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NO: A120660

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**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**In Re: Guardianship and Conservatorship of:**

**Jeraldine J. Pates,**

**Respondent.**

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**BRIEF AND APPENDIX OF APPELLANTS**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF LEGAL ISSUES

- I. Whether the district court erred in appointing a conservator for Jeraldine J. Pates?

The district court appointed a conservator of the estate.

### Apposite Cases/Statutes

1. *Conservatorship of Lundgaard*, 453 N.W. 2d 58 (Minn. App. 1990)
2. Minn. Stat. Sec. 524.5-402
3. *In re Estate of Congdon*, 309 N.W. 2d 261 (1981)

- II. Whether the district court erred by appointing David Younkin as conservator instead of Abraham Younkin who had priority under Minn. Stat. Sec. 524.5-413?

The district court appointed David Younkin as conservator instead of Abraham Younkin

### Apposite Cases/Statutes

1. Minn. Stat. Sec. 524.5-413

- III. Whether the district court erred by granting limited protective powers over the person under Minn. Stat. Sec. 524.-310?

The district court granted protective powers over Jeraldine J. Pates to David Younkin

### Apposite Cases/Statutes

1. Minn. Stat. Sec. 524.5-310
2. Minn. Stat. Sec. 524.5-313
3. Minn. Stat. Sec. 524.5-401

IV. Whether the district court erred by not ordering a cost bond for the conservator?

The district court directed that no cost bond was required.

**Apposite Cases/Statutes**

1. Minn. Stat. Sec. 524.5-413

## STATEMENT OF THE CASE

This matter arises from Isanti County District Court from an Order of February 23, 2012 (Order) by the Honorable P. Hunter Anderson after a trial on a petition for appointment of a guardian and conservator of Respondent Jeraldine J. Pates (Mrs. Pates). A petition dated October 20, 2011 was filed by David Younkin, son of Mrs. Pates, seeking his own appointment as guardian and conservator. The petition was objected to by her son, Abraham Younkin, and her daughter, Linda Towler (the Objectors).

In opposing the petition, the Objectors asked the court to alternatively appoint Abraham Younkin as guardian and conservator if appointments were made. Objectors contended, *inter alia*, that Abraham Younkin was entitled to priority by law based on his nomination and preference by Mrs. Pates. After a trial on January 24, 2012, the district court granted the petition for conservatorship and appointed David Younkin as conservator with no bond. A-5 (Order No. 2). The district court denied the petition for guardianship and found that the court could not find that Mrs. Pates was incapacitated. A-1 (Finding of Fact No. 1). The court noted that it considered the positions of the Court Visitor and Dr. Rosenbloom who recommended appointment of a guardian but found that the Petitioner had not proven by clear and convincing evidence that Mrs. Pates was incapacitated and in need of a

guardian at this time. (Finding of Fact No. 1), A-2. The court observed that she "has not demonstrated any memory loss or confusion that is so great as to cause problems in her everyday life." *Id.* The court, however, granted a Protective Arrangement under Minnesota Statute Section 524.5-310(b) and accorded David Younkin limited protective powers to be exercised after consultation with the other siblings:

- a. To select medical professionals to see the needs (sic) Mrs. Pates. This power is to be exercised only after conferring with Mrs. Pates and considering her reasonable wishes.
- b. To make and attend all medical appointments.
- c. To make arrangements for Ms. Pates to attend all medical appointments.
- d. To make decisions regarding the residence of Ms. Pates after consulting with Ms. Pates and considering her reasonable wishes and providing notice to the other siblings of any intent to change Ms. Pates (sic) residence.

A-5-6 (Conclusion of Law No. 3 and Order No. 4). The court appointed David Younkin as conservator over Mrs. Pates with all of the powers under Minn. Stat. Sec. 524.5-417, subd. C (1-6). A-5 (Order No. 2, 3). This appeal followed.

### **STATEMENT OF FACTS**

Respondent Jeraldine Pates (Mrs. Pates) is 84 years old and the mother of six adult children, including David Younkin, Dale Younkin,

Daniel Younkin, Linda Towler, Douglas Younkin, and Abraham Younkin. A-9-10 (Petition). Her spouse is deceased. Mrs. Pates lives alone in an apartment at Riverwood Village, a senior living facility in Cambridge, Minnesota. *Id.*; T-128, 32.<sup>1</sup> She enjoys living in her apartment and likes her neighbors. T-128. She does some of her own cooking and meals are otherwise available. *Id.* She keeps her apartment neat and clean and is having no problems there. T-129, 132. Mrs. Pates takes her own medications including vitamins. T-127. She has some trouble hearing. T-126.

Mrs. Pates opposed the petition for appointment of a guardian and conservator. T-127. She testified she can take care of herself and that a guardian and conservator were not necessary. T-127, 129. She also testified that if she had to have a guardian or conservator, she would prefer her son, "Abe," with whom she has a good relationship. T-128, 129.

In a meeting with the court visitor on November 23, 2011 at her apartment, she told the social worker that she could manage her affairs and finances herself. A-68-69. Patricia Younkin, David's wife, was present when the court visitor arrived but left the room during the interview. A-72.

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<sup>1</sup> Mrs. Pates's house in Willmar was on the market as of the hearing of January 24, 2012. T-20. Mrs. Pates was aware the house was for sale and discussed this with Dr. Caven. A-77 ("She states that her home is currently up for sale.").

On February 23, 2011, Mrs. Pates was taken to a neurologic exam by her daughter-in-law, Patricia Younkin (David's wife), and was seen by Dr. Michael Rosenbloom in St. Paul. A-15; A-17 (Ex. 3); T-66<sup>2</sup>. She gave input regarding Mrs. Pates's condition. *Id.* This was based on her own observations as well as information told to her by David and Dale Younkin. Ms. Younkin could not recall giving the doctor any specific examples of Mrs. Pates's ability to care for herself or manage her business matters, bills, or appointments. *Id.* at 66-67. The doctor discussed the need to have someone else supervise her finances. A-20. Dr. Rosenbloom noted a diagnosis of "mild probable Alzheimer's disease, among other things." *Id.* He recommended Mrs. Pates begin taking Aricept but Patricia Younkin rejected this advice on the spot without consulting with any of the family members. A-20; T-67. Dr. Rosenbloom's notes indicated that "[i]t appeared that the daughter-in-law was overwhelmed by the diagnosis ..." A-21.

Mrs. Pates was later prescribed Aricept and procuring the medication was coordinated by Abraham. T- 72. The medication is taken daily. *Id.* Mrs. Pates has stated that the medication is helping and she feels very good about it. *Id.* The doctor recommended a family conference be held to discuss Mrs. Pates's care but such a conference was never held. T-67-68.

