

A12-0660

STATE OF MINNESOTA

IN COURT OF APPEALS

In Re: Guardianship and Conservatorship of:

JERALDINE J. PATES,

Respondent,

BRIEF AND ADDENDUM OF JERALDINE PATES, RESPONDENT

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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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LEGAL ISSUES

- I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN APPOINTING AN UNLIMITED CONSERVATOR WHERE THE EVIDENCE WAS NEITHER CLEAR AND CONVINCING OF THE INABILITY OF MRS. PATES TO MANAGE HER FINANCIAL AFFAIRS NOR A PREPONDERANCE OF EVIDENCE THAT PROPERTY REQUIRED FOR HER NECESSITIES WAS DISSIPATED.

The district court appointed an unlimited conservator.

APPOSITE AUTHORITY:

Minn. Stat. § 524.5-401(2)
In Re Conservatorship of Lundgaard, 453 N.W.2d 58 (Minn. App. 1990)

- II. WHETHER THE DISTRICT COURT ERRED AS A MATTER OF LAW IN GRANTING PERSONAL POWERS OF ABODE AND MEDICAL DECISIONS TO CONSERVATOR IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE OF INCAPACITY AND DEMONSTRATED NEEDS.

The district court ordered a “protective arrangement.”

APPOSITE AUTHORITY:

Minn. Stat. § 524.5-310 (b)
In Re Conservatorship of Medworth, 562 N.W.2d 522 (Minn. App. 1997)
In Re Guardianship of DeYoung, 801 N.W.2d 211 (Minn. App. 2011)

- III. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN APPOINTING DAVID YOUNKIN AS UNLIMITED CONSERVATOR DESPITE MRS. PATES’ CHOICE OF ABRAHAM YOUNKIN AS HER ATTORNEY-IN-FACT ON HER DURABLE POWER OF ATTORNEY AND HER NOMINATION OF ABRAHAM YOUNKIN IN HER TESTIMONY AT TRIAL.

The district court appointed David Younkin as unlimited conservator.

APPOSITE AUTHORITY:

Minn. Stat. § 524.5-413
Schmidt v. Hebeisen, 347 N.W.2d 62 (Minn. App. 1984)

STATEMENT OF THE CASE

Jeraldine J. Pates (DOB 6/29/27) lives at Riverwood Village which is an assisted senior apartment facility in Cambridge, Minnesota. Her husband is deceased. She has six adult children:

David L. Younkin
Dale D. Younkin
Daniel C. Younkin
Linda L. Towler
Douglas P. Younkin
Abraham J. Younkin

On October 20, 2011, a petition for guardianship was filed by David Younkin. The petition sought appointment of himself as both guardian and conservator. The petition was opposed by Mrs. Pates. In addition, Linda Towler and Abraham Younkin objected to appointment of a guardian or conservator. In the alternative, if one or both appointments were deemed appropriate, the objectors submitted that Abraham Younkin had statutory priority as Mrs. Pates' nominated preference.

A trial was held on January 24, 2012 in the Isanti County Probate Court. Court File No. 30-PR-11-76. Following the trial, Honorable P. Hunter Anderson filed his Order denying appointment of a guardian and appointing David Younkin as Conservator with all powers pursuant to Minn. Stat. 524.5-417, subd. c. (1)-(6). Order, Filed February 23, 2012; Respondent's Addendum at pp. RA-1 through RA-6 ("RA-1 - RA-6").

The Court concluded that Mrs. Pates was not incapacitated. Nevertheless, the Court ordered a “Protective Arrangement” granting the Conservator (David Younkin) the powers (1) to select “medical professionals to see the needs [sic] Mrs. Pates, arrange for and transport her to medical appointments and (2) to determine her abode after consulting with her and providing notice to her other children. Id. RA-5 – RA-6. The “limited protective powers [are] to be exercised after consultation with the other siblings.” Id. In a footnote, the court explained:

¹ “Consultation” does [sic] mean that Mr. Younkin is bound to follow the advice of any of the other children or even the majority of them. He must consider their opinions and wishes, but the powers and responsibilities enumerated herein reside solely with Mr. Younkin. Normally the Court would not impose such a condition on the exercise of these powers, especially where there are deep divisions in the family as there are here, however, Mr. Younkin volunteered to do this during his testimony.

