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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1919**

In re the Guardianship and Conservatorship of
Myra Georgianna Jaekel.

**Filed July 18, 2011
Affirmed
Worke, Judge**

Carver County District Court
File Nos. 10-PR-09-93, 10-P8-95-000391

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Considered and decided by Worke, Presiding Judge; Stauber, Judge; and Willis,
Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's appointment of a conservator over his wife's estate, arguing that: (1) the district court failed to comply with statutory requirements in appointing and refusing to remove the conservator; (2) the district court abused its discretion in awarding attorney fees; (3) the district court erred by refusing to address his ex parte motion; (4) the district court erred by issuing a contempt order; and (5) respondents committed fraud upon the district court. We affirm.

DECISION

Statutory Requirements

Appellant Leonard Arthur Jaekel first challenges the district court's appointment of a conservator to oversee the finances of his wife, Myra Georgianna Jaekel, as well as the district court's subsequent refusal to remove the conservator. Guardianship and protective proceedings in Minnesota are governed by the Uniform Guardianship and Protective Proceedings Act (UGPPA). Minn. Stat. §§ 524.5-101 to .5-502 (2010). Minn. Stat. § 524.5-106 provides that the district court "has jurisdiction over[] guardianship and related proceedings . . . , protective proceedings . . . , and property coming into the control of a guardian or conservator." We will not interfere with a district court's appointment absent a clear abuse of discretion. *In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 63 (Minn. App. 1990).

Appellant asserts that the district court failed to follow the appropriate procedure to appoint a conservator under Minn. Stat. § 525.54, subd. 5. This statute has been

repealed. 2003 Minn. Laws ch. 12, art. 2, § 8. Minnesota has since adopted UGPPA, which provides that a conservator may be appointed if the district court finds that: (1) the individual is unable to manage her property or business affairs; (2) property will be wasted or dissipated absent management; and (3) no less-restrictive means exist. Minn. Stat. § 524.5-409, subd. 1(a). The district court found that appellant's wife is incapable of managing her finances. The district court did not expressly make findings regarding the second and third factors because the parties agreed to allow the guardian to evaluate whether a conservator was appropriate. After agreeing to authorize the guardian to appoint a conservator, appellant refused to pay any cost associated with his wife, including a \$19,000 nursing-home bill. Moreover, appellant failed to make any formal objection to the guardian's appointment of the conservator, and the hearing on the matter was canceled due to appellant's inaction. The appointment was appropriate.

Appellant also argues that the district court lacked jurisdiction to dismiss his petition to remove the conservator without a hearing. But the district court may, in its discretion, waive the notice or hearing requirements on a petition to remove a guardian or conservator. Minn. Stat. § 524.5-414(d). Here, appellant initially informed the district court that he would speak with opposing counsel to arrange an agreeable hearing date for the removal petition. Nearly two months passed without appellant providing the court with a hearing date, and appellant never contacted opposing counsel. Appellant did not request a hearing date until one week before the hearing requested by the conservator; at this time, the nursing home was threatening to discharge appellant's wife due to his

unwillingness to pay her bills. It was completely within the district court's discretion to deny appellant's motion without a hearing under these circumstances.

Attorney Fees

Appellant also challenges the district court's award of attorney fees to the conservator. The issue of attorney fees in conservatorship cases is also governed by UGPPA, which provides that "if the court determines that a [party] . . . has not acted in good faith, the court *shall* order some or all of the fees or costs incurred in the proceedings to be borne by the [party] . . . not acting in good faith." Minn. Stat. § 524.5-502(b) (emphasis added). This court reviews an award of attorney fees for abuse of discretion. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

Appellant first argues that the conservator failed to adequately support the request for attorney fees. But because the conservator provided a supporting affidavit, appellant's argument fails. *See* Minn. R. Gen. Pract. 119.02 (requiring an affidavit to support a request for attorney fees). Appellant also claims that there was no bad faith warranting an award of attorney fees. The record indicates otherwise. Appellant has refused to provide information to the conservator, failed to formally file objections to the conservator appointment resulting in the cancellation of a hearing, failed to secure a court date for his removal petition for two months, refused to cooperate with the conservator even when faced with the threat of his wife being ejected from the nursing home, and attempted to siphon her social-security payments in flagrant disregard of the court's order directing these benefits to be administered to a payee. Accordingly, the district court's

award of attorney fees is supported by the record, and the district court did not abuse its discretion.

Ex Parte Motion

Appellant argues that the district court erred by failing to address his ex parte motion to release his wife from the nursing home and back into his care. Minn. R. Civ. P. 7.02 requires “written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made ex parte.” Appellant cites to no provision in the UGPPA entitling him to ex parte relief. Absent such an exception, the district court was not allowed to rule on appellant’s ex parte motion. Accordingly, the district court did not err by failing to rule on appellant’s ex parte motion.

Contempt Finding

Appellant also challenges the district court’s contempt finding. The district court vacated its contempt finding in an amended order the day before appellant filed this appeal. This argument is moot.

Fraud Upon the Court

Finally, appellant argues that the district court’s orders were influenced by a series of fraudulent representations made by the guardian, the conservator, and the nursing home. Because appellant failed to raise these issues before the district court, he is precluded from arguing them for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.