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<sup>2</sup> Dr. Rosenbloom did not testify at the trial.

Mrs. Pates had been attending appointments with her daughter, Linda, except for the time she lived with David and Patricia Younkin. T-69. Mrs. Pates had been getting to her doctor's appointments and her medical needs attended to according to Patricia Younkin. T-69-70.

### **David Younkin**

David Younkin is the eldest son of Mrs. Pates and lives in Fridley. A-9, 68. He testified that his mother was living in assisted living in an apartment at a senior living facility. T-32. He noted that she makes her own meals other than the one meal a day available at her building. T-33.

David Younkin testified about concerns that his mother was not taking her medication but was not aware of her needing medical treatment because of medication issues. T-34. When asked what medications she was on he responded "the stuff for Alzheimer's, I believe it's called 'Abacet' or something similar." T-44. He said he believed she was taking something for the pain in her neck and might be taking something for allergies. *Id.* He had not explored whether the facility could provide assistance with medication set up for her. T-35. Similarly, he had not attended any of his mother's doctor's appointments. T-39. He was unaware of any recent medical emergencies for his mother. T-46.

David Younkin testified a guardian was necessary because at one

point in time a phone bill of his mother's had not been paid. T-36. He was unaware of any other bills that had not been timely paid. *Id.* No date was given for these events.

He was not aware of his mother improperly spending her money or falling victim to any financial scams. T-44. She was not incurring any unexplained debt. *Id.* He believed her funds were being used for her care. *Id.* There were no pending or recent issues of fraud, money issues, emergencies or situations of her being taken advantage of according to David Younkin. T-46.

He testified that his brother Dale had been handling his mother's finances. T-19. He described a situation related by Dale about his mother withdrawing funds from her bank account. T-19-20. David Younkin testified he believed that his sister, Linda Towler, held the 90 - some thousand dollars in cash. T-20. Ms. Towler, however, testified she was not aware of the location of her mother's \$92,000. T-123. He speculated that the rest of his mother's money "could end up in the basement ..." T-21.

David Younkin testified that his mother's house was an asset that was not very well protected because it was up for sale. T-20. He indicated he did not know what would happen to the proceeds from the sale. T-20-21. There had been no interference by anyone in efforts to sell the house. *Id.*

David Younkin admitted to accompanying his mother to change her power of attorney and trust in her will. T-21. This took place on March 11, 2011 when Mrs. Pates changed or modified her Will, trust, power of attorney and health care directive of April 13, 2010 to name him and Dale Younkin as the designated fiduciaries in place of Abraham Younkin and Linda Towler. A-39, 41, 45, 64. He said that whenever she was with someone "we'd change it, and then they changed it, we changed it, then they changed it." T-21.

David tried to convince his mother to invest a large amount of money with him and she responded "no." T-105-106. When other family members suggested a smaller amount of \$5,000 to \$10,000, he was not interested and wanted all or nothing. T-106-107. In light of this, there are trust issues among Mrs. Pates's children with respect to David handling her funds. T-105-107.

David Younkin estimated he had visited his mother two to three times at her apartment and called her once or twice a month. T-40. Finally, in his career in law enforcement, he was fired from his job with the Fridley Police Department. T-42-44.

### **Dale Younkin**

Dale Younkin, son, lives in Waconia, Minnesota. T-75. Since Mrs.

Pates moved to Cambridge, Minnesota he has seen her one time. *Id.* In the past, he helped with repairs to her house and preparing her annual tax returns. T-75-6. He also helped monitor her bank accounts to ensure there was "nothing funny going on." T-76. He had access to her banking records and tax returns. T-83.

Dale Younkin testified that in 2001 he was told by Mrs. Pates that she had borrowed \$70,000 to his sister, Linda Towler. T-77. He went through the receipts and IOUs with David and Patricia Younkin and determined that \$41,800 was owed. *Id.* The loan was documented and committed to writing. T-109. Eventually, the matter was resolved in arbitration with his sister agreeing to pay \$35,000 at 8% interest. T-77. The balance was paid off early. *Id.* These events occurred in 2002 before her diagnosis of Alzheimer's. T-82.

Dale Younkin testified that one time his mother's phone bill was paid late. T-82. On that occasion, David and Patricia Younkin stopped by Mrs. Pates's home unannounced and noticed the unpaid bill. They picked her up and took the bill with them along with an auto insurance bill. T-112. The insurance bill had been adjusted for a different amount than on the statement. *Id.* Generally, her bills were mostly paid by automatic withdrawal from her account. *Id.* Other than the one telephone bill, he was

unaware of any bills not being current or of her depleting any of her assets.

T-90. He was not aware of any poor decisions regarding her health care. *Id.*

### **Bank Events**

At one time, Mrs. Pates had around \$180,000 in two bank accounts, according to Dale Younkin. T-78-79. Mrs. Pates withdrew half, about \$90,000, from one of the bank accounts. T-80. Mrs. Pates had a long history of keeping cash outside of the bank. T-125. For example, in years past she had saved \$6,000 at home to buy a piece of property in the 1970s. T-125. She and her husband built a home on the property. *Id.* She later saved approximately \$65,000 - \$70,000 in a safe at home. T-125. She used these funds to purchase her home in Cushing, Minnesota. *Id.* She likes to have money outside of the bank. That's been her method of operation. *Id.* The \$92,000 has been kept in a safe and secure location. T-92.

### **Estate Planning by Mrs. Pates on April 13, 2010**

On April 13, 2010, Mrs. Pates executed a Health Care Directive naming Abraham Younkin and Linda Towler as her agents to make health care decisions. Ex. 8; A-45 (HCD of 4/13/10). She also signed a durable power of attorney naming them as her attorneys-in-fact. *See* Ex. 6; A-41 (revocation of power of attorney on 3/11/11 previously signed 4/13/10). She similarly signed a Trust Agreement naming Abraham Younkin and Linda

Towler as co-trustees. Ex. 10: A-52 (Trust Agreement of 4/13/10). The Trust Agreement excluded David Younkin as a residuary beneficiary to receive a distribution upon the death of Mrs. Pates. *Id.*; A-53-54. Mrs. Pates executed her Last Will and Testament on April 13, 2010. Ex. 4; A-32 (Will of 4/13/10). The Will nominated Abraham Younkin and Linda Towler as co-trustees to the residuary trust and co-personal representatives. *Id.*; A-33. It excluded David Younkin as a residual beneficiary. *Id.*; A-33, 36.

