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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2180**

In re the Guardianship Christine Rose Samson,
Proposed Ward and Protected Person

**Filed June 18, 2012
Affirmed
Chutich, Judge**

St. Louis County District Court
File No. 69VI-PR-11-5

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Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Ludwig Samson challenges a district court order dismissing his petition to be appointed as his mother's guardian, arguing that the court erred by (1) requiring a physician's statement to support his petition for guardianship; (2) determining that a durable power of attorney executed by his mother provides a less restrictive alternative to

guardianship; and (3) failing to hold an evidentiary hearing or determine his mother's best interests. Because the district court properly dismissed the case, we affirm.

FACTS

In November 1997, Christine Samson executed a "Durable Power of Attorney for Health Care" (power of attorney) designating her daughter, Elizabeth Kuitunen, to serve as her health-care agent. In the event that Kuitunen was unable to serve as her agent, Christine Samson designated her son Ludwig Samson (Samson) as her first alternate agent, and her son, Bernard Samson, to serve as her second alternate agent. In October 2004, Christine Samson moved to Virginia Convalescent Center in Virginia, Minnesota, where she currently resides. Christine Samson is 98 years old and is incapacitated by dementia.

In March 2011, Samson petitioned for guardianship of his mother. Kuitunen moved for the petition to be dismissed because the health-care directive was already in place, contending that creating a guardianship was therefore unnecessary. Alternatively, Kuitunen argued that she should be appointed as her mother's guardian. The district court granted Kuitunen's motion and dismissed Samson's petition. This appeal follows.

DECISION

I.

Samson contends that the district court erred in granting Kuitunen's motion to dismiss for failure to state a claim. Minn. R. Civ. P. 12.02 requires a court to treat a motion to dismiss as a motion for summary judgment if matters outside the pleadings are presented to and not excluded by the court. Here, the district court received and

considered materials outside the pleadings; we therefore review the district court's determinations under a summary judgment standard. *See, e.g., N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004) (reviewing a district court's decision under the summary judgment standard of review because it considered matters outside of the pleadings in ruling on a motion for judgment on the pleadings).

In reviewing a ruling on summary judgment, we consider “(1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We view the evidence in the light most favorable to the nonmoving party. *Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009).

Minn. Stat. § 524.5-303 (2010) sets forth the requirements for a petition of guardianship. The petitioner must state, among other things, “the reason why guardianship is necessary, including a brief description of the nature and extent of the respondent’s alleged incapacity.” Minn. Stat. § 524.5-303, subd. (b)(8). The district court may then appoint a guardian “only if it finds by clear and convincing evidence that (1) the respondent is an incapacitated person; and (2) the respondent’s identified needs cannot be met by less restrictive means.” Minn. Stat. § 524.5-310 (2010). There is no express statutory requirement of a physician’s statement in support of a petition for guardianship.

Samson argues that the district court erred by requiring a physician’s statement to support his petition for guardianship. In opposing the motion to dismiss, Samson argued that a doctor had prescribed Christine Samson the wrong dose of a particular medicine.

While a physician's statement is not specifically required to support a petition for guardianship, the district court properly requested that Samson provide a medical opinion to support this allegation rather than rely on Samson's lay opinion. *See* Minn. R. Civ. P. 56.05 (“[A]n adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial.”). No evidence in the record supports Samson's allegation that Christine Samson was prescribed the wrong dose of medicine.

Additionally, Samson contends that a guardianship is necessary because Kuitunen, Christine Samson's health-care agent, is out of the state for two months in winter and is “unavailable to fulfill the duties of a guardian.” It is undisputed that Kuitunen spends two months out of state, but no evidence in the record suggests that Kuitunen has not been available to properly care for her mother or has failed to take timely action regarding her mother's health-care needs. *See* Minn. Stat. § 145C.10(c) (2010) (providing that a health-care agent is “presumed to be acting in good faith, absent clear and convincing evidence to the contrary”). Samson failed to raise a genuine issue of material fact about whether Christine Samson's needs are being met.

