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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1942**

In re the Guardianship of: Jennifer Bixley,  
Ward,  
Jean Bixley, petitioner,  
Appellant,  
Joyce Wallace (Isanti County Family Services),  
Petitioner Below,  
Steve Haavisto,  
Guardian ad Litem, County of Isanti,  
Petitioner Below.

**Filed November 18, 2008  
Affirmed  
Stoneburner, Judge**

Isanti County District Court  
File No. 30PR0662

Stephen Anderson, 441 South Main Street, Cambridge, MN 55008 (for ward)

Jean M. Bixley, 3220 Roanoke Street Northwest, Cambridge, MN 55008-7020 (pro se  
appellant)

Jeffrey Edblad, Isanti County Attorney, Shila Walek Hooper, Assistant County Attorney,  
555 18th Avenue Southwest, Cambridge, MN 55088 (for respondent Wallace)

Steve Haavisto, 509 Third Street, Pine City, MN 55063 (guardian ad litem)

Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and  
Stauber, Judge.

## UNPUBLISHED OPINION

**STONEBURNER**, Judge

Appellant challenges the district court's appointment of Lutheran Social Services as guardian for her adult daughter, arguing that the appointee lacks the knowledge and the desire to treat what appellant considers to be her daughter's primary medical condition. Because the district court did not abuse its discretion in appointing Lutheran Social Services, we affirm.

### FACTS

The ward, Jennifer Bixley (J.B.), is the 27-year-old daughter of appellant Jean Bixley. Following the emergency appointment of Isanti County Family Services (the county) as J.B.'s guardian in August of 2006, the county removed J.B. from Bixley's home and placed her in the foster home of David and Joy Karcher, who operate a licensed group home. The county petitioned the district court for appointment of Lutheran Social Services (LSS)<sup>1</sup> as J.B.'s guardian. Bixley petitioned the district court for the appointment of a family friend, Kathy Krier, as J.B.'s guardian. The county objected to Bixley's nominee. At trial, both Bixley and the county agreed that a guardian should be appointed for J.B. and should be granted all of the powers provided under Minn. Stat § 525.4–313. It is not disputed that the nominees have equal priority under Minn. Stat. § 524.5–309 (2006).

Bixley's argument that Krier is best qualified to be J.B.'s guardian is premised on her conviction that J.B. suffers from a medical condition shared by Krier, that LSS has

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<sup>1</sup> LSS is a non-profit corporation that provides guardianship services.

shown no inclination to learn about or treat. Bixley presented evidence from Dr. Christopher Miles Foley that Jennifer suffers from porphyrin enzyme disorder and Multiple Chemical Sensitivities (MCS). Bixley's main focus is on the MCS diagnosis. Dr. Foley described MCS as "a clinical condition . . . that is the result of exposures to . . . volatile organic compounds, odors, fumes, perfumes, industrial solvents, that, after a time, reproduces symptoms that can range from nausea, fatigue, headache, disordered thinking, weight loss, depression, many ill-defined types of symptoms that are reproducible upon repeated exposures." Krier testified that she also suffers from, and is therefore knowledgeable about, MCS. She knows J.B. and is willing and able to provide living space for J.B. in her own controlled-environment residence.

The county called Dr. Thomas A. Sult, a board-certified family practitioner specializing in functional medicine, a discipline that looks at the fundamental biochemical causes of illness. J.B. was a patient of Dr. Sult beginning in May 2006. Dr. Sult opined that, based on J.B.'s thriving in foster care, despite exposure there to common chemicals, J.B. does not have, nor has she ever had, MCS.<sup>2</sup>

The county also called Dr. Jeannie L. Beattie, a neurologist who specializes in epilepsy. Dr. Beattie examined and tested J.B. in late 2006 and early 2007 and diagnosed J.B. with epilepsy. Dr. Beattie testified that, to her knowledge, MCS is not an accepted medical diagnosis.

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<sup>2</sup> Bixley attacks the credibility of Dr. Sult's opinions on the basis that he did not review numerous medical records that Bixley had turned over to J.B.'s guardian ad litem. But Dr. Sult's opinion that J.B. does not suffer from MCS is based primarily on the empirical evidence of her current success in living in a normal environment, rather than J.B.'s medical history.

