STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0779

In re: Guardianship of Ednord Alcenat.

Filed May 16, 2022
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-GC-PR-20-230

Peter H. Dahlquist, Dahlquist Law, LLC, Minneapolis, Minnesota (for appellant Ednord Alcenat)

James A. Reichert, James A. Reichert, LLC, Minneapolis, Minnesota (for respondent Pitagore Alcenat)

Considered and decided by Bryan, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's establishment of a guardianship. We affirm the district court's decision because the record supports the district court's finding that appellant was an incapacitated person and because the district court's conclusion that no less restrictive means were available is not against logic or the facts in the record.

FACTS

On May 26, 2020, petitioner Pitagore Alcenat filed a petition seeking appointment as a guardian for his brother, appellant Ednord Alcenat. The petition alleged that Alcenat could not make decisions for himself and referred to Alcenat's history of civil commitment. Alcenat was first civilly committed as a person who poses a risk of harm due to mental illness in September 2020 and his commitment was extended until March 9, 2022, by an order from the district court in March 2021.

On January 27, 2021, the district court held a hearing on the guardianship petition. At the start of the hearing, Alcenat stated he did not want his brother as his guardian and requested a professional guardian. The district court accepted two exhibits, including a physician statement from Dr. Mark Rynda. Dr. Rynda examined Alcenat in September 2020 and concluded that Alcenat "has longstanding paranoid schizophrenia," and "becomes very disorganized and engages in dangerous behaviors when decompensated, which happens frequently due to [noncompliance with medication prescriptions]." Dr. Rynda stated that Alcenat "frequently leaves any attempted placements and is extremely vulnerable on the streets," therefore he opined that "[h]aving a guardian for purposes of placement in an appropriate long-term setting would be very beneficial for his overall safety and wellbeing." Pursuant to an agreement between the parties, the district court also took judicial notice of the two court files from Alcenat's civil commitment proceedings, including the order for civil commitment and the order authorizing Alcenat's psychiatric provider to administer neuroleptic medications. The court files included a court examiner's report, filed in September 2020.

Both petitioner and Alcenat testified at the hearing. Petitioner testified about Alcenat often leaving placements or running away. Petitioner further stated that Alcenat does not consistently take his medication and has not cashed the checks from his employment. Alcenat testified that he pays for his own groceries, buys his own clothes and other necessities, and at the time of the hearing was applying for social security benefits. Alcenat testified that he did not want petitioner to supervise him and alleged that petitioner abused him when they were children.

The district court concluded that clear and convincing evidence established that Alcenat is an incapacitated person because Alcenat is "impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and [ ] is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance." The district court relied on Dr. Rynda's statement as well as the court examiner's September 2020 report from Alcenat's civil commitment court file. The district court summarized this report, stating that Alcenat "failed to obtain necessary food, clothing, shelter, or medical treatment" and explaining that in the report, the examiner opined that Alcenat "poses a substantial likelihood of physical harm to himself and others."

The district court found that Alcenat's testimony was not credible, but that petitioner's testimony was credible. Specifically, the district court credited petitioner's testimony that Alcenat is unable to make many decisions for himself, runs away, and does not take his medication. The district court also listed eight powers and rights that Alcenat was incapable of exercising and concluded that clear and convincing evidence established

that Alcenat's needs cannot be met by less restrictive means. The district court rejected alternatives to guardianship because Alcenat could not effectively participate in residential and community services and because of the limited duration of civil commitments:

> Due to the extent of Respondent's mental illness, there is no less restrictive alternative that would adequately protect the Respondent even with the use of technology. The Respondent is extremely vulnerable. Due to the Respondent's noncompliance with psychiatric treatment, severe disorganization and inability to make complex decisions, the Respondent would not be able to effectively participate in any supported decision-making arrangement or residential and community services. Respondent is currently civilly committed, but civil commitments expire and it is uncertain if he will continue to be under commitment in the extended future.

The district court reserved the issue of who would be the guardian to allow time for Alcenat's attorney to find information about professional guardianship services. On March 23, 2021, the district court held a hearing to address this issue. Alcenat reiterated that he did not want petitioner to serve as his guardian and instead proposed Open Roads LLC, a professional guardian. Alcenat also requested that the appointment of a guardian be limited in duration, specifically requesting a one-year appointment. An employee of Open Roads LLC appeared and testified that it would be willing to take Alcenat's appointment. At the hearing, the district court stated some of its reasons for denying a guardianship of limited duration, noting that given Alcenat's needs, and the work required to be a guardian, it was "logical" to order a guardianship lasting "multiple years."

On April 22, 2021, the district court filed its written order on Alcenat's guardianship. The district court determined that although petitioner had a higher priority

to be appointed as Alcenat's guardian under the applicable statute, appointing petitioner would not be in the best interest of Alcenat. The district court appointed Open Roads LLC as limited guardian in the best interests of Alcenat. Alcenat appeals.

DECISION

I. Findings of Fact Regarding Incapacitation

Alcenat first challenges the findings of fact made by the district court underlying its determination that Alcenat is an incapacitated person. Because we are not left with the firm conviction that a mistake was made in determining these facts, we affirm the district court's findings.