#### **Meeting with Attorney Scott Timm of March 11, 2011**

On March 11, 2011, sixteen days after Dr. Rosenbloom's diagnosis of probable Alzheimer's, David and Dale Younkin took Mrs. Pates to see attorney Scott Timm in Waconia, Minnesota, for an estate planning meeting. T-42. She executed numerous estate planning documents revoking and changing the documents prepared on April 13, 2010. Specifically, the power of attorney dated April 13, 2010 was revoked. Ex. 6; A-41 (Revocation of Power of Attorney). It was replaced by a new power of attorney of March 11, 2011 naming David Younkin as first attorney-in-fact and Dale Younkin as successor attorney-in-fact. Ex. 7; A-42 (Power of Attorney of 3/11/11). Her Health Care Directive was amended to name David and Dale Younkin as her health care agents. Ex. 9; A-51 (Amendment No. 1 of 3/11/11 to Health Care Directive). Mrs. Pates's Trust Agreement was amended on

March 11, 2011 to name David and Dale Younkin as co-Trustees and include David as a beneficiary. Ex. 11; A-64. (Amendment No. 1 of 3/11/11 to Jeraldine J. Pates Trust Agreement). The amendment, moreover, provided that before David and Dale Younkin made a major decision regarding management of trust assets, to consult first with Abraham Younkin. T-22; A-64. Finally, Mrs. Pates's Will was also amended with Codicil Number 1 to Will of Jeraldine J. Pates. Ex. 5; A-39. The Codicil substituted provisions of the Will and named David and Dale Younkin as co-trustees of the residual trust and named them as co-personal representatives. Ex. 5; A-39-40 (Codicil of 3/11/11). The provision excluding David Younkin as a beneficiary was revoked. *Id.* Attorney Timm notarized the documents on March 11, 2011. *Id.* at 41, 44, 51, 65.

These documents were examples of David and Dale Younkin changing the power of attorney and the trust of the will and changing them back and forth. T-21. David acknowledged he and Dale helped his mother change the documents when she was with them. *Id.*

### **Linda Towler**

Linda Towler is the daughter of Mrs. Pates and has assisted her mother write checks and pay bills. T-112. Mrs. Pates has been able to write her own checks and her daughter monitors them for accuracy. *Id.* She

acknowledged the one phone bill of her mother's was overlooked, but that there were no consequences with her services and it was an isolated incident. T-112-113.

She sees her mother frequently and has nearly daily contact in person or by telephone. T-111. She helps with transportation to her appointments, grocery shopping, occasional cooking, recreational activities, and socializing. T-112. She testified that her mother takes her regular medications and she checks on her almost daily. T-114-115. When visiting the doctor, her mother is able to answer the doctor's questions and ask questions related to her own care. T-116.

With respect to the ten-year old lawsuit, she and her husband had borrowed money on and off from her mother. T-109. These transactions were reduced to writing and documented. *Id.* The Towlers met with Dale Younkin to review the documentation. T-110. Eventually, the matter proceeded to arbitration where it was resolved by settlement. *Id.* at 110-111.

In regard to the bank account funds of Mrs. Pates's that were withdrawn, Linda Towler did not know where the \$92,000 was located. T-123. She did not have it.

Linda Towler testified that she did not think that a guardian or conservator were needed. T-115-116, 117. If a guardian and conservator

were appointed she testified that it should be Abe. T-117. She felt that he was the closest to her mother over the years and that it was clear to the siblings that Abe was who she wanted to take care of her. T-118, 119.

**Five County Mental Health Center Diagnostic Assessment of June 29, 2011**

On June 29, 2011, Mrs. Pates underwent a diagnostic assessment at Five County Mental Health Center with Elizabeth Caven, Psy.D, Licensed Psychologist. A-76 (Ex. 16); T-76.<sup>3</sup> In the interview, Mrs. Pates indicated she currently resided in her home but that it was currently up for sale. A-77. She explained she would like to eventually move into an assisted living facility with others her age. *Id.* She noted that some of her children wanted her to move in with them but that she did not want to do so. *Id.* She reported that she managed her own finances. *Id.* She said she kept some of her money out of the bank for emergencies. *Id.* In discussing finances, she stated she would like to have some money available in case she would need to pay for nursing home costs in the future. *Id.* She denied having trouble managing household tasks and explained that she kept her home "nice and clean". *Id.* The doctor described Mrs. Pates as "alert and talkative" during the interview. *Id.*

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<sup>3</sup> Mrs. Pates met with Dr. Caven alone. A-76. Her daughter was not present. T-119.

Dr. Caven observed her appearance and dress were appropriate and judgment, insight, and grooming were good. A-76. She noted that Mrs. Pates had no problems with perception and orientation and that her mood/affect, speech, and behavioral aspects were appropriate. *Id.* She observed lucidity and noted cognition with appropriate alertness and memory along with perseverance. *Id.*

Based on the interview information only, it was Dr. Caven's opinion that Mrs. Pates did not meet criteria for a mental health diagnosis. A-77. The doctor opined that although formal testing was not completed, she did not observe cognitive impairment. *Id.* Therefore, Dr. Caven did not have any recommendations. *Id.*

#### **Amended Planning Documents of July 18, 2011**

On July 18, 2011, Mrs. Pates executed a new durable power of attorney that named Abraham Younkin and Linda Towler as co-attorneys-in-fact. Ex. 19; A-89 (POA of 7/18/11). She concurrently revoked the power of attorney that appointed David Younkin and Dale Younkin as attorneys-in-fact. A-92. On July 18, 2011, she signed a new Health Care Directive appointing Linda Towler and Abraham Younkin as her health care agents. Ex. 20; A-93 (HCD of 7/18/11, p. 1). The Health Care Directive also nominated them as the guardian or conservator of her person. *Id.*, par. 5.

## **Amended Estate Planning Documents of September 12, 2011**

The Trust Agreement of Jeraldine Pates was amended on September 12, 2011 by revoking the amendments of March 11, 2011, excluding David and Dale Younkin as beneficiaries, and nominating Abraham Younkin as Trustee. A-96 (Second Amendment to the Trust Agreement of Jeraldine J. Pates of 9/12/11). A new Last Will and Testament was signed by her on the same date. Ex. 18; A-81 (Will of 9/12/11). The Will nominated Abraham J. Younkin as the Trustee of the residual Trust and as Personal Representative of the estate. A-82. The Will also excluded David and Dale Younkin as beneficiaries. A-85 (para. 6.3). The self-proving affidavit, signed by two witnesses, noted that at the time of the signing Mrs. Pates was "... of sound mind and under no constraint or undue influence." A-87.

