

NO. A10-716

State of Minnesota
 In Court of Appeals

Peggy Greer,

Appellant,

v.

Professional Fiduciary, Inc.; Wells Fargo Bank, N.A.;
 Wells Fargo Investments, L.L.C. d/b/a Wells Fargo Private
 Bank Elder Services; and Ruth Ostrom,

Respondents.

JOINT BRIEF OF AMICI CURIAE THE PROBATE AND TRUST LAW
 SECTION OF THE MINNESOTA STATE BAR ASSOCIATION AND
 MINNESOTA ASSOCIATION OF GUARDIANSHIP
 AND CONSERVATORSHIP

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STATEMENT OF INTEREST

The Minnesota State Bar Association (“MSBA”) is a nonprofit Minnesota corporation whose regular members are judges and lawyers in private and government practice admitted to practice before the Minnesota Supreme Court. The MSBA’s goals include aiding the courts in the administration of justice, applying the knowledge and experience of the legal profession to the public good, maintaining high standards of public service, conducting programs of continuing legal education, providing a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, and publishing information related to these goals.

The MSBA’s Probate and Trust Law Section works on behalf of its members and the public to assist with and improve the practice of estate planning, probate, and trust law in Minnesota. It has more than 1,000 members. Section members are frequently consulted to advise clients regarding establishing and maintaining conservatorships and guardianships. The Section seeks to provide information, insight, and legal analysis on the legal and practical impact of the statutory scheme pertaining to conservators and guardians, as well as the material significance of a probate court’s decision to approve a final accounting and discharge of a conservator and guardian and the public’s interest in the finality of those decisions.

The Minnesota Association for Guardianship and Conservatorship (“MAGiC”) is a nonprofit organization founded in 1989 to explore substitute decision-making for vulnerable individuals. MAGiC has over 200 members from Minnesota, North Dakota and Wisconsin. Members include guardians and conservators, attorneys, social workers,

long-term care and housing providers, court personnel, and others interested in ensuring that the appropriate level of quality substitute decision-making is applied consistently.

The MSBA Probate and Trust Section and MAGiC submit this brief jointly, pursuant to this Court's Order, dated May 18, 2010.¹

¹ The undersigned counsel for *Amici* authored the brief in whole, and no persons other than *Amici* made a monetary contribution to the preparation or submission of the brief. Minn. R. Civ. App. P. 129.03.

ARGUMENT

Summary of Argument

The *Amici* urge this Court to apply the plain meaning of Minnesota's guardian and conservator statutes and affirm the probate court's judgment dismissing Appellant's civil claims. In addition to the application of *res judicata*, this case presents a question of statutory interpretation. The Respondents have thoroughly briefed the elements of *res judicata* and that discussion will not be repeated here. This brief will concentrate on the third element of *res judicata*, which examines whether the prior probate proceedings resulted in a judgment on the merits. (See authorities discussed in Wells Fargo Br. at 19; PFI Br. at 14.) To complete an analysis of the third element, this Court will necessarily consider Minnesota's statutory scheme for guardians and conservators.

The Minnesota Legislature recently revised the statutory scheme for guardians and conservators. In 2003, Minnesota enacted the Uniform Guardianship and Conservatorship Act ("UGCA") as part of its probate code. 2003 Minn. Sess. Law Serv. 12 (West); UNIF. GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT, 8A U.L.A. 301 (1997). Articles 3 and 4 of this act govern guardianship and conservatorship proceedings in Minnesota. Minn. Stat. §§ 524.5-301–317; Minn. Stat. §§ 524.5-401–433.

Guardians are responsible for the protection of an incapacitated person's health and welfare, while conservators serve the related function of administering the incapacitated person's finances. This Court has not had occasion to interpret the UGCA's impact on the personal liability of guardians or conservators or the finality of a probate court's order discharging guardians or conservators. Likewise, no court in the

other six uniform act jurisdictions has construed these relevant provisions. This appeal thus requires an interpretation of the UGCA for the first time.

