IN THE COURT OF APPEALS OF IOWA

No. 7-074 / 06-0583
Filed May 9, 2007

IN THE MATTER OF THE GUARDIANSHIP OF M.E.B.,
Ward,

Z.B., Grandmother,
Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

A grandmother appeals a district court order appointing her daughter as the legal guardian of the daughter's adult daughter. **AFFIRMED.**

Judith Hoover, Cedar Rapids, and Tarek A. Khowassah of Holland and Anderson, L.L.P., Iowa City, for appellant.

Richard F. Mitvalsky of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for appellee.

James C. Holmes of Holmes & Holmes, Cedar Rapids, attorney and guardian ad litem for proposed ward.

Heard by Sackett, C.J., and Mahan and Miller, JJ.

MILLER, J.

Z.B. (grandmother) appeals the district court's order appointing R.B. (mother) instead of her as the proposed adult ward's (ward) legal guardian. She contends the court applied an incorrect legal standard for appointment of a guardian for an adult ward and erred in not finding that the ward's best interests require she be appointed as the ward's legal guardian. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

The ward, born in February 1978, is an incapacitated adult female. She suffers from cerebral palsy, hydrocephaly, microcephaly, scoliosis, spasticity, mild petit mal epilepsy, constricture of the hands, profound mental retardation, and is quadriplegic. The mother gave birth to the ward when she was twenty years old and still lived with her mother, the grandmother. The ward's father has never been a part of her life. The mother and ward lived with the grandmother in the grandmother's home in Iowa for approximately the first eleven years of the ward's life, during which both the mother and grandmother contributed to the ward's care. The mother completed her high school education and later began college studies during this eleven-year period.

In 1989 the grandmother moved to California to live with one of her other daughters. In 1990 the mother and ward moved to California as well. For the first few months she and the ward lived with her sister and the grandmother. They then moved out and lived on their own for a few months. Eventually they moved in with the mother's boyfriend, Steve. The grandmother moved back to Iowa in 2000. From 1991 through 2000 the mother and the ward lived with Steve

and raised the ward without any assistance from the grandmother. During this time the mother enrolled the ward in Redondo Beach High School's special education program for disabled students to enhance the ward's educational development and secured additional community-based services for the ward, including in-home support services. In 2000 she also involved the ward with Vocational Visions, the social service agency which has been involved in her care since that time. The grandmother seems to concede that during this time period the mother provided the ward with a stable home and met all of her educational, medical, and social needs. The mother's relationship with Steve ended in 2000.

The mother became involved with Michael, to whom the juvenile court found she was married at the time of the guardianship hearing, in 2000. The grandmother and Michael have never got along, and in the past have had extremely heated arguments on several occasions on numerous subjects. The mother's extended family also dislikes Michael and disapproves of his behavior when around them. In November 2004 Michael pled guilty to domestic abuse of the mother, with imposition of sentence suspended. The incident giving rise to the charge apparently occurred in the presence of the ward. In 2001 the ward suffered a broken leg. There are conflicting versions of how her leg was broken, however it appears to have occurred when Michael tripped over the family dog while carrying the ward. The court found the ward has made a good recovery from this injury, and that "[d]espite the unpleasantness of these observations about Michael, none of them reflect upon the capacity to care for [the ward],

except the suspicion by the extended . . . family that Michael is responsible for breaking [the ward's] leg."

In April 2003, the mother, Michael, and the ward traveled to Iowa to spend time with the mother's extended family, including the grandmother. After visiting with them for some time, the mother and Michael traveled to Oregon to visit Michael's extended family. The mother and the grandmother agreed the ward would stay with the grandmother while the couple traveled to Oregon. While caring for the ward during this time the grandmother suspected there was something wrong and took the ward to the emergency room. The doctors found the ward was in fact suffering from a broken shunt and performed surgery to correct the problem. Upon learning of the ward's condition the mother returned to Iowa to be with her. Following the ward's discharge from the hospital she and the mother remained in Iowa for approximately two weeks while she recovered before returning to California in the summer of 2003.

