

NO. A10-1768

State of Minnesota
In Court of Appeals

In RE: The Guardianship of
Jeffrey DeYoung

RESPONDENT'S BRIEF

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ARGUMENT

I. The Trial Court Did Not Abuse its Discretion by Denying Mary DeYoung's Petition for Appointment of a Successor Guardian.

On August 6, 2010, the District Court denied Petitioner Mary DeYoung's Petition for the Appointment of a Successor Guardian. (Add. 4)¹ The Court did so because Mary DeYoung failed to meet her burden to establish grounds for the removal of current guardian, Ayanel Guardian Solutions. (Id.)

This decision is reviewed under an abuse-of-discretion standard. *See In re Conservatorship of Brady*, 607 N.W.2d 781, 784 (Minn.2000) (reviewing district court's exercise of discretion and determination of best interest); see also *In re Guardianship of Kowalski*, 478 N.W. 790, 792-96 (Minn.App.1991) (reviewing district court's choice of guardian). The review of the District Court's findings of fact, which provides the basis for its exercise of discretion, is limited to clear-error review, and an appellate court must defer to the district court's decisions on witness credibility. *In re Guardianship of Wells*, 733 N.W.2d 506, 510 (Minn.App.2007) (citing Minn. R. Civ. P. 52.01).

On appeal, Mary DeYoung² offers three reasons why the District Court must be reversed and her Petition granted. Each of these arguments fails.

¹ References to pages in Appellant's Addendum will identified by, "Add. p. ____"

² The Ward's Attorney never appealed the District Court's decision. The Ward, Protected Person Jeffrey DeYoung is a Respondent. Nevertheless the Ward's attorney has submitted a Respondent's Brief which supports the appeal. Indeed, such brief raises the same arguments as those raised by Mary DeYoung. While Respondent Ayanel Guardian Solutions is focusing on the arguments set forth by Ms. DeYoung, it submits this Brief

(1) The District Did Not Abuse its Discretion by Failing to Make a Specific Finding that Allowing Ayanel Guardian Solutions to Continue as Guardian was in the Best Interest of the Ward.

Mary DeYoung cites to Minn. Stat. § 525.551, Subd. 5 -- a repealed statute - and suggests that the District Court had an obligation to make a specific finding that it was in the best interest of the ward to maintain appointment of the current guardian. (A.B. p. 11-12)³ She argues that while this law has been repealed, she could find no case law that holds that the same findings requirements do not apply under the new Uniform Guardianship and Protective Proceedings Act. (Id.). Yet, the absence of case law is not binding or persuasive and reliance on a repealed statute is misplaced.

Mary DeYoung also suggests that in *In re Guardianship of Wells*, 733 N.W.2d 506 (Minn. App. 2007), it was held that district courts were required to make a finding that continuance of a guardian was in the best interests of the ward, even under the new law. (Id.) This is incorrect. A review of *In re Guardianship of Wells*, reveals no such holding. Rather, in that case the Petitioner Frey asserted that the court had failed to adequately explain its reasoning for denial. The reviewing court rejected this argument as unfounded. No mandate to make findings under the new law was announced or even addressed. Accordingly, the District Court did

also in Opposition to the duplicative arguments made by the Ward's Attorney in its Respondent's Brief.

³ References to pages in Appellant's Brief will be identified by, "A.B. p. ____"

nothing wrong when it failed to make a specific finding that continuance of the current Guardian was in the best interest of the Ward.

Further, it is implied from the District Court's findings that continuance of the current Guardian was found to be in the best interest of the Ward. The District Court made several findings explaining its reasoning for denial of the Petition to Appoint a Successor Guardian. It found that the Ward's father believed that the current Guardian was providing "reasonably good" services. (Add. P. 4) It found that the Ward's father believed the Ward was happy at the group home and that it would be disruptive to move him from the Home. (Id.) It found that the Home Ombudsman found no basis for Mary DeYoung's concerns about the Ward's care at the Home. (Add. p. 3) It found that the Guardian had increased Mary DeYoung's visitation time with the Ward including overnight visits. (Id.) It found that Mary DeYoung's concerns about the Ward's medical and dental needs had been adequately addressed. (Add. p. 4).