### **Abraham Younkin**

Abraham (Abe) Younkin is the youngest child of Jeraldine Pates. T-98. He testified his relationship with his mom was good. T-98. He said he had a "great mom" and had a "great childhood." *Id.* He has helped his mother with chores and tasks such as shoveling her sidewalk, replacing the roof on her house, performing home repairs, taking her shopping for groceries, and otherwise spending time with her. T-97-98.

He testified that she did not need a guardian because she basically takes care of herself. T-98. He said that his mother's move to Cambridge was not done in secrecy and that it was his mother's decision to move. T-95, 96. He felt she was not in need of a conservator. T-99. He was unaware of any poor financial decisions she had made regarding money. *Id.*

With respect to the \$92,000 she withdrew from the bank, he stated she withdrew the money out of concerns not to keep it all in one location. T-91-92. He testified that the funds were in a safe and secure location and not in his or his sister's basement. T-92.

He was opposed to David Younkin's appointment as guardian or conservator. He expressed concerns that David would not be there for his mother and, instead, have his wife, Patricia, handle matters. T-100. He also indicated concerns over David's desire to invest large chunks of money and David's history of previously asking her for money to invest. T-99-100.

#### **Stated Preference for Abraham Younkin**

Mrs. Pates testified that if she had to have a guardian and conservator she would prefer to have her son, Abraham Younkin appointed. T-128, 129.

#### **STANDARD OF REVIEW**

The Court of Appeals reviews the decision by the district court regarding the best interest of the respondent under an abuse of discretion

standard. *See In re Conservatorship of Brady*, 607 N.W. 2d 781, 784 (Minn. 2000). In reviewing findings of fact, the Court of Appeals may not set aside the probate court's findings unless they are clearly erroneous, giving due regard for the probate court's determinations regarding the credibility of witnesses. *In re Conservatorship of Lundgaard*, 453 N.W. 2d 58, 60-61 (Minn. App. 1990); Minn. R. Civ. P. 52.01; *In re Conservatorship of T.L.R.*, 375 N.W. 2d 54, 58 (Minn. Ct. App. 1985).

## ARGUMENT

### **I. THE DISTRICT COURT ERRED IN APPOINTING A CONSERVATOR.**

#### **1. Insufficient Evidence to Support Appointment of a Conservator.**

The district court appointed David Younkin as conservator over Mrs. Pates with all of the rights and powers under Minn. Stat. Sec. 524.5-417, subd. C (1-6). Order, No. 3, A-5. The court noted that a limited conservatorship was not appropriate because Respondent was a vulnerable adult and in need of protection from the influence of others. *Id.*

In its Order appointing a conservator, the district court found, in part, that :

The Respondent is unable to manage property and business affairs because of an impairment in here (sic) ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance. And the Respondent has

property which will be dissipated without proper management and funds are needed for the support, care, education, health, and welfare of the Respondent and that protection is necessary or desirable to obtain money.

*See* Finding of Fact No. 3, A-3.

The evidence at trial failed to provide clear and convincing evidence of the need for appointment of a conservator for Mrs. Pates. The analysis is a two-step process under the statute. Under Minn. Stat. Sec. 524.5-401(2)(i), the court may appoint a limited or unlimited conservator for the estate and affairs of any individual if the court determines "by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance ..." *See* Minn. Stat. Sec. 524.5-401(2)(i). If the first step is satisfied, the court determines whether by a preponderance of the evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health and welfare of the individual ... and that protection is necessary or desirable to obtain or provide money." *See* Minn. Stat. Sec. 524.5-401(2)(ii). The court's findings of fact on these two steps were clearly erroneous as the record evidence was insufficient to support appointment of a conservator. These two-steps will be discussed in turn.

First, the district court's Order failed to identify evidence of an impairment of Mrs. Pates's ability to receive and evaluate information or make decisions. The Order inadequately describes the nature of her impairment or how it affects her ability to manage her property and business affairs and receive and evaluate information or make decisions. While the Order mentioned that her verbal working and calculation skills are abnormal due to her memory loss and Alzheimer's disease, there was no evidence in the record to support this finding. *See* Finding of Fact No. 3, A-3. There was no testimony by a medical professional to link any conduct or actions by Mrs. Pates to memory loss or Alzheimer's disease. The court cannot independently extrapolate a medical condition on its own to tie behavior by Mrs. Pates to her diagnosis of Alzheimer's disease and memory loss. Further, to the extent the court did rely on her diagnosis in making this finding, it identified no specific acts by her that were due to her impairment.<sup>4</sup>

There was no clear and convincing evidence supporting the court's finding that her failure to pay one phone bill, making changes to her estate planning documents or being influenced by family members regarding her assets, estate planning or sale of her house was because of memory loss or

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<sup>4</sup> For example, as of her doctor's appointment of April 28, 2011 Mrs. Pates was still driving. A-27. This was after her diagnosis of Alzheimer's disease. The record is devoid of evidence tying conduct to her medical condition.

Alzheimer's disease. This finding of fact was clearly erroneous. There was no evidence she made poor decisions or decisions against her best interests in these areas. The record lacked medical testimony to support the finding. The evidence, moreover, demonstrated that one late phone bill was an isolated incident, her assets were intact, she had not been financially abused, her bills were paid, her money went for her care, her estate planning reflected her wishes and she was cognizant her house was for sale.

No specific evidence of poor decisions was identified and none was presented at trial to support appointment of a conservatorship. Notably, the court found that with respect to the guardianship issues she was not incapacitated. The finding by the court that she has an impairment was clearly erroneous and not supported in the record by clear and convincing evidence and should be reversed.

Additionally, the finding by the court that she is unable to manage property and business affairs because of an impairment in her ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance is no more than a recitation of the statutory language of Minn. Stat. Sec. 524.5-401(2)(i). By itself, this finding is insufficient to satisfy the burden of clear and convincing evidence and is therefore clearly erroneous. *See In re Conservatorship of Lundgaard*, 453

N.W. 2d 58, 63, 64 (Minn. App. 1990)(use of such "general" conclusory findings will force a remand for findings consistent with legislative mandate of specificity). On its face the court's finding of fact number 3 is insufficient to demonstrate clear and convincing record evidence of this requirement to prove the statutory requirement of impairment under Minn. Stat. Sec. 524.5-401(2)(i). Because the requirements demonstrating impairment are not met, the court cannot proceed to the second step of the analysis for appointment of a conservator under Minn. Stat. Sec. 524.5-401(2)(ii).