A court may appoint a guardian if it finds by clear and convincing evidence that the subject of the guardianship is an incapacitated person whose needs cannot be met by less-restrictive means. Minn. Stat. § 524.5-310(a) (2020). An incapacitated person is defined as a person who "is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions" and "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 (2020).[1]

We review the district court's decision to appoint a guardian for abuse of discretion, *In re Guardianship of Kowalski*, 478 N.W.2d 790, 792 (Minn. App.1991), *rev. denied* (Minn. Feb. 10, 1992), but we review factual findings underlying that decision for clear

[1] On August 1, 2020, the statutory definition was amended, but these changes do not impact our analysis.

error and view the record in the light most favorable to those findings, *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014); *In re Guardianship of Wells*, 733 N.W.2d 506, 510 (Minn. App. 2007), *rev. denied* (Minn. Sept. 18, 2007). We defer to the credibility determinations of the district court, *In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 61 (Minn. App. 1990), and will not conclude that the district court clearly erred "unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed," *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations and citations omitted). Nor do we reconcile conflicting evidence or "weigh the evidence as if trying the matter de novo." *Id.* at 221 (quotation omitted). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted).

Importantly, in this case, Alcenat does not argue that the district court's findings are insufficient to support a determination of incapacity. Rather, Alcenat directly challenges the underlying findings themselves, arguing that the record contained other, conflicting evidence that compelled alternative factual findings. For example, Alcenat argues that contrary to the district court's findings, Alcenat's own testimony established that he could perform certain daily living activities and that there were periods of time when he had no contact with the petitioner, reducing the weight of petitioner's testimony. We are not persuaded for two reasons. First, given our standard of review, we defer to the district court's determination of witness credibility, *Lundgaard*, 453 N.W.2d at 61, and do not reweigh conflicting evidence, *Kenney*, 963 N.W.2d at 217, 221.

Second, we conclude that the findings made by the district court are supported by the evidence in the record. Dr. Rynda's report includes information about Alcenat's history of failing to take medications on his own and Alcenat's denial of diagnosed mental illness, which contributed to his inability to care for himself. Dr. Rynda concluded that Alcenat "has longstanding paranoid schizophrenia," and because of Alcenat's inability to remain medication compliant, Alcenat "becomes very disorganized and engages in dangerous behaviors when decompensated, which happens frequently." Dr. Rynda also stated that Alcenat "frequently leaves any attempted placements and is extremely vulnerable on the streets." In addition, the district court noted that the court examiner concluded that Alcenat "failed to obtain necessary food, clothing, shelter, or medical treatment." The examiner further opined that Alcenat's psychiatric disorder "poses a substantial likelihood of physical harm to himself and others."[2] Based on the record, we conclude that the district court did not clearly err in making the findings underlying its determination of incapacity.

II. Determination Regarding Less Restrictive Alternatives

Next, Alcenat argues that the district court erred when it determined that less restrictive alternatives could not meet Alcenat's needs. We discern no abuse of discretion.[3]

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[2] Alcenat does not challenge the district court's reliance on the commitment files, and we have previously permitted reliance on such materials. *See, e.g.*, *In re Welfare of D.J.N.*, 568 N.W.2d 170, 174-75 (Minn. App. 1997) (stating that court records and files from prior adjudicative proceedings are an appropriate subject of judicial notice by the district court).

[3] It is not clear whether Alcenat intended to assert error in the district court's underlying factual findings. Alcenat explicitly disagrees with the reasoning of the district court, without directly challenging the facts underlying that analysis, thereby asserting a challenge only to the district court's exercise of discretion. However, the facts relied on to reject the identified alternatives are nearly indistinguishable from those underlying the determination of incapacity that Alcenat expressly challenges in the first portion of his

A district court may appoint a guardian only if the incapacitated person's needs cannot be met by less restrictive means. Minn. Stat. § 524.5-310(a)(2). Less restrictive means are those that do not infringe on the ward's autonomy while providing necessary protection. *Kowalski*, 382 N.W.2d at 866. Because Alcenat argues that the district court's stated reasons do not support its ultimate decision rejecting the two offered alternatives, we review the district court's weighing of alternatives to guardianship for an abuse of discretion. *See Kowalski*, 478 N.W.2d at 792; *Wells*, 733 N.W.2d at 509, 510. A district court abuses its discretion when its decision is against logic and the facts in the record. *See Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 501 (Minn. 2018).

In rejecting the two identified alternatives, the district court listed several facts to "indicate why less restrictive alternatives do not work," including Alcenat's extreme vulnerability, noncompliance with psychiatric treatment in the past, severe disorganization, and inability to make complex decisions. In the district court's estimation, these impairments rendered Alcenat unable to participate in supported decision-making arrangements, residential programming, and community services. In addition, in its written order, the district court also emphasized that these needs would persist after the expiration of a civil commitment, and in its statements at the March 23, 2001 hearing, the district court stated that a guardianship lasting multiple years was more appropriate.

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brief. To the extent that Alcenat impliedly challenges those facts as they relate to the determination that no less restrictive alternatives could meet his needs, we reiterate our previous conclusion that these facts are supported by the record. To the extent that Alcenat instead, or in addition, argues that these facts cannot support the ultimate determination regarding less restrictive alternatives, we disagree for the reasons noted above.

The district court's decision was not against logic or the facts. Given the underlying facts regarding the nature and severity of Alcenat's needs, it was not an abuse of discretion to conclude that Alcenat would be unable to conduct himself in the manner required by a civil commitment. In addition, given the facts regarding the history of Alcenat's needs over a long period of time, it was not an abuse of discretion to conclude that neither a civil commitment nor a six- or twelve-month guardianship would meet Alcenat's needs.

Affirmed.