This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0578

In re the Guardianship and Conservatorship of Carolyn Neu

Filed December 12, 2022
Affirmed
Larson, Judge

Stearns County District Court
File No. 73-PR-21-4038

Ryan A. Carlson, Halvorson Legal, Howard Lake, Minnesota (for appellant Carolyn Neu)

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Considered and decided by Larson, Presiding Judge; Smith, Tracy M., Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant challenges the district court's decision to appoint a conservator for her estate, arguing that the district court made insufficient findings and otherwise failed to support its decision. Alternatively, appellant contends the district court abused its discretion when it decided not to appoint her choice of conservator. We affirm.

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

FACTS

Appellant Carolyn Neu ("Carolyn") is an 82-year-old woman with four adult children: respondent Julie Robinson ("Julie"), respondent Steven Neu ("Steven"), Allen Neu ("Allen"), and Paul Neu ("Paul").[1] Carolyn lived with her husband until he passed away in June 2021. Days after her husband's death, Carolyn moved in with Paul who also acted as Carolyn's primary caretaker. Around that time, Julie and Steven petitioned the district court for guardianship and conservatorship; specifically, for the district court to appoint a neutral professional to oversee Carolyn and her affairs. In their petition, Julie and Steven expressed concerns about Paul limiting the family's access to Carolyn and not providing Carolyn continuous care. Carolyn objected to Julie and Steven's petition. Paul filed a cross-petition requesting that the district court appoint him as guardian and/or conservator for Carolyn.

The district court held a two-day evidentiary hearing where the district court heard testimony from all of Carolyn's children and received evidence from all parties. Carolyn did not testify. According to a report by a court-appointed visitor, Carolyn expressed her view that she did not need a guardian or conservator. But, if the district court appointed a guardian and/or conservator, she would prefer Paul's appointment.

At the evidentiary hearing, the district court heard testimony regarding Carolyn's ability to manage her own finances. Steven testified that he discovered his parents' financial difficulties in early 2020. Steven realized his parents had many overdue bills and

[1] Since appellant and many of her children share a last name, we refer to appellant and her children by their first names.

that their credit score had declined more than 200 points over approximately six months. Steven also testified that his parents had fallen victim to several financial scams. Due to these issues, Carolyn and her husband granted Steven power of attorney. Carolyn and her husband's financial situation began to improve once Steven intervened. Despite this improvement, both Steven and Paul testified that Carolyn could not handle her finances independently.

The district court received medical documents detailing Carolyn's cognitive abilities. The documents revealed that Carolyn had been diagnosed with late-onset Alzheimer's disease. These documents stated Carolyn "demonstrated cognitive/linguistic deficits in attention, memory, problem solving, orientation, oral expression, speech comprehension, reading comprehension, and writing." Additionally, the district court received a statement from Carolyn's primary care provider, which expressed support for the guardianship and conservatorship. The provider indicated that Carolyn continued to have "moderate cognitive deficits" and that "she had definitely worsened" since the earlier evaluation.

Julie, Steven, and Allen expressed concerns about Paul controlling Carolyn's affairs. Paul's siblings all testified that Paul inhibits contact with Carolyn. They expressed concern that Paul may financially abuse or manipulate Carolyn. Julie and Steven expressed concern that Carolyn removed Steven's power of attorney shortly after their father's passing and that Paul was currently the only person with power of attorney over Carolyn. Steven expressed concern that Paul gave himself a raise for being Carolyn's caretaker. Allen detailed that Paul said he could take out $30,000 a year from his parents' accounts

as a tax-free gift. Due to these concerns, Julie, Steven, and Allen testified that a neutral third-party professional should oversee Carolyn's affairs.

After the evidentiary hearing, the district court denied the petition to appoint a guardian and granted the petition to appoint a conservator. In doing so, the district court appointed a neutral professional conservator, rather than Paul. The district court explained that Paul had exhibited some concerning conduct when it came to Carolyn's affairs. The district court determined that "to prevent any potential future manipulation of Carolyn Neu's finances, the [c]ourt finds appointment of a [professional] conservator necessary."

Carolyn appeals.

DECISION

Carolyn challenges both the district court's decision to appoint a conservator and, alternatively, the district court's decision not to appoint Carolyn's conservator of choice.

We review a district court's determination to appoint a conservator for an abuse of discretion. *In re Guardianship of Pates*, 823 N.W.2d 881, 885 (Minn. App. 2012). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)). Additionally, we will not set aside the district court's factual findings "unless they are clearly erroneous, giving due regard for the [district] court's determinations regarding the credibility of witnesses." *In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 60-61 (Minn. App. 1990). "We will not conclude that a factfinder clearly erred unless, 'on the entire evidence,' we are 'left with a

definite and firm conviction that a mistake has been committed.'" *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quoting *N. States Power Co. v. Lyon Food Prods., Inc.*, 229 N.W.2d 521, 524 (Minn. 1975)). We address each argument in turn below.

I.

Carolyn first contends that the district court abused its discretion when it appointed a conservator because its findings were insufficient as a matter of law and not supported by the evidence.