Id.

On or about April 10, 2012, objectors Linda Towler and Abraham Towler served and filed a Notice of Appeal. Minn. Ct. App. File No. A12-0660. Their brief was served and filed by U.S. Mail on May 21, 2012.

Respondent, Jeraldine J. Pates, submits this brief in order to challenge the district court’s order appointing David Younkin as unlimited conservator and granting him personal powers regarding medical decisions and choice of residence in the absence of a finding of incapacity or a demonstrated need.

STATEMENT OF FACTS

At the trial on January 24, 2012, the Petitioner, David L. Younkin, and his wife, Patricia Younkin, testified as well as the Respondent, Jeraldine J. Pates. In addition, four of Mrs. Pates' other children testified regarding her abilities.

Among the exhibits was a report by Dr. Micheal Rosenbloom which diagnosed Mrs. Pates with "mild probable Alzheimer's" and deficits in providing medical care, nutrition, clothing, shelter and/or safety. Exhibit 2; T. 14, 18. With respect to capacity, Mrs. Pates testified that "I can take care of myself." T. 127. The evidence showed that she got meals at her senior apartment complex and received assistance from the staff. T. 32, 128. She keeps her apartment neat and clean and safe. T. 98, 129. She takes her medications as prescribed. T. 34, 115-116. She is well groomed. T. 66, 116. She does not drive. T. 33. The witnesses testified that she was basically physically healthy except for rheumatism in her neck. T. 34, 114.

Regarding her abilities to receive and evaluate information and make decisions, her children do help her with her finances. For example, her son Dale Younkin helps her with her finances, taxes and bank accounts. T. 76. Her daughter Linda Towler also helps her prepare her bills. T. 112-113. On one occasion, there was a phone bill that was late through Ms. Towler's oversight. T. 82, 113-114. However, the telephone was never shut off. T. 114.

A rift in the family occurred in 2001/2002 over loans in the family restaurant business. T. 77, 82-83, 110-111. Both David and Dale Younkin pointed to this incident as Linda Towler taking advantage of their mother. T. 77. However, it is uncontroverted that the matter was ultimately resolved by court arbitration. T. 23, 83, 109-110.

Abraham Younkin testified that his mother did not make poor financial decisions. T. 99. Jeraldine Pates agreed that she had not lost money, been swindled or taken advantage of by televangelists. T. 130. David Younkin agreed she did not improperly spend any of her money, get involved in scams, incur debt or not apply funds for her are. T. 44.

Both David Younkin and Dale Younkin accused Linda Towler and Abraham Younkin of having their mother put approximately \$90,000 in a basement. T. 19-21; 23; 79-80. However, Abraham Younkin testified that this withdrawal was his mother's decision and that she removed the money because she doesn't trust banks. T. 91-92. She had kept up to \$70,000.00 in cash outside of banks previously for real estate (i.e., a home in Cushing, MN) and other transactions. T. 125. David Younkin called the police and family services to investigate the withdrawal. T. 37-38. The police and family services determined that the money was all accounted for. Id.

Other than the withdrawal of cash from her bank account, Dale Younkin testified that he knew of no other recent unusual financial transactions. T. 82. Daniel Younkin testified similarly that he knew of no other examples of assets

being depleted or her money not being used for Jeraldine Pates' care. T. 90.

David Younkin testified that the value of his mother's assets (including the house on the market in Willmar, MN) were approximately \$330,000. T. 26. Other than the issue of her cash withdrawal, he knew of no medical emergencies, money issues or emergencies or fraud. T. 46. Currently, most of her bills are paid by automatic withdrawals. T. 82.

David Younkin's paramount concern was his mother's various changes in her estate plan. T. 22. He testified that Jeraldine Pates had a Power of Attorney drafted in 2009 which removed him as Attorney-in-Fact. T. 12. She also drafted a Will "which excluded me." Id. Later, David and Dale Younkin took their mother to a different attorney who "revised the Will and Power of Attorney so that now we possess that, Dale and myself." T. 13. Dale later informed David Younkin that the Will and Power of Attorney were changed once again. Id.