Accordingly, Mary DeYoung's first argument in support of reversal fails.

(2) It Was Not Clearly Erroneous for the District Court to Find That There Were no Grounds for Removal of the Current Guardian.

Mary DeYoung argues that the current guardian should have been removed because she delegated almost all of her responsibilities to the Ward's group home, failed to provide proper medical care to the Ward, and limited the Ward's contact with his family. (A.B. p. 12-18). The record does not support such assertions.

Rather, it supports the District Court's finding that there was no evidence supporting removal of the guardian.

Contrary to Ms. DeYoung's assertion, a guardian is not statutorily barred from delegating daily care responsibility by placing a ward in a group home. While a guardian may be subject to statutory supervision, this does not mean the guardian must obtain express approval for every act relating to personal care and custody of the ward, or that the guardian is placed in a legal straitjacket which deprives him of all discretion and flexibility in meeting such needs. *See Grier v. Grier's Estate* 252 Minn. 143, 148, 89 N.W.2d 398, 402 (MINN 1958). Even Mary DeYoung admitted that if she was appointed successor guardian she would keep the ward in the current group home:

Q. Now, did you say you no plans on changing Jeff's residence if you were appointed guardian; is that right?

A. No immediate plans.

Q. Okay, and by no immediate, do you have some sort of timetable for that?

A. I think I would want to see, if I became guardian, if we can work together.

Q. An you would leave him at Pathways to Community is that what you're

A. I feel that I would want to see what was the best option for Jeff and if they were the best option for Jeff and if he could stay there and get the care that he needed and there was open communication, I would be open to him staying there.

(V1-T46: June 1, 2010 Transcript, Testimony of Mary DeYoung Page 46, Lines 15- Page 47, Line 4)⁴

Moreover, the record shows that the current guardian maintained significant contact with the group home and the ward. The guardian has met with the Ward at least once a month since her appointment and has visited him during the group home's day program to watch him interact with others. (V3, T. 8-9) She found that he was very comfortable at the group home and that the staff responded to him in a very prompt and professional manner. (V3, T. 20) The Guardian testified that the staff at the group home reports to her at least weekly and sometimes twice a week and that the Ward is supervised 24 hours a day. (V3, T. 52; V3, T.56).

Also, contrary to Mary DeYoung's assertion, the Guardian has properly provided for the Ward's medical care. The District Court found that issues related to the Ward's medical and dental care had been addressed. (Add p. 4 ¶ 5). Mary DeYoung admitted that the Ward was indeed going to the doctor and that a mistake in x-raying the Ward's wrong hand had been remedied. (V1, T46). Also her complaint that the Ward was not getting adequate medical care was determined to be unfounded by the group home Ombudsman:

Q. Okay. Now, I think it was in the summer of 2009 there was on Ombudsman complaint filed in this case; do you recall that?

A. Yes.

Q. And – can you describe, if you know, what the circumstances surrounding that complaint were or what the allegations were?

⁴ References to the Transcript will be identified by volume and page number as, "V__ T.__"

A. I believe the allegations were that Miss DeYoung's time had been restricted with Jeffrey; that he was not getting adequate medical care, and I believe neglect.

Q. And, do you know, did the Ombudsman's Office investigate that?

A. Yes.

Q. Did they prepare a report?

A. Yes.

Q. Okay. Do you remember what their conclusions were?

A. That it was unfounded.

(V3, T.14; Transcript of Proceedings June 28, 2010 Page 14, Line 22 - Page 15, Line 14)

Additionally, contrary to Mary DeYoung's assertion, the Guardian has not improperly restricted the Ward's access to his family. The District Court found that Mary DeYoung's visitation had been gradually increasing. (Add. p. 3). Ms. DeYoung admitted that the amount of visitation she was allowed had increased under the current guardian, including overnight access. (V1, T40-42). The guardian also granted Mary DeYoung offsite visits with the Ward. (V3, T10). In addition, the guardian has tried to accommodate Ms. DeYoung when she asked for extra visitation time. (V3, T12). The guardian also allows the Ward's father weekly visits. (V3, T13). Further, the guardian testified that she placed no restrictions on what Mary DeYoung does with the Ward during her visitation time or with whom they visit. (V3, T14).