A district court may appoint a conservator if it finds:

> (1) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions . . . ;
>
> (2) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided . . . ; and
>
> (3) the [individual's] identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, representative payee, trusts, banking or bill paying assistance, or appointment of an attorney-in-fact under section 523.01.

Minn. Stat. § 524.5-409, subd. 1(a) (2020). The district court "must make specific findings particular to the [individual] why less restrictive alternatives do not work." *Id.*, subd. 1(a)(3).

A. Impairment

Carolyn contends the district court's findings to support its conclusion that she cannot manage her property and business affairs due to an impairment are insufficient and not supported by the evidence. We are not persuaded.

First, Carolyn challenges the district court's decision that she has an impairment due to her diagnosis with Alzheimer's disease, arguing the diagnosis is stale. Carolyn compares her diagnosis to that in *In re Guardianship of Haggenmiller*, No. A19-2081, 2020 WL 4280032, at *4 (Minn. App. July 27, 2020).[2] But *Haggenmiller* is distinguishable. There, the diagnosing physician refused to testify because she had not recently evaluated the person subject to conservatorship. *Id.* In contrast, Carolyn's primary care provider submitted a statement to the district court, opining that Carolyn needed a conservator. The provider described that Carolyn's evaluation "revealed moderate cognitive deficits" and opined that her condition "ha[s] definitely worsened" since her initial evaluation. Therefore, the district court's finding that Carolyn has an impairment because of her diagnosis with Alzheimer's disease is supported by clear and convincing evidence.

Second, Carolyn argues the record does not provide clear and convincing evidence that she is impaired in her ability to manage her property and business affairs. In *Pates*, we affirmed the district court's impairment finding where Pates had abnormally limited "verbal working and calculation skills . . . due to their memory loss and Alzheimer's disease." 823 N.W.2d at 886 (noting that Pates had "missed payment on at least one bill").

[2] We observe that *Hagenmiller* is a nonprecedential opinion, but we recognize, in the context of this case, it has persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

We concluded the record supported the district court's impairment finding with clear and convincing evidence because the district court relied on "medical record[s], [a] physician's statement, the visitor's report, and testimony from [the] family." *Id.*

This case is similar to *Pates*. Here, the district court found that Carolyn: (1) "was diagnosed with late onset Alzheimer's disease";[3] (2) had "demonstrated cognitive/linguistic deficits in attention, memory, problem solving, orientation, oral expression, speech comprehension, reading comprehension, and writing"; (3) "has struggled to pay her bills on time"; and (4) "could not handle her own finances." These findings are supported by clear and convincing evidence, relied upon by the district court, including Carolyn's medical records, financial history, and testimony from her children.

For these reasons, the district court's findings were not clearly erroneous, and the district court did not abuse its discretion when it determined that Carolyn "is unable to manage [her] property and business affairs because of an impairment in [her] ability to receive and evaluate information." *See* Minn. Stat. § 524.5-409, subd. 1(a).

[3] Carolyn contends we should only review the findings the district court lists under the subsection titled "Carolyn Neu is Unable to Manage Property and Business Affairs because of an Impairment in the Ability to Receive and Evaluate Information." However, the specific placement of a finding within a district court's order does not matter if the findings, when taken as a whole, are sufficient to support the conclusions of law. *See Big Lake Lumber, Inc. v. Sec. Prop. Invs., Inc.*, 836 N.W.2d 359, 366-67 n.8 (Minn. 2013).

B. Wasted or Dissipated Property

Carolyn next contends the district court's findings to support its conclusion that her property would be wasted or dissipated unless management is provided are insufficient and not supported by the evidence. Again, we are not persuaded.

In *Pates*, the district court found Pates was "vulnerable to being taken advantage of, especially in financial matters" and that "[i]t appear[ed] that she [was] easily influenced by individuals in decisions she ha[d] made regarding her assets, her estate planning, and regarding the sale of her home." 823 N.W.2d at 886. To support these findings, the district court observed a series of modifications Pates had made to her will, power of attorney, and health-care directive. *Id.* The district court also referenced testimony showing that certain individuals that Pates trusted were exploiting her finances. *Id.*

Here, the district court similarly found that Carolyn could "be easily manipulated into handing over money and being financially exploited" and that she was "vulnerable to being taken advantage of when it comes to financial matters." The record supports these findings. As the district court noted, "Carolyn has been subject to three money-wire scams." Additionally, Julie, Steven, and Allen all expressed concern that Paul may financially exploit Carolyn. Paul's siblings noted his significant raise, his discussion of a $30,000 gift, and his sudden position as Carolyn's sole power of attorney.

The record reflects the district court's findings were not clearly erroneous. *Id.* at 885. The record contains a preponderance of the evidence supporting the finding that Carolyn's property will be wasted or dissipated unless management is provided. Therefore,

the district court did not abuse its discretion when it used this statutory factor to support its appointment of the conservator. *See* Minn. Stat. § 524.5-409, subd. 1(a).