The grandmother returned to California with Michael, the mother, and the ward to stay with them. The reasons for her going to California are disputed. The grandmother claims she went with them upon her insistence in order to deter further abuse and neglect of the ward, while the mother testified she invited the grandmother to return with them to have some fun and do some shopping. Regardless of the reason, the grandmother's return to California with the family was initially intended to last only a few weeks. However, she ended up staying for approximately one year. Due to the grandmother's extended stay and her extremely contentious relationship with Michael, tensions in the household rose.

The domestic abuse incidents described at the hearing occurred largely during this time.

In the summer of 2004 the grandmother returned to Iowa to attend another granddaughter's wedding. The mother could not attend but allowed the grandmother to take the ward with her to Iowa for the wedding. Although no set schedule for the visit to Iowa was established, the mother and grandmother both agreed it was to be relatively brief and mainly for the purpose of attending the wedding. However, the grandmother never voluntarily returned the ward to her mother.

In February 2005 the mother and Michael drove to Iowa to visit and take the ward back to California with them. When Michael and the mother informed the grandmother and the rest of her extended family that they intended to take the ward back with them an altercation ensued. The family in Iowa asserted the ward was in poor condition when she arrived in Iowa and they were merely looking out for her best interests. Nevertheless, none of the family members reported any suspicion of abuse or neglect to authorities in Iowa. The family told the mother she was not welcome, accused her of wanting the ward only for the ward's social security benefits, and insisted she and Michael get out of the house.

The mother stayed in Iowa for approximately five days and then returned to California without the ward but with the assurance from the grandmother that she would immediately fly with the ward back to California. However, instead of returning the ward to her mother, the grandmother filed the present petition to

have herself appointed as the ward's guardian. She also secured an order appointing her as the ward's temporary guardian. A hearing was held on the grandmother's petition for guardianship on January 31, 2006.

The ward was a client of Vocational Visions, a social services agency for disabled people in California, from 2000 up to the time the grandmother took her to Iowa in 2004. A registered nurse from the staff of Vocational Visions testified via telephone at the hearing. She testified the ward was at the facility every day for approximately six hours and that she was personally familiar with both the mother and the ward. She stated the ward was always well groomed and clean when she arrived at the facility and the mother was involved in the ward's care and programming. The nurse further testified the ward was doing well in her programming, her health was good, and the mother was very knowledgeable and good at caring for the ward. She was also aware of a report that was made in California alleging abuse of the ward but stated the report was investigated and found to be unsubstantiated. Finally, she noted that if the ward returned to California she could return to the program at Vocational Visions right away.

Evidence was also admitted at trial regarding the grandmother's mental and physical health. The court found the grandmother was sixty-eight years of age at the time of the hearing and has a long history of mental illness, including auditory hallucinations. She was still currently carrying a diagnosis of schizophrenia, although her current psychiatrist was not completely confidant that was the correct diagnosis. She had been on several different medications in the past for her mental illness but was not taking any at the time of the hearing.

The court further found that in addition to her mental illness, the grandmother also had several physical conditions which could affect her ability to care for the ward. The record shows that some of her current health concerns include diabetes, heart arrhythmia, and high cholesterol. Historically she has also suffered from anxiety, nervousness, and hypertension.

The district court concluded a guardianship was needed but that the grandmother failed to establish the mother was unfit or that the grandmother would be a better caretaker for the ward. Thus, the court appointed the mother as the ward's permanent guardian. In reaching its conclusion the court concluded that the mother was to be preferred as a guardian, citing Iowa Code section 633.559 (2005) in support of that conclusion.

The guardian ad litem and attorney for the ward filed a "Motion to Amend Findings, Conclusions and Order" arguing: the parental preference in section 633.559 is applicable only to minor children and the court should not have applied it; the court should have applied a best interests legal standard instead of placing the burden on the grandmother to establish that the mother was unfit and that she was a better caretaker; and if the court had correctly applied that standard, it would have found the grandmother the more appropriate guardian. The grandmother filed a separate motion concurring with the guardian ad litem's motion. The district court denied the motions, concluding there was no reason to amend the prior order.

The grandmother appeals the district court's ruling appointing the mother as the ward's legal guardian. She claims the court erred in applying the parental

preference under section 633.559, arguing it should not be applied when appointing a guardian for an adult ward. She also claims the court erred in not finding the ward's best interests required she be appointed as her legal guardian.