The second step of Minn. Stat. Sec. 524.5-401(2)(ii) calls for proof by a preponderance of the evidence that Mrs. Pates has property that will be "wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare" of her and that protection is necessary or desirable to obtain or provide money. *See* Minn. Stat. Sec. 524.5-401(2)(ii). The district court stated:

Respondent has property which will be dissipated without proper management and funds are needed for the support, care, education, health, and welfare of the Respondent and that protection is necessary or desirable to obtain money. Dissipation includes the failure to earn any return on the funds. This conclusion is supported by the following facts: She has recently allowed family members to have access to and custody of a significant amount of her cash, rather than keeping it in a bank to earn interest. She has demonstrated that she is vulnerable to being taken advantage of, especially in financial matters. Her verbal working and calculation skills are abnormal due to her

memory loss and Alzheimer's disease. She has missed payment on at least one bill. She has recently made changes in her estate planning and expressed a lack of knowledge of how such changes were made. It appears she is easily influenced by individuals in decisions she has made regarding her assets, her estate planning, and regarding the sale of her home.

A-3, (Finding of Fact No. 3).

The finding that dissipation includes the failure to earn any return on her funds is clearly erroneous and unsupported for purposes of finding a conservator is needed. "Dissipate" is defined as "to destroy or waste, as to expend funds foolishly." *See Black's Law Dictionary*, Fifth Ed., p. 425. There was testimony that she kept some of her funds in the bank. T-79. These funds would presumably earn some interest. The court made no findings of fact, however, regarding the amount of her funds that were kept in the bank, the name of the bank and savings of Mrs. Pates largely because there was no evidence of her bank accounts.

The fact that some of Mrs. Pates's funds were kept out of the bank is insufficient evidence of dissipation of assets and the need for a conservator under the circumstances. Mrs. Pates had a history of retaining funds outside of the bank that she saved to pay for large purchases dating back several years. Continuing this practice does not evidence the need for a conservator in light of her history of keeping cash out of the bank.

The fact that some of Mrs. Pates's money may not have earned a

return is not clear and convincing evidence of the need for a conservator. Many investments fail to earn a return and can lose principal. Mrs. Pates's conservative approach to investments and saving has allowed her to retain principal without risk. Maintaining status quo is not dissipating her money or assets. Her funds are not being destroyed, wasted, or dissipated by retaining principal. *Id.*

The court's finding that she has recently allowed family members to have access to and custody of a significant amount of her cash, rather than keeping it in a bank to earn interest is not evidence of dissipation and is clearly erroneous. Instead, it evidences her practice of keeping cash available for her use outside of the banking system. She obtained assistance from those she trusted most, close family members, to facilitate these transactions. While the court suggested some type of impropriety in the process, there was no evidence that any money withdrawn from the bank had been misused, misappropriated or had dissipated. Simply having some family influence is not evidence of improper influence.

A fair amount of time was spent on Mrs. Pates's estate planning documents. The district court noted that "There appear to have been many changes made to Respondent's estate planning documents, including a plan that would eliminate the Petitioner as an heir." *See* Finding of Fact No. 5,

A-5. The court suggested that Mrs. Pates "was subject to some form of influence from the Objectors to make such a change." *Id.* The court indicated that appointing a conservator would eliminate "problems" with her changing her estate planning documents. *Id.* These findings by the district court do not support the appointment of a conservator for Mrs. Pates and are clearly erroneous.

There was no evidence that her Last Will and Testament, for example, was executed by her while subject to undue influence by Linda Towler or Abraham Younkin. Undue influence is influence of such a degree exerted upon the testator by another that it destroys or overcomes the testator's free agency and substitutes the will of the person exercising the influence for that of the testator. *See In re Wilson's Estate*, 223 Minn. 409, 413, 27 N.W. 2d 429, 432 (1947). Proof of undue influence must be clear and convincing. *In re Manzanec's Estate*, 204 Minn. 406, 411, 283 N.W. 745, 748 (1939). It is not enough to raise a mere suspicion or conjecture. *Id.* There must be evidence that undue influence was exerted. It is not sufficient to show that a party benefitted by a will had the motive and opportunity to exert such influence; there must be evidence that he did exert it. *Id.* Opportunity to influence and a confidential relationship alone are insufficient to establish undue influence. *In re Estate of Ristau*, 399 N.W. 2d 101, 104 (Minn. App.

1987). Inequality of distribution is not sufficient to support a finding of undue influence. *Id.* Because testamentary capacity is a less stringent standard than the capacity to contract, it is not inconsistent for the subject of a conservatorship to have sufficient capacity to execute a will. *See In re Estate of Congdon*, 309 N.W. 2d 261, 267 (1981); *In re Estate of Jenks*, 291 Minn. 138, 189 N.W. 2d 695 (1971). The omission of David Younkin as an heir does not prove Mrs. Pates was improperly influenced in signing her Will. The self-proving affidavit stated she was of sound mind and not under undue influence. This was uncontradicted. Appointing a conservator will not eliminate Mrs. Pates's ability to execute such documents as the district court ruled. The court's statement that she is "easily influenced" disregards her prerogative to change her estate planning documents. In short, the district court's suggestion that Mrs. Pates was somehow influenced improperly in the execution of her estate planning documents simply because she was accompanied by her children is unsupported by specific findings of fact or proven by a preponderance of the evidence.

Notably, Mrs. Pates initially changed her estate planning documents at the behest of David and Dale Younkin on March 11, 2011. They brought her to attorney Timm to have her power of attorney, health care directive, trust, and Last Will and Testament changed to nominate themselves into

positions of decision-makers and beneficiaries. These actions by David Younkin were equally as influential on Mrs. Pates as the subsequent changes by her in July and September, 2011. The district court failed to explain why the changes orchestrated by David and Dale Younkin to Mrs. Pates's estate planning documents in March of 2011 were in conformance with her wishes and in her best interest in contrast to the changes she subsequently made in 2011. David Younkin's facilitation of his mother's changes to her estate planning documents in March of 2011 was an acknowledgment that she was capable of understanding and making such changes. He should be estopped from arguing that she is easily influenced in making changes to her estate planning documents when she changed her wishes in July and September when he admittedly influenced her changes in March of 2011.

