IN THE COURT OF APPEALS OF IOWA

No. 3-457 / 13-0064
Filed June 12, 2013

**IN THE INTEREST OF AND
REGARDING THE GUARDIANSHIP
OF D.J.M.**

**ROLAND MARTZAHN and
DEANNE MARTZAHN,**
Guardians-Appellants.

Appeal from the Iowa District Court for Butler County, DeDra L. Schroeder, Judge.

The guardians appeal the district court's order denying their final report and sanctioning them. **AFFIRMED IN PART AND REMANDED WITH DIRECTION.**

Lana L. Luhring of Laird & Luhring, Waverly, for appellants.

Bruce J. Toenjes of Nelson & Toenjes, Shell Rock, for appellee mother.

Christy Liss, Waterloo, for father.

Dale Edwin Goeke of Goeke Law Firm, Waverly, guardian ad litem for D.J.M.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

Guardians, Roland and Deanna Martzahn, appeal the district court's December 20, 2012 order, which disapproved the final report they filed seeking to terminate the guardianship and also sanctioned them in the amount of $300 "for failing to abide by the previous orders of this Court." They claim their final report should have been approved and the guardianship terminated because the guardianship was no longer necessary in light of the fact the minor child had been transitioned into the care of his natural mother and father. In addition, they claim the sanction imposed was improper as the issue of sanctions was not before the court and the court failed to follow the procedural requirements for finding them in contempt. We affirm the district court's order denying approval of the final report; however, we remand this case to the district court for clarification of the sanction.

I. BACKGROUND FACTS AND PROCEEDINGS.

A guardianship was established in 2009 shortly after D.J.M. was born. D.J.M.'s biological parents, Roberta and Nathan, consented to the guardianship, and the court appointed Roland and Deanna, Nathan's parents, as guardians. Roberta applied to have the guardianship terminated over the years, including most recently in October 2011. That termination application proceeded to a two-day trial in August 2012. The court issued its decision September 28, 2012, continuing the guardianship on a temporary basis in order to transition D.J.M. to Roberta's home. The court articulated a transition schedule where Roberta's time with D.J.M. would continue to increase and the guardianship would

terminate June 1, 2013, unless any party petitioned for the guardianship to continue. The court found the slow transition period was necessary based on the testimony of D.J.M.'s therapist. The court also found Nathan had the ability to parent D.J.M. but had chosen not to. At that time, Nathan supported the continuation of the guardianship.

The guardians did not appeal the September order, but some time before November 2012, they transitioned D.J.M. to Nathan's home and then filed a "final report" asserting, "The child's father has moved to his own residence and the child had been transitioned to his residence during the Guardian's primary caretaking time. The Guardians are no longer actively caring for the child as the parents have assumed responsibility." Roberta filed a response to the final report and a request for sanctions asserting that the final report and a child custody case recently filed by Nathan in district court were attempts to circumvent the September order. Roberta asserted the guardian's actions had wasted the court's time and resources and the guardians' filings had been made for an improper purpose.

The court set a hearing and also issued an Order Sua Sponte directing the guardians to bring D.J.M. back to their home and care for him as described by the September order. The court reminded the guardians that the prior order required them to work with Roberta to transition him into Roberta's full-time care. The court stated it would not permit D.J.M. to live somewhere other than with the guardians without further application and hearing. It also ordered the guardians to provide Roberta within seven days any and all documentation that was needed

to comply with the September order including the child's social security card, inoculation records, and birth certificate.

The guardians moved to set aside the sua sponte order claiming the child's therapist was consulted prior to the transition to Nathan's home and they believed the guardianship was no longer necessary. The therapist filed a report that stated D.J.M. was continuing to have behavioral difficulties at school and struggling with transitions. However, since being transitioned to Nathan's home, the actual drop-offs and pick-ups between Nathan and Roberta were going better than in the past when the guardians were involved. The therapist stated that in light of the fact D.J.M. was already transitioned to Nathan's home, transitioning him back to the guardian's home for a few weeks until custody/placement is determined would be unnecessary.

The court heard the motions of the parties in a consolidated hearing on December 17, 2012. It filed its decision December 20, declining to set aside its sua sponte order, declining to approve the final report of the guardians, keeping the guardianship open as set forth in the September order, and sanctioning the guardians $300 for failing to abide by the previous orders. The court found the guardians unilaterally decided to disregard the orders of the court and place D.J.M. in Nathan's home. The court also found the guardians failed to comply with the sua sponte order requiring that they provide necessary documentation to Roberta.

II. SCOPE AND STANDARD OF REVIEW.

An action to terminate a guardianship is equitable in nature, and as such, our review is de novo. *In re Guardianship of B.J.P.*, 613 N.W.2d 670, 672 (Iowa 2000). We give weight to the factual findings of the district court but we are not bound by them. *In re Guardianship of Stewart*, 369 N.W.2d 820, 822 (Iowa 1985).

Roberta sought the imposition of sanctions against the guardians for wasting the court's time and resources in filing the final report. Although no authority was cited by Roberta as a basis for sanctions, this request appears to be based on Iowa Rule of Civil Procedure 1.413(1).[1] Our review of an appeal from the imposition of sanctions under this rule is for an abuse of discretion. *See Everly v. Knoxville Cmty. Sch. Dist.*, 774 N.W.2d 488, 492 (Iowa 2009). However, in imposing the sanction the court stated the guardians were sanctioned "for failing to abide by the previous orders of this Court." The guardians argue that this language is more akin to a finding of contempt under

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[1] Iowa Rule of Civil Procedure 1.413(1) provides, in part:

> Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation. . . . If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee. The signature of a party shall impose a similar obligation on such party.

