STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0329

In re the Guardianship of Paul Yankowiak, Jr., Ward.

Filed December 7, 2020
Affirmed
Bjorkman, Judge

Rice County District Court
File No. 66-PR-15-239

David L. Ludescher, David Estle, Grundhoefer & Ludescher, P.A., Northfield, Minnesota (for appellant Arlen Britton)

John Fossum, Rice County Attorney, Terence Swihart, Chief Assistant County Attorney, Faribault, Minnesota (for respondent Rice County Social Services)

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

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

BJORKMAN, Judge

Appellant challenges the denial of his request to intervene in this guardianship matter, arguing that the district court (1) erred by denying him intervention as of right, (2) abused its discretion by denying permissive intervention, and (3) erred by declining to explain why the file is sealed. We affirm.

FACTS

The district court established a guardianship of Paul Yankowiak, Jr., in 2014. Appellant Arlen Britton sought to be designated as an "interested person" in the guardianship matter on the ground that he "lived with" Yankowiak for part of 2013. *See* Minn. Stat. § 524.5-102, subd. 7(v) (2018) (providing that an "interested person" includes an adult "who has lived with a ward"). In a July 2014 order, the district court denied the request, noting that Britton's conduct appeared inconsistent with Yankowiak's best interests. The court further found Britton to be a "frivolous litigator," ordered that he was not entitled to notice of future proceedings, and prohibited him from filing any motions or objections or "seeking any further relief" within the guardianship matter without prior court approval.

The district court sealed the case file for this guardianship matter in January 2015. In October 2018, Britton filed a motion seeking access to the file "to determine why [it] was sealed and if a motion to intervene is proper." The district court denied the motion, finding that it violated the July 2014 order.

Britton appealed. Because the order denying Britton access was not an appealable order, we dismissed the appeal. *In re Guardianship of Yankowiak*, No. A19-0535 (Minn. App. Apr. 30, 2019) (order).

In July 2019, Britton moved to intervene as of right under Minn. R. Civ. P. 24.01 or, in the alternative, for permissive intervention under Minn. R. Civ. P. 24.02. He also argued that he is entitled to an explanation why the file is sealed. The district court denied his motion in all respects, again noting the July 2014 order. Britton appeals.

D E C I S I O N

I. Britton is not entitled to intervene as of right.

The Minnesota Rules of Civil Procedure provide for intervention as of right under certain circumstances:

> Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Minn. R. Civ. P. 24.01. The supreme court has recognized that this rule requires: "(1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant's interest is not adequately represented by existing parties." *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012) (citing *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986)). We review de novo a district court's denial of a motion to intervene as of right. *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005).

Britton challenges the district court's determinations as to all four intervention factors, but the first two—timeliness and interest in this action—are dispositive.

First, Britton's motion is untimely. The timeliness of a motion to intervene depends on "the particular circumstances involved and such factors as how far the suit has progressed, the reason for any delay in seeking intervention, and any prejudice to the existing parties because of a delay." *Schumacher*, 392 N.W.2d at 207. Britton claims he

delayed seeking intervention because the order sealing the file kept him from being aware of the current guardianship "for years" and he sought to intervene "in a judicious manner once he knew of the existence of [this] guardianship file." Both the record and Britton's own statements defeat this contention. Britton acknowledges he has tried to find a lawyer for Yankowiak, despite the fact Yankowiak has a court-appointed lawyer. And the record reveals Britton has been surreptitiously engaged in this effort since 2016. His motion to intervene, filed more than four years after the file was sealed and more than five years after the order deeming him a "frivolous litigator," is untimely.

Second, Britton lacks the requisite interest in this matter. A proposed intervenor's interest must be in the nature of a legal interest, not a "personal" one. *Schroeder v. Simon*, ___ N.W.2d ___, ___, 2020 WL 5359413, at *4-5 (Minn. App. Sept. 8, 2020) (citing *Valentine v. Lutz*, 512 N.W.2d 868, 870 (Minn. 1994)), *pet. for review filed* (Minn. Oct. 8, 2020). Britton claims an interest in "mak[ing] sure that nothing untoward is being done" to Yankowiak. Because Britton is not an "interested person" in this matter—a circumstance that the district court noted has not changed since 2014—his concern for Yankowiak's welfare is, at best, a personal interest, not a legally recognized one. *See Valentine*, 512 N.W.2d at 870 (rejecting request to intervene as of right brought by former foster parents in a child-protection proceeding out of concern for the child).

Britton also asserts an interest in ensuring the public's access to court records. But that generalized concern is not an interest in the subject matter of this particular action. *See Schroeder*, 2020 WL 5359413, at *4-5 (concluding that nonprofit organization's interest

in uniform application of the law and limiting expenditure of public funds on litigation was not an interest in an action regarding reinstatement of felons' voting rights).

Britton's lack of an interest in the subject of this action means he cannot establish the other two intervention requirements—the disposition of this action will not affect Britton's ability to protect any of his own legally cognizable interests, and existing parties do not and need not represent any of Britton's interests. *Cf.* Minn. R. Civ. P. 24.01. Moreover, to the extent Britton professes an interest in Yankowiak's welfare, the district court determined, consistent with the record, that Yankowiak's guardian and court-appointed lawyer adequately represent that interest. Accordingly, Britton is not entitled to intervene as of right in this matter.

II. The district court did not abuse its discretion by denying Britton's motion for permissive intervention.

"Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact." Minn. R. Civ. P. 24.02. Orders denying permissive intervention generally are not appealable, but such a denial may be subject to review if it is based on a finding that the proposed intervenor "had no protectable interest in the litigation," in which case we review for an abuse of discretion. *State v. Deal*, 740 N.W.2d 755, 760 (Minn. 2007) (quotation omitted).

As discussed above, Britton does not have a legally cognizable individual interest in this matter. And his professed interest in ensuring public access to court records is not an interest specific to him such that it justifies his intervention. *Cf. id.* at 761 (reasoning

that "the state should be permitted to intervene in a civil proceeding in order to assert the public's interest in a pending criminal proceeding"). We discern no abuse of discretion by the district court in denying his motion for permissive intervention.

III. Britton is not entitled to an explanation why the file is sealed.

Britton argues that he is entitled under Minn. R. Pub. Access to Recs. of Jud. Branch 7, subd. 3, to an explanation why the file in this matter is sealed. He misapprehends the rule. A person may submit an oral or written request to a court records custodian to inspect or obtain copies of "records that are accessible to the public." Minn. R. Pub. Access to Recs. of Jud. Branch 7, subd. 1. If the custodian cannot grant the request, "an explanation shall be given to the requesting person as soon as possible." *Id.*, subd. 3. Britton sought access to records that are not accessible to the public, and he received an explanation why court staff could not grant the request—because the district court sealed the record. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 4, subds. 1(s)(3), 2 (recognizing that court may restrict record access by order). We are satisfied that the district court discharged its responsibility to Britton under the public-access rules. Moreover, a court has discretion in deciding whether to restrict record access. *Schumacher*, 392 N.W.2d at 206. Our review of the record reveals that the district court had an ample evidentiary basis for doing so here.

Affirmed.