

NO. A10-1768

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State of Minnesota  
In Court of Appeals

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In re:

Guardianship of Jeffrey DeYoung

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ATTORNEY FOR PROTECTED PERSON'S  
RESPONDENTS BRIEF AND APPENDIX

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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).

## TABLES OF CONTENTS

	Page
Table of Authorities.....	i
Statement of the Case .....	1
Legal Issues .....	2
Statement of Facts .....	3
Argument:.....	4
Appendix .....	15

TABLE OF AUTHORITIES

STATUTES

page

Minnesota Statutes Section 524.5-112 (a)(b)(c).....  
Minnesota Statutes Section 524.5-309 (a)(5).....  
Minnesota Statutes Section 524.5-309(a)(7).....  
Minnesota Statutes Section 524.5-309(b) .....

CASES

*In re: Guardianship of Sharon Kowalski, 382 N. W. 2d 861 (Ct. Appeals 1986).....*  
*In re: Guardianship of Sharon Kowalski, Ward, 478 N.W. 2d 70 (Ct. Appeals 1992).....*  
*In re: Guardianship of Herbert D. Emswiler, Ward. No. A06-1979. Unpublished Opinion  
Filed December 18, 2007. ....*  
*In re: Guardianship of Jean A. Wells, Ward. No. A06-1500. 733 N.W. 2d 506 (Ct.  
Appeals MN) 2007.....*

OTHER

None

**Statement of the Case**

Of: In re: Guardianship of Jeffrey DeYoung

Trial Court Case #27-GC-PR-08-3464

1. Hennepin County District Court, Probate/Mental Health Division, the Honorable Bruce Kruger.
2. This Appeal is from an order denying the appointment of Mary DeYoung, the mother of Jeffrey DeYoung, an autistic and non-verbal young man, age 25, as successor guardian and continuing the appointment of Annette Kuhnley, as his current guardian.
3. The court-appointed attorney, Jennie M. Brown, representing Jeffrey DeYoung, believes that the trial court abused its discretion when it chose Annette Kuhnley to remain as present guardian of Jeffrey DeYoung and denied the petition of his mother, Mary DeYoung, to be appointed as successor guardian of him.

Legal Issues

Whether the trial court's findings are clearly erroneous.

Did the trial court consider Jeffrey DeYoung's best interests?

Did the trial court properly exercise its discretion?

Is the trial court's ruling reasonably supported by the evidence?

### Statement of Facts

Jeffery DeYoung is a 25 year old man who lives at Chowen Home, a group home for person with limited cognitive abilities.

Jeffrey's parents are Mary DeYoung and his father is David DeYoung. Jeffrey's parents are divorced.

Mary DeYoung took care of Jeffrey all of his life until he reached the age of 19. At that time his mother needed full employment. She therefore placed Jeffrey in a group home.

The next thing that Mary DeYoung experienced was a restriction by Pathways to Communities which disallowed her entrance to Chowen House. Thus Mary DeYoung could only see her son outside of Chowen Home.

Mary DeYoung filed a complaint against Chowen House with the Office of Ombudsman for Mental and Developmental Disabilities. After that Mary DeYoung filed the petition for appointment of a Successor Guardian.

The trial court accepted that a guardian is needed for Jeffrey DeYoung. Moreover, none of the parties challenged whether Jeffrey was in need of a guardian. Neither did Jeffrey DeYoung's court appointed attorney, Jennie M. Brown, make such challenge. Therefore, the trial proceeded on the issue of should petitioner, Mary DeYoung, Jeffrey's mother, be successor of Jeffrey.

The trial court denied Ms. DeYoung's Petition.

## ARGUMENT

### Testimony Given at Trial

#### Mary DeYoung

Ms. DeYoung testified that Jeffrey was placed in Chowen House in August, 2004.

Ms. DeYoung testified that Jeffrey is autistic and non-verbal. She testified Jeffrey also has a seizure disorder, frequent ear infections, sinus infections and skin rashes.

Ms. DeYoung stated while under oath that Jeffrey uses a communication board and that at times he can be aggressive. T. p.8.

Jeffrey has had the following guardians since 2004:

- Ayanel Guardian Solution, (Annette Kuhnley)—current guardian
- Jennifer Montieth—first successor guardain
- Alternate Decision Makers—Successor Guardian

The testimony is that the guardian Jennifer Montieth had a conflict of interest because Jeffrey had moved into Pathways to Communities, which was Jennifer Monteith's employer.

Ms. DeYoung testified that three adult protection complaints had been filed against her regarding Jeffrey. None of these complaints were found to have merit.