On February 23, 2011, David Younkin and Dale Younkin arranged for their mother to see Dr. Michael Rosenbloom who made a diagnosis of "mild probable Alzheimer's." Exhibit 2; T. 42. Sixteen days after obtaining the diagnosis, they brought Jeraldine Pates to a different lawyer who prepared new estate planning documents to include David Younkin. T. 42-43. When Jeraldine Pates later tried to retrieve these documents, David Younkin took the position that she lacked the requisite competence to have access to her own estate plan. T. 43. He admitted that his mother had to hire another attorney to get her documents returned to her. T. 43.

The various changes in the Wills, Codicils, Trusts, Amendments and Powers of Attorney are documented in Exhibits 4-10. T. 21. David Younkin testified that these vacillations in her estate plan were the result of Jeraldine Pates' confusion. He stated that she would agree with anything she was told because she does not want any conflict. T. 12, 21. However, Exhibit 11, which is Jeraldine Pates' Trust Amendment No. 1, states that "David and Dale shall serve as co-trustees." T. 22. David Younkin testified that although their mother insisted that they must consult with their brother Abraham Younkin in major decisions regarding management, the amendment "puts me back in the trust agreement." Id.

Abraham Younkin testified that David Younkin had asked Jeraldine Pates for all of her money to invest and she had told him no. T. 99-100. During a family meeting, she still refused. T. 106. When lesser amounts of \$5,000 and \$10,000 were proposed, David Younkin was quoted as responding that "he wanted it all or nothing." T. 106-107.

During Mrs. Pates' cross-examination, after conferring with David Younkin, his attorney asked her if she had excluded David Younkin from her Will. T. 133. She hesitated and with David Younkin and his siblings present in court stated that she thought that "everybody" (i.e., all her children) were included. Id.

Jeraldine Pates testified that she loved all of her children and believed they all loved her as well. T. 131. Nevertheless, she testified that her preference was for Abraham Younkin if she had to have a guardian or conservator. T. 128. She was also consistent in stating that she liked living in her senior apartment complex

in Cambridge. T. 127-128. She testified that there are lots of nice people living there and the staff checks up on her all the time. T. 128. Finally, she was consistent in her testimony that she did not need a guardian or conservator at this point in time. T. 128.

STANDARD OF REVIEW

Because “the conservatee’s best interests is an ultimate issue deduced from other facts in the record, [the appellate courts] review that determination for an abuse of discretion.” In Re Conservatorship of Brady, 602 N.W.2d 781, 784 (Minn. 2000). The district court abuses its discretion “by making findings unsupported by the record or by improperly applying the law.” Goldman v. Greenwood, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). An abuse of discretion is present when an erroneous conclusion is against the logic and the facts contained in the record. Rutten v. Rutten, 347 N.W.2d 47, 50 (Minn. 1984).

The district court’s findings will not be set aside unless clearly erroneous, giving deference to the trial court’s credibility determinations. In Re Conservatorship of Lundgaard, 453 N.W.2d 58, 60-61 (Minn. App. 1990). However, interpretation of statutes is reviewed *de novo*. In Re Conservatorship of Foster, 547 N.W.2d 81, 84-85 (Minn. 1996).

In the case at bar, the district court abused its discretion by appointing David Younkin as unlimited conservator despite the irrevocable and detrimental animosity between the two factors in the family. If the Court of Appeal determines that a Conservator is required, the matter should be remanded for an independent fiduciary. Furthermore, the district court abused its discretion when it misapplied the law and disregarded the logic and facts before it by granting to David Younkin the personal powers of medical decisions and choice of abode despite the protected person’s

reasonable objections and in the absence of a finding of incapacity and demonstrated needs. Minn. Stat. § 524.5-310(a)-(c); Minn. Stat. 524.5-313(c); In. Re Guardianship of DeYoung, 801 N.W.2d 211, 217 (Minn. App. 2011).