II. SCOPE OF REVIEW.

The parties agree that appointment of a legal guardian for the ward is necessary, and the issue is whether the ward's mother or grandmother should be appointed. They also agree, although for somewhat different reasons, that our scope of review is de novo, and we will so review the issue of which party should be appointed as the ward's guardian. With de novo review we give weight to the fact-findings of the district court, especially with regard to witness credibility determinations, but we are not bound by them. Iowa R. App. 6.15(6)(*g*). Our review of a district court's construction, interpretation, and/or application of a statute is, however, for errors at law. *Horizon Homes of Davenport v. Nunn*, 686 N.W.2d 221, 224 (Iowa 2004) (interpretation); *In re Detention of Swanson*, 668 N.W.2d 570, 575 (Iowa 2003) (construction); *State v. McCoy*, 618 N.W.2d 324, 325 (Iowa 2000) (interpretation and application); *State v. Moore*, 569 N.W.2d 130, 131 (Iowa 1997) (application). We thus review the district court's partial reliance on Iowa Code section 633.559 for correction of error.

III. MERITS.

Iowa Code section 633.559 provides:

> The parents of a *minor*, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall then be given to any person, if qualified and suitable, nominated as guardian for a *minor* child by a will executed by the parent having custody of a *minor* child, and any qualified and suitable person requested by a *minor* fourteen years

> of age or older, or by standby petition executed by a person having physical and legal custody of a *minor*. Subject to these preferences, the court shall appoint as guardian a qualified and suitable person who is willing to serve in that capacity.

(Emphasis added.) The district court clearly relied in part on this statute in determining the mother, rather than the grandmother, should be the guardian of the ward. The grandmother contends this constituted application of an incorrect legal standard in determining the appropriate guardian for an adult ward, and thus the court's ruling must be reversed.

The controlling rule of statutory construction is: "When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms." *State v. Knowles*, 602 N.W.2d 800, 801 (Iowa 1999) (quoting *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998)). Our supreme court has frequently stated that we do not resort to the rules of construction when the terms of the statute are unambiguous. *Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 714 n.2 (2005). In determining what the legislature intended in adopting a statute, the court is constrained to follow the express terms of the statute. *State v. Byers*, 456 N.W.2d 917, 919 (Iowa 1990). "We do not search for meaning beyond the express terms of a statute when a statute is plain and its meaning is clear." *Cubit v. Mahaska County*, 677 N.W.2d 777, 781-82 (Iowa 2004) (quoting *In re Name Change of Reindl*, 671 N.W.2d 466, 469 (Iowa 2003)). We do not speculate as to the probable legislative intent apart from the words used in the statute, *State v. Adams*, 554 N.W.2d 686, 689 (Iowa 1996), and we resort to rules of statutory construction only when a statute is ambiguous. *State v. Gilmour*, 522 N.W.2d 595, 597 (Iowa 1994).

Section 633.559 is clear that in deciding who should be appointed as guardian for a minor child the parents of the minor are favored over all others, so long as they are "qualified and suitable." However, the statute mentions no parental preference for an adult ward. The parties have not cited and we have not found any other provision in the code providing for a parental preference, or any other preference, for appointment as guardian for an adult ward.

We conclude the text of section 633.559 is plain and its meaning unambiguously clear, and thus we need not, nor can we, search for meaning beyond its express terms. The legislature's intent that the parental preference be applied only to minors is clear from the language of the statute. If the legislature intended a parental preference to be applied in selecting a guardian for an adult ward it easily could have expressly provided for such a preference. It has chosen not to do so. Accordingly, we conclude the district court erred in applying the parental preference set forth in section 633.559 in determining the appropriate guardian for the adult ward in this case. *See, e.g., In re Queiro,* 864 A.2d 437, 444-45 (N.J. Super. Ct. App. Div. 2005) (finding trial court used incorrect legal standard in applying statute strictly applicable to guardianship of minors in determining guardianship for an incapacitated adult).

There is no express statutory preference for the appointment of a guardian for an adult ward. Nor does there appear to be any guidance in our prior case law concerning which of two or more statutorily qualified and suitable persons, such as we have in the case at hand, should be appointed as guardian of a profoundly handicapped adult. Thus, the question of what standard or test

should be applied in making such a determination is an issue of first impression in Iowa.

