

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0748**

In re the Guardianship of:
Gertrude A. Strgar, Ward.

**Filed January 14, 2013
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-PR-09-85

Bill L. Thompson, Falsani, Balmer, Peterson, Quinn & Beyer, Duluth, Minnesota (for appellant Gertrude Strgar)

Mark S. Rubin, St. Louis County Attorney, Joanne Vavrosky, Assistant County Attorney, Duluth, Minnesota (for respondent county)

Brian Smith, Duluth, Minnesota (guardian)

Gary Strgar, Chisholm, Minnesota (pro se respondent)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-ward challenges the district court's denial of her petition to remove her court-appointed guardian or appoint a successor guardian. Because the district court did not abuse its discretion by denying the petition, we affirm.

FACTS

In February 2009, appellant-ward Gertrude Strgar was brought to St. Luke's Hospital suffering from life-threatening pressure ulcers, dehydration, and malnutrition. The paramedics discovered Strgar in her home, sitting in a wheelchair with her head propped against a broomstick and unable to move. She was unclean and had a significant amount of stool around her in her wheelchair. The emergency-room physician described Strgar's pressure ulcers (which went down to the bone) as the worst he had ever seen. Hospital personnel concluded that Strgar had been severely neglected.¹

This was not the first time Strgar was hospitalized for these conditions. In August 2008, she was hospitalized for skin and nutrition issues and spent time in a nursing home before going to live in an apartment rented by her son, respondent Gary Strgar (Gary). Two months later, she was hospitalized for "severe debility and some sacral pressure ulcers." Strgar again went to a nursing home where she became ambulatory and received appropriate nutrition. In December 2008, Gary signed Strgar out of the nursing home against medical advice, indicating that he would care for her. Two months later, Strgar was back in the hospital.

Based on Strgar's history, fragile condition, and concerns that neither Strgar nor her son could take care of her or make appropriate medical decisions for her, the hospital determined that Strgar is a vulnerable adult and successfully petitioned the district court to appoint an emergency guardian. On June 3, 2009, based on a stipulation between the

¹ On March 4, 2009, St. Louis County determined that Strgar's son, respondent Gary Strgar, was responsible for neglecting Strgar, a vulnerable adult.

parties, the district court granted respondent St. Louis County's petition for the appointment of a general guardian for Strgar, finding that she is an "incapacitated person." The parties agreed, and the district court found, that Strgar requires assistance with making decisions concerning her place of abode and medical care and treatment, and that no less restrictive alternative is available. Since that time, St. Louis County social worker Brian Smith has served as Strgar's guardian.

On September 2, 2011, Strgar and Gary filed a petition to remove the guardian or, in the alternative, appoint Gary as successor guardian. Strgar asserted that she is able, with Gary's help, to take care of herself and should not be forced to stay in a nursing home against her will. Strgar also claimed that conditions in the nursing home aggravate her allergies, and that she does not get her eye drops, is prevented from walking, and is not allowed to see the doctor of her choice. Gary asserted that Smith improperly delegated his responsibilities to the nursing home.

During the evidentiary hearing on the petition, Strgar briefly testified that she does not have any major health problems and that she intends to keep doing what she wants to do as long as she knows what she is doing. Gary agreed that Strgar needs to remain in the nursing home or a similar facility at least for now and indicated that he would cooperate with Strgar's medical providers, including with respect to where Strgar lives. But when asked specific questions about his willingness to cooperate with Strgar's medical providers, Gary seemed less certain, stating that "a patient's wishes count more than the doctor's wishes," and that Strgar "should have some latitude in determining [her]

life also.” Gary also admitted that he was found to have committed maltreatment by neglecting Strgar in February 2009.