In interpreting statutes, this Court “construe[s] words and phrases according to their plain and ordinary meaning.” *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 9 (Minn. 2008) (quoting *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000)). This Court’s primary duty in interpreting statutes “is to construe the statutory language so as to give effect to the legislative intent.” *Wheeler Lumber Bridge & Supply Co. v. Seaboard Sur. Co.*, 16 N.W.2d 519, 522 (Minn. 1944). If the “legislature’s intent is clearly discernable from plain and unambiguous language” of the statute, this Court must “apply the statute’s plain meaning.” *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007). Although the plain meaning of an unambiguous statute is controlling, this Court often examines the public policy underlying a legislative act. *Amco Ins. Co. v. Indep. School Dist. No. 622*, 627 N.W.2d 683, 687 (Minn. Ct. App. 2001). Of course, policy considerations “do not trump the plain and unambiguous language of the statute.” *Ittel v. Pietig*, 705 N.W.2d 203, 209 (Minn. Ct. App. 2005).

The plain meaning of the UGCA provides that a final order of the probate court discharges conservators of all liability. The act also insulates guardians from personal liability. The *Amici* urge this Court to give effect to the plain meaning of these statutory provisions and affirm the probate court’s judgment dismissing Appellant’s civil claims. Notably, application of the plain meaning of the UGCA will further the public’s interest in protecting incapacitated persons. Holding guardians and conservators personally liable for their official acts, absent fraud or bad faith, will prevent qualified individuals from

serving as guardians and conservators. Few would be willing to assume the risk of caring for our state's most vulnerable citizens. The plain meaning of the UGCA mitigates these unfortunate consequences.

I. STANDARD OF REVIEW

The appellate court reviews questions of statutory interpretation *de novo*. *State v. Wertheimer*, 781 N.W.2d 158, 160 (Minn. 2010).

II. UNDER THE PLAIN LANGUAGE OF THE UGCA, A PROBATE COURT DISCHARGES A CONSERVATOR'S LIABILITY WHEN IT ISSUES A FINAL ORDER AFTER PROPER NOTICE AND A HEARING

In this case, the probate court analyzed the third element of *res judicata* and determined that “a court-approved accounting serves as a final judgment of all matters during that accounting.” (Add. 13, citation omitted.) The court also concluded that “all court-approved matters determined in an approved accounting are *res judicata*.” (*Id.*, citation omitted.) The court ultimately held that “the probate court’s orders approving, settling, and allowing Wells Fargo’s accounts as Conservator in the Greer Conservatorship constitute a final judgment on the merits.” (Add. 16, citations omitted.) Minnesota’s statutory scheme fully supports the probate court’s analysis because it prescribes comprehensive probate proceedings to establish, appoint, maintain, monitor, approve, terminate and discharge a conservatorship. In this case, the probate court followed these procedures perfectly. The probate court closely monitored and approved Wells Fargo’s actions, and discharged Wells Fargo of all liability through a formal court order.

Because a conservator is “subject to the control and direction of the court at all times and in all things,” conservators must comply with the UGCA’s strict reporting requirements designed to defend the incapacitated person’s estate against mismanagement. Minn. Stat. § 524.5-417(a). Under the UGCA, the conservator bears the burden of reporting annually to the probate court with a formal account of the incapacitated person’s estate, including a detailed list of estate assets, services provided to the incapacitated person, and any recommended changes to the scope or plan for the conservatorship. Minn. Stat. § 524.5-420.

The probate court is far from a rubber stamp for the conservator’s actions. In reviewing the conservator’s detailed and comprehensive reports, the probate court must scrutinize “whether the conservator has acted in accordance with the conservatorship plan, whether the conservator, to the extent feasible, has attempted to involve the protected person in decision-making, and whether the conservatorship or its current scope is still appropriate.” UNIF. GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT § 420, CMT. 1, 8A U.L.A. 407 (1997). The probate court’s close monitoring of conservator reports is a “critical component of court oversight of conservatorships to prevent abuses.” *Id.* The UGCA’s ongoing oversight requirements provide a necessary check on conservator’s power, and ensure that the incapacitated person’s assets are handled appropriately.