C. Less Restrictive Means

Carolyn finally argues the district court failed to "make specific findings particular to why less restrictive alternatives do not work [for Carolyn]" as required by Minn. Stat. § 524.5-409, subd. 1(a)(3). Carolyn also contends the district court's findings on this factor are not supported by the evidence. We are not persuaded.

Our cases illustrate the "specific findings" necessary to comply with Minn. Stat. § 524.5-409, subd. 1(a)(3). *Pates*, 823 N.W.2d at 886-887. In *Pates*, we concluded the district court made sufficient findings that Pates "was susceptible to influence by . . . her attorneys in fact." 823 N.W.2d at 887; *see also In re Guardianship of Jaeger*, No. A21-0153, 2021 WL 4059765, at *6 (Minn. App. Sept. 7, 2021) (concluding district court made sufficient findings when individual consistently failed to pay bills despite "the power of attorney, health-care directive, and trust agreement in place").[4]

Here, the district court made similar findings. The district court determined that: (1) "Carolyn has shown she is vulnerable to being taken advantage of when it comes to financial matters"; (2) "Carolyn's dementia affects her attention span, memory, problem solving skills"; (3) "Carolyn has been manipulated and scammed out of a significant amount of money multiple times"; (4) "[a]fter Carolyn's husband's death, Paul gave

[4] While *Jaeger* is nonprecedential, we recognize the persuasive value regarding the "specific findings" necessary to comply with Minn. Stat. § 524.5-409, subd. 1(a)(3). *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

himself a significant raise"; and (5) "the timing of the change in Carolyn's power of attorney" concerned the district court "especially when Paul was planning to give himself a $30,000.00 gift and knew Carolyn lacked capacity." Thus, the district court made sufficient findings on the less-restrictive-means factor. *See Pates*, 823 N.W.2d at 887; *Jaeger*, 2021 WL 4059765, at *6.

The district court's findings are also supported by the record. In finding that Carolyn "is vulnerable to being taken advantage of when it comes to financial matters," the district court referred to Carolyn's dementia and the multiple wire-fraud scams. Regarding Paul, the district court found Julie, Steven, and Allen's concerns about Paul to be credible and, on that basis, determined Paul should not be Carolyn's sole caretaker. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that the district court's credibility findings can be implicit). We do not decide issues of witness credibility. *Lundgaard*, 453 N.W.2d at 60-61.

The district court made the required "specific findings" and did not abuse its discretion when it determined that Carolyn's "identified needs cannot be met by less restrictive means." Minn. Stat. § 524.5-409, subd. 1(a).

For these reasons, the district court did not abuse its discretion when it appointed Carolyn a conservator. *Pates*, 823 N.W.2d at 885.

II.

Alternatively, Carolyn contends that the district court abused its discretion when it did not appoint her choice of conservator: Paul. When appointing a conservator, a district court must consider those persons given statutory priority. Minn. Stat. § 524.5-413(a)

(2020). However, "[t]he court, acting in the best interest of the person subject to conservatorship, may decline to appoint a person having priority and appoint a person having a lower priority or no priority." Minn. Stat. § 524.5-413(c) (2020), *see Pates*, 823 N.W.2d at 887 (holding the district court did not abuse its discretion in appointing a conservator lower in the priority list). When conducting the best-interests analysis, a district court may weigh the potential for intrafamily conflict. *See In re Guardianship of Well*s, 733 N.W.2d 506, 507-08 (Minn. App. 2007) (affirming appointment of third-party conservator despite person subject to conservatorship expressing preference for one of her daughters due to intrafamily conflict), *rev. denied* (Minn. Sept. 18, 2007).

Carolyn correctly observes that Paul is higher on the priority list than a professional conservator.[5] However, the district court determined that appointing a professional conservator, rather than Paul, was in Carolyn's best interest. As described above, the district court found Julie, Steven, and Allen's concerns about Paul credible. We defer to the district court's credibility determinations. *Lundgaard*, 453 N.W.2d at 60-61. And, as is the case here, we affirm decisions to appoint a lower-priority person as conservator when the district court expresses concern about financial exploitation. *See Pates*, 823 N.W.2d at 886-887.

[5] Pursuant to section 524.5-414(a), Paul satisfies the following priority criteria: (i) "a person nominated as conservator by the respondent," (ii) "an agent appointed by the respondent to manage the respondent's property under a durable power of attorney," (iii) "an adult child of the respondent," and (iv) "an adult who is related to the respondent by blood, adoption, or marriage." A "professional conservator" is given the lowest priority. *Id.* (a)(9).

The district court also determined that appointing a professional conservator would help to avoid intrafamily conflict. The district court noted that: (1) "Steven, Allen, and Julie have all expressed hard feelings toward their brother Paul" and (2) "Steven [], Julie [], and Allen have all voiced their concerns about financial exploitation." Further, the record shows examples of conflict between Paul and his siblings. The district court appropriately weighed avoiding further conflict between the siblings when it appointed a professional conservator. *Well*s, 733 N.W.2d at 508.

For these reasons, the district court did not abuse its discretion when it appointed a professional conservator instead of Carolyn's choice: Paul.

Affirmed.