STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2081

In re the Guardianship of:
Daniel Joseph Haggenmiller.

Filed July 27, 2020
Reversed
Johnson, Judge

Sibley County District Court
File No. 72-PR-19-25

Jason R. Lee, Melchert Hubert Sjodin, PLLP, Hutchinson, Minnesota (for appellant Daniel Haggenmiller)

David E. Schauer, Sibley County Attorney, Gaylord, Minnesota (for respondent Sibley County)

Lutheran Social Services, Mankato, Minnesota (guardian)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and John P. Smith, Judge.*

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

JOHNSON, Judge

Sibley County petitioned the district court to appoint a guardian for Daniel Joseph Haggenmiller. The district court granted the petition. On appeal, Haggenmiller argues that the district court erred on the ground that the county did not present clear and convincing

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

evidence that he is an incapacitated person or that his needs cannot be met by less-restrictive means. We agree and, therefore, reverse.

FACTS

Haggenmiller is a 67-year-old man who has lived at an assisted-living facility in Gibbon since May 2018. In June 2019, the county petitioned for appointment of an emergency guardian for Haggenmiller, which the district court granted. In August 2019, the county petitioned for guardianship. The petition alleged that a physician at a Veterans Administration (VA) hospital examined Haggenmiller in October 2017 and diagnosed him with "major neurocognitive disorder (alcohol-related dementia)." The petition alleged, based on the diagnosis, that Haggenmiller was unable to understand the consequences of his actions and that he continued to make "decisions that negatively impact his health and safety." The petition also alleged that Haggenmiller could not manage his finances because "he is easily manipulated and coerced into giving money or property away" and because he "is being taken advantage of financially." The petition further alleged that Haggenmiller has poor self-care and has been living in unsafe conditions.

The district court held a hearing on the county's petition in October 2019. The county presented the testimony of three witnesses, beginning with a nurse practitioner who had treated Haggenmiller. She supported guardianship for Haggenmiller because of his medical history, statements about him made by other medical professionals, his short- and long-term memory issues, and her concern about his ability "to make sound medical decisions for himself."

The second witness was the co-owner of the assisted-living facility where Haggenmiller lives, who is a nurse. She testified that she was concerned about Haggenmiller's safety, primarily because of instances in which Haggenmiller left the facility to visit a local bar. She also was concerned because of reports that staff had found half-burned cigarettes in Haggenmiller's room and that he had previously gotten "very agitated very easily at the other residents." She testified that Haggenmiller can feed and bathe himself but needs reminders, prompting, and help with setup and cleanup. She testified that Haggenmiller can sometimes make and communicate responsible decisions for himself. She believed that Haggenmiller's short-term memory had worsened since he arrived at her facility.

The third and final witness was a county employee who is Haggenmiller's case manager. She testified that Haggenmiller had a neuropsychological evaluation at the VA in 2017 and was diagnosed with dementia. She has seen Haggenmiller "get belligerent" and has received reports of incidents in which Haggenmiller showed behavioral issues. She testified that Haggenmiller had previously lost housing placements, was "unable to manage his finances," and could not manage his medications. She "question[ed] [Haggenmiller's] ability to have good judgment about the decisions that he's making" because he does not "understand the consequences" of his actions. She agreed that Haggenmiller had been "mostly sober" since moving to the assisted-living facility and that she had never seen him drink alcohol.

After the parties presented closing arguments, the district court stated that the record was "somewhat spotty" and not "fully developed" but that the county had nonetheless

proved that Haggenmiller is an incapacitated person. One week later, the district court filed a written order in which it granted the county's petition and ordered the existing guardianship to remain in effect.

Haggenmiller filed a motion for reconsideration. He argued that the evidence concerning the 2017 diagnosis was unreliable and should not be considered based on a post-hearing letter in which the county attorney stated that "the [VA] doctor indicated she could not testify as to [Haggenmiller's] current capacity" because "[s]he has not seen [him] since that exam." In November 2019, the district court denied Haggenmiller's motion for reconsideration. In its eight-page order and memorandum, the district court further explained its reasons for granting the county's petition. Haggenmiller appeals.

D E C I S I O N

Haggenmiller argues that the district court erred by granting the county's petition for guardianship. He makes numerous arguments, which focus on two primary issues: whether he is incapacitated and whether his needs cannot be met by less-restrictive means.

The proof necessary for a guardianship is specified by statute:

> The court may appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:
>
> (1) the respondent is an incapacitated person; and
>
> (2) the respondent's identified needs cannot be met by less restrictive means . . . .

Minn. Stat. § 524.5-310(a) (2018).