The court's Order made no finding of fact that any influence that may have been presented from the Objectors was improper influence. For the sake of argument, the mere fact that Mrs. Pates may have been influenced by the Objectors, or easily influenced, does not establish that she was *unduly* influenced by either of them to warrant the need for a conservator. Linda Towler and Abraham Younkin were attorneys-in-fact for their mother and would have had close dealings with her. This does not render them improper. The Order made no finding of fact stating Mrs. Pates was

improperly influenced by Linda Towler or Abraham Younkin in executing her estate planning documents. The record contained no evidence of Linda Towler and Abraham Younkin improperly influencing Mrs. Pates to change any of her estate planning documents in 2011. The changes she made in July and September of 2011 were consistent with her estate planning documents prepared in 2010. The district court's finding that because she was "easily influenced" she required a conservator is clearly erroneous.

The court further found that "[s]he has demonstrated that she is vulnerable to being taken advantage of, especially in financial matters." *See* Finding of Fact No. 3, A-4. The record, however, lacks specific evidence of Mrs. Pates actually being taken advantage of in financial matters. The incident involving the loan with her daughter and son-in-law occurred ten years ago and she resolved it through arbitration. No witness testified about any recent incidents of her being taken advantage of financially or with respect to her assets. This finding is clearly erroneous.

Finally, the court's finding of a "missed payment on at least one bill" is clearly erroneous. While the court stated at least one bill was paid late there was no evidence of more than one. The one telephone bill of an undetermined amount was subsequently paid. Linda Towler testified she had overlooked the bill and it was an isolated incident. Mrs. Pates did not

lose service or incur any consequences. This testimony was uncontradicted and there was no evidence of a problem with Mrs. Pates's bills being paid to warrant appointment of a conservator. The one late phone bill is insufficient evidence to support appointment of a conservator.

**2. Mrs. Pates's Identified Needs Can Be Met By Less Restrictive Means, Including Use of Appropriate Technological Assistance.**

In appointing a conservator, Minnesota Statute Section 524.5-409, subd. 1(a)(3) requires the court to find that:

[T]he respondent's identified need cannot be met by less restrictive means, including use of appropriate technological assistance.

*See* Minn. Stat. Sec. 524.5-409, subd. 1(a)(3). Here, the district court did not make a specific finding of fact on this point, but instead extrapolated language from the Minn. Stat. Sec. 524.5-313(c)(6) governing guardianships that addresses granting the general supervisory power over a person in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and service.<sup>5</sup> The district court used the following language:

No appropriate alternative to Conservatorship exists that is less restrictive of Respondent's civil rights and liberties including the use

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<sup>5</sup> Minn. Stat. Sec. 524.5-313(c)(6) is: "the duty and power to exercise supervisory authority over the ward in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services."

of appropriate technological assistance. It is clear that Respondent is quite easily influenced and has taken actions that appear to be against her wishes or at least against her best interests.

*See* Finding of Fact No. 4, A-3-4.

The district court's language pertaining to limiting civil rights and liberties is not in the conservatorship statutes. The finding is not in conformance with Minn. Stat. Sec. 524.5-409, subd. 1(a)(3) and fails to find that Mrs. Pates's identified needs cannot be met by less restrictive means than a conservatorship and is clearly erroneous. Further, because the court failed to make specific findings of fact on Mrs. Pates's identified needs that cannot be met by less restrictive means than conservatorship the appointment of a conservator is erroneous and should be reversed.

The evidence demonstrated that Mrs. Pates's needs concerning the management of her property and business affairs were being met by less restrictive means than a conservatorship. She had a valid short form durable power of attorney in place. A-89. This authorized her attorneys-in-fact to handle real and tangible personal property transactions, banking transactions, business, insurance, beneficiary, gift, and fiduciary transactions, as well as claims and litigation, family maintenance, and records reports and statements and all transactions listed on the power of attorney. A-90. The record contained no evidence of misuse of the power

of attorney or that the power of attorney had not been helpful in managing her affairs. The court made no finding of fact that the power of attorney had been executed or entered improperly or that Mrs. Pates lacked capacity and understanding to sign it on July 18, 2011. Instead, the district court specifically noted it could not find that she was incapacitated. A-1. Despite the court's failure to make a proper finding of fact under Minn. Stat. Sec. 524.5-409, subd. 1(a)(3), the record is devoid of evidence of identified needs that cannot be met by less restrictive means than appointment of a conservator and the Order appointing a conservator should be reversed.

The district court's statement that Mrs. Pates is "easily influenced and has taken actions that appear to be against her wishes or at least against her interests" is not supported by a finding of specific evidence in the record and is clearly erroneous. There was no evidence that she has been taken advantage of financially to warrant a conservator or has been vulnerable to financial abuse by strangers. There was no evidence that she had lost money or been swindled out of any of her assets. The evidence at trial was to the contrary.

Similarly, there was no evidence that placing Mrs. Pates's house in Willmar for sale was a bad idea, against her wishes, or not in her best interest. She was fully aware her house was on the market and commented

on it to Dr. Caven.

The mere fact that Mrs. Pates may be influenced by her adult children is not grounds for appointing a conservator. Families often exchange advice and recommendations from children to parents and parents to children. *See* Finding of Fact No. 5, A-4. The record revealed that Mrs. Pates had a history of utilizing her children for such purposes.

**II. THE DISTRICT COURT ABUSED ITS DISCRETION BY NOT APPOINTING ABRAHAM YOUNKIN AS CONSERVATOR BECAUSE HE HAD PRIORITY UNDER MINNESOTA STATUTES SECTION 524.5-413 AND WAS THE PREFERENCE OF MRS. PATES.**

The district court abused its discretion by appointing David Younkin as conservator instead of Abraham Younkin. Abe held priority of appointment under Minnesota Statute Section 524.5-413(a)(2) based upon his nomination and preference by Mrs. Pates, the respondent.

Minnesota Statute Section 524.5-413(a)(2) gives priority of appointment to persons otherwise qualified who are nominated by the respondent if the respondent had sufficient capacity to express a preference at the time of the nomination. *See* Minnesota Statute Section 524.5-413(a)(2). Mrs. Pates stated she preferred to have her son Abraham appointed during her testimony in court. T-128. This preference was corroborated by her daughter, Linda Towler. T-117-118. No evidence

disputing her preference for Abraham was presented at trial. The statute has no requirement that the nomination or preference be in writing. The district court's failure to apply the statutory priority for appointment set forth in 524.5-413(a)(2), without specific reasons for a departure was an abuse of discretion and should be reversed.

In addition, Abraham Younkin was nominated by Mrs. Pates as a guardian/conservator in her Health Care Directive of July 18, 2011, in which he was also appointed as one of her health care agents. A-94. He was named as a co- attorney-in-fact in her durable power of attorney of July 18, 2011. A-89. Finally, Mrs. Pates's Last Will and Testament of September 11, 2011 named him as the trustee of the residuary trust and personal representative of her estate. A-82. There was no evidence or findings of fact that she was incapacitated or under undue influence at the time she made these designations. The district court specifically found that she was not incapacitated. A-1, 3.

