007, to address permanency of the emergency order. On January 24, 2007, Kittleson added himself as a signatory to appellant's Wisconsin checking account.

At the February 22 hearing, the parties reached a stipulated agreement. The essential terms of the agreement were orally placed on the record. Appellant was represented by both Minnesota and Wisconsin counsel when this agreement was reached.

The stipulated agreement acknowledged that appellant had been diagnosed with dementia and that this would detrimentally affect her ability to care for herself and

manage her property. It acknowledged that the statutory burdens and requirements to create a permanent guardianship had been met.[1] The parties agreed that instead of appointment of a guardian, the less restrictive alternative of a negotiated care-management-and-coordination contract would be implemented to provide for appellant's health, safety, and well-being. The stipulated agreement also acknowledged that the statutory burdens and requirements to create a permanent conservatorship had been met, but that means less restrictive than an appointment of a conservator were appropriate to protect appellant's assets.[2] This less restrictive alternative was to transfer appellant's assets from an existing revocable trust to an irrevocable trust, with Powers and Ficken selecting the trustee. The stipulated agreement further stated that appellant would be allowed to return to Wisconsin once the agreement was fully executed by all parties, including appellant, and approved by the district court.

Under the stipulated agreement, the emergency conservatorship was to continue until the final accounting of Fiduciary Foundation was approved, with the petition for final accounting to be filed no later than April 30, 2007.[3] The emergency guardianship

---

[1] *See* Minn. Stat. § 524.5-310 (2006) (establishing the requirements for a district court to create a guardianship and requiring less restrictive means than appointment of a guardian be utilized if appropriate).

[2] *See* Minn. Stat. § 524.5-409 (2006) (establishing the requirements for a district court to create a conservatorship, but stating that even if the required evidentiary burdens are met, appointment of a conservator is only appropriate if less restrictive means would not sufficiently protect a person's assets).

[3] On April 30, 2007, Fiduciary Foundation petitioned for final accounting as required. It subsequently filed an amended petition for final accounting on June 22, 2007. The propriety of this final accounting is not an issue in this appeal.

was to continue until the court received a letter from appellant's Wisconsin attorney indicating that appellant's care-management plan had been implemented. If no such letter was received, a hearing regarding discharge of the emergency guardianship was to be held no later than April 30, 2007.

The parties' agreement was incorporated into a written stipulated order that was submitted to the district court on March 1, 2007. But the order was missing several necessary signatures and attachments. On March 3, 2007, the district court received facsimile copies of the pages with the missing signatures as well as the missing attachments (i.e., it had the full agreement, but some signature pages were facsimile copies). To allow appellant to return to Wisconsin, the district court orally indicated to appellant's Minnesota attorney that it was approving the agreement.[4]

Appellant returned to Wisconsin on or about March 3, 2007. Although it is not precisely clear from the record what occurred during the next several months, there were ongoing disputes relating to the implementation and funding of the irrevocable trust and appellant's purportedly improper withdrawal of monies from certain financial accounts. These disputes apparently prevented establishment of both the permanent guardianship and conservatorship in accordance with the terms of the parties' stipulated agreement that the district court approved.

[4] The district court stated that it would sign the stipulated order containing the parties' agreement once it received the signature pages bearing the required original signatures. But it never received these signature pages and has apparently yet to actually sign and file the stipulated order incorporating the parties' agreement. Nevertheless, appellant is not contesting the validity of the execution of the agreement.

In May 2007, Fiduciary Foundation moved to enforce the parties' stipulated agreement. In response, appellant moved the district court to, among other things, void its March 3 approval of the agreement based on lack of subject-matter jurisdiction and to dismiss the matter.

Following a hearing, the district court denied appellant's motion to dismiss in an August 10, 2007 order. The court found that it had subject-matter jurisdiction over both the guardianship and conservatorship proceedings under Minn. Stat. § 524.5-106 (2006). The district court granted Fiduciary Foundation's motion to enforce the parties' agreement as incorporated in the court's stipulated order. This appeal follows.

**D E C I S I O N**

Before the district court, appellant challenged the entirety of the March 3 stipulated order on jurisdictional grounds. She argued that the district court did not have subject-matter jurisdiction over either the guardianship proceeding or the conservatorship proceeding. But on appeal, she concedes that the district court had subject-matter jurisdiction to impose the *guardianship* under the terms agreed to by the parties. Accordingly, her current argument is limited to the contention that the district court did not have subject-matter jurisdiction to impose a *conservatorship* in the form of an irrevocable trust.[5] She asks this court to void the portion of the district court's March 3 stipulated order relating to the conservatorship.