ARGUMENT

- I. THE DISTRICT COURT ABUSED ITS DISCRETION IN APPOINTING AN UNLIMITED CONSERVATOR WHERE THE EVIDENCE WAS NEITHER CLEAR AND CONVINCING OF THE INABILITY OF MRS. PATES TO MANAGE HER FINANCIAL AFFAIRS NOR A PREPONDERANCE OF EVIDENCE THAT PROPERTY REQUIRED FOR HER NECESSITIES WAS DISSIPATED.
- A. MRS. PATES IS ABLE TO MANAGE HER AFFAIRS, MAKE DECISIONS AND AVOID DISSIPATION OF HER ESTATE.

With respect to capacity, that term is defined at Minn. Stat. § 524.5-102,

subd. 6:

Subd. 6. Incapacitated person. "Incapacitated person" means an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance.

The district court concluded that there was not clear and convincing evidence of incapacity and did not appoint a guardian. Order, FOF paragraph 1, p. RA-1, COL paragraph 2, p. RA-5. Mrs. Pates testified that "I can take care of myself." T. 127. The evidence showed that she got meals daily at her senior apartment complex and received assistance from the staff. T. 32, 128. She keeps her apartment neat and clean and safe. T. 98, 129. She takes her medications as prescribed and is physically healthy. T. 34, 114-116, 127. She is well groomed. T. 66, 116. Finally, she does not drive. T. 33.

Regarding her abilities to receive and evaluate information and make decisions, her children do help her with her finances. For example, her son Dale Younkin helps her with her finances, taxes and bank accounts. T. 76. Her daughter Linda Towler also helps her prepare her bills. T. 112-113. On one occasion, there was a phone bill that was late through Ms. Towler's oversight. T. 86; 113-114. However, the telephone was never shut off. Id.

A rift in the family occurred in 2001/2002 over loans in the family restaurant business. T. 77; 110-111. Both David and Dale Younkin pointed to this incident as Linda Towler taking advantage of their mother. Id. However, the matter was ultimately resolved by court arbitration. T. 23, 83, 109-110.

Abraham Younkin testified that his mother did not make poor financial decisions. T. 99. Jeraldine Pates agreed that she had not lost money, been swindled or taken advantage of by televangelists. T. 130. Daniel Younkin testified that he was unaware of any unnecessary depletion of her assets. T. 90.

Under cross-examination, David Younkin testified as follows:

- Q. At this point in time, you're not aware of your mom improperly spending any of her money; is that correct?
- A. I am not aware of it, no.
- Q. You're not aware of her getting caught up in any scams?
- A. Not that I'm aware of.
- Q. And so her funds are being used for her care, to the best of your knowledge?
- A. I guess so, yeah.
- Q. She's not incurring a lot of debt that's not explainable?
- A. Not that I'm aware of.

T. 44.

Dale Younkin testified that he prepared her taxes every year and checked on her bank accounts. T. 76. He disapproved of the 2001-2002 loan transaction and her bank withdrawal of \$90,000.00. T. 82 – 83. On cross-examination, he was asked:

Q. Okay. And again, other than what you've testified to, sounds like you were – had access to her information, her banking records, her tax returns, and nothing out of the ordinary other than what you testified to, correct?

A. That's correct.

T. 83.

Both David Younkin and Dale Younkin accused Linda Towler and Abraham Younkin of having their mother put approximately \$90,000 in a basement. T. 19-21; 23; 79-80. However, Abraham Younkin testified that this withdrawal was his mother's decision and that she removed the money because she doesn't trust banks. T. 91-92. She had kept cash outside of banks previously for real estate and other transactions such as purchasing land for a home in Cushing, MN. T. 125. David Younkin called the police and family services to investigate the most recent withdrawal. T. 37-38. He admitted that the police and family services determined that the money was all accounted for. Id.