Strgar’s primary physician (Mark Boyce, M.D.) and guardian Smith both testified. Dr. Boyce testified that Strgar continues to need a guardian to make decisions for her on a daily basis and that her current medical condition requires constant care from someone trained in skin care, nutrition, the use of a Hoyer lift, and working with difficult patients. Dr. Boyce testified that Strgar has a fixed delusion that all of her health problems are caused by allergies, which contributes to her need for a guardian. Finally, Dr. Boyce testified that there is no cause to remove Smith as Strgar’s guardian and expressed concern about Gary being appointed as a successor guardian given Strgar’s prior health problems while in Gary’s care. Smith testified that Strgar continues to need a guardian to ensure that she remains in a safe, clean environment, receives adequate nutrition, and is able to pursue additional medical tests and treatments if she desires. Smith also expressed concern about Gary’s ability to serve as Strgar’s guardian.

The district court concluded that Strgar failed to make a prima facie case for terminating her guardianship because her circumstances have not changed; she remains unable to make responsible decisions concerning her personal needs for medical care, nutrition, shelter, and safety. Further, the district court found that appointing Gary as a successor guardian would be “untenable” given his demonstrated inability and unwillingness to care properly for Strgar in the past. This appeal follows.

DECISION

The decision to appoint or remove a guardian is a matter within the district court's discretion and will not be disturbed absent a clear abuse of that discretion. *In re Conservatorship of Geldert*, 621 N.W.2d 285, 287 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001). "A reviewing court is limited to determining whether the district court's findings are clearly erroneous, giving due regard to the district court's determinations regarding witness credibility." *In re Guardianship of Wells*, 733 N.W.2d 506, 510 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

I. The district court did not abuse its discretion by denying Strgar's petition to remove her guardian.

The guardianship statute authorizes the district court to appoint a guardian if it finds clear and convincing evidence that (1) the subject of the guardianship is "an incapacitated person" and (2) the person's "identified needs cannot be met by less restrictive means." Minn. Stat. § 524.5-310(a) (2012). An incapacitated person is an individual who "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." Minn. Stat. § 524.5-102, subd. 6 (2012). Once established, a guardianship terminates only at the death of the ward or by court order. Minn. Stat. § 524.5-317(a) (2012). Upon petition, the district court "may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian." Minn. Stat. § 524.5-317(b) (2012). If the

petitioner presents evidence establishing a “prima facie case for termination,” the court shall order termination “unless it is proven that continuation of the guardianship is in the best interest of the ward.” Minn. Stat. § 524.5-317(c) (2012).

Strgar argues that she no longer needs a guardian because (1) the skin ulcerations and nutrition issues that prompted the guardianship are now under control, and (2) other than determining where she will live, there is nothing that a guardian can do, as she is competent to make the major decisions concerning her health. We are not persuaded.

First, although Strgar no longer suffers from the severe pressure ulcers and malnutrition that existed in early 2009, the seriousness of her overall physical condition has not changed. Dr. Boyce testified that Strgar continues to have significant medical problems, including very fragile skin, anemia, weak bones or osteoporosis, and a lung condition. She is nearly totally dependent on the nutrition and care she receives at the nursing home; her skin must be treated daily by someone trained in skin care, she is wheelchair bound, and she requires a Hoyer lift to get in and out of her wheelchair. And Strgar remains unable to recognize the extent to which her medical problems limit her ability to care for herself. In short, Strgar’s current medical condition, expressed intention to return to her son’s apartment if given the opportunity, and history of rapid decline when not in a hospital or nursing home demonstrate her continued need for a guardian.

Second, the fact that Strgar is mentally competent to make major decisions regarding her medical care does not mean that she does not need a guardian. She denies having many of her diagnosed health problems, attributing her conditions to bacteria and

allergies. Strgar's self-assessment is at odds with Dr. Boyce's testimony and undermines her claimed ability to meet her personal needs. Strgar's competence and right to choose whether or not to pursue certain medical testing and treatment does not change the fact that she is incapacitated with respect to her ability to meet her daily nutritional, hygiene, safety, and other personal needs.

The record supports the district court's finding that Strgar continues to need a guardian to ensure that she receives appropriate care. Strgar has failed to show that her circumstances and capacities have changed. We discern no clear error in the district court's determination that Strgar failed to make a prima facie showing that she no longer needs a guardian.