[5] The propriety of the district court's exercise of personal jurisdiction over appellant is not disputed.

Appellant's primary argument is that the statutory requirements of Minn. Stat. § 524.5-106 (2006) granting a court subject-matter jurisdiction to impose a conservatorship were not met. Respondents contend that the current circumstances satisfy the statute's jurisdictional requirements. In addition, respondents assert that, even if we conclude that the statute was not satisfied in regard to the conservatorship, the parties' stipulated agreement is still valid and enforceable in its entirety. For the reasons discussed below, we agree with appellant's contention that section 524.5-106 was not satisfied and disagree with respondents' argument that the district court had the ability to enforce the imposed conservatorship.[6]

**I.**

Prior to 2003, proceedings to establish a guardianship or conservatorship were addressed by Minn. Stat. §§ 525.539-.705 (2002). But in 2003, the Minnesota Legislature adopted the Uniform Guardianship and Protective Proceedings Act (UGPPA), which resulted in the creation of a series of new statutes governing guardianships and

[6] In both the district court and this court, the parties to this case have based their respective arguments on the premise that Minn. Stat. § 524.5-106 defines the district court's subject-matter jurisdiction over a conservatorship. Consistent with the manner in which the parties have framed the issues, we assume without deciding that section 524.5-106 defines the district court's subject-matter jurisdiction rather than its in personam jurisdiction over parties and its in rem jurisdiction over property that may be protected by a conservatorship. *Cf. Hous. & Redevel. Auth. v. Adelmann*, 590 N.W.2d 327, 331-33 (Minn. 1999) (questioning whether failure to comply with Minn. Stat. § 117.145 (1998) deprives district court of subject-matter jurisdiction); *In re Trusteeship of Sheridan, Colo.*, 593 N.W.2d 702, 705 (Minn. App. 1999) (interpreting Minn. Stat. § 501B.16 (1998) to define subject-matter jurisdiction rather than in rem jurisdiction); *cf. also In re Commitment of Giem*, 742 N.W.2d 422, 429 (Minn. 2007) (noting that statute divesting district court of subject-matter jurisdiction may violate constitutional doctrine of separation of powers). Whether the assumption underlying our decision is correct should be reserved for a case in which the issue is raised and fully briefed.

conservatorships. 2003 Minn. Laws ch. 12, at 116-72; *see also* Unif. Guardianship and Protective Proceedings Act (1997). The UGPPA consists of five parts. Part one contains generally applicable provisions, including a statute entitled subject-matter jurisdiction. Minn. Stat. §§ 524.5-101 to .5-118 (2006). Part two addresses guardianship of a minor. Minn. Stat. §§ 524.5-201 to .5-211 (2006). Part three addresses guardianship of an incapacitated person, such as appellant. Minn. Stat. §§ 524.5-301 to .5-317 (2006). Part four addresses what the statutes label "protective proceedings" and what are more commonly known as conservatorships. Minn. Stat. §§ 524.5-401 to .5-433 (2006). Part five addresses compensation and expenses for guardians and conservators. Minn. Stat. §§ 524.5-501 to .5-502 (2006).

Minn. Stat. § 524.5-106, based on UGPPA § 106, provides a district court with jurisdiction over both guardianship and conservatorship proceedings. Jurisdiction "involves a court's authority to decide a particular class of actions and its authority to decide the particular questions before it." *Herubin v. Finn*, 603 N.W.2d 133, 137 (Minn. App. 1999). Jurisdiction is essential to a court's ability to adjudicate a claim, and any order issued in its absence is void. *Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981); *Lyon Fin. Servs., Inc. v. Waddill*, 625 N.W.2d 155, 158 n.3 (Minn. App. 2001), *review denied* (Minn. June 19, 2001).

The issue of a district court's jurisdiction presents a question of law, which this court reviews de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002). To the extent that jurisdiction is dependent on the construction of a statute granting such jurisdiction, this court's review is also de novo. *See Olmanson v. LeSueur County*, 693

N.W.2d 876, 879 (Minn. 2005) ("The construction of a statute is a question of law, which this court reviews de novo.")