The UGCA also provides an opportunity for the probate court to consider the incapacitated person’s objections, if any, to the conservator’s actions. After the probate court has thoroughly reviewed the conservator’s report, it must give notice and a hearing

on the report's contents. Minn. Stat. § 524.5-420(a). The Minnesota Rules of Court parallel this notice and hearing requirement, emphasizing the finality of the court's action following the hearing. Minn. Gen. R. Prac. 415(g). The hearing provides an opportunity for all interested parties, including the incapacitated person, to object to the activities disclosed in the conservator's report. If the incapacitated person wishes to challenge the conservator's management of assets, the conservator's provision of services, or the conservator's recommended scope of the conservatorship, the incapacitated person is afforded a full hearing to air such grievances. The probate court must consider these objections and challenges before taking further action on the conservator's report. The hearing thus provides a further check to ensure the conservator is adequately safeguarding the assets of the incapacitated person. By providing a hearing before the probate court, the UGCA fully satisfies "an essential component of a fair and impartial system of justice." 52 Minn. Stat. Ann., Code of Jud. Conduct, Rule 2.6, cmt. 1 (West 2009).

Finally, after the probate court has carefully reviewed the conservator's report and listened to all objections from interested parties, the probate court may "allow" the conservator's report to stand, relieving the conservator of all liabilities under the conservatorship. In this provision, the legislature intended the word "allow" to be interpreted pursuant to its ordinary meaning as "[t]o approve of, accept as true, admit, concede, adopt, or fix." *Black's Law Dictionary* 70 (5th ed. 1979). Under the UGCA, a probate court's order "allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting." Minn. Stat. §

524.5-420(a). The same is true for a final report filed by the conservator at the conclusion of the conservatorship. An order “allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship.” *Id.*

Once the final report has been allowed, the probate court is required to “enter a final order of discharge” of the conservator. Minn. Stat. § 524.5-431(f). Under the plain meaning of “discharge” as “extinguish[ing] an obligation,” *Black’s Law Dictionary* 416 (5th ed. 1979), the final order of discharge extinguishes a conservator’s liabilities to the incapacitated person for actions related to the conservatorship. This is not only a plain reading of the statutory term, it is also the necessary effect of the related provision that a court order “allowing” a conservator’s final report “adjudicates all previously unsettled liabilities relating to the conservatorship.” Minn. Stat. § 524.5-420(a). The UGCA establishes a fair and reasonable procedure that protects the interests of conservators while strongly defending the rights of incapacitated persons.

When considered as a whole, the UGCA’s prescribed process of reporting, monitoring, notice and hearing, allowing, and discharging presents a clear statutory structure in which the incapacitated person and other interested persons have ample opportunity to review, comment, and object to the conservator’s actions. The final opportunity is an appeal from the final discharge order. Minn. Stat. § 525.712 (“appeal may be taken under the Rules of Appellate Procedure by any person aggrieved after service by any party of written notice of the filing of the order, judgment, or decree appealed from, or if no written notice is served, within six months after the filing of the order, judgment, or decree”).

In this case, Wells Fargo fulfilled its requirements as conservator under the UGCA. Wells Fargo filed detailed annual reports as well as a detailed final report of its activities as conservator. (App. 208–212, 218–221, 252–255.) The probate court did not simply approve these reports *pro forma*. The probate court reviewed each report with the scrutiny required by the UGCA. The probate court held open hearings on Wells Fargo’s conservatorship reports, hearings at which Greer or her counsel was present. (Add. 3.) Rather than challenge Wells Fargo’s actions, Greer did the exact opposite. She expressly stated that she “had an opportunity to review said accounts” and had “no objections to said accounts.” (Add. 5.) Only after its diligent review, an open hearing, and Greer’s clear and express assent did the probate court allow Wells Fargo’s reports and grant a final order discharging conservator. (App. 214, 226, 259.) Greer did not appeal the final order. (Add. 6.)