Mary DeYoung's second argument in support of reversal fails. The record shows it was not clearly erroneous for the District Court to find a lack of evidence for removal of the current guardian.

(3) It Was Not Clearly Erroneous For The District Court To Find That Mary DeYoung Had Failed To Show That She Would Be The Best Qualified Guardian For the Ward.

Mary DeYoung asserts that, “none of the evidence submitted in this matter established in any manner whatsoever that the appointment of Jeffrey’s mother as Guardian would be in anything but his best interests.” (A.B. p. 26) She argues that by failing to appoint her guardian, the District Court has allowed one employee at the group home to “punish” her and that it was erroneous for the Court to allow this to continue. (A.B. p. 26-27)

Nevertheless, the record shows Ms. DeYoung failed to prove that she would be the best guardian for the Ward. As set forth above, there was substantial evidence that the current guardian was doing an adequate job and that the Ward was doing well under her guardianship. In contrast, there was substantial evidence that Mary DeYoung would not be an adequate guardian, but instead would be a disruptive influence on the Ward.

Specifically, the Ward’s Father supported continuance of the current guardian over Ms. DeYoung’s successor candidacy:

Q. Do you think it’s in Jeff’s best interest to continue to have an independent, professional guardian?

A. Yes, I do. I mean that was the issue back when Jeffrey was 18 or 19 years old. I don’t think or see anything that has changed that would, that would look for a change in that area.

Q. Do you think it’s in Jeff’s best interest that he continue to at Pathways to Communities and the Chowen House?

A. Yes, I do. I think is he doing very well.

Q. Do you think it would be in Jeff’s best interest to have Mary DeYoung appointed as his guardian?

A. No, I don't.

Q. Why not?

A. I think that Mary has a difficult time dealing effectively with people that she disagrees with.

Q. Give me an example of that.

A. Well, yes. I have been around this for a very long time. I have seen a lot have incidents –let's take for example in school when Jeff was over to Ridgeview. If Mary wanted, she would berate the people at the school right to their face. I don't think is particularly productive in terms of doing that to somebody and then expecting them to appropriately care for your child.

Q. So you – you supported having an independent guardian for Jeff ever since he turned 18: is that correct?

A. Correct.

Q. Supported that then and still support that now?

A. Correct.

(V2, T37-39; Page 38, Line 10 - Page 40, Line 15). Likewise, the Supervisor at the Ward's group home testified about several incidents where Mary DeYoung displayed negative behavior:

Q. Okay. Now, there has been some testimony about an incident in around Halloween. I'll call it the Halloween incident. I believe that was 2008. Were you present at the Chowen House that evening?

A. Yes, I was.

Q. Can you briefly describe what happened?

A. Sure. Mary had come to the house with Karen for a visit which Jeff as scheduled and Jeff was in his room watching a movie when they had arrived. And typically during this visit at the home when family members come in to the home and visit with him, she likes to watch movies and hang out in his in bedroom with him.

Now I observe Mary and Karen redirecting Jeff to other parts of the home such as the entryway and the living room instead of just joining him in his bedroom and watching the movie with him. And so during that time frame, Mary had gotten out a camera and wanted to take some pictures of Jeff in the home. We do have pictures of other residents displayed in the home. And due to the privacy matters we cannot allow outsiders to just bring in cameras and take pictures throughout the home as they wish without that being

monitored due to the privacy of the other residents, and the other three residents were home at that time.

And so I had asked Mary to please do not take pictures in the home without permission. So I did take a picture of Mary and Karen and Jeff as she had requested. And they were back in Jeff's bedroom at that point and Jeff was watching his TV. His TV is on a tall dresser and he likes to stand very close to the dresser and watch the TV very close up. And Mary had his arm behind him off to the side using his hand to facilitate communication on boogie board and Jeff seemed to be interested in his movie.