Minn. Stat. § 524.5-106 states, in relevant part:

> This article applies to, and the court has jurisdiction over, guardianship and related proceedings for individuals domiciled or present in this state, protective proceedings for individuals domiciled in or having property located in this state, and property coming into the control of a guardian or conservator who is subject to the laws of this state.

As noted above, the protective proceeding referred to in the second clause of the statute is the chosen designation for a proceeding to establish a conservatorship. *See, e.g.*, Minn. Stat. § 524.5-401 (stating that a conservator is appointed as the result of a protective proceeding).

In interpreting section 524.5-106, we must first determine whether the statute's language is ambiguous on its face. *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007). A statute is ambiguous when its language is subject to more than one reasonable interpretation. *Id.* If a statute is ambiguous, courts may look to extrinsic evidence and the canons of construction to ascertain its meaning. *Lietz v. N. States Power Co.*, 718 N.W.2d 865, 870 (Minn. 2006). But when the legislature's intent is patent from the statute's unambiguous language, courts apply the language in accordance with its plain meaning; further construction is neither necessary nor permitted. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001); *see also* Minn. Stat. § 645.16 (2006).

A statute should be construed "to give effect to all its provisions." Minn. Stat. § 645.16. If possible, "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted). Courts also should not construe a statute in a manner that produces an absurd result. Minn. Stat. § 645.17(1) (2006).

Statutes based on uniform laws should be interpreted to effect their underlying purpose of creating uniformity among the states that enact them. Minn. Stat. § 645.22 (2006). Accordingly, other states' interpretations of uniform laws are generally given great persuasive weight. *Murray*, 648 N.W.2d at 670. But only two other states—Colorado and Hawaii—have enacted the UGPPA, and neither state's case law sheds any light on the proper interpretation of the jurisdiction provision contained in the act.[7] Thus, the structure and language of Minn. Stat. § 524.5-106 are paramount to its meaning.

Minn. Stat. § 524.5-106 has three different jurisdictional clauses. The parties disagree about the interpretation and application of all three.

**A. The first clause**

The first clause, which the district court relied on in retaining jurisdiction over appellant's conservatorship, states that a court has jurisdiction over a "guardianship and related proceedings for individuals domiciled or present in this state." Minn. Stat. § 524.5-106. Respondents concede that this clause does not provide jurisdiction based on the state of appellant's domicile, which is Wisconsin. But respondents contend that the

[7] The Colorado equivalent of Minn. Stat. § 524.5-106—Colo. Rev. Stat. § 15-14-106 (2007)—has yet to be discussed by a Colorado court. The Hawaii equivalent, Haw. Rev. Stat. § 560:5-106 (2006), has been cited once for an unrelated matter.

district court correctly concluded that conservatorship proceedings are within the meaning of "related proceedings" as the phrase is used in the clause. Therefore, respondents argue that this clause grants a district court jurisdiction over appellant's Wisconsin property because she was personally "present" in Minnesota when Ficken petitioned to establish the conservatorship. Appellant claims that the clause provides jurisdiction solely in regard to guardianship proceedings. She argues that the "related proceedings" language does not contemplate conservatorship proceedings and so an individual's presence in this state, by itself, is not enough to provide a district court with jurisdiction to impose a conservatorship. We agree.

The scope of the phrase "related proceedings" is ambiguous, because it is not defined in the section and is subject to more than one reasonable interpretation. But the canons of construction and other extrinsic evidence indicate that the phrase "related proceedings" was not meant to include a conservatorship proceeding within its definition.

First, the phrase is contained within a clause that specifically references guardianship proceedings. It is the next (i.e., second) clause of section 524.5-106 that specifically references protective/conservatorship proceedings. Section 524.5-106's delineation between the two proceedings is consistent with other statutory provisions contained within chapter 524 that define a guardian and conservator separately and that give very different powers and duties to each.[8] That the structure of Minn. Stat.

[8] *See, e.g.,* Minn. Stat. §§ 524.5-102 (defining guardian and conservator separately and defining a person supervised by a guardian as a "ward" while an individual whose property is supervised by a conservator is deemed a "protected person"); .5-207, subd. 2(a) (stating that a guardian only has limited power over a ward's personal effects and

§ 524.5-106 expressly identifies and separates these two different proceedings between the first and second clauses of the statute indicates that the jurisdictional requirements of the first clause addressing guardianships were meant to be separate and distinct from those contained in the second clause that addresses conservatorships.

