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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0787**

In re the Conservatorship of: Myrtle Haack, Protected Person.

**Filed March 31, 2009  
Affirmed  
Toussaint, Chief Judge**

LeSueur County District Court  
File No. 40-P7-96-000425

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Considered and decided by Toussaint, Chief Judge; Schellhas, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**TOUSSAINT**, Chief Judge

Appellants Susie Ruff, a/k/a Carol A. Ruff, Leroy Haas, Linda Wilde, Althea Brown, and Richard Haas challenge the district court order continuing the

conservatorship of their mother, Myrtle Haack, and appointing Lutheran Social Services as successor conservator. Because the district court did not abuse its discretion in continuing the conservatorship and appointing Lutheran Social Services as successor conservator, we affirm.

## D E C I S I O N

“The appointment of a conservator is a matter within the district court’s discretion and will not be disturbed absent a clear abuse of that discretion.” *In re Conservatorship of Geldert*, 621 N.W.2d 285, 287 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001).

### I.

Appellants claim that their mother’s conservatorship should be terminated because there are less-restrictive means by which her financial affairs can be managed, specifically, through her trust that is currently under court supervision.

“On petition of any person interested in the protected person’s welfare, the court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator.” Minn. Stat. § 524.5-431(c) (2008). “Upon the establishment of a prima facie case for termination, the court shall order termination unless it is proved that continuation of the conservatorship is in the best interest of the protected person.” Minn. Stat. § 524.5-431(d) (2008).

Haack voluntarily requested her original conservatorship in 1996, after establishing her trust, because she recognized the need to have an outside person manage her major financial affairs and because she had property that could be dissipated without

proper management. Upon establishing Haack's conservatorship, the district court concluded that she was incapable of approving or withholding approval of any contract, except those regarding necessities, and of possessing and managing her estate. Nothing in the record establishes that Haack no longer needs the assistance or protection of a conservator. *See* Minn. Stat. § 524.5-401(2) (2008) (stating that district court may appoint conservator when individual is impaired in ability to evaluate information or make decisions and unable to manage property).

Appellants, as trustees, manage the property in Haack's trust and the income that it generates. Appellants are not neutral third parties, however; they are beneficiaries of the trust assets upon Haack's death. Without a conservatorship in place, no neutral third party is representing Haack and protecting her interest in the trust assets. On this record, appellants have not established a prima facie case for termination of Haack's conservatorship. The district court did not abuse its discretion in continuing Haack's conservatorship as termination of the conservatorship was not in her best interests.

## **II.**

A conservator's resignation, upon petition, "is effective when approved by the court." Minn. Stat. § 524.5-112(a) (2008). A district court may appoint a successor conservator in the event of a vacancy. Minn. Stat. § 524.5-112(c) (2008). Here, on recommendation of the resigning conservator, the district court appointed Lutheran Social Services as successor conservator.

When appointing a conservator, a district court shall first consider those persons given statutory priority for such an appointment. Minn. Stat. § 524.5-413(a) (2008). As

relevant here, Haack's adult children take priority over third parties. *Id.* at (5). But the district court may, in the best interests of the conservatee, decline to appoint a person having priority and rather appoint a person having a lower priority or no priority. Minn. Stat. § 524.5-413(c) (2008).

Appellants argue that the district court should have appointed one of Haack's daughters as successor conservator because the daughter is most familiar with Haack's financial matters and has statutory priority. Respondent Robert Haas, Haack's son, counters that, because the district court had knowledge of the entire record, its decision to appoint Lutheran Social Services as the successor conservator is clearly within its discretion. Respondent adds that appointing Lutheran Social Services was in Haack's best interests because Lutheran Social Services is an independent agency with no financial conflict of interest in managing Haack's affairs.

We must defer to the district court's discretion in appointing Lutheran Social Services as successor conservator, even if Lutheran Social Services did not have statutory priority, because the record indicates that doing so was in Haack's best interests. The district court did not abuse its discretion in appointing Lutheran Social Services as successor conservator.

**Affirmed.**