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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1022

In re: Guardianship of Laye Komara, minor

Filed April 10, 2017
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-GC-PR-15-449

Michael D. Gavigan, Wilson Law Group, Minneapolis, Minnesota (for appellant Ishamel Komara)

Laye Komara, Brooklyn Park, Minnesota (pro se respondent)

Considered and decided by Peterson, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

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

PETERSON, Judge

In this appeal from orders denying a guardianship petition and a motion to appoint a guardian nunc pro tunc, appellant argues that (1) the district court erred by declining to appoint a guardian on the ground that the proposed ward had reached the age of majority and no longer met the statutory criteria for appointment of a guardian, and (2) the district court should have applied equitable principles in deciding whether to appoint a guardian. We affirm.

FACTS

Respondent Laye Komara is an orphan who was born in Liberia on February 10, 1998, and arrived in the United States on August 27, 2014, when he was sixteen years old. Upon landing in New York, respondent was picked up and brought to live in Brooklyn Park by his adult cousin, appellant Ishamel Komara. Respondent has lived with appellant and his family since that time. Appellant filed a petition on November 9, 2015, seeking to be appointed respondent's guardian on the ground that respondent was an orphaned minor. The petition alleges that respondent has an older brother and sister, a 70-year-old uncle who lives in Philadelphia, and two aunts who live in Guinea, all with unknown addresses. A hearing on the petition was scheduled to be held on December 22, 2015.

On November 23, 2015, the district court directed a Hennepin County social worker to conduct a "welfare report . . . covering the home environment and . . . assess[ing] . . . whether the proposed guardian of the said minor . . . would be suitable." On December 3, 2015, the court visitor filed a visitor's report that recommended appointing appellant as respondent's guardian. A home study conducted by a county social worker was filed on December 16, 2015, and recommended approval of respondent's placement and appointment of appellant as guardian. That study, however, expressed concern that the family had not completed a required background check.

The district court's hearing notes from December 22, 2015, indicate that the background check had not been completed and that none of the other documents required to create a guardianship had been filed. The notes also state that "[o]ther family members

in the U.S. have expressed interest in being appointed as G but Resp wants to be w/Petitioner."

The Minnesota Department of Human Services filed a background study on appellant on January 6, 2016, and a background study on appellant's wife, Bindu Komara, on January 27, 2016. The studies indicated no criminal history or other findings that would affect appellant's ability to serve as respondent's guardian.

Affidavits from respondent's siblings living in Liberia, Assata Komara and Farouk Komara, were filed on January 14 and supported appointment of appellant as guardian. On January 15, 2016, appellant filed an affidavit demonstrating that he made diligent efforts but was unable to locate respondent's other relatives.

The district court held a "notice-only" hearing on February 5, 2016, and no relatives other than appellant appeared; respondent did not appear. On February 9, respondent's attorney sent the district court a letter stating that appellant had provided the necessary information to complete the background checks and had exhausted a search for respondent's relatives. The attorney stated that it was "imperative" that the district court sign an order to establish the guardianship before respondent's birthday, warning that respondent would otherwise "lose an opportunity to apply for Special Immigrant Juvenile Status through the U.S. Citizenship and Immigration Service." On February 10, the district court issued an order denying the guardianship petition as moot. The district court concluded that appointment of a guardian was not necessary because respondent had reached the age of 18 years, but noted that respondent "would have met the standard for minor conservatorship prior to his 18th birthday."

Appellant then moved for appointment of a guardian nunc pro tunc, asserting that he had complied with all statutory requirements by January 15, the district court did not issue the guardianship order before respondent reached the age of 18, and the failure to establish the guardianship was caused by the "delay of the [c]ourt." In a supplemental memorandum of law, appellant also asked the district court to apply equity in order to retain jurisdiction over the matter.

Following a hearing on April 5, 2016, the district court denied the motion, ruling that the petition was properly denied as moot, rejecting the argument that its handling of the matter was untimely, and rejecting as not "convincing" a Massachusetts case that applied equitable principles to decide an action involving a special immigrant juvenile, *Recinos v. Escobar*, 46 N.E.3d 60 (Mass. 2016).

This appeal followed.

D E C I S I O N

I.

Appellant seeks reversal of the denial of the guardianship petition. The decision whether to grant or deny a petition to appoint a guardian is discretionary. *In re Guardianship of Wells*, 733 N.W.2d 506, 508 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). On review, this court will not reverse a guardianship decision unless there has been "a clear abuse of discretion." *Id*. at 509. This court reviews the district court's interpretation of the guardianship statute de novo. *See In re Guardianship of Tschumy*, 834 N.W.2d 764, 768 (Minn. App. 2013), *aff'd*, 853 N.W.2d 728 (Minn. 2014).

Under Minnesota's Uniform Guardianship and Protective Proceedings Act, "[t]he [district] court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and . . . both parents are deceased." Minn. Stat. § 524.5-204(a), (2016). A minor is defined as "an unemancipated individual who has not attained 18 years of age." Minn. Stat. § 524.5-102, subd. 10 (2016). A guardianship terminates by operation of law "upon the minor's death, adoption, emancipation, attainment of majority, or as ordered by the court." Minn. Stat. § 524.5-210(a) (2016).