Second, to interpret the first clause to encompass conservatorships renders half of the second clause superfluous and irrelevant. The first clause grants jurisdiction over persons domiciled in Minnesota or persons present in the state. The second clause grants jurisdiction over persons domiciled in Minnesota or property located in the state. Thus, the "domiciled" language in the second clause is rendered unnecessary if a conservatorship is within the meaning of the phrase "related proceedings" contained in the first clause. Put differently, respondents' interpretation contravenes the canon stating that a statute should not be interpreted in a manner that renders part of its language irrelevant.

Third, the comment to UGPPA § 106, on which Minn. Stat. § 524.5-106 is based, indicates that conservatorships were not meant to be encompassed within the first clause's grant of jurisdiction. The relevant language of the comment states:

> [S]ection [106] provides a clear delineation of jurisdiction for guardianships and protective proceedings. Under the Act, jurisdiction over an individual's person is based on the person's domicile or person's physical location while jurisdiction over a person's property is based on the person's domicile or the property's location. Consequently, location of property alone does not grant a court the authority to

---

that a guardian "must" commence a conservatorship proceeding if necessary to obtain additional power to protect the ward's property); .5-417 (giving a conservator broad power over many aspects of a protected person's property) (2006).

> appoint a guardian for the person who owns the property. The person must also be domiciled or physically located in the jurisdiction. Nor does the physical location of a person alone grant the court authority to appoint a conservator or enter another protective order. The person must also be domiciled in or have property located in the jurisdiction.

Unif. Guardianship and Protective Proceedings Act § 106 cmt. Thus, the comment states both that jurisdiction over conservatorships is provided under the second clause of the statute and that there was meant to be a "clear delineation" between jurisdiction over conservatorships and guardianships.

Finally, the "related proceedings" phrase is more logically understood to simply ensure that a district court retains jurisdiction over the many proceedings that are ancillary to the establishment, maintenance, and termination of a guardianship such as modification of the guardianship's terms or compensating the person appointed as guardian. *See* Minn. Stat. §§ 524.5-317 (permitting modification and termination of the guardianship), .5-502 (governing proceedings for a guardian to obtain payment for services rendered) (2006).

For all these reasons, we conclude that the district court erred when it relied on the first clause of Minn. Stat. § 524.5-106 to find that it had subject-matter jurisdiction to impose a conservatorship in the form of an irrevocable trust on appellant's Wisconsin property.

**B. The second clause**

The second clause in Minn. Stat. § 524.5-106 grants a court jurisdiction over "protective proceedings for individuals domiciled in or having property located in this

state." The parties agree this clause expressly encompasses protective/conservatorship proceedings. And as already stated, neither party asserts that the state of appellant's domicile is Minnesota. But the parties disagree about the meaning of the term "property" as used in the clause.

Respondents contend that the meaning of the word "property" encompasses even essential, day-to-day personal effects such as a person's clothes, watch, or purse. Respondents go on to argue that these personal effects, which are necessarily "located" in the state while a person is present in the state, give a court jurisdiction under the clause over *all* of the person's property for the purposes of imposing a conservatorship. They contend that this is true even if the vast majority of the property potentially subject to a conservatorship is located in a different state.

The word "property" is not defined in section 524.5-106. Because the scope of this word's sweep could reasonably be interpreted in more than one manner, it is again ambiguous and requires reference to other factors to aid in its definition. Respondents' proffered interpretation, however, is unsupported by the available evidence regarding the meaning of the word or the canons of statutory construction.

Initially, respondents' interpretation contravenes the canon stating that statutes should not be construed to produce an absurd result. Respondents' proffered definition of the word "property" would require a person traveling through Minnesota to do so, literally, without a stitch of clothing on his or her body to avoid being subject to a district court's jurisdiction to impose a conservatorship on the entirety of the person's property,

including property located in a different state. This is a patently unreasonable reading of the statute.

In addition, given the second clause's specific reference to protective proceedings, the type of property that a conservator is given the power to manage tends to inform the definition of the term "property" as used in the clause. A guardian has only limited ancillary power to care for a ward's personal effects and handle certain monies to provide for the ward's continued health, safety, and welfare. Minn. Stat. § 524.5-207 (2006). A conservator, on the other hand, has broad power to manage almost every aspect of a protected person's property, including his or her real property, debts, and investments. Minn. Stat. §§ 524.5-417 to .5-418 (2006). In other words, the property that respondents assert provides conservatorship jurisdiction—essential personal effects—does not require a conservatorship to manage in the first place.

