STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1405

In re the Guardianship of:
Ryan Van Huyen.

Filed September 7, 2021
Affirmed
Bratvold, Judge

Anoka County District Court
File No. 02-PR-16-295

Jason L. Schellack, Nathaniel Gurol, Autism Advocacy & Law Center, LLC, Minneapolis, Minnesota (for appellant)

Jeffrey J. Storey, Coon Rapids, Minnesota (for respondent)

Robin Tomney, Tomney Law, PLLC, St. Paul, Minnesota (for guardian Lutheran Social Service of Minnesota)

Considered and decided by Bratvold, Presiding Judge; Connolly, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant-father challenges an order appointing a successor guardian for respondent-son. Father argues that the district court abused its discretion because the successor guardian did not appear at the evidentiary hearing and the appointment was not in the best interest of his adult son, even though son petitioned for the appointment of the successor guardian. Because father raises the successor guardian's failure to appear for the

first time on appeal, we decline to decide the issue. Because the record supports the district court's determinations favoring appointment of the successor guardian, we conclude that the district court did not abuse its discretion. Thus, we affirm.

FACTS

The district court summarized the relevant facts in its October 2020 order appointing Lutheran Social Service of Minnesota (LSS) as successor guardian for respondent Ryan Van Huyen (Ryan). Ryan has been diagnosed with "pervasive development disorder since an early age and is globally developmentally delayed."

In June 2016, just before Ryan's eighteenth birthday, appellant Remi Van Huyen (father) petitioned for the appointment of a guardian. Father and Ryan's mother, who have been divorced since 2005, were appointed as temporary co-guardians. In December 2016, mother took Ryan to Japan without father's consent and in violation of a parenting-time order. The district court terminated mother's co-guardianship and appointed father as Ryan's sole guardian. But less than four months later, Ryan petitioned to discharge father and appoint Integrity Financial Solutions LLC as his successor guardian. Father first objected, then agreed that he would resign and Integrity should be appointed. The district court's order followed in September 2017 and appointed Integrity as Ryan's guardian.

In September 2019, father petitioned to remove Integrity and asked the district court to appoint him as Ryan's guardian. Father contended that Integrity allowed Ryan to live with his mother in Japan and that Integrity had "squandered nearly two full years of education services available to [Ryan]." Ryan flew to Minnesota for a hearing on father's petition and returned to Japan after the hearing. The district court later found that, upon

returning to Japan, Ryan was "so angry at his father that he made threats toward a teacher who looked like his father. Ryan was expelled from the school and returned to Minnesota."

In early February 2020, father deposed the Integrity guardian. Shortly afterward, the guardian sent the district court a letter stating that she was resigning "effective immediately" as Ryan's guardian. The guardian also stated that "Ryan is easily coached and persuaded to side with the parent that he is spending the most time with." The parties agreed that Integrity would voluntarily resign as Ryan's guardian and father could petition to be appointed successor guardian. The district court ordered Integrity to continue as Ryan's temporary guardian until a successor was appointed.

In March 2020, Ryan opposed father's appointment and petitioned for LSS to be appointed as successor guardian. During an evidentiary hearing on the competing petitions, the district court heard testimony from Ryan, father, mother, Ryan's two stepsisters, Ryan's Anoka County case manager, a support specialist, and the Integrity guardian. Shortly after the evidentiary hearing concluded, the district court discharged Integrity and appointed LSS as Ryan's temporary guardian. The parties submitted written closing arguments in August.

In its October 2020 order, the district court prepared written findings of fact and conclusions of law, granted Ryan's petition to appoint LSS as a successor guardian, and denied father's petition. The district court commented in its findings that it was assigned to the mother and father's dissolution proceedings in 2015 and therefore has a "rather lengthy history with the parties."

The district court also summarized the conflicting views of Ryan and father. The district court found that Ryan wanted "a neutral party appointed as his Guardian," and Ryan testified that his father "makes him angry and he fears his father will exploit him if appointed guardian." The district court also found that "[i]t is very clear to this Court that Ryan is extremely anxious about Father's petition and that these proceedings are having a negative impact on Ryan's mental health and well-being."

In contrast, the district court found that father testified that "Ryan is being coached and that Ryan does not really have these negative feelings for Father." The district court also found that father is "highly trained and qualified in the area of special education and Autism," with 26 years of experience in special education and "overseeing Ryan's education and managing his services." Father testified that before Ryan's move to Japan in 2016, Ryan was managing well, but that he "has regressed in his behaviors because he did not receive adequate professional and educational services while living in Japan." When the district court asked father if he was "concerned that any suggestion that you make will be resisted by Ryan because the suggestion comes from you," father responded, "Ryan's pretty pliable." The district court observed father "was confident that he could overcome Ryan's objections."

