

OFFICE OF
APPELLATE COURTS

NO. A06-1500

OCT - 6 2006

FILED

STATE OF MINNESOTA
IN COURT OF APPEALS

IN RE GUARDIANSHIP OF JEAN A. WELLS, WARD.

RESPONDENT'S BRIEF (JEAN A. WELLS)

Daniel Oberdorfer (#233791)
Chad Roggeman (#28788X)
LEONARD STREET & DEINARD P.A.
150 South Fifth St. - Suite 2300
Minneapolis MN 55402
Attorneys for Appellant Nancy J. Frey

Nancy Kiskis (#198997)
Phillip L. Young (#283368)
MOSS & BARNETT
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis MN 55402-4129
Attorneys for Respondent Diane L. Vandermolen

Richard C. Ilkka (#175997)
P.O. Box 313
Stillwater MN 55082
Attorney for Respondent Jean A. Wells

Tamara J. Gerten (#193227)
Gerten & Van Valkenburg, P.A.
303 East Little Canada Road
St. Paul MN 55117-1625
Attorney for Respondent Frank Sutherland

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

LEGAL ISSUE 1

STATEMENT OF FACTS 2

ARGUMENT 3

CONCLUSION 5

TABLE OF AUTHORITIES

In re Guardianship of Stanger, 299 Minn. 213, 217 N.W. 2d 754 (1974) 3
In re Guardianship of Kowalski, 478 N.W.2d 790 (Minn.App.1991) 3
In re Guardianship of Schober, 303 Minn. 226, 226 N.W. 2d 895 (1975). 3

STATUTES

Minnesota Statutes § 524.5-309 3

LEGAL ISSUE

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN APPOINTING AN INDEPENDENT GUARDIAN RATHER THAN A FAMILY MEMBER WITH STATUTORY PRIORITY.

Trial Court Ruling:

The trial court found that the appointment of family member Nancy J. Frey, the Appellant herein, was not in the best interests of the Ward, citing willful and intentional efforts by the Appellant to obstruct efforts by her sister, Respondent Diane L. Vandermolen to receive information about and participate in health care decisions involving the Ward, contrary to the express wishes of the Ward. Additionally, the trial court cited disputes and personal animosity between the Appellant and Respondent Vandermolen as conflict contrary to the best interests of the Ward.

Key legal Authorities:

Minnesota Statutes § 524.5-309

In re Guardianship of Stanger, 299 Minn. 213, 217 N.W. 2d 754 (1974)

In re Guardianship of Schober, 303 Minn. 226, 226 N.W. 2d 895 (1975)

In re Guardianship of Kowalski, 478 N.W.2d 790 (Minn App.1991)

STATEMENT OF THE CASE

Respondent Jean A. Wells adopts the Appellants Statement of the Case.

STATEMENT OF FACTS

On February 21st, 2006, the trial court held a hearing to consider the petitions of the Appellant and Respondent Diane L. Vandermolen for appointment as Guardian for their mother, Jean A. Wells. Prior to the hearing it was stipulated by the parties that Ms. Wells was an incapacitated person and that the appointment of a Guardian was necessary. The sole issue before the trial court was the determination of who should be appointed Guardian for Jean A. Wells.

The trial court heard the testimony of four witnesses: the Appellant; Ronald Gerk, a family friend of the Ward and of the Appellant; Respondent Diane L. Vandermolen; and Anthony Vandermolen, the husband of the Respondent. The trial court also admitted into evidence a Health Care Directive signed by the Ward dated March 14, 2005. The trial court heard testimony relating to various disputes and conflicts between the two sisters, including testimony that the Appellant had deliberately obstructed Respondent Diane L. Vandermolen's attempts to obtain information about their mother's care, even though the Health Care Directive specifically allows her to receive such information. At the conclusion of the hearing, the trial court took the matter under advisement, but not before advising the parties that it was considering the appointment of a third party to be the Guardian of Jean A. Wells (Transcript of February 21, 2006 Hearing at 83).