Other than the 2001-2002 loan and withdrawal of cash from her bank account, Dale Younkin testified that he knew of no other unusual financial transactions. T. 82. Daniel Younkin testified similarly that he knew of no other examples of her money not being used for Jeraldine Pates' care or her assets being depleted. T. 90. David Younkin testified that the value of his mother's assets (including the house on the market in Willmar, MN) were approximately

\$330,000. T. 26. Other than the issue of her cash withdrawal, he knew of no medical emergencies, money issues or emergencies or fraud. T. 46. Currently, most of her bills are paid by automatic withdrawals. T. 82.

In the instant case, the district court attempted to do the right thing in dealing with a difficult family situation. However, the court abused its discretion in concluding on this record that the evidence was clear and convincing that Mrs. Pates was not able to manage her affairs and make decisions. Minn. Stat. § 524.5-401(2)(i). Furthermore, despite David and Dale Younkin's characterizations of resolved ten-year-old loans and a cash withdrawal, there was not a preponderance of evidence that her estate was dissipated or subject to waste. Minn. Stat. § 524.5-401(2)(ii). In fact, given the track record of financial institutions over the past 3-4 years, Mrs. Pates' distrust of banks may yet prove to be prudent.

B. THE DISTRICT COURT ABUSED ITS DISCRETION IN APPOINTING DAVID YOUNKIN AS CONSERVATOR DESPITE THE OPPOSITION OF OBJECTORS AND THE DOCUMENTED PREFERENCE OF MRS. PATES.

The ultimate goal in the appointment of either a guardian or conservator is to determine the proposed ward's/protected person's best interests. Under the Uniform Guardianship and Protected Persons Act, the initial petition must include, *inter alia*, the reason why a conservatorship or other protective order is in the best interest of the respondent. § Stat. 524.5-403 (b)(9). Furthermore, in deciding the priority between proposed conservators, the court must act "in the best interest of the protected person." Minn. Stat. §524.5-413(c).

In the decision to appoint a guardian among persons with various degrees of priority, this court has ruled that the burden of proof in objecting to the appointment of a particular proposed guardian is a preponderance of the evidence:

Because Minn.Stat. §524.5-309 does not require a heightened standard of proof in guardianship proceedings, a party opposing appointment of a person with priority under the Uniform Guardianship and Protective Proceedings Act must establish by a preponderance of the evidence that appointment is not in the best interests of the ward.

In Re Guardianship of Wells, 733 N.W.2d 506, 512 (Minn. App. 2007). Assuming *arguendo* that the same standard applies in appointing a conservator where the parties have different degrees of priority, the preponderance of evidence burden of proof should also apply under Minn. Stat. § 524.5-413(c). Also, assuming *arguendo* that this burden was addressed by the district court in declining to appoint Mrs. Pates' attorney-in-fact and stated preference, Abraham Younkin, as not being in her best interest as her conservator. Order, FOF paragraph 5, p. RA-5. Nevertheless, the district court's abuse of discretion is blatant in its appointment of David Younkin as Mrs. Pates' conservator. This is especially so as the district court did not include in its order any findings or conclusions that this appointment was in the best interests of the protected person. Order, pp. RA-1 – RA-6. To the contrary, the evidence that the appointment was not in her best interests was overwhelming.

Unfortunately, UGPPA does not include a specific definition of "best interests." Gregory R. Solum, "Guardianship and Conservatorship Proceedings: A

New Approach” (Bench and Bar, August, 2003) at p. 24. However, under the prior statutory framework, the definition of best interests included, in pertinent part:

Best interests of the ward or conservatee. “Best interests of the ward or conservatee means all relevant factors to be considered or evaluated by the court in nominating a guardian or conservator, including but not limited to:

- (1) the reasonable preference of the ward or conservatee, if the court determines the ward or conservatee has sufficient capacity to express a preference;*
- (2) the interaction between the proposed guardian or conservator and the ward or conservatee; and*
- (3) the interest and commitment of the proposed guardian or conservator in promoting the welfare of the ward or conservatee and the proposed guardian’s or conservator’s ability to maintain a current understanding of the ward’s or conservatee’s physical and mental status and needs.*

Minn. Stat. §525.539, subd. 7 (2002).

In the instant case, the district court’s appointment of David Younkin as unlimited Conservator is not in Mrs. Pates’ best interests and is contrary to the logic and the facts contained in the record.