The district court also considered the views of others familiar with Ryan. The district court found that Ryan's mother, stepsisters, and the Integrity guardian all testified that Ryan has a strained relationship with father, and that a professional guardian was appropriate. The support specialist offered similar testimony.

After determining that "family dynamics and hostilities prevent the appointment of any family members to act as Ryan's Guardian," the district court also determined that Ryan "remains in need of the services of a guardian," and that "it is in Ryan's best interest that Lutheran Social Service be appointed guardian for Ryan with all the powers and duties as allowed by law."

Father appeals.

DECISION

"The appointment of a guardian is generally within the discretion of the district court." *In re Guardianship of Wells*, 733 N.W.2d 506, 508 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). "The reviewing court shall not interfere with the exercise of this discretion except in the case of clear abuse." *In re Guardianship of Kowalski*, 478 N.W.2d 790, 792 (Minn. App. 1991), *review denied* (Minn. Feb. 10, 1992); *Wells*, 733 N.W.2d at 509. A district court's factual findings are clearly erroneous "only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

The Uniform Guardianship and Protective Proceedings Act, Minn. Stat. §§ 524.5-101 to -502 (2020), governs the appointment of a guardian for an incapacitated person.[1] "An individual or person interested in the individual's welfare may petition . . . for

[1] An incapacitated person is "an individual, who for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance." Minn. Stat. § 524.5-102, subd. 6 (2020)

the appointment of a guardian." Minn. Stat. § 524.5-303(a). "Upon receipt of a petition to establish a guardianship, the [district] court shall set a date and time for hearing the petition . . . ." Minn. Stat. § 524.5-304(a). The district court also "may appoint a successor guardian . . . in the event of a vacancy." Minn. Stat. § 524.5-112(c).

Ryan and father agree that Ryan remains an incapacitated person needing a guardian, but they disagree about whom that guardian should be. On appeal, father requests that this court reverse the district court's order, discharge LSS, and appoint father as Ryan's successor guardian, or in the alternative, remand for further proceedings. Father raises two issues, which we address in turn.

I. For the first time on appeal, father raises LSS's failure to enter an appearance at the evidentiary hearing.

Before the hearing, Ryan identified the LSS program director as a witness, but the LSS witness did not testify. Indeed, no one from LSS testified at the hearing, nor was an appearance by LSS noted in the transcript.

On appeal, father argues that "the district court abused its discretion by allowing LSS's non-appearance without good cause and in appointing LSS as [Ryan's] guardian." Father's argument rests on Minn. Stat. § 524.5-307(a), which states, "Unless excused by the court for good cause, the petitioner *and the proposed guardian* shall *attend* the hearing." (Emphasis added.) Father did not object to LSS's "nonappearance" during the evidentiary hearing. Following the hearing, the district court left the record open one week for the parties to make objections, but its order noted that "[n]o objections were received."

The first time that father raised this issue was in his closing-argument letter brief, though he did not cite or discuss Minn. Stat. § 524.5-307(a).

Generally, appellate courts will not consider issues which were not raised to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1998). This "principle especially applies when facts on which the . . . issue rests are in dispute." *Id.* Here, the relevant facts are unclear. While the parties agree, and the transcript reflects, that LSS did not *enter an appearance* at the evidentiary hearing, the transcript also reveals that an LSS representative *attended* the hearing, according to statements made by Ryan's attorney. We note that Minn. Stat. § 524.5-307(a) requires the proposed guardian to *attend* the hearing, and does not expressly require an appearance, as argued by father. Because father failed to timely raise this issue during district court proceedings, we decline to decide whether the district court abused its discretion by appointing LSS without finding good cause to excuse its "nonappearance."

Even if we considered LSS's failure to enter an appearance, we would conclude that any error was harmless. "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Minn. R. Civ. P. 61; *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (citing Minn. R. Civ. P. 61 and determining error was harmless). Before the hearing, LSS filed an acceptance of appointment as successor guardian and "submit[ted] to the jurisdiction of the Court in any proceeding related to [Ryan.]" Thus, father could have subpoenaed a witness from LSS and compelled testimony. We therefore conclude that father has failed to articulate how his substantial rights were affected, and no prejudice is apparent.

II. The district court did not clearly abuse its discretion by appointing LSS as Ryan's successor guardian.

Father argues that the district court "committed clear error" when it found "that it was in [Ryan's] best interest for LSS to be appointed as [Ryan's] successor guardian." Ryan argues that "[t]he record is replete with evidence and findings that support the district court's decision" and that "LSS was the only reasonable choice . . . because they are neutral, because [they] are a professional guardian[,] and because [Ryan] had petitioned for them to be appointed."

Father relies on Minnesota law that recognizes an "order of priority" when a district court considers appointing a guardian from among more than one "otherwise qualified" persons. Minn. Stat. § 524.5-309(a). Indeed, the district court correctly determined that father, as a parent, had priority to be considered over LSS—a "professional guardian." *See id.* (listing a parent before a professional guardian in the "order of priority").