Some of the other jurisdictions that have looked at the issue of appointing a guardian for an adult ward have adopted a standard whereby the court simply looks to which guardian's appointment would serve the best interest of the ward. *See Guardianship of Brown,* 546 P.2d 298, 303 (Cal. 1976) (finding in a case determining guardian for an adult that where the statutory provisions "contain no explicit order of preference or legal standard to be applied by a court in the selection of a guardian . . . the paramount consideration guiding the trial court is the best interest of the incompetent."); *In re Estate of Robertson,* 494 N.E.2d 562, 570 (Ill. App. Ct. 1986) (finding that in selecting a guardian for an incompetent adult the "best interest and welfare of the incompetent person is of paramount concern in selecting a guardian."); *Queiro,* 864 N.W.2d at 309-11 (adopting "the best interest and welfare of the mental incompetent" as standard for appointment of guardian for adult).

We agree with these jurisdictions and conclude that when two or more statutorily qualified and suitable persons are seeking guardianship of an adult ward the appropriate legal standard is the best interest and welfare of the ward. The court must determine which proposed guardian's appointment would better serve the best interests and well-being of the ward. Furthermore, we believe that closeness of consanguinity or affinity should be considered in making such a decision, but only as a part of the best interest analysis. *See, e.g.*, Peter G. Guthrie, Annotation, *Priority and Preference in Appointment of Conservator or*

Guardian for an Incompetent, 65 A.L.R. 3d 991, § 4, at 998-1003, § 6(a), at 1009-12 (1975).

Although we have determined the trial court erred in taking the parental preference in section 633.559 into account because it is not applicable to the case at hand, we nevertheless give weight to its findings of fact, especially with regard to witness credibility. *See* Iowa R. App. P. 6.14(6)(*g*).

Independent of any discussion of or reliance on section 633.559, the trial court's findings of fact included a detailed examination of both the mother's and grandmother's respective strengths, weaknesses, and histories in caring for the ward. The court also made findings with regard to the grandmother's mental and physical disabilities, the domestic abuse of the mother by Michael, and the nature and quality of the care and services the mother provided the ward in California from 1991 through 2004. In addition, the court considered the grandmother's actions in taking the ward to Iowa with her for what was to be a short visit, and then not returning her despite the mother's wishes and her own promises to do so. These are precisely the kind of matters that need to be taken into consideration in making a best interest determination in cases such as this.

Based on the evidence set forth in detail above, we conclude the best interest and welfare of the ward will be served by the appointment of her mother as her guardian. The evidence before us demonstrates that the mother did an excellent job of caring for the ward for over ten years in California. Her care included, but was not limited to, providing the ward with the medical, educational, and social services and support she needed. The testimony of one of the nurses

who has helped care for the ward at Vocational Visions is very revealing on these matters. On the other hand, the grandmother suffers from physical and mental disabilities which could have a negative impact on her ability to care for the ward, if not now almost certainly in the not-too-distant future. In addition, her behavior following her return with the ward to Iowa in July 2004, including denying the mother access to her daughter and the use of ruse and deception concerning her true intentions with regard to the ward, at best show very poor judgment on her part.

The ward has a stable home in California with her mother and Michael where all of her medical, educational, and social needs are being more than adequately met. She also has several capable medical and social service providers there with whom she appears to be familiar and comfortable. The fact there was some domestic violence between the mother and Michael is of course somewhat troubling to us. However, it appears any such incidents were largely confined to the time when the grandmother was living with the mother and Michael, and they resulted in part from tension caused by her extended stay and the grandmother's and Michael's extreme dislike for each other. In addition, the evidence concerning these incidents was before the district court and it clearly did not find the incidents to be of such recency or nature as to indicate the mother could not or would not provide appropriate care for the ward or that the grandmother would be a better guardian.

IV. CONCLUSION.

We conclude the district court erred in applying the parental preference found in section 633.559. The statute is unambiguously and expressly limited to cases involving minors and should not have been applied here in determining which proposed guardian's appointment would be most conducive to the best interest and welfare of an adult ward. Based on our de novo review of all of the evidence before us, and for the reasons set forth above, we conclude the best interest and welfare of the ward will be served by the appointment of the ward's mother as her legal guardian. We therefore affirm the district court.

AFFIRMED.