The comment to UGPPA § 106 further helps provide some definition to the nature of the property interest required to assert jurisdiction under the second clause of Minn. Stat. § 524.5-106. The comment states that a person's physical location in the state alone is not enough to confer jurisdiction to impose a conservatorship. Respondents' proffered interpretation of the word "property" undermines this statement. Every person necessarily has a few essential personal effects with them when they enter the state. Accordingly, in contravention of the comment to UGPPA § 106, respondents' contention that minor personal effects fall within the definition of "property" would effectively allow a court to exercise jurisdiction and impose a conservatorship based on the person's physical location in the state alone.

We need not, and do not, decide today the precise contours of the term "property" as used in the second clause of section 524.5-106. But we do conclude that the personal effects accompanying a person on a brief vacation to this state do not fall within the meaning of the term. Respondents cannot use this "property" to establish jurisdiction over appellant's real property and financial accounts, all of which are located in Wisconsin. Accordingly, neither does this clause provide the district court with jurisdiction to impose a conservatorship on appellant's Wisconsin property.

**C. The third clause**

The third and final jurisdictional clause of Minn. Stat. § 524.5-106 dictates that a court has jurisdiction over "property coming into the control of a guardian or conservator who is subject to the laws of this state." This clause is not ambiguous; its plain language indicates that a condition precedent for the exercise of jurisdiction under its terms is that an existing conservator (or guardian) has acquired control of the property. Yet the very issue here is whether the district court had jurisdiction to impose a conservatorship at all. If the district court had no jurisdiction to do so, the improperly created conservatorship cannot validly acquire control of the property needed to establish jurisdiction under this clause. Stated differently, if a district court order creating a conservatorship is void due to lack of jurisdiction, the legally invalid conservatorship taking control of property *ultra vires* does not somehow create jurisdiction that did not exist in the first place. As appellant notes, this would be bootstrapping.

Respondents try to avoid this problem by noting that the clause also grants jurisdiction over property coming into control of a guardian, which Kittleson of Fiduciary

Foundation was and whose validity is not disputed. But this argument fails to withstand scrutiny because a guardian has no statutory authority to take control of the property transferred to the irrevocable trust here, i.e., appellant's real property and financial accounts.

The third clause of section 524.5-106 states that its grant of jurisdiction is limited to property coming under the control of a guardian "subject to the laws of this state." As already noted, a guardian has only limited power to manage a ward's personal effects and certain monies necessary to provide for the ward's health, safety, and welfare. Minn. Stat. § 524.5-207. If a guardian requires additional power over a ward's property, it must petition to establish a conservatorship. *Id.*, subd. 2(a). It is only a conservator who has broad powers over a protected person's real property and investments. Minn. Stat. §§ 524.5-417 to .5-418. Because a guardian could not validly acquire control of the disputed property here, any exercise of control over this property by the guardian would be *ultra vires*. In other words, the guardian's exercise of control over the property would not be pursuant "to the laws of this state," and so jurisdiction is not conferred by the clause. A validly imposed guardianship cannot be used as an end run around the jurisdictional requirements of section 524.5-106 in regard to a conservatorship.

In conclusion, clause one of Minn. Stat. § 524.5-106 provides a district court jurisdiction only in relation to guardianship proceedings. Clause two provides jurisdiction over conservatorship proceedings, but its requirements are not met here because appellant is domiciled in Wisconsin, and none of her "property" as contemplated by the clause is located in Minnesota. And clause three's jurisdictional requirements are

not met for the reasons discussed above. As a result, the district court did not have jurisdiction to impose a conservatorship under Minn. Stat. § 524.5-106.

**II.**

Respondents also assert that the district court had authority to enforce the parties' settlement agreement even if the requirements of Minn. Stat. § 524.5-106 were not met. Both respondents make several arguments to support their assertions. None have merit.

