

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2212**

In re the Guardianship and/or Conservatorship of:
Lois L. Rothfusz, Ward/Protected Person.

**Filed July 9, 2012
Affirmed
Cleary, Judge**

Ramsey County District Court
File No. 62-PR-07-665

Vincent Courtney, Courtney and Courtney, St. Paul, Minnesota (for ward/protected person Rothfusz)

Carol Grant, Kurzman Grant Law Office, Minneapolis, Minnesota (for appellant Brown)

Andrew Baese, Briggs and Morgan P.A., St. Paul, Minnesota (for respondent Fiduciary Foundation LLC)

Daniel W. Boerigter, Steven L. Theesfeld, Yost & Baill, LLP, Minneapolis, Minnesota (for respondent Alternate Decision Makers, Inc.)

Sue Field, Fridley, Minnesota (pro se respondent)

Considered and decided by Cleary, Presiding Judge; Stauber, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Appellant Kathy Brown petitioned to be appointed successor guardian/conservator of her mother, ward Lois Rothfusz. During the appointment hearing, the district court

denied Brown's request to adjourn the hearing until Rothfusz could be present and testify. Following the hearing, the court appointed a professional guardian/conservator, rather than Brown. Because we hold that the district court did not abuse its discretion by making these decisions, we affirm.

FACTS

This matter initially arose out of competing petitions filed by Kathy Brown and her sister Susan Field requesting that a guardian and conservator be appointed for their mother, Lois Rothfusz. In April 2010, Rothfusz's attending physician stated that Rothfusz suffers from Alzheimer's dementia with hearing loss and anxiety, needs 24-hour care, and is unable to make decisions, take medicine by herself, or comprehend legal documents. The physician listed Rothfusz's prognosis as, "Poor, will not improve." The physician also stated:

By reason of the medical condition of [Rothfusz] as supported by the facts set forth in the above statement, it is my opinion that [Rothfusz] is unable to attend the hearing on the petition requesting the appointment of an emergency guardian for [Rothfusz], or that her attendance at the hearing would not be beneficial to her.

In September 2010, Brown, Field, and Rothfusz, through their attorneys, stipulated to the facts contained in the physician's April 2010 statement and to Alternative Decision Makers, Inc. (ADMI) being appointed guardian/conservator. The district court approved this stipulation and appointed ADMI guardian/conservator of Rothfusz.

In April 2011, Brown petitioned to be appointed successor guardian/conservator, arguing that ADMI was not willing or able to provide the necessary care for Rothfusz, or

to preserve Rothfusz's assets or use them to provide necessary care. Brown, Field, and ADMI, as well as Rothfusz, through her attorney Vincent Courtney, subsequently stipulated that ADMI would temporarily continue to act as guardian/conservator, and that Courtney, Brown, and Field would submit names of proposed successor guardian/conservators. If Courtney, Brown, and Field could not agree on a successor guardian/conservator, the parties stipulated to return to court and allow the court to make the final selection.

Courtney, Brown, and Field did not agree on a successor guardian/conservator, and the parties appeared in court in October 2011. At the beginning of the hearing, Brown objected to the fact that Rothfusz was not present, arguing that Rothfusz wished to appear to express her opinion as to successor guardian/conservator and that Rothfusz had not signed a waiver of her appearance. Brown requested that the hearing be adjourned until Rothfusz could be present. Courtney did not object to the hearing taking place without Rothfusz's presence, and in fact felt that Rothfusz would not be able to hear or understand the proceeding, which would cause her anxiety. Courtney stated, "I had one meeting with [Rothfusz]. I absolutely was unable to communicate with her. She did not understand what I was saying." An attorney for ADMI stated that Rothfusz's travel outside of her home had been restricted, that the hearing should proceed without Rothfusz's presence, and that Courtney understood what was in Rothfusz's best interests and could communicate that to the court. Field agreed with Courtney and ADMI's attorney that it would not be appropriate for Rothfusz to attend the hearing because Rothfusz would not understand what was happening, which would increase her anxiety.

A nurse practitioner who saw Rothfusz on a regular basis had provided a letter for the hearing that stated that, in her opinion, Rothfusz “would not benefit from attending or contribute to a court hearing. This would be disruptive and induce unnecessary anxiety.” The report of the court-appointed visitor was also produced, which stated, “It is my impression that [Rothfusz] has at least moderate dementia, that she does not understand the nature of the proceedings, that she is not able to direct her care or to give informed consent or to make reasonable judgments about the performance of her guardian or conservator.” Rothfusz had not attended any of the previous probate hearings. Based on all of this, the court denied Brown’s request to adjourn the hearing until Rothfusz could be present.

Turning to the appointment of a successor guardian/conservator, Courtney had previously proposed four names, only one of which, Fiduciary Foundation, LLC, ultimately agreed to be appointed. Field supported the appointment of Fiduciary Foundation. Brown requested that she be appointed successor guardian/conservator, arguing that she is the closest to Rothfusz, that Rothfusz wanted her to be appointed, and that a family member could better care for Rothfusz than a stranger. Courtney, Field, and ADMI opposed Brown being appointed, claiming that Brown was not fit to be guardian/conservator and that such an appointment would not work out because of the long history of animosity between Brown and Field. At the close of the hearing, the court stated:

I have heard the evidence and let me just say that this is one of the most acrimonious cases I have heard in 20 years on the bench. It is a shame that this has been such a problem

between the daughters, and I can't help but wonder how it has affected the poor mother.