The district court abused its discretion by making no findings of fact that the appointment of David Younkin instead of Abraham Younkin was in Mrs. Pates's best interest. Minnesota Statute Section 524.5-413(c) allows that "[t]he court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a

lower priority or no priority. With respect to persons having equal priority, the court shall select the one it considers best qualified." The district court observed that "[w]hile Respondent's desire in the matter was considered the court cannot find that Respondent's best interest would be served by allowing the Objectors to serve as Conservators." A-4. This statement lacked specific factual findings behind the decision and was a conclusory statement. More importantly, however, the district court made no finding as to why Abraham Younkin should not be appointed as conservator. Instead, the district court limited its brief discussion to both Objectors. This failed to follow Minnesota Statute Section 524.5-413(c) because it omitted findings of fact outlining why David Younkin was best qualified instead of Abraham Younkin who was nominated by respondent Jeraldine Pates.<sup>6</sup> As such, the court abused its discretion.

Similarly, the district court made no findings of fact for its rejection of Mrs. Pates's nomination of Abraham Younkin as guardian and conservator in her Health Care Directive under Minnesota Statute Section 524.5-309(a)(2). Her nomination of Abe as guardian and conservator in her Health Care Directive is evidence that supports her preference for him to

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<sup>6</sup> The closing argument by the Objectors' attorney further asked that Abraham Younkin be appointed if an appointment was made. Objectors' Closing Argument at 5.

serve. Her power of attorney, Trust, and Will nominated him as attorney-in-fact, trustee, and personal representative, respectively. Even the revised Trust Agreement orchestrated by David Younkin in March of 2011 included language that Abe should be consulted regarding major decisions for her trust assets. A-64. These acts do not evidence improper influence of her by Abe but rather her trust in him as her decision-maker. Her nomination to have him appointed to be the decision-maker to handle her affairs should not be lightly set aside and the court abused its discretion by not appointing Abe conservator.

The district court should provide an explanation for determining it is acting in the best interest of the protected person when declining to appoint a person having priority. Minn. Stat. Sec. 524.5-413(c). Simply restating the statutory language that the appointment is in the best interest or that Respondent's best interest would not be served by appointing the Objectors to serve as conservators gives no factual basis for the court's decision and is an abuse of discretion. *See* Finding of Fact No. 5, A-4. This conclusory statement about the Objectors (Linda Towler and Abraham Younkin), is inadequate to explain the appointment of David Younkin instead of Abraham Younkin. *Id.*

Finally, the district court abused its discretion in appointing David

Younkin as conservator instead of Abraham Younkin because appointment of Abe Younkin was in the best interest of Mrs. Pates. She preferred Abe, he was responsive to her needs, and capable of managing her affairs.

### **III. THE DISTRICT COURT ERRED GRANTING PROTECTIVE POWERS UNDER MINNESOTA STATUTE SECTION 524.5-310.**

#### **1. The District Court's Order Granting Limited Powers was Legally Erroneous and Not Supported by Sufficient Evidence or Findings of Fact.**

The district court concluded that "Minn. Stat. Sec. 524.5-310 allows the court to treat the application for Guardianship as an application for a protective order." A-5. The court thereby granted certain powers over the person of Mrs. Pates to David Younkin despite finding that she was not incapacitated. A-1. The personal powers granted included:

1. the power to select medical professionals (to be exercised only after conferring with Ms. Pates and her reasonable wishes);
2. to make and attend all medical appointments;
3. to make arrangements for Ms. Pates to attend all medical appointments; and
4. to make decisions regarding the residence of Ms. Pates after consulting with Ms. Pates and considering her reasonable wishes and providing notice to the other children of any intent to change Ms. Pates residence." A-5-6.

The Order also stipulated that the limited powers be exercised "after

consultation with the other siblings." A-5. The conclusion of law number 3 granting limited powers over the person is erroneous as a matter of law and an abuse of discretion.

Preliminarily, the district court cited no statutory authority for granting limited powers over the person without a finding that Mrs. Pates was incapacitated and substantially incapable to make such decisions regarding her personal affairs. The court effectively created a limited guardianship while circumventing the requirement of incapacity. The court's reliance on Minnesota Statute Section 524.5-310 as the basis for granting limited powers as a protective order is misplaced.

Minnesota Statute Section 524.5-310 governing appointment of a guardian or limited guardian provides, in pertinent part:

(a) The court may appoint a limited or unlimited guardian for a respondent 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, including use of appropriate technological assistance.

The provisions of (a)(1) require a finding that the respondent is incapacitated in order to grant limited guardianship powers. Here, the district court specifically declined to find that Mrs. Pates was incapacitated. A-1.

Because the district court found that Mrs. Pates was not incapacitated as to

her person, the court abused its discretion in granting effective limited guardianship powers under Minnesota Statute Section 524.5-310. A-1.

Mrs. Pates did not require a substitute decision-maker to exercise the powers granted to David Younkin by the court. The evidence indicated she was attending her medical appointments and had had no problems with medical issues. She had been receiving assistance from her daughter and the Order gave no explanation why this arrangement was unsatisfactory or that it was in Mrs. Pates's best interest to change the protocol. The Order lacked findings of fact explaining why she required a protective arrangement for making and attending medical appointments while reserving the power to make medical decisions to Mrs. Pates. Selecting one's doctor is part of the medical decision process. Mrs. Pates may not want to see a doctor chosen by David Younkin and the Order created the strange situation whereby David could choose her doctors, make medical appointments and arrange for her transportation only for her to make the ultimate medical decisions that arise. The record lacked evidence that David had previously made any of her medical appointments, transported her to such appointments, was aware of her medical issues, and was the best person to make such decisions. The Order lacked sufficient findings of fact to support David being granted certain powers for selection of Mrs. Pates's medical providers, attendance

and transportation.

Similarly, the court erred granting the protective power to David to make decisions regarding the residence of Mrs. Pates after consulting with her and considering her wishes and providing notice of any change to the other siblings. A-6. This provision grants the limited power to determine her place of abode under Minnesota Statute Section 524.5-313(c)(1). Simply labeling it as a protective arrangement does not change the nature of the power. In order to take this power from Mrs. Pates the record requires that she be proven incapacitated under 524.5-310(a)(1) by clear and convincing evidence. This was not proven as the court acknowledged. A-1. The Order further lacked sufficient findings of fact explaining why granting this power to David Younkin was in her best interests or why Mrs. Pates was incapable of making decision regarding her residence herself. *See* Minnesota Statute Section 524.5-313(b)("The court shall grant to a guardian only those powers necessary to provide for the demonstrated needs of the ward"). She made the decision to move to her Cambridge apartment and testimony revealed she liked her living arrangements. The record indicated Mrs. Pates was able to choose her residence and place of abode and there were no plans for her to move.