After a person interested in the welfare of a minor petitions for appointment of a guardian, the district court sets a hearing date, and the petitioner must provide notice of the hearing to the minor and others who may have an interest in the establishment of the guardianship, including "each living parent of the minor or, if there is none, the adult nearest in kinship that can be found." Minn. Stat. § 524.5-205(a), (b) (2016). The court must appoint the guardian "if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of section 524.5-204, paragraph (a), have been met, and the best interest of the minor will be served by the appointment." Minn. Stat. § 524.5-205(c) (2016).

Because respondent reached the age of 18 before the district court made its decision regarding the guardianship petition, the district court lacked proper grounds for appointing appellant as respondent's guardian. *See id.* Furthermore, any guardianship would have terminated by operation of law when respondent reached age 18 on February 10, 2016. *See* Minn. Stat. § 524.5-210(a). As the district court ruled in its order denying the petition, the issue of whether to appoint a guardian for respondent, which was based on his status as a

minor, became moot when respondent reached the age of 18. *See Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004) (stating that "[g]enerally, an issue may be dismissed as moot if an event occurs that resolves the issue or renders it impossible to grant effective relief"), *review denied* (Minn. Apr. 4, 2005) .

While the district court's findings in both of its orders recognize that, but for respondent's reaching the age of 18, he "would have met the standard" for minor guardianship, the compelling nature of the underlying facts does not dictate the outcome when a statutory requirement for the guardianship does not exist. *See Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 439-40 (Minn. 2009) (declining to interpret unambiguous forfeiture statute to favor private property rights, stating that "it is the role of the legislature, not the courts, to rewrite the statute to provide greater protection for private property" and that "[t]he public policy arguments . . . should be advanced to the legislature, the body that crafted the language that compels the result here").

Appellant argues that the district court erred by requiring that respondent be incapacitated in order for appellant to be appointed as his guardian. In addition to finding that respondent did not qualify for a guardian because he had "attained the age of 18 years," the district court also made a finding that "[t]here is no other evidence that [r]espondent is incapacitated in any other way or needs a guardian." A guardianship may be created because the proposed ward is a minor, Minn. Stat. § 524.5-201 (2016), or because the proposed ward is an incapacitated person, Minn. Stat. § 524.5-301 (2016), and the requirements for these types of guardianships differ. The finding of respondent's lack of incapacity was not necessary for the district court's decision because the petition sought

appointment of a guardian only due to respondent's status as a minor, and appellant mischaracterizes the district court's findings by assuming that the district court ruled that a finding of incapacity was necessary for the district court to appoint a guardian for respondent. The district court reached its decision only because respondent was no longer a minor and had "attained the age of majority." Under these circumstances, the incapacity finding is irrelevant and may be disregarded. *See Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979) ("Where a decisive finding of fact is supported by sufficient evidence and is adequate to sustain the conclusions of law, it is immaterial whether some other findings are not so sustained."); *Kendall v. Laven*, 181 Minn. 570, 572, 233 N.W. 243, 244 (1930) ("[F]indings [that] are wholly immaterial and do not affect the result . . . should be disregarded.").

Finally, appellant cites Minn. R. Gen. Pract. 416(c) to argue that respondent should have been allowed to voluntarily consent to the establishment of the guardianship. Minn. R. Gen. Pract. 416(c) states, "If an adult voluntarily petitions or consents to the appointment of a guardian or conservator . . . , then it is not necessary for such adult to be an 'incapacitated person' as defined by law." By the clear language of this provision, only an "adult" may consent to the appointment of a guardian. When appellant petitioned to become respondent's guardian, respondent was a minor, not an adult.[1]

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[1] In a case where a petition requested appointment of a guardian for an incapacitated person over 18 years of age who intended to apply for special immigrant juvenile (SIJ) status, this court explained:

> An immigrant need not be a minor to apply for SIJ status, but must be under 21 years of age and unmarried when he or she

II.

Appellant also seeks reversal of the district court's denial of his motion for an order nunc pro tunc to establish the guardianship. Appellant argues that this action is merited because the district court caused the delay that prevented him from being appointed respondent's guardian.

An order nunc pro tunc permits retroactive correction of a legal deficiency through a court's inherent power. *County of Washington v. TMT Land V, LLC*, 791 N.W.2d 132, 135 (Minn. App. 2010). "A *nunc pro tunc* order may be used for correcting an omission of the court, fixing a clerical error, or properly recording a step in the trial procedure which occurred but was omitted from the record." *Id*. (quotation omitted). "A *nunc pro tunc* order may not be used to supply a deficiency or omission in the record, caused not by clerical error, or by mistake or oversight on the part of the court, but, rather, by the failure

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> files an application. *See* 8 C.F.R. § 204.11(c) (2016). When applying for SIJ status, applicants must submit an order from a juvenile or state court finding that (1) the immigrant either "has been declared dependent on a juvenile court," or has been placed in the custody of a state agency or department or an individual or entity "appointed by a [s]tate or juvenile court"; (2) the immigrant's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under [s]tate law"; and (3) it would not be in the immigrant's best interests to return to his or her country of origin. 8 U.S.C. § 1101(a)(27)(J)(i)-(ii); *see* 8 C.F.R. § 204.11 (2016).