II. The district court did not abuse its discretion by denying Strgar's petition to appoint her son as successor guardian.

A district court may remove a guardian if removal would be in the best interests of the ward or for other good cause. *In re Guardianship of DeYoung*, 801 N.W.2d 211, 216 (Minn. App. 2011) (citing Minn. Stat. § 524.5-112(b) (2010)). Strgar contends that a change in guardians would serve her best interests because she prefers to have Gary as her guardian, and the current arrangement is not working because Smith improperly delegated his guardianship responsibilities to the nursing home. We address each argument in turn.

First, a ward's preference as to a guardian is effectuated only if it is consistent with the ward's best interests. *See In re Guardianship of Doyle*, 778 N.W.2d 342, 347 (Minn. App. 2010) ("The ward's best interests must be the determinative factor in

guiding the court when making any choice on the ward's behalf.”). The county argues that the district court did not abuse its discretion by determining that appointment of Gary as Strgar's guardian is not in her best interests. We agree.

The record reveals that Gary has been unwilling or unable to meet Strgar's daily needs in the past. Strgar was under his care when she entered the hospital in February 2009. The severity of her condition prompted the hospital to seek appointment of a guardian and the county to determine Gary had committed maltreatment. And although Gary claims that he would follow the recommendations of Strgar's doctors concerning her care, his testimony indicates otherwise. When asked what he would do if Strgar's doctors said she needed to stay in an assisted-living facility but she wanted to go home with him, Gary responded that “a patient's wishes count more than the doctor's wishes.” Then, when asked by Strgar's attorney whether he would abide by the doctor's opinion or Strgar's opinion if the doctor specifically told him that Strgar was not ready to go home, Gary stated that he “would go by both.” Gary also supported Strgar's unfounded assertion that allergies are to blame for her myriad medical conditions and that no treatment is necessary. On this record, we conclude that the district court did not clearly err by finding that appointing Gary as guardian would be “untenable” and did not abuse its discretion by declining to do so.

With respect to Strgar's second argument, Minnesota law prohibits a guardian from delegating its duties and powers to a third-party care provider. *See* Minn. Stat. § 524.5-313 (2012); *DeYoung*, 801 N.W.2d at 217. The district court did not address

whether Smith improperly delegated his duties to the nursing home, but there is no evidence in the record to support Strgar's argument.

This court addressed a similar argument in *DeYoung*. In that case, the ward's mother appealed the denial of her petition to appoint her as a successor guardian, arguing that the current guardian improperly delegated her authority to the ward's group home. *DeYoung*, 801 N.W.2d at 212. We interpreted Minn. Stat. § 524.5-313 to prohibit a guardian from delegating its powers and duties to a third party and remanded the case to the district court for specific findings on that issue. *Id.* at 217-18. But we also stated that

we do not read the guardianship statute to prohibit a guardian from relying on third parties to satisfy the ward's daily needs and to make routine decisions in meeting those needs. And while a guardian should not rubber-stamp recommendations by a group home or caregiver concerning the ward's needs and care, a guardian is not required to micromanage a group home or caregiver's efforts to satisfy the ward's needs and provide for the ward's care. Rather, a guardian is responsible for making ultimate decisions about a ward's care, abode, and rights, and may consider, and even adopt, the recommendations of a group home or caregiver so long as the guardian has independently considered whether the recommendations are in the best interests of the ward. Such an approach ensures that a guardian does not eschew its responsibilities to the caregiver, while also allowing a guardian to rely on a caregiver or group home's expertise, knowledge, and advice under appropriate circumstances.

Id. (citations omitted).

Here, there is no evidence that Smith has rubber-stamped recommendations made by Strgar's caregivers or delegated his responsibility to make decisions about Strgar's care, abode, and rights. Rather, the record reflects that Smith has been highly involved in decisions concerning where Strgar lives, the nutrition and safety-related practices in

place, and the routine medical care she receives. On this record, we conclude that the district court did not abuse its discretion by failing to find improper delegation.

Affirmed.