But Minnesota law also provides that "[t]he court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority." *Id.* (a). Caselaw directs that "the best interests" of the person subject to guardianship "should be the decisive factor in making any choice on his behalf." *In re Guardianship of Schober*, 226 N.W.2d 895, 898 (Minn. 1975) (quoting *In re Guardianship of Overpeck*, 2 N.W.2d 140, 144 (Minn. 1942)).

The district court gave four reasons for appointing LSS as guardian rather than father. First, the district court determined that "family dynamics and hostilities prevent the appointment of any family members to act as Ryan's Guardian." Second, the district court

recognized that "[m]ost importantly, [it] must take into account Ryan's testimony and requests." Third, it determined that "Lutheran Social Services is the most suitable and best qualified among those available." And fourth, the district court determined that "it is in Ryan's best interest to appoint Lutheran Social Services as the Successor Guardian [for] Ryan." Father challenges the third and fourth of these reasons, both of which involve the district court's exercise of its discretion. We discuss, in turn, the third and fourth reasons.

A. The record supports the district court's determination that LSS is most suitable and qualified to serve as guardian "among those available."

Father argues that "there was scant evidence regarding LSS's knowledge of [Ryan's] needs" or ability to provide for those needs. We disagree. Before the evidentiary hearing, LSS's program director submitted a signed and notarized acceptance of appointment, in which it stated that the employees who carry out guardian duties had received training and understand a guardian's duties and responsibilities. While not overwhelming, the evidence supports the district court's determination that LSS is qualified to serve as Ryan's guardian.

Father also points to his own direct examination, where he offered as evidence the February 2015 meeting minutes from Anoka County Human Services. The minutes describe a proposed amendment to LSS's contract with the county, dating from 2008, "to provide Guardianship/Conservatorship services for vulnerable adults." The minutes state that LSS provides "an average of 5 hours [of services] per client per month." Father testified that five hours per month would not be "sufficient to meet [Ryan's] needs,"

because of their complexity. He agreed that, if he was appointed Ryan's guardian, he would not "limit [himself] to five hours a month."

Father's reliance on this evidence is misplaced for two reasons. First, the minutes are more than five years old and describe a contract that did not involve Ryan. The minutes also state that "actual number of hours [LSS] works with a client can vary each month." There is no reason to assume that these minutes comment on the average amount of time LSS would spend with Ryan.

Second, the district court's order does not discuss the minutes, which implies that it did not give the evidence any weight. *See In re Guardianship of Pates*, 823 N.W.2d 881, 887 (Minn. App. 2012) (explaining that the district court necessarily weighs evidence by resolving factual issues on conflicting evidence); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (clarifying that the district court may implicitly weigh conflicting evidence). On appeal, this court does not reweigh the evidence. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

We discern no abuse of discretion in the district court's determination that LSS is most suitable and qualified "among those available."

B. The record supports the district court's determination that it was in Ryan's best interest for LSS to serve as successor guardian.

Father also argues that his own appointment, rather than LSS, is in Ryan's best interest. The district court based its determination on two points, which we consider in turn. First, the district court considered "the history of this case [and] the ongoing intra-family conflicts." Testimony by Ryan, his mother, stepsisters, and previous guardian uniformly

support the district court's finding of family conflict. And the district court appropriately considered "potential harm to Ryan's mental health" should father be appointed. Ryan's own testimony and his psychiatrist's letter support the district court's concerns, including that when Ryan "thinks of Father, he sometimes feels suicidal."

Second, the district court considered Ryan's stated preference for a professional guardian, stating that Ryan "absolutely articulated his desire to not have his Father as a guardian or co-guardian." "[T]he guardianship statute requires the court to consider both the ward's expressed preferences and the ward's best interests." *Wells*, 733 N.W.2d at 511 (citing Minn. Stat. § 524.5-309(b)); *see also* Minn. Stat. § 524.5-120(2), (13) (providing that the person subject to guardianship "retains all rights not restricted by court order," including right to "due consideration of current and previously stated personal desires and preferences" and to "petition the court for termination or modification of the guardianship" at any time).[2] Here, Ryan's strong preference tracked the district court's determination of his best interest.

Because the district court's determinations are fully supported by the record, we see no clear error in the district court's conclusion that Ryan's best interest supports appointment of LSS as successor guardian.

Affirmed.

[2] We note that both parties cite caselaw relying on statutes that have since been repealed. *See In re Guardianship of Kowalski*, 478 N.W.2d 790 (Minn. App. 1991) (citing Minn. Stat. § 525.539, subd. 7 (1990)), *review denied* (Minn. Feb. 10, 1992). We do not find this caselaw helpful to the issues in this appeal and therefore do not discuss it.