Ms. DeYoung as well as her son, Jeffrey, are being held hostage by Pathways to Communities because according to Michelle Sippel, manager of Pathways to Communities, if Ms.DeYoung is appointed successor guardian, Jeffrey DeYoung will be evicted from Chowen House.

## Jeffrey DeYoung

### Weight Loss

Jeffrey went from weighing 174 pounds to weight in 156 or 157 pounds. Jeffrey is six feet four inches tall.

### Supervised Visitation/Restrictive to Access

According to Jerry Mellum, Senior Planning Analyst at Aging and Disability Services at Hennepin County, to restrict a parent's access is an uncommon occurrence. Mr. Mellum explained that waiver is a home and community based program and often there is open access. Mr. Mellum testified that most group homes have open access. That parents, relatives, friends come and go as they please. Trans. p59.

Indeed, Mr. Mellum, testified that restricted access is rare. Mr. Mellum's testimony was that, although he had no first hand dealing with Pathways to Communities, he knows their name and that the philosophy is unusual to restrict visitors, to restrict parents. Trans. p63.

It appears that Mary DeYoung was placed on supervised visitation with Jeffrey when she was reported to Adult Protection by Pathway to Communities in July, 2008.

### Small Lunches

In a letter from Chrestomathy, it was discovered that Jeffrey's lunches were very small.

### Mary DeYoung's Restricted Access to Jeffrey

Mary is not allowed to go in the group home to visit Jeffrey. If Jeffrey has a conflict in his schedule designed by Chowen House. Mary's visitation is cancelled.

Annette Kuhnley, the Current Guardian

Seldom visits Jeffrey. Ms. Kuhnley heavily relies on what Chowen House or Pathways to Communities tells her.

Michael Stein's Testimony

Michael Stein has recently known Mary DeYoung. She has cared for his three children who have autism. Mr. Stein is a rehabilitation consultant, with a master's degree in rehabilitation psychology. Trans. p67. Key in Mr. Stein's testimony is that he states that no matter how well intended a professional guardian may be, they're going to be limited as to the time they can devote in cases of severe disability, they just cannot possibly have the ability to put in as much time as a loving parent can, Trans. p72-73, lines 14-25; p72 and lines 1-8; p73.

Karen Brandon

A former attendant for Jeffrey when he was living at home, Ms. Brandon testified that Mary DeYoung was always attentive to Jeffrey's need and never was disruptive at Jeffrey's doctor visits. Trans. p82-84. Ms. Brandon at Trans. p86 reported that she was being restricted from the group home also which had never occurred in the past. Ms. Brandon testified that she was also present when Mary DeYoung telephoned her sister and her sister was speaking to Jeffrey on the speaker phone and Jeffrey began to cry. Ms. Brandon testified further that Michelle (Sippel) told them that it was inappropriate for them to stay and that we needed to go because we had upset Jeff. Trans. p86 lines 7-25.

Furthermore, Ms. Brandon testified the Mary comforted Jeff and he had started to settle sown and stop crying and actually had stop crying before we were still advised that we had to go. Trans. p87, lines 1-4. At Trans. p90 lines 20-25, Ms. Brandon testified that May DeYoung's access to Jeffrey was basically almost totally eliminated between October and April of 2008.

Ms. Brandon also testified that when she observed Jeff at his board, he printed the word "yes" when asked if he wanted his mother to be his guardian. Trans. p93, lines 1-25; also see Trans. p98, lines 4-24.

Ms. Brandon testified that Jeffrey had changed since being in the group home. Trans. p106, lines 21-25. Ms. Palmer testified that Jeffrey is weak, that he has lost a significant amount of weight loss and that he is curled up in a little ball sometimes. Trans. p106, lines 1-25.

Ms. Brandon also testified Jeffrey's vibrancy is gradually going away and that lately he wears high water pants and ill-fitting clothes sometimes and she recalled that Jeffrey used to be well-groomed. Ms. Palmer also mentioned in her testimony his teeth were always beautiful, but in recent years his teeth were caked with yellow tartar and that his hair smelled acrid. Trans. p107, lines 1-4.

#### Jane Palmer, Jeffrey's Aunt

Trans. p104, Ms. Palmer lives in Nebraska. She testified that after Jeffrey moved to the group home, they were lucky to see Jeffrey once a year. Before living in the group home, she saw Jeffrey for major holidays in Nebraska. Trans. p104, lines 15-21.