By Order dated March 17, 2006, the trial court appointed an independent professional guardian, Frank Sutherland/Sutherland Fiduciary Inc. to be the Guard of Jean A. Wells. The trial court found that it was the intention of the Ward, Jean A. Wells, that the Respondent Diane

L. Vandermolen have access to and be informed of health care issues and decisions. The trial court also found that the Appellant had “willfully and intentionally obstructed” efforts by Diane L. Vandermolen to obtain such information. The trial court also found that the sisters were involved in ongoing, significant disputes, including disputes that had involved the Ward’s health care provider. The court found that these disputes did not serve the interests of the Ward.

ARGUMENT

THE APPOINTMENT OF AN INDEPENDENT GUARDIAN RATHER THAN A FAMILY MEMBER WAS NOT AN ABUSE OF DISCRETION AND WAS IN THE BEST INTERESTS OF THE WARD.

The issue of the appointment of a guardian is “uniquely in the discretion of the appointing court.” *In re Guardianship of Stanger*, 299 Minn. 213, 215, 217 N.W. 2d 754,755 (1974). On appeal, the decision of the trial court should not be disturbed unless it can be shown that discretion has been clearly abused. *In re Guardianship of Kowalski*, 478 N.W.2d 790 (Minn.App.1991) When deciding whom to appoint as guardian, the best interest of the ward should be “the decisive factor.” *In re Guardianship of Schober*, 303 Minn. 226, 230, 226 N.W. 2d 895, 898 (1975)

As a family member and because she was named in the Ward’s Health Care Directive, the Appellant had priority for appointment as guardian under MN ST §524.5-309. Per MN ST §524.5-309(b), the trial 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.

The Ward lives in the memory care wing of an assisted living facility. Her food, clothing and social activities are provided for primarily by the facility. Given the current condition of the

Ward, suffering from Alzheimer's dementia and not able to make informed medical decisions, the most relevant factor for the trial court to consider would be the ability of the proposed guardian to provide for the medical needs of the Ward. The trial court found that the Ward intended to have both of her daughters - the Appellant and Respondent Diane L. Vandermolen informed about her healthcare needs and issues. It is clear from the trial court's findings that it was particularly concerned by the Appellant's failure to follow the Health Care Directive when the Appellant "willfully and intentionally obstructed" efforts by Respondent Diane L. Vandermolen to obtain information about the Ward's care. The record reflects that the Appellant tried to enlist the staff and care providers at the Ward's assisted living facility to in this obstruction. (Testimony of A. Vandermolen, Tr. 74-79) The Appellant states that the trial court failed to cite examples where the Appellant caused harm to the Ward. What could be a clearer example, not to mention, a greater breach of duty and trust than the Appellant's intentional failure to honor her mother's instructions in her Health Care Directive? This single fact is alone sufficient to find that it is not in the Ward's best interests that the Appellant be appointed Guardian. The Appellant wants this court to believe that the trial court ignored her mother's right to self-determination when it did not appoint the Appellant as Guardian in this matter, yet the Appellant herself has ignored her mother's express wishes that both of her daughters have access to information and the right to discuss health care matters with providers. The Appellant oversimplifies and ignores her own misconduct when she claims that animosity between the Appellant and her sister was the only factor relied upon by the trial court. The Appellant intentionally involved those people who provide the 24 hour supervised care for the Ward in this

conflict. It doesn't take a specific finding by the trial court to know that this does not serve the interests of the Ward.

CONCLUSION

The Appellant has declared in her argument that this case is about self-determination and that the trial court's decision, if left standing, would eviscerate the Minnesota Health Care Directives Act. Not only is this false, but it ignores the real issue before this court: whether the trial court properly determined what was in the best interests of the Ward. Here, the trial court carefully considered the evidence presented, correctly applied the law and concluded that it was in the best interests of the Ward that an independent, professional guardian be appointed. The trial court listened to the testimony of the Appellant as well as the other witnesses and had the opportunity to not only hear their words, but observe their demeanor. There is sufficient evidence to support the trial court's conclusion that the appointment of an independent professional guardian was in the best interests of the Ward. The decision of the trial court was not an abuse of discretion. It was the right decision and it should be upheld.

Respectfully Submitted,

Dated: _____

10-02-06



Richard C. Ilkka (#175997)

P.O. Box 313

Stillwater MN 55082

Attorney for Respondent Jean A. Wells