First, Jeraldine Pates’ reasonable preference (if she had to be “protected”) was clearly her youngest son, Abraham Younkin. T. 128-129; See, Minn. Stat. § 525.539 subd. 7(1) (2002). She sees him quite often and they have a good relationship. Id. He is the attorney-in-fact on her power of attorney. T. 133. That Mrs. Pates has sufficient capacity to express a preference is contained in the

court's own Findings of Fact, paragraph 1 which specifically ruled out her "incapacity." RA-1.

Secondly, the interaction between David Younkin and his mother's is severely strained. See, Minn. Stat. § 525.539, subd. 7(2) (2002). He attempted to involve her in an investment in which he insisted upon all her assets. When a lesser amount was proposed, Abraham Younkin quoted his brother David as saying "he wants it all or nothing." T. 106-107. In addition, David Younkin arranged for the doctor's appointment on February 23, 2011 which resulted in a diagnosis of "mild probable Alzheimer's." T. 42. Sixteen days later, he and his brother, Dale Younkin, brought their mother to a different attorney to have themselves re-included in the estate plan. Id. When Jeraldine Pates later tried to retrieve those documents, David Younkin admitted that he and Dale Younkin refused. They took the position that she was unauthorized to receive her own estate plan because she lacked the requisite competency. T. 42-43. In fact, the estate planning documents were only released later to another lawyer for Mrs. Pates. T. 43.

Thirdly, David Younkin's commitment and interest in promoting his mother's well-being is dubious at best. See, Minn. Stat. § 525.539, subd. 7(3) (2002). For example, he did not know his mother's current attorney-in-fact. T. 45. The consensus at trial was that between David and his wife, Patricia Younkin, it was the latter who was more involved with Mrs. Pates. T. 117. For example,

David Younkin admitted that he never attended one of his mother's doctor appointments. T. 39.

The district court order did not contain any detailed or non-conclusory reference to the objectors' opposition to the appointment of David Younkin. Furthermore, the district court did not include in its Order any reference to the best interest standard required by Minn. Stat. § 524.5-413(c) or preponderance of evidence burden regarding Mrs. Pates' objections to the appointment of David Younkin. See, Wells, 733 N.W. 2d at 512. At a minimum, this court should remand the matter for specific findings addressing this burden. See, In Re Guardianship of DeYoung, 801 N.W.2d 211, 218 (Minn. App. 2011).

C. THE APPOINTMENT OF DAVID YOUNKIN AS UNLIMITED CONSERVATOR WITH POWERS TO AMEND MRS. PATES' ESTATE PLAN WAS AGAINST THE FACTS ON RECORD AND THE LOGIC OF THE CASE.

The court-appointed conservator has broad powers to thwart the expressed testamentary and financial wishes of the protected person. For example, the durable power of attorney appointing Abraham Younkin as attorney-in-fact can be summarily revoked, suspended or terminated by the conservator. Minn. Stat. § 524.5-417(d). More importantly for the case at bar, David Younkin can obtain court approval to "make, amend or revoke the protected person's will." Minn. Stat. § 524.5-411(a)(9).

This power is in no way in the best interest of Mrs. Pates. At trial it was clear that of paramount importance to David Younkin was his mother's various

changes in her estate plan. T. 22. He testified that Jeraldine Pates had a Power of Attorney drafted in 2009 which removed him as Attorney-in-Fact. T. 12. She also drafted a Will which “excluded me.” Id. Later, David and Dale Younkin took their mother to a different attorney who “revised the Will and Power of Attorney so that now we possess that, Dale and myself.” T. 13. Dale later informed David Younkin that the Will and Power of Attorney were changed once again. Id.

In response, on February 23, 2011, David Younkin and Dale Younkin arranged for their mother to see Dr. Michael Rosenbloom who made a diagnosis of “mild probable Alzheimer’s.” T. 42. Sixteen days later, they brought Jeraldine Pates to a different lawyer who prepared new estate planning documents to include David Younkin. T. 42. When Jeraldine Pates later tried to retrieve these documents, David Younkin took the position that she lacked the requisite competence to have access to her own estate plan. Id. He admitted that his mother had to get another attorney to have her documents returned to her. T. 43.