## The Defense Case

### Ms. Annette Kuhnley

Ms. Kuhnley of Ayanel Guardian Solutions testified she has been a guardian for five years and has a “little bid over 50 current clients.” Trans. p5, lines 21-25 and p6, lines 5-8. Ms. Kuhnley was appointed successor guardian in this case after Alternate Decision Makers wished to step down. Trans. p7, lines 19-22. Ms. Kuhnley has not met with Jeffrey once a month since she was appointed. Trans. p8, lines 25 ;Trans. p9, lines1-3. After her appointment as guardian of Jeffrey, Ms. Kuhnley granted visitation to Mary DeYoung one hour a week and later overnight visits once a month. Trans. p10, lines 1-25.

However Ms. Kuhnley never noticed physical changes in Jeffrey. Trans. p17.

If Ms. Kuhnley had accessed Jeffrey’s medical records, she would have raised questions about his significant weight loss and the more recent diagnosis of asteo parasis.

Regardless, Ms. Kuhney’s decision making appears to be controlled by Pathway to Communities rather her role as guardian. She (Ms. Kuhney) testified that it is not her desire to restrict Jeffrey’s parents from seeing him. Trans. p19, lines-16-18.

Ms. Kuhnley’s testimony shows neither she nor Ms. Suppel (program manager of Chowen House/Pathway to Communities Group Home) noticed that the x-ray of Jeffrey’s hand was the wrong hand. Trans. p26, lines 1-25. Her testimony shows Ms. Kuhnley did

not review Jeffrey's medical records. Ms. Kuhnley also acknowledges that it was Ms. DeYoung who discovered that Jeffrey's x-ray was of the wrong hand. Trans. p27, lines 1-25. It also shows that Ms. Kuhnley thought it was not appropriate for Ms. DeYoung to see Jeffrey's medical records. Also Ms. Kuhnley stated that although Mary DeYoung had requested a schedule of Jeffrey's activities, it was never provided to her. Trans. p31, lines 1-5; Trans. p30, lines 18-25.

Ms. Kuhnley has been guardian since October, 2008 and the day of this testimony was June 28, 2010, a period of 21 months. Ms. Kuhnley further denied both parents from being present during oral surgery with time Jeffrey was under general anesthesia. Trans. p35, lines 12-25.

Further cross examination of Ms. Kuhnley shows she was remiss in communication of the need for Jeffrey to have a soy allergy test which was the guardian's job to make medical decisions for Jeffrey. Trans. p41, lines 15-25; Trans. p42, lines 1-25. Ms. Kuhnley in cross also revealed that she had not informed Mary that Jeffrey had been taken to urgent care and diagnosed with pneumonia. Trans. p43, lines 8-25 and Trans. p44, lines 1-6.

Mr. David DeYoung (father of Jeffrey DeYoung)

His testimony supports the continuation of Annette Kuhnley as guardian of Jeffrey DeYoung and Mr. DeYoung testified that he thought it was in Jeff's best interest to stay at Chowen House. Trans. p39, lines 11-25.

Mr. DeYoung is allowed to visit at Jeffrey's residence at Pathways to Communities.

Trans. p13, lines 16-19.

While others, Mary, who is his mother and ,Jane Palmer, who is his aunt are not allowed to visit there.

#### Summary of Ms. Kuhnley's Testimony

It is clear that Ms. Kuhnley was biased against Mary DeYoung; she ignored Mary DeYoung's request for medical records, a schedule of Jeffrey's activities and did not consider notifying Mary DeYoung of Jeffrey being taken to Urgent Care and the medical diagnosis of pneumonia, a very serious condition.

It was also interesting that Ms. Kuhnley at no time call Jeffrey's doctor(s) about internal bleeding or his diagnosis of pneumonia. Trans. p52, lines 1-25.

#### Michelle Sippel

Ms. Sippel gave testimony as the Chowen Group Home where Jeffrey currently resides.

Ms. Sippel stated that she oversees the resident's day-to-day daily routine, their medical appointments, their eating habits, and day program coordination and communication with the team which consists of the guardians and case managers.

Interestingly, Ms. Sippel testified that Pathways to Communities' policy is not to restrict access. Trans.p7, lines 1-10.

Ms. Sippel later testified that Pathways to Communities would no longer provide services to Jeff if Mary DeYoung was guardian. Trans. p31, lines 1-4.

This is a case on which the best interest of the ward was not applied. The ward's mother is Mary DeYoung. The ward is named Jeffrey DeYoung. For the past six years, Jeffrey has lived in a group home called Chowen House which is a part of Pathways to Communities.