This court reviews a district court's order appointing a guardian to determine "whether the district court's findings are clearly erroneous, giving due regard to the district court's determinations regarding witness credibility." *In re Guardianship of Wells*, 733 N.W.2d 506, 510 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). A finding is clearly erroneous if it is not supported by the evidence. *See In re Guardianship of Doyle*, 778 N.W.2d 342, 352 (Minn. App. 2010) (citing *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999)). If the petitioner has satisfied the clear-and-convincing evidentiary standard, a district court has discretion to appoint a guardian, and this court applies an abuse-of-discretion standard of review to that discretionary decision. *In re Guardianship of Autio*, 747 N.W.2d 600, 603 (Minn. App. 2008).

A. Incapacitated Person

We begin with the first requirement for the appointment of a guardian, that the respondent is an incapacitated person. *See* Minn. Stat. § 524.5-310(a)(1). The term "incapacitated person" is defined by statute to have a two-part meaning:

> an individual [1] who . . . is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and [2] who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance.

Minn. Stat. § 524.5-102, subd. 6 (2018) (alterations added). We address each part of this definition, beginning with the second part.

1. Behavioral Deficits

Under a heading corresponding with the second part of the definition of "incapacitated person," the district court found that Haggenmiller cannot meet his personal needs on his own and "is in need of 24-hour supervision." The district court reasoned that Haggenmiller has "problems [that] are due to self-neglect," "gets agitated very easily," smokes indoors, needs help and prompting to bathe himself, and cannot manage his medication due to memory deficiencies. The district court additionally noted that Haggenmiller has a history of drinking, mismanaging his finances, and losing housing placements.

Haggenmiller contends that the district court's finding is the product of an "underdeveloped record" because the county presented only vague and general testimony about his alleged deficiencies. He argues that the evidence relied upon by the district court is more relevant "to his past, not his current situation."

We agree with Haggenmiller that the evidence is thin with respect to the second prong of the definition of incapacitated person. The county's witnesses testified only generally about Haggenmiller's ability to meet his personal needs. The county presented no specifics of Haggenmiller's previous financial and housing issues or how those issues relate to his future decision-making. Haggenmiller's inappropriate or disruptive behavior is not unique to persons who are incapacitated and, thus, is not necessarily a "demonstrated deficit[] in behavior which evidence[s] an inability to meet personal needs," absent additional evidence or explanation. *See* Minn. Stat. § 524.5-102, subd. 6. The county's witnesses did not explain how or why Haggenmiller's inability to manage his medications

would cause adverse medical consequences, or even what those consequences would be, in light of the fact that he lives in an assisted-living facility. And with respect to Haggenmiller's need for help with bathing or eating, the district court noted, "It is unclear if [Haggenmiller] is incapable or unwilling to do these things himself." The lack of clarity in that evidence tends to show that it is not "clear and convincing."

Thus, the county's evidence cannot satisfy the county's burden to prove, by clear and convincing evidence, the second prong of the definition of "incapacitated person," that Haggenmiller "has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance." *See* Minn. Stat. § 524.5-102, subd. 6.

2. Impairment

Under a heading corresponding with the first part of the definition of "incapacitated person," the district court found that Haggenmiller "lacks sufficient understanding or capacity to make or communicate responsible personal decisions" because of "his behaviors at his current facility as well as his behavior prior to being placed in his current memory care facility." The district court focused on Haggenmiller's uncooperative behavior, stating that Haggenmiller "gets agitated very easily, yelling and swearing, at the other residents and staff"; has put himself and other residents in the facility at risk by smoking indoors; and has twice patronized bars after deciding to "elope from the facility." The district court further found that Haggenmiller "does not have the ability to use good judgment" because he continues to use alcohol despite his "main diagnosis stem[ming]

from his use of alcohol," as evidenced by the "two different times that [he] had to be taken out of bars."

Haggenmiller contends that the district court erred in multiple ways with respect to this finding. Some of his contentions go to the admissibility of evidence or the drawing of an adverse inference from the absence of his own testimony. But his most substantial contentions go to the sufficiency of the evidence.

We begin by noting that the district court's findings with respect to the first part of the definition of "incapacitated person" are largely repetitive of its findings with respect to the second part of the definition. Those findings do not bear directly on whether Haggenmiller is "impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions." *See* Minn. Stat. § 524.5-102, subd. 6. The findings, by themselves, arguably are insufficient to satisfy the statutory criteria.