Iowa Code section 665.2 (2011).[2] We review a finding of contempt for correction of errors at law. *See Reis v. Iowa Dist. Ct.*, 787 N.W.2d 61, 66 (Iowa 2010). We review only the jurisdiction of the district court and the legality of its actions. *Id*. If substantial evidence supports the finding of contempt—evidence that could convince a rational trier of fact the contemnor is guilty of contempt beyond a reasonable doubt—we will affirm. *Id*.

III. GUARDIANSHIP.

The Martzahns assert they had determined the continuation of the guardianship was no longer in D.J.M.'s best interests, and thus, under Iowa Code section 633.675(1)(d) the guardianship should have been terminated. Iowa Code section 633.675(1)(d) provides that a guardianship shall terminate when the court determines the guardianship is no longer necessary. *See* Iowa Code section 633.675 ("1. A guardianship shall cease . . . upon the occurrence of any of the following circumstances: . . . (d) Upon determination *by the court* that the conservatorship or guardianship is no longer necessary for any other reason." (emphasis added)).

On September 28, 2012, just six weeks before the guardians filed their final report, the court had denied Roberta's request to terminate the guardianship and determined the guardianship needed to continue on a temporary basis in order to transition D.J.M. from the guardians' home to Roberta's home. The court specifically provided the guardianship would terminate on June 1, 2013,

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[2] Iowa Code section 665.2 lists the acts or omissions that constitute contempt. Included in the list of acts are: "[c]ontemptuous or insolent behavior toward such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority" and "[i]llegal resistance to any order or process made or issued by it."

after the transition to Roberta occurred pursuant to the detailed instructions provided by the court, unless a party filed an application seeking for the guardianship to be extended. Under Iowa Code section 633.680, no other petition to terminate the guardianship could be filed until at least six months after the court's September denial of Roberta's petition.

The "final report" filed by the Martzahns recommended the guardianship be terminated, and it reported that the care of the child had been transferred to the parents since October 2012. While it is not unusual for a guardian to file a final report that requests the court to terminate the guardianship and approve the final acts of the guardian, in this case, there are at least two problems with such an approach: (1) the transfer of care of the child was in defiance of the September order of the court, and (2) no request for termination was proper until at least six months had passed after the September denial of Roberta's petition to terminate the guardianship.

The district court in its December order stated that at no time during the pendency of the guardianship had Nathan indicated the guardianship should be terminated or expressed a desire to parent D.J.M. on a full-time basis. It was clear to the court from the therapist's testimony at the August hearing that D.J.M. did not see Nathan as a parental figure. The court also found it interesting that following the September order Nathan suddenly obtained his own home, started working first shift at his job, and suddenly took an interest in parenting D.J.M. The court concluded it was not in D.J.M.'s best interests to terminate the guardianship, noting D.J.M. had to share a room at Nathan's home with Nathan's

girlfriend's two children and was already adjusting to the increased parenting time with Roberta. The court was particularly concerned with Nathan's demeanor during the hearing, noting he was laughing on more than one occasion, smirking, and looking at the clock. The court stated this was not behavior it would expect from a person now wanting to assert a parenting role. The court concluded that Nathan may not be mature enough to handle the difficult situation.

Ordinarily, a guardian may change residential placement of a ward without court approval so long as the placement is not more restrictive. *See* Iowa Code § 633.635(2)(a) (providing a guardian must have prior court approval to change a ward's permanent residence if the new residence is more restrictive of the ward's liberties than the current residence). The September order, however, specifically directed residential placement, and therefore, prevailed over the general default language of Iowa Code section 633.635. The guardians were not prohibited from requesting court approval before making a change in residential placement but did not do so.

We agree with the district court's conclusion that the guardianship should remain open as provided in the September 28, 2012 order, from which no appeal had been taken or other relief requested. The legislature has clearly stated that it is not legally permissible to petition to terminate the guardianship before the passage of six months from the last denial of a request for termination. *See* Iowa Code § 633.680. Although the guardian's request for termination was in the form of a "final report," the substance was clearly a "petition" to terminate. We affirm

the court's refusal to approve the guardian's final report requesting a termination of the guardianship.

IV. SANCTIONS.

Next, the Martzahns argue the district court erred in sanctioning them and have presumed that the court found them in contempt. They claim the issue of sanctions was not properly before the court as there had been nothing filed providing them notice of any facts that might serve as the basis for a finding of contempt. They also claim the procedural requirements of sections 665.6 and 665.7 were not followed.

Roberta requested "sanctions," both in her written motion and during closing arguments at the December hearing, asserting the guardians' actions had been for an improper purpose and had wasted a substantial amount of the court's time and resources. While she does not cite rule 1.413(1), it appears that is the basis for her request.

The court ordered that the guardians shall be "sanctioned" for "failing to abide by the previous orders of this Court" and set the sanction amount at $300. It made no findings or conclusions of law in support of sanctions under rule 1.413(1) or in support of a finding of contempt under chapter 665. It also did not specify to whom any such monetary sanctions were payable. The guardians did not file a motion to enlarge or amend in order to seek clarification of the sanctions order.

As we are unable to determine whether the order was a finding of contempt under chapter 665 or an imposition of sanctions for an improper filing

under rule 1.413(1), we remand this case to the district court for clarification and for the court to make appropriate findings of fact and conclusions of law in support of its order. We leave it to the court's discretion whether the current record is adequate to complete its findings or whether further briefing or a hearing is necessary. We do not retain jurisdiction.

AFFIRMED IN PART AND REMANDED WITH DIRECTIONS.