In light of the statutory scheme and this clear procedural history, the probate court correctly dismissed Greer’s civil claims against the conservator under the doctrine of *res judicata*. Wells Fargo fulfilled all its duties as conservator, the probate court adequately reviewed and considered the views of the incapacitated person, granted a final order extinguishing all of Wells Fargo’s liabilities, and no appeal was taken. The statute protected Greer as the legislature intended. Permitting this collateral attack to proceed would upset the delicate legislative balance and frustrate the statutory scheme governing conservatorships.

III. GUARDIANS ARE IMMUNE FROM PERSONAL LIABILITY UNDER THE UGCA

In addition to the probate court's *res judicata* reasons for dismissing Greer's civil claims, one unique provision in Minnesota's guardianship statute bars claims against guardians for their official acts, absent fraud or bad faith. Like conservatorships, guardianship proceedings in Minnesota are governed by the UGCA. Minn. Stat. §§ 524.5-301–317. In approving the UGCA, however, the Minnesota Legislature made a number of significant additions to the act's guardianship provisions. One of these additions expressly limits the personal liability of guardians.

Although both sides argued this liability limitation before the probate court, the court did not discuss the statutory provision in its opinion dismissing Greer's civil claims. Consideration of this statutory provision provides further support for the probate court's judgment. This Court may consider and adopt alternative grounds for affirmance so long as those grounds were presented to the lower court. *Day Masonry v. Indep. School Dist.* 347, 781 N.W.2d 321, 331 (Minn. 2010) ("it is well established in Minnesota law that where a party litigated two separate grounds for recovery and the district court made its decision based on one and not the other, that party can 'stress any sound reason for affirmance' even if 'it is not the one assigned by the trial judge, in support of the decision'") (citing *Penn Anthracite Mining Co. v. Clarkson Sec. Co.*, 287 N.W. 15, 17 (Minn. 1939)).

The Minnesota Legislature included blanket protection for the personal liability of guardians when it passed the UGCA. Minn. Stat. § 524.5-313(c)(2). Under the heading

“Powers and duties of guardian,” the legislature carefully clarified that guardians will not be personally liable should they fail to fulfill their duties to the incapacitated person. *Id.* Specifically, Minnesota’s guardianship statute explains that a guardian’s duties include:

[T]he duty to provide for the ward's care, comfort, and maintenance needs, including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation. *The guardian has no duty to pay for these requirements out of personal funds.* Whenever possible and appropriate, the guardian should meet these requirements through governmental benefits or services to which the ward is entitled, rather than from the ward's estate. *Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian, but the guardian shall have no personal or monetary liability.*

Id. (emphasis added). The immunity granted by this section is broad, covering a guardian’s failure to satisfy the incapacitated person’s care, comfort, and maintenance needs. *Id.* If such needs are not met, the incapacitated person’s recourse is to seek replacement of the guardian.

The original UGCA, drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL), existed for six years before Minnesota passed its modified version. UNIF. GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT, 8A U.L.A. 301 (1997). The original UGCA does not limit personal liability of guardians. Likewise, no other state’s codification of the UGCA affords guardians such broad protection. It is well-settled under Minnesota law that the legislature’s affirmative modification of an existing law “raises a presumption that the legislature intended to make some change in the existing law.” *Honeymead Prods. Co. v. Aetna Cas. & Sur. Co.*, 132 N.W.2d 741, 743 (Minn. 1965) (quoting *W. Union Tel. Co. v. Spaeth*, 44 N.W.2d

440, 442 (Minn. 1950)). Under long-standing canons of statutory construction, the Minnesota Legislature's addition of robust personal liability protection demonstrates its intent to insulate guardians from personal liability, absent fraud or bad faith. The statute's plain meaning thus protects guardians from personal liability, and the *Amici* urge this Court to give effect to this plain meaning.