Finally, simply granting the limited protective powers to David

Younkin because the court decided he would be appointed conservator is an insufficient basis for granting the powers or evidencing the arrangement is in her best interests. This is particularly true when the record was clear that David had little experience with his mother's personal affairs such as medical appointments, transportation, bill paying, finances, and day to day activities.

**2. The District Court Erred in Applying Minnesota Statute Section 524.5-310(b).**

The district court erroneously applied the protective arrangement language from a conservatorship statute to create limited protective powers for David Younkin. Minnesota Statutes Section 524.5-401 governs protective proceedings over assets and estates. The statute provides, in pertinent part:

Upon petition and after notice and hearing the court may appoint a limited or unlimited conservator or make any other protective order provided in this part in relation to the estate and affairs of:

(2) any individual, including a minor, if the court determines that, for reasons other than age:

(i) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is missing, detained, or unable to return to the United States; and

(ii) by a preponderance of the evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

The district court stated that Minn. Stat. 524.5-310 allowed the court to treat the application for Guardianship as an application for a protective order. A-5 (conclusion of law No. 3). Minnesota Statute Section 524.5-310(b), however, does not apply to guardianship powers. The relevant language provides:

Alternatively, the court, with appropriate findings, may treat the petition as one for a protective order under section 524.5-401, enter any appropriate order, or dismiss the proceeding.

Minnesota Statute Section 524.5-401 addresses protective proceedings for appointment of a limited or unlimited conservator or to make any other protective order under the statute in relation to the estate and affairs relating to business and property management. *See* Minnesota Statute Section 524.5-401. It makes no mention of covering limited powers of a guardian to manage an individual's personal decisions and the court abused its discretion in using the conservatorship statute for this purpose.

Minnesota Statute Section 524.5-310(b) only articulates application to 524.5-401 that pertains to conservatorship powers. In order to authorize the action by the district court, the statute would need to be modified to state it

allowed for protective orders to grant limited protective powers over the person. The current statute only allows for treating a petition as "one for a protective order under section 524.5-401," which, as indicated, only covers conservatorship powers. It is an abuse of discretion for the court to effectively grant limited guardianship powers over Mrs. Pates when she has not been proven incapacitated as required by 524.5-310(a)(1). The language of 524.5-310(b) says nothing about converting the specific protective arrangement language for an individual's estate, financial and business affairs under 524.5-401 to be freely wielded by courts for individuals. To allow the court to implement such powers without proof of incapacity, or any other condition or demonstrated inability to manage personal affairs, would allow courts to grant protective powers with no legal standard of proof. Simply stating the court believes an individual requires assistance is not the standard for granting the powers delegated by the court to David Younkin over Mrs. Pates's personal decisions. The district court abused its discretion in using 524.310(b) as the basis for granting limited protective powers over the person and should be reversed.

**3. The District Court Erred By Not Granting Personal Powers To Abraham Younkin Instead of David Younkin if Such Powers Were to Be Granted.**

The district court abused its discretion in granting limited protective

powers of the person to David Younkin instead of to Abraham Younkin if such powers were to be granted. Mrs. Pates preferred to have Abe make decisions regarding her personal affairs per her own testimony, had designated him as her attorney-in-fact, health care agent, proposed trustee and nominated as personal representative under her most recent Will. These designations were all consistent with her strong preference for him to manage her affairs if necessary.

The court's Order disregarded Abe's close relationship with his mom and instead pointed to convenience as a basis for granting the protective powers to David since he was also appointed conservator. David did not have any history of arranging or transporting his mother to the doctor, helping with her shopping or chores, or otherwise managing her day to day affairs. It was his wife that accompanied Mrs. Pates to certain doctor's appointments. It was Dale who helped with her banking and taxes. Simply because David nominated himself as guardian and conservator is an insufficient basis to demonstrate the appointment is in her best interests to grant him the protective powers and the court abused its discretion in doing so. If limited protective powers were to be granted, they should have been granted to Abraham Younkin under the circumstances and evidence presented.

**IV. THE DISTRICT COURT ERRED BY NOT ORDERING A BOND FOR THE CONSERVATOR OR MAKING FINDINGS OF FACT EXPLAINING THE BASIS FOR THE DECISION.**

In the Order appointing David Younkin as conservator, the district court directed that "[n]o bond shall be required of the Conservator." A-5. The court made no findings of fact explaining the basis for this decision nor did it cite to any legal authority behind it. This decision is erroneous as a matter of law and an abuse of discretion under Minnesota Statute Section 524.5-413(d).

Minnesota Statute Section 524.5-413(d) states as follows:

In any proceeding where the value of the personal property of the estate of the proposed protected person in the initial inventory of the estate filed by the conservator under section 524.5-419 is expected to be at least \$10,000, the court *shall* require the conservator to post a bond. The bond requirement under this paragraph does not apply to conservators before August 1, 2009, but shall apply as current conservatorships are reviewed by the court after August 1, 2009.

(Emphasis added).

It was undisputed that Mrs. Pates had personal property of over \$10,000. Testimony and the petition revealed bank accounts, money and investments of over \$100,000 and she owned a house in Willmar full of household items and furnishings. The petition cited other personal property and a vehicle worth \$12,000. A-13. Based on the record, a bond for the conservator should have been ordered under Minnesota Statute Section 524.5-413(d).

Alternatively, the district court should have made specific findings of fact setting forth the basis for not ordering a bond.

**CONCLUSION**

For these reasons, the district court's Order appointing David Younkin as conservator of Jeraldine J. Pates and granting him powers over her person under a protective arrangement should be reversed. Alternatively, the court should reverse the Order and remand with directions to appoint Abraham Younkin as conservator with limited powers under a protective arrangement based on his statutory priority and preference of Mrs. Pates.

RESPECTFULLY SUBMITTED,

**STEPHEN C. FIEBIGER LAW OFFICE, CHARTERED**

Dated: May 21, 2018

  
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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel certifies that this Brief complies with the typeface requirements and word count limitation of Minnesota Rule of Civil Appellate Procedure 132.01, subd. 3 and contains 9,872 words. The following word processing software was used to prepare this Brief:  
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