The various changes in the Wills, Codicils, Trusts, Amendments and Powers of Attorney are documented in Exhibits 4-10. T. 21. David Younkin testified that these vacillations in her estate plan were the result of Jeraldine Pates’ confusion. He stated that she would agree with anything she was told because she does not want any conflict. T. 12, 21. However, Exhibit 11, which is Jeraldine Pates’ Trust Amendment No. 1, states that “David and Dale shall serve as co-trustees.” T. 22. David Younkin testified that although their mother insisted that

they must consult with their brother Abraham Younkin in major decisions regarding management, “the amendment puts me back in the trust agreement.” Id.

Abraham Younkin testified that David Younkin asked Jeraldine Pates for money to invest and she had told him no. T. 99-100. During a family meeting, she still refused. T. 106. When lesser amounts of \$5,000 and \$10,000 were proposed, David Younkin was quoted as responding that “he wanted it all or nothing.” T. 106-107.

The district court determined that Mrs. Pates was “easily influenced” and has “taken actions that appear to be against her wishes or at least against her interests.” Order, FOF paragraph 4, pp. RA-3 – RA-4. However, despite the above manipulative actions by David Younkin, the district court appointed him as conservator with powers regarding Mrs. Pates’ estate plan. Id. FOF paragraph 5, p. RA-4.

Incredibly, the Order based this determination on a finding that “Respondent is clearly susceptible to influence in changing her estate planning documents and having this power belong to the conservator will eliminate such problems.” Id. To the contrary, rather than “eliminate such problems” the family and their mother will continue to increase their mutual distrust and more problems will result. Such a solution is contrary to the facts and logic in the instant case.

Therefore, the appointment of one family antagonist to “watch over the hen house” is contrary to the protected person’s best interests. See, Schmidt v. Hebeisen, 347 N.W.2d 62, 64 (Minn. App. 1984). Furthermore, as discussed

below, it adds to the distrust and conflict within the family to the detriment of Mrs. Pates.

II. THE DISTRICT COURT ERRED AS A MATTER OF LAW IN GRANTING PERSONAL POWERS OF ABODE AND MEDICAL DECISIONS TO CONSERVATOR IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE OF INCAPACITY AND DEMONSTRATED NEED.

As noted above, the district court made findings that Abraham Younkin and/or Linda Towler were not appropriate as conservators. FOF at paragraphs 4 & 5; RA-3 – RA-4. David Younkin accused his two siblings of secretly hiding and moving Mrs. Pates in order to avoid the other family members. FOF at paragraphs 4 & 5; RA-3 – RA-4; T. 49-50, 61. They claimed that the objectors prohibited communications between Mrs. Pates and other family members. T. 94. He and his wife claimed Abraham Younkin yelled at their mother on the phone, although they did not hear the content of their communications. T. 57. Dale Younkin accused Linda Towler of condoning welfare fraud. T. 79. Abraham Younkin and Linda Towler emphatically denied these claims. T. 94, 96-97. Nevertheless, it is uncontroverted that the relationship between the two factions is irreconcilably contentious. T. 69, 111. The district court acknowledged this in the Order at fn. 1 pp. RA-5 – RA-6:

¹ “Consultation” does [sic] mean that Mr. Younkin is bound to follow the advice of any of the other children or even the majority of them. He must consider their opinions and wishes, but the powers and responsibilities enumerated herein reside solely with Mr. Younkin. Normally the Court would not impose such a condition on the exercise of these powers, especially where there are deep divisions in the family as there are here,

however, Mr. Younkin volunteered to do this during his testimony.

(emphasis supplied)

That the rancor within the family has had a detrimental impact on Mrs. Pates is evidence by the various changes to her estate plan. David Younkin testified that the changes and amendments occurred because Mrs. Pates was so easily influenced and desired to avoid conflict. T. 12. However, David Younkin's actions in obtaining new estate planning documents within sixteen days of obtaining her "mild probable Alzheimer's" diagnosis were certainly "actions that appear to be against [Jeraldine Pates'] wishes or at least against her interests." FOF at paragraph 4; RA-4. This behavior is especially manipulative given his refusal to release these documents to her because he and his brother, Dale Younkin decided (based on the new diagnosis) that she lacked the requisite competency. T. 42-43. Mrs. Pates had to get another lawyer to get her own estate plan released to her. T. 43.