The district court also heard the testimony of Amy Yarbrough, the county social worker who was J.B.'s case manager under a medical assistance program, Community Alternatives for Disabled Individuals (CADI) that provides in-home services beyond what medical assistance pays for; Kimberly Bahl, J.B.'s LSS guardian; Kristal Huntley-Egemo, Isanti County Family Services social service supervisor who has been involved with J.B.; Dr. Norman Cohen, a licensed psychologist who performed a neuropsychological evaluation on J.B. to evaluate her thinking skills; Joy Karcher, J.B.'s foster parent; Nola Smith, who had been a personal care attendant (PCA) for J.B. before J.B. was removed from Bixley's home; Kelly Larson, also a former PCA for J.B.; Leann Peters, a friend of Bixley who also suffers from MCS; Bixley; and Krier.<sup>3</sup>

Based on the evidence presented and arguments of counsel, the district court found that J.B. is developmentally disabled and that there is a difference of opinion among the witnesses about whether J.B. suffers from MCS. The district court found that the proposed LSS guardian is "well aware of [J.B.'s] health issues," and that the foster parents who have cared for J.B. since August 29, 2006, "have great experience in following specific medical advice and documenting the critical health issues that is required for someone suffering from the maladies (exclusive of MCS) of [J.B.]."

The district court acknowledged that Krier has built a house designed to avoid the effects of chemicals, with an area that could be used as an apartment for J.B. But the district court noted that there is no evidence that Krier has "training or experience in caring for the developmentally disabled or any area of [J.B.'s] health concerns except

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<sup>3</sup> The trial transcript is 466 pages contained in three volumes.

[Krier's] own experience with her diagnosis of MCS.” The district court concluded that J.B.'s best interests will be served by continuation of her current living arrangement. The district court appointed LSS as J.B.'s guardian, and this appeal followed.

## D E C I S I O N

### **I. Evidence not in the record will not be considered on appeal.**

We first address the county's objection to this court's consideration of materials filed by Bixley that are not part of the district court record. “The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal[.]” Minn. R. App. P. 110.01. “Only matters before the trial court may be considered by the reviewing court.” *In re Conservatorship of Foster*, 535 N.W.2d 677, 684 (Minn. App. 1995) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988)).

By order dated January 18, 2008, this court denied Bixley's motion to accept her appendix. Therefore, we will not consider portions of Bixley's brief that refer to the excluded documents or any evidence that is not in the record.<sup>4</sup>

### **II. The district court did not abuse its discretion in appointing LSS as J.B.'s guardian.**

The appointment of a guardian is a matter peculiarly within the discretion of the district court that will not be reversed except in the case of a clear abuse of discretion. *In re Guardianship of Kowalski*, 478 N.W.2d 790, 792 (Minn. App. 1991), *review denied*

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<sup>4</sup> Because Bixley's argument about “testimony/evidence not allowed or not provided” is based on evidence not in the record, we decline to address this issue. The record does not explain why there is no report from or testimony by the guardian ad litem (GAL) to whom Bixley delivered copies of medical records, with the expectation that those records would be addressed by the GAL. GALs are appointed to assist the district court, but the record we have received does not provide any information from the GAL.

(Minn. Feb. 10, 1992). “With respect to persons having equal priority, the court shall select the one it considers best qualified.” Minn. Stat. § 524.5–309 (b) (2006).

Here, the district court referred to J.B.’s best interests and did not explicitly state whom it considered to be the best-qualified candidate. But the findings reflect the district court’s implicit determination that proposed LSS guardian Kimberly Bahl is the best qualified of the proposed guardians. The district court made findings on Bahl’s education and experience working with developmentally disabled wards and on her awareness of J.B.’s health issues. The district court also found that LSS is likely to maintain J.B. in her current placement, made findings on the experience and ability of J.B.’s current foster parents to care for J.B., and concluded that remaining in her current placement is in J.B.’s best interests. The district court specifically found that Krier lacks any training or experience in caring for the developmentally disabled and also lacks expertise in any area of J.B.’s health concerns other than Krier’s own experience with MCS. Despite the district court’s failure to specifically address factors set forth in the statute, we conclude that because the record plainly reflects that the district court weighed the qualifications of both nominees and found LSS better qualified to be J.B.’s guardian, a remand for additional findings is not required.

The district court noted the dispute among physicians about whether J.B. suffers from MCS, but, by finding that it is in J.B.’s best interests to remain in her current placement, implicitly rejected Bixley’s premise that J.B. is currently in need of a restrictive environment that can best be provided by Krier. There is evidence in the

record to support the district court's implied finding that placing J.B. in such a restrictive environment is not necessary for J.B. or in her best interests at this time.

Bixley essentially asks this court to reweigh the evidence and to conclude otherwise. Although we are not insensitive to Bixley's natural concern for her daughter's needs, we defer to the credibility determinations of the district court. On this record, we conclude that the district court did not abuse its discretion by implicitly finding that LSS is best qualified to serve as J.B.'s guardian.

**Affirmed.**