At this time there is no question but that there has to be a professional guardian in this case with this degree of difficulty, and I believe that we do have a person here who is willing to accept the responsibility.

The court subsequently issued an order appointing Fiduciary Foundation as successor guardian/conservator of Rothfusz. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by refusing to adjourn the hearing on the appointment of successor guardian/conservator until Rothfusz could be present and testify.

District courts have broad discretion in overseeing and regulating courtroom conduct and procedure. *State v. Lindsey*, 632 N.W.2d 652, 658–59 (Minn. 2001). Whether to grant a continuance is also within a district court's discretion. *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998). For hearings regarding the judicial appointment of guardians and conservators, “[t]he respondent shall attend and participate in the hearing, unless excused by the court for good cause.” Minn. Stat. §§ 524.5-307(a), .5-408(a) (2010).

In April 2010, Rothfusz's physician stated that Rothfusz was unable to attend a previous court hearing due to her medical condition and that Rothfusz's prognosis was poor and would not improve. Courtney, Field, ADMI, a nurse practitioner who regularly saw Rothfusz, and the court-appointed visitor all felt that it would be inappropriate for Rothfusz to attend the hearing because she would not understand what was going on, which would cause her increased anxiety. Rothfusz had an attorney who had been

appointed to represent her, and Rothfusz had not attended any of the previous probate hearings.

Brown argues that it is a requirement that a ward attend a guardianship or conservatorship hearing unless appearance is waived or a physician's statement indicates a medical inability to attend. The law previously required that:

If the proposed ward or conservatee is within the state, that person shall be present at the hearing unless in a meeting with a visitor that person specifically waives the right to appear in person or is not able to attend by reason of medical condition as evidenced by a written statement from a licensed physician.

Minn. Stat. § 525.551, subd. 1 (2002). However, this statute was repealed in 2003 and the good-cause language in Minn. Stat. §§ 524.5-307(a), .5-408(a) was then enacted. *See* 2003 Minn. Laws ch. 12, art. 1, §§ 31, 47; 2003 Minn. Laws ch. 12, art. 2, § 8. The district court did not abuse its discretion by finding good cause to excuse Rothfusz from the hearing and by refusing to adjourn the appointment hearing until Rothfusz could be present and testify.

II. The district court did not abuse its discretion by denying Brown's request to be appointed successor guardian/conservator.

The appointment of guardians and conservators is a matter for and within the discretion of the probate court. *In re Guardianship of Kowalski*, 478 N.W.2d 790, 792 (Minn. App. 1991), *review denied* (Minn. Feb. 10, 1992); *In re Conservatorship of Kocemba*, 429 N.W.2d 302, 306 (Minn. App. 1988). A reviewing court may not interfere with the exercise of that discretion except in the case of clear abuse. *Kowalski*, 478 N.W.2d at 792; *Kocemba*, 429 N.W.2d at 306.

The ward's best interests are the decisive factor and the court's paramount concern when deciding who to appoint as guardian and conservator of a ward. *In re Guardianship of Autio*, 747 N.W.2d 600, 603 (Minn. App. 2008); *Schmidt v. Hebeisen*, 347 N.W.2d 62, 64 (Minn. App. 1984). “[T]he court, in appointing a guardian, shall consider persons otherwise qualified in the following order of priority: . . . (4) an adult child of the respondent; . . . (8) any other adult or a professional guardian.” Minn. Stat. § 524.5-309(a) (2010). *See also* Minn. Stat. § 524.5-413(a) (2010) (specifying a similar order of priority for a court to consider when appointing a conservator). “The 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.” Minn. Stat. § 524.5-309(b) (2010); *see also* Minn. Stat. § 524.5-413(c) (2010) (using nearly identical language for a person protected by a conservatorship).

In a case with facts nearly identical to here, two daughters each sought to be appointed guardian of their mother, who suffered from dementia as a result of Alzheimer's disease. *In re Guardianship of Wells*, 733 N.W.2d 506, 507–08 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). The mother had expressed her preference that one of the daughters be appointed her guardian. *Id.* at 511. Instead, the district court appointed a professional guardian, citing as the reason for its decision the daughters' longstanding conflict and animosity and stating that appointing one of the daughters would only exacerbate the intrafamily dispute, which would not be in the best interests the mother. *Id.* at 510–11. This court upheld the district court's appointment of a professional guardian, determining that the district court had properly considered the best

interests of the mother and that the appointment decision was not an abuse of discretion. *Id.* at 511–12. *See also In re Conservatorship of Edwards*, 390 N.W.2d 300, 305 (Minn. App. 1986) (“The probate court’s appointment of a third party under these circumstances was a proper exercise of discretion. . . . The children cannot agree upon who should care for their aged father. Thus, it is appropriate that a third party be charged with that responsibility.”).

Similarly, the district court determined that a professional guardian/conservator was necessary in this case due to the acrimonious relationship between Brown and Field and the fact that the relationship may be affecting Rothfusz. Courtney, Field, and ADMI supported the appointment of Fiduciary Foundations as successor guardian/conservator. Although Rothfusz may have wanted Brown to be appointed instead, the district court was required to consider the best interests of Rothfusz and had discretion to decline to appoint Brown. Based on the record, the district court’s decision to appoint a professional guardian/conservator appears to have been in Rothfusz’s best interests. The district court did not abuse its discretion by denying Brown’s request to be appointed successor guardian/conservator.

Affirmed.