In this case, Greer alleges that PFI violated its duties to her as an incapacitated person by providing excessive health care and preventing her from living in her own home. The Minnesota guardianship statute expressly immunizes PFI from liability for this type of allegation. Minn. Stat. § 524.5-313(c)(2). Greer does not allege that PFI failed to satisfy her needs for health care and shelter, but instead that PFI made extravagant provision. Where it is clear on the face of section 524.5-313(c)(2) that PFI has no liability for failing to meet Greer's needs, it is equally true that the legislature intended PFI to have no liability for exceeding Greer's needs. This Court should honor the legislature's intent and hold that PFI is not liable for its decisions as guardian.

IV. PUBLIC POLICY SUPPORTS AFFIRMING THE PROBATE COURT'S DECISION

The public's interest in protecting incapacitated persons strongly supports a decision to affirm the probate court's judgment dismissing Appellant's civil claims. Guardians and conservators serve a critical role by protecting our state's most vulnerable citizens. This Court should protect the quality of care these guardians and conservators provide and affirm the probate court's judgment.

Providing the necessary level of care for incapacitated persons is a difficult job. Incapacitated persons are often frustrated with the loss of their independence. Many underestimate their personal needs and want to remain in their homes instead of professional care facilities, even when in-home care would be prohibitively expensive. Although guardians and conservators must consider these concerns, the fact remains that incapacitated persons are, by definition, incapable of caring for themselves. Minn. Stat. § 524.5-102. Guardians and conservators must make the difficult decisions that incapacitated persons cannot. This requires guardians and conservators to act in the incapacitated persons' best interest, even when the incapacitated persons' best interest is contrary to their personal wishes.

Guardians and conservators need to know that providing for the incapacitated person's best interest will not result in personal liability. If an incapacitated person can recover the cost of court-approved care services simply because the incapacitated person did not believe the care was necessary, guardians and conservators will forego serving as guardians and conservators. The risks of protecting incapacitated persons will simply be too high. The result will be fewer, less-qualified guardians and conservators managing larger numbers of incapacitated persons. The quality of care will deteriorate while claims arising from inadequate guardianships and conservatorships will undoubtedly rise. Many incapacitated persons will be left in dangerous home environments instead of the professional care facilities they need. Others will never receive the medical care a guardian or conservator would have provided. Enforcing the plain language of the statute

will discourage these unfortunate consequences and ensure that the best available guardians and conservators continue to protect our state's most vulnerable citizens.

In undertaking their heavy burdens, guardians and conservators need certainty that their liability will be governed by the plain language of the UGCA and the final orders of the probate court. Conservators need assurance that a probate court's final discharge order truly extinguishes conservators' liability to the incapacitated person. Guardians need assurance that the statute's personal liability limitation will be honored. If these plainly worded statutory provisions are ignored, most qualified individuals will simply refuse to accept the risk of protecting incapacitated persons.

CONCLUSION

This appeal raises a statutory interpretation question of first impression, initially, as part of its *res judicata* analysis, but also as alternative grounds on which to support the judgment. The probate court's judgment dismissing Appellant's civil claims should be affirmed based on the doctrine of *res judicata*, in part, because Minnesota's statutory scheme establishes that the discharge order was a judgment on the merits in favor of the conservator. The plain meaning of the UGCA provides that a probate court's final order discharges not only the conservator but also the conservator's liability. As an alternative basis for affirming the probate court's judgment for the guardian, the Minnesota Legislature's additions to the UGCA are significant. The legislature expressly chose to insulate guardians from personal liability. Finally, the public's interest in caring for our most vulnerable citizens requires robust protection for guardians and conservators.

Dated: July 26, 2010

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for Amicus, certifies that this brief complies with the requirements of Minn. R. App, P. 132.01 in that it is printed in 13 point, proportionately spaced typeface utilizing Microsoft Word Word 2007 and contains 3,446 words, including headings, footnotes and quotations.

Dated: July 26, 2010

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