The district court's lack of findings as to whether Haggenmiller is impaired reflect the evidence in the record. Haggenmiller contends that the evidence is insufficient because there is no testimony or written report of a physician. He does not contend that such evidence is required as a matter of law, but he persuasively contends, by citing to numerous non-precedential opinions, that such evidence typically is present in cases of this type and is an essential feature of the clear and convincing evidence that is necessary for a guardianship. Indeed, it appears that both the bench and bar have recognized that the best practice is to introduce evidence of a physician's evaluation of the person who allegedly is incapacitated. *See* Minn. Conf. of Chief Judges, *Conservatorship and Guardianship in*

Minnesota 13 (Aug. 2016); Robert A. McLeod & Ivory S. Umanah, *How to Start Your First Guardianship!: The Forms You Need, How to Fill Them Out and How to File Them* at 3, *in 2015 Probate & Trust Law Section Conference* (Minn. CLE 2015). The absence of such evidence in this case is of special concern because the record indicates that the physician who examined Haggenmiller in 2017 refused to testify because she had not recently evaluated him. As a result, the evidentiary record contained only second-hand descriptions of a stale diagnosis by a physician who was unwilling to testify about Haggenmiller's condition.

We note that the county's evidence focused on Haggenmiller's ability to make decisions concerning his medical care. When the district court asked the nurse-practitioner for specific reasons why Haggenmiller needed help making medical decisions, she responded by saying that "as we get older, we have decline, we have more disease processes." The case manager testified in general terms that Haggenmiller cannot "manage his medications because he doesn't have the memory to do so, so he doesn't know what he takes or why he takes it." But the county's witnesses did not explain the adverse medical consequences that have arisen or might arise while Haggenmiller is living in an assisted-living facility, where staff presumably can and do prompt him to take his medications as necessary. The county's evidence does not clearly and convincingly establish that Haggenmiller's condition hinders his ability to make the decisions that are necessary for his medical care.

In addition, Haggenmiller persuasively contends that other evidence presented by the county is vague, general, and lacking in specifics. The county's witnesses testified only

in general and conclusory terms about Haggenmiller's ability to make decisions. The case manager broadly testified that Haggenmiller "is unable to manage his finances" and that the county is "working to pay down his debt." The county provided no specifics as to how the debt was incurred, the nature of the poor decisions that led to the debt, or the extent of the consequences of those decisions.

Thus, the county's evidence in this case cannot satisfy its burden to prove, by clear and convincing evidence, the first prong of the definition of "incapacitated person," that Haggenmiller "is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions." *See* Minn. Stat. § 524.5-102, subd. 6.

Therefore, we conclude that the district court clearly erred by finding that Haggenmiller is an incapacitated person. This conclusion is a sufficient basis for reversal of the district court's decision.

B. Less-Restrictive Means

We continue by analyzing the second requirement for the appointment of a guardian, that "the respondent's identified needs cannot be met by less restrictive means." Minn. Stat. § 524.5-310(a)(2). Less-restrictive means are those that allow a ward to keep as much autonomy as possible while providing the necessary protection. *See In re Guardianship of Kowalski*, 382 N.W.2d 861, 866 (Minn. App. 1986), *review denied* (Minn. Apr. 18, 1986).

The district court found that Haggenmiller's needs cannot be met by less-restrictive means because he "is not capable of entering into a health care directive or advance psychiatric directive." This finding appears to be based on the nurse-practitioner's

testimony that "one of [her] biggest concerns" pertained to "medical decision-making" if "something were to happen" to Haggenmiller. The county attorney argued that a health-care directive was not an appropriate alternative because none of Haggenmiller's family members are willing to execute such a directive. We note that there is no requirement that a person execute a health-care directive. A person "with the capacity to do so *may* execute a health care directive." Minn. Stat. § 145C.02 (2018) (emphasis added). That Haggenmiller has not executed a health-care directive may reflect a deliberate decision to not do so. Thus, we agree with the district court that a health-care directive is not an appropriate less-restrictive alternative to a guardianship in this case.

The district court also found that Haggenmiller's existing behavioral-care plan and the assistance of the county's caseworkers "are not enough." Haggenmiller argues that less-restrictive alternatives were available in the form of either his staying at the assisted-living facility or the appointment of a limited guardian. The county has not explained how the appointment of a guardian will improve Haggenmiller's day-to-day behavior or that a guardianship is the only way to do so.

Thus, the district court erred by finding that Haggenmiller's needs cannot be met by less-restrictive means.

In sum, we agree with the district court that the record is "spotty" and not "fully developed." For that and other reasons, we conclude that the evidence is insufficient to prove that Haggenmiller is an incapacitated person or that his needs cannot be met by less-restrictive means. Therefore, the district court erred by granting the county's petition and appointing a guardian.

Reversed.