At that time, Mary suggested that had they make a phone call to his aunt I believe it was. And so they turned the movie off and put on speaker phone they were calling someone on the speaker phone I believe it was his aunt and Jeff started to become upset and was crying and screaming. So at that time I observed Jeff's agitated behaviors and asked that they would please leave because it would be best for Jeff to be able to routine – to return to his routine and not be engaged in the agitative behaviors.

And at that time Jeff then walked out in the entryway which was right next to his bedroom and Mary and Karen also accompanied him into the entryway and Jeff was still upset, and Mary was standing in front of him with her hands on his shoulders and made some comment about they can only torture you so long. And at that point, using the words "torture" in front of Jeff with regards to his group home was well as the other residents had heard Jeff getting upset, they had come out of their bedrooms to see what was going on.

So at this point, it not only became disruptive to Jeff's routing for that night, but for the other residents that live in the home as well. So I continued to ask her to leave because it was very inappropriate action that were taking place.

Q. Did other residents did they, they see Jeffry getting agitated?

A. Yes.

Q. Do you know if any of the residents heard the dialogue where Mary used the term "torture". Do you know if any of the residents heard that?

A. Yes. I know they heard the dialogue. I don't know if they heard what was actually said, but they could witness that Jeff was upset from the interactions that were taking place and so they witnessed the disruption.

(V2, T7-10; Page 7, Line 11 - Page 10, Line 1; Page 10, Line 16 - Line 24).

Q. Describe what you saw and what happened?

A. Jeff returned from a visit for a weekend with Mary from Omaha, and he returned with multiple bruises and the bruises were suggestive of handprints. And so I was very concerned. At that point, I am a mandated reporter and I don't have a choice but to call in to the VA and make that report.

Q. Is that what you did?

A. That is in fact what I did.

(V2 T11; Page 11, Line 8 - Line 24)

Q. Okay. I think there was some testimony earlier and clearly the prior Court order gave the guardian the authority to not have either of the parents attend medical appointments. Do you know what the underlying basis for that was?

A. Yes. Previous to the last court date, Mary was attending doctors' appointments with myself and Jeff. It came to the point where we also had to have the PPC nurse come, it was Wendy Bosh at the time, to attend to appointments with us as well because Mary was very disruptive during the appointment. So that was the last time we were at court that they made that Court order.

There was often times where I felt we could not address Jeff's medical needs while we in the appointment because Mary would take control of the appointment, so we didn't have the opportunity to address things that we needed to address.

Q. You testified that Mary was disruptive at the doctor's office?

A. Correct.

Q. Can you describe her behavior?

A. Sure. I observed her taking control of conversations and discussing things with the doctor and not allowing me to get a word in, which is why we had the Pathways to Communities nurse come along as well to basically supervise the doctor's an appointments to make sure that the Pathways to Communities needs were being met as well.

(V18-27; Page 18, Line 25 - Page 19, Line 17 Page 27, Line 16 - Page 28, Line 1)

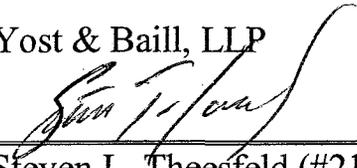
Because of such disruptive behavior by Mary DeYoung, the group home director testified that if Ms. DeYoung was appointed successor guardian, the home would no longer provide services to the Ward. (V2, T31.)

Given this record it was not clearly erroneous for the District Court to find that Mary DeYoung had failed to prove that it would be better for the Ward if she were guardian.

On appeal, Mary DeYoung has failed to offer any reasonable showing that the District Court abused its discretion in denying her Petition for a Successor Guardian. Because the record supports the District Court's decision, this Court must defer to the District Court and affirm its decision.

Dated: January 20, 2011

Yost & Baill, LLP



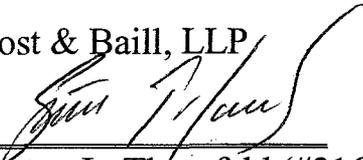
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CERTIFICATE OF BRIEF LENGTH

I hereby certify that this Brief conforms to the requirements as set forth in Minnesota Rules of Civil Procedure 132.01. The length of the Brief is 3139 words. The Brief was prepared using Microsoft Word 2003. The Brief contains 14 point Times New Roman font.

Dated: January 20, 2011

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