Fiduciary Foundation properly concedes that the parties to an action cannot consent to or waive subject-matter jurisdiction if no such jurisdiction otherwise exists. *See No Power Line, Inc. v. Minn. Envtl. Quality Council*, 262 N.W.2d 312, 321 (Minn. 1977) (stating that "subject-matter, unlike personal, jurisdiction cannot be conferred by consent of the parties"); *Schroeder v. Schroeder*, 658 N.W.2d 909, 912 (Minn. App. 2003) (stating that a party is unable to "confer subject matter jurisdiction to the district court either by waiver or consent"). But Fiduciary Foundation goes on to argue that the district court had the authority to enforce the parties' agreement "because the court's authority to appoint a guardian over [appellant] also necessarily included the authority to enforce a Settlement Agreement willingly entered into by all parties, including [appellant]." Fiduciary Foundation correctly notes that the district court did have jurisdiction to enforce the parties' agreement in regard to the guardianship. Where Fiduciary Foundation's reasoning becomes problematic, however, is when it argues that because part of the district court's order was valid and enforceable, the district court had the ability to enforce the entirety of the order.

But simply because a portion of a district court's order is valid and enforceable does not necessarily mean the entirety of the order is valid and enforceable. *See Park Elm Homeowner's Ass'n v. Mooney*, 398 N.W.2d 643, 646-47 (Minn. App. 1987) (reversing a portion of a district court's ruling because it "acted completely outside its authority . . . [and so its judgment was] tantamount to one rendered despite a lack of subject matter jurisdiction," but enforcing a different section of the district court's ruling because it "clearly had jurisdiction to render this part of [the] judgment"). Conversely, just because part of a district court's order is void or unenforceable does not necessarily mean the entirety of the order is invalid. *See id.* While often related in practice, the statutory scheme of Minnesota Statutes chapter 524 makes clear that guardianships and conservatorships are distinct legal concepts with differing procedures; they cannot be casually lumped together as respondent is attempting to do. Fiduciary Foundation's argument that the presence of a valid and enforceable guardianship renders equally valid and enforceable the conservatorship is without merit, because there is still a lack of jurisdiction regarding the latter.

Fiduciary Foundation next argues that because appellant was never actually adjudicated incapacitated, she had the capacity to enter into what it deems a "contract" to transfer her property into an irrevocable trust that was created as part of the conservatorship. But the stipulated agreement here was not a negotiated contract between the parties; it was a settlement meant to resolve Ficken's still-pending petition for creation of a permanent guardianship and conservatorship. The settlement was meant to avoid an adversarial trial on the merits. It specifically addressed the statutory

requirements that must be met to create both a guardianship and conservatorship and referenced Minnesota Statutes chapter 524 multiple times. Unlike a typical contract, it required the district court to incorporate it into a stipulated order before it became valid and enforceable.

Fiduciary Foundation next argues that because the terms of the parties' settlement did not include the appointment of an actual conservator, the district court did not in fact exercise jurisdiction over appellant's Wisconsin property. Thus, Fiduciary Foundation reasons, the agreed-upon settlement does not implicate section 524.5-106 and its restrictions on jurisdiction. We again disagree. First, Kittleson (of Fiduciary Foundation) added himself to appellant's checking account under the authority granted him by the district court's emergency order of January 4, 2007. In addition, a district court must expressly approve the creation of an irrevocable trust in the context of a conservatorship under Minn. Stat. § 524.5-411(a)(4) (2006). Thus, while an actual conservator was not appointed, the district court (improperly) exercised both jurisdiction and authority over appellant's Wisconsin property by naming Kittleson as a temporary conservator and imposing the irrevocable trust.

Ficken also raises several arguments relating to the present matter. He initially argues that the district court has jurisdiction over the guardianship and proceedings to provide compensation for a guardian. This is correct and undisputed. Ficken next discusses numerous Minnesota statutes and argues that these statutes grant a conservator and/or district court authority in overseeing a conservatorship. But the statutes and any

authority that may be granted by them are irrelevant unless it is first established that a district court has jurisdiction to impose the conservatorship.

Finally, respondents emphasize that appellant was represented by counsel at all times, participated in the negotiation process, and personally agreed to the settlement, arguing that this shows that her assent to the agreement was voluntary and intelligent. While the record appears to support these representations, these circumstances cannot confer on the district court jurisdiction to impose the conservatorship that does not exist otherwise.

We conclude that Minn. Stat. § 524.5-106 granted the district court jurisdiction to impose a guardianship to provide for appellant's health, safety, and well-being, but not a conservatorship for the protection of her out-of-state property. Wisconsin is the proper forum for a conservatorship proceeding. Therefore, the district court's order in regard to imposition of the conservatorship is void and unenforceable for lack of subject-matter jurisdiction.

**Reversed.**