Trouble began when Pathways program supervisor, Michelle Sippel, reports the Adult Protection possible abuse to Jeffrey which it turned out to be unfounded. A second occurrence was on Halloween, 2008, when Mary DeYoung, the mother of Jeffrey, was visiting her son at Chowen House. Jeffrey became upset and began to cry. Ms. DeYoung was then asked to leave and thereafter barred from visiting Jeffrey at the group home.

#### Abuse of Discretion

In light of the preference given to appointing parents as guardians of children, the court missed its mark by ignoring this preference. This is so because Jeffrey is non-verbal, autistic and has several significant health conditions. All of these factors would lead a reasonable trier-of-fact to prefer a discerning and knowledgeable parent seeking guardianship to when a contest is between that parent and a professional guardian who has relies too much on the caregiver to make health decisions for a ward who is unable to express himself.

In light of the trial testimony of the current guardian (Ms. Kuhnley) who saw the ward no more than 45 minutes, did not read medical reports, did not report the ward's pneumonia diagnosis, did not consider his weight loss to be a concern, the court was stretching

reasonableness to its breaking point. It appears the court was prejudicial against the parent because of some factors which were not in evidence.

It could be concluded that justice did not prevail and a mistake took place regarding the court's duty to act in the ward's best interest.

### Guardianship Law

A parent of a ward gets priority when guardianship appointments are made. This is interfering with the familial association with his mother in particular, for no apparent reason. Ms. DeYoung is thus unable to see Jeffrey within his living conditions.

Moreover, his guardian who is Ms. Kuhnley seldom sees Jeffrey as well. Jeffrey is non-verbal but he still has feelings. It is absurd that Jeff's mother would be prevented from visiting Jeff in his "home" because of a single incident which was not declared abusive.

Trans. p91.

### Issues

Should the court below based on the evidence presented have decided that Mary DeYoung, mother of Jeffrey DeYoung, be appointed Jeffrey DeYoung's successor guardian?

Should the court below based on the evidence presented have decided that Annette Kuhnley (Guardian Solutions) is removed as guardian of Jeffrey DeYoung?

A comparison of Mary DeYoung and Annette Kuhnley shows that Mary DeYoung, by all counts is the better qualified to be guardian of Jeffrey DeYoung. Unfortunately, the trial did not address who is best qualified to be guardian. Neither did it address what is in the

best interests of the ward, Jeffrey, or make a finding as to the best interests under the statute. Certainly the trial facts could not support a finding that Annette Kuhnley supports the interest and commitment of the proposed successor, Mary DeYoung in seeking the welfare of the ward or conservatee and the proposed successor, guardians or conservator's ability to maintain a current understanding of the ward's or conservatee's physical and mental status and needs. A second aspect of the best interests test is an assessment of the interaction between the proposed guardian or conservator and the ward or conservator. See the court of appeals analysis in *In re: Guardianship of Jean A. Wells, Ward, 733 N.W. 2d 506, MN Ct. Appeals 2007*. Also the unpublished opinion, *In re: Guardianship of Herbert D. Emswiler, Ward, A06-1979 (Ct. Appeals, 2007)*. The testimony at trial shows little if any interaction between Ms. Kuhnley and Jeffrey. However, there is strong and continuous interaction between petitioner, Mary DeYoung and Jeffrey.

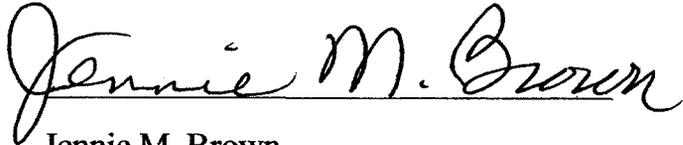
According to the court of appeals decision *In re Kowalski* when taken as a whole, the statutes enumerated factors direct that a guardian be someone who is preferred by the ward if possible, has a positive interaction with the ward, and has high involvement with and commitment to, promoting the ward's welfare. The evidence at trial already supports Mary DeYoung as the superior choice for successor guardian of Jeffrey. Ms. Kuhnley's testimony did not clearly show that she had understanding and knowledge of the ward's physical and emotional needs. See *Kowalski at 793*.

Conclusion

The Order denying the appointment of Mary DeYoung as successor guardian should be reversed by the court of appeals because the trial court did not conduct an assessment of what is in the best interests of Jeffrey DeYoung.

Dated: December 21, 2010

Respectfully submitted,

A handwritten signature in cursive script that reads "Jennie M. Brown". The signature is written in black ink and is positioned above the printed name.

Jennie M. Brown

Attorney for Protected Person, Jeffrey DeYoung