Regarding specific demonstrated needs, the evidence revealed that Mrs. Pates was getting to her medical appointments and participating actively. T. 69-70, 116. Similarly, the testimony showed that Mrs. Pats was happy and well taken care of in her senior apartment and had no reason or intention to move. T. 127-128, 132. Under such circumstances, the need for powers of abode and medical decisions has not been demonstrated. At best, these limits on Mrs. Pates' autonomy are unnecessary and premature.

Not surprisingly, the familial conflicts between petitioner, respondent and objectors would not motivate any party to proactively propose an independent fiduciary. Such a proposal would dilute their own respective positions. However, where the children of an aged parent are in such profound disagreement, such a solution is necessary. The question was put to David Younkin who rejected the idea. T. 30. He stated that “I’m much better. I have much more intimate knowledge of my mother than any other stranger...” Id. However, he also has an agenda that conflicts with other family members.

Thus, in the instant case it is appropriate and in the best interests of Mrs. Pates for a remand to appoint an independent fiduciary. The statutory scheme does not prevent the trial court from appointing a third-party conservator even if not suggested by the parties. See, e.g., In Re Conservatorship of Edwards, 390 N.W.2d, 302, 305 (Minn. App. 1986). The authority of the district court to address these familial issues has been summarized by this Court:

Courts generally select someone with family ties or the nominees of such persons when appointing a guardian. However, the requirement is not mandatory and the court will disregard the application of a family member if their interest and those of the ward would conflict. “The best interest of the ward should be the decisive factor in making any choice on his behalf.” In Re Guardianship of Schober, 303 Minn. 226, 230, 226 N.W.2d 895, 898 (1975). As enunciated by the Minnesota Supreme Court: Where, as here, the members of the family are divided into hostile camps it may be doubtful that a selection from either faction can well be made. We can think of no one better fitted to make such selection than the probate court. In re Guardianship of Strom, 205 Minn. 399, 405, 286 N.W. 245, 249 (1939).

Schmidt v. Hebeisen, 347 N.W.2d 62, 64 (Minn. App. 1984).

Based upon the irreconcilable and divisive split into “hostile camps” within this family, it is “doubtful that a selection from either faction can well be made.”

Id. Therefore, the instant case is the quintessential argument for an independent fiduciary.

CONCLUSION

In its attempt to make the best of a bad situation, the district court abused its discretion in appointing David Younkin as unlimited conservator. The preponderance of evidence showed that the choice was emphatically not in Mrs. Pates' best interests. Furthermore, the "protective arrangement" granting personal powers of abode and medical decisions was clearly erroneous as a matter of law in the absence of evidence of incapacity and demonstrated needs regarding her senior living apartment and/or medical needs.

In the case at bar, the two factions within the family are so irreconcilably divided that neither "hostile camp" would be perceived by the other camp to be making decisions in their mother's best interests. In such situations, the true "loser" is the relationship between Mrs. Pates and her children.

For these reasons, the matter should be remanded to the district court for an independent fiduciary with powers limited to actual demonstrated deficits and needs. Such a solution would be the least restrictive alternative. Minn. Stat. 524.5-409, subd. 1(a)(3).

Dated: 6/22/12

Respectfully submitted,


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STATE OF MINNESOTA

COURT OF APPEALS

Appellate Court File No.: A12-0660

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

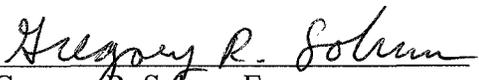
JERALDINE J. PATES,

CERTIFICATE OF BRIEF LENGTH

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3 for a brief produced with a monospaced font. The length of this brief is approximately 5,625 words and 569 lines. This brief was prepared using Microsoft Word 10.0 (2002).

Dated: 6/22/12


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