In re Guardianship of Guaman, 879 N.W.2d 668, 669, 671 (Minn. App. 2016) (alterations in original) (footnote omitted).

of a party to take a necessary step at the time required by statute." *Id.* (quotation omitted). The decision whether to grant an order nunc pro tunc is discretionary. *Id*.

On the facts presented, issuance of an order nunc pro tunc for the purpose of preserving respondent's status as a minor is not a proper application of the district court's authority. *See id.* at 138 (holding that the district court abused its discretion by ordering entry of judgment nunc pro tunc to avoid application of a statutory interest rate on a judgment); *Hampshire Arms Hotel Co. v. Wells*, 210 Minn. 286, 288-89, 298 N.W. 452, 453 (1941) (reversing district court's entry of judgment nunc pro tunc to an earlier date for the purpose of validating a premature appeal where the time for appeal after entry of judgment had expired and it was "obvious that the court amended the date of the judgment to save the appeal"). An "order *nunc pro tunc* is authorized only to correct the record and to supply a deficiency therein caused by the action of the court." *Wilcox v. Schloner*, 222 Minn. 45, 49, 23 N.W.2d 19, 22 (1946); *see Duluth Ready-Mix Concrete, Inc. v. City of Duluth*, 520 N.W.2d 775, 777 (Minn. App. 1994) (stating that nunc pro tunc rule is "founded on the maxim that an act of the court shall prejudice no one" (quotation omitted)), *review denied* (Minn. Mar. 14, 1995). As addressed in more detail below, the district court took no action that caused a deficiency in the guardianship proceedings. The district court did not abuse its discretion by declining to issue an order nunc pro tunc to establish a guardianship.

Respondent lived with appellant and his family for 14 months before appellant petitioned for guardianship. After filing the guardianship petition on November 9, 2015, it was appellant's duty as petitioner to provide notice of the hearing to "the adult nearest in

kinship that can be found." Minn. Stat. § 524.5-205(b)(3). Appellant did not file an affidavit showing that he was unable to contact respondent's other relatives until January 15, 2016, and a "notice-only"[2] hearing was held on February 5. The district court issued its decision three business days after the hearing. This chronology of events does not demonstrate that the district court's handling of the matter was untimely.

Despite the lack of statutory or procedural support for his guardianship request, appellant also asks this court to appoint him as respondent's guardian "as a matter of equity and fundamental fairness." "Under the doctrine of unclean hands: he who seeks equity must do equity, and he who comes into equity must come with clean hands." *Peterson v. Holiday Recreational Indus., Inc.*, 726 N.W.2d 499, 505 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Feb. 28, 2007). "Courts of equity apply the doctrine of unclean hands not by way of punishment for extraneous transgressions, but upon considerations that make for the advancement of right and justice." *Brown v. Lee*, 859 N.W.2d 836, 843 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. May 19, 2015). Respondent admittedly arrived in this country illegally, and appellant now seeks to enhance respondent's opportunity for citizenship through the application of the guardianship laws of this state. Appellant must seek relief through the guardianship statute. *See Adelman v. Onishuk*, 271 Minn. 216, 228, 135 N.W.2d 670, 678 (1965) (providing that a statutory remedy "is generally exclusive and will preclude any resort to equity").

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[2] The district court was required to hold a hearing to ensure, among other things, that "the required notices have been given" to others before appointment of a guardian. Minn. Stat. § 524.5-205(c). It appears that the district court held the February 5 hearing only for this limited purpose. As noted, respondent did not appear at the February 5 hearing.

Appellant further argues that the reasoning of *Recinos*, 46 N.E.3d at 60, should apply here. In *Recinos*, the Supreme Judicial Court of Massachusetts held that the state's probate court "has jurisdiction, under its broad equity power, over youth between the ages of eighteen and twenty-one for the specific purpose of making the special findings necessary to apply for [special immigrant juvenile] status pursuant to the [Immigration and Naturalization Act]." 46 N.E.3d at 63, 65. The court noted the existence of a gap in access to federal statutory relief for immigrants between the ages of 18 and 21. *Id*. at 65. This gap derived from a termination of the probate court's jurisdiction over children when they reach the age of 18. *Id*. The court also noted that the gap exists in other states, such as Maryland and New York, and that other states have enacted legislation to extend jurisdiction over immigrant children affected by the gap. *Id*. at 66 & n.8.

But the district court in this action did not find *Recinos* persuasive, noting differences between the authority of the Massachusetts court in which the *Recinos* plaintiff sought relief, which held "broad equity powers," and the limited authority granted by statute to Minnesota district courts. The district court also noted that in *Recinos*, the plaintiff sought a "decree of special findings," while in this case appellant sought actual appointment of a guardian. We agree with the district court that *Recinos* is not on point, and we decline to apply its reasoning either in contravention of the plain language of the guardianship statute or to overturn the district court's exercise of its discretion.

Affirmed.