Finally, Samson argues that he should be appointed guardian because Kuitunen has delegated her responsibilities as health-care agent to the nursing home. Samson relies heavily on this court's decision *In re Guardianship of DeYoung*, claiming that the district court erred in not making findings as to whether Kuitunen improperly delegated her responsibilities as health-care agent. 801 N.W.2d 211 (Minn. App. 2011).

In *DeYoung*, this court found that a guardian was prohibited from delegating her powers and duties to a third party and remanded the case to the district court for specific findings on the issue. *Id.* at 217–18. *DeYoung* is easily distinguishable because it considered a petition to remove a guardian, while here the district court considered a motion to dismiss a petition for guardianship.¹

The district court did not err in declining to make findings as to whether Kuitunen delegated her responsibilities; rather, the court properly determined that Samson has not demonstrated that a genuine issue of material fact existed as to whether Kuitunen was somehow deficient in meeting her mother’s needs. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) (“The district court’s function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist.”). In the absence of specific facts supporting Samson’s assertions, the district court properly dismissed his petition for guardianship.

II.

Samson next contends that the district court erred in concluding that “a less restrictive alternative to guardianship exists in the form of the Durable Power of Attorney.” He argues that the power of attorney granted Kuitunen broad powers relating to Christine Samson’s health care. Samson, however, petitioned for an unlimited guardianship and requested all potential guardian authority under Minn. Stat. 524.5-313(c) (2010), including the “power to give any necessary consent to enable the ward to receive necessary medical or other professional care, counsel, treatment, or service.”

¹ Additionally, Kuitunen is Christine Samson’s health-care agent, not guardian.

Minn. Stat. § 524.5-313, subd. (c)(4)(i). If the court granted Samson’s petition, it would automatically suspend Kuitunen’s authority to make decisions for Christine Samson, demonstrating that the requested guardianship is at least as restrictive, if not more so, than the power of attorney. *See* Minn. Stat. § 524.5-310(d) (“If the court grants the guardian any of the powers or duties under section 524.5-313 . . . the authority of a previously appointed health care agent to make health care decisions . . . is suspended until further order of the court or as otherwise provided by this section.”).

Furthermore, a guardian is court appointed and is “subject to the control and direction of the court at all times and in all things.” Minn. Stat. § 524.5-313(a) (2010). By contrast, the power of attorney allowed Christine Samson to appoint a person of her choosing to make decisions on her behalf when she was no longer able to do so. When Christine Samson executed the power of attorney, she made a fully-informed decision and chose her daughter, Kuitunen, over her son, Ludwig Samson. Accordingly, Kuitunen has been acting as Christine Samson’s health-care agent for over fifteen years, since 1997.

The district court honored Christine Samson’s express wishes by declining to override the power of attorney absent a showing that it was insufficient to provide for her needs. The district court did not err in determining that the power of attorney was less restrictive than the guardianship.

III.

Samson asserts that the district court erred by dismissing the petition for guardianship without holding an evidentiary hearing as required by law. *See* Minn. Stat.

§ 524.5-304(a) (2010) (“Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition”); Minn. Stat. § 5-307 (2010) (“The petitioner and respondent may present evidence and subpoena witnesses and documents; examine witnesses, . . . and otherwise participate in the hearing.”). He cites no authority that summary proceedings, such as a motion to dismiss pursuant to rule 12.02(e), do not apply to petitions for guardianship. In fact, Minn. Stat. § 524.5-310(b) expressly states that the district court, “with appropriate findings,” may dismiss the petition. The district court properly heard and granted Kuitunen’s motion to dismiss; the district court did not err by declining to hold an evidentiary hearing when no genuine issue of material fact was presented to it.

Samson further argues that the district court erred by not considering the “best interests” of his mother. Minn. Stat. § 524.5-309(b) (2010) provides that “[t]he court, acting in the *best interest* of the respondent, may decline to appoint a person having priority and appoint a person having lower priority or no priority.” (emphasis added). Because the district court dismissed the petition for guardianship under rule 12.02, it never addressed the priority of potential guardians. The district court did not err by declining to consider this provision.

Affirmed.