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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0826**

In the Matter of the Guardianship of:
Joy Bostrom, Ward.

**Filed March 3, 2014
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-GC-PR-11-138

David J. Thielke, Maplewood, Minnesota (for appellant Joy Bostrom)

Linda L. Bogut, Bogut Law Office, Minneapolis, Minnesota (for respondent Close to Home Advocate and Guardian Service, LLC)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the district court's order denying her petition for restoration to capacity, arguing that she is no longer an incapacitated person, that her mental-health commitment is a less-restrictive alternative to guardianship, and that guardianship is not appropriate in her circumstances. Because the district court did not abuse its discretion by denying appellant's petition to restore her to capacity, we affirm.

FACTS

In 2007, the district court issued an order committing appellant Joy Bostrom as a mentally ill person. The district court found that she was ill with a psychotic disorder secondary to a traumatic brain injury, which grossly impaired her judgment, behavior, capacity to recognize reality, or to reason or understand, so that she posed a substantial likelihood of causing physical harm to herself or others. *See* Minn. Stat. § 253B.02, subd. 13 (2012) (defining a person who is mentally ill for purposes of civil commitment). The district court found that, when appellant was not taking her prescribed medications, she became delusional, disorganized, and unable to care for her own needs.

In 2009, the district court issued another commitment order after appellant provoked a confrontation with a bus driver, left a crisis center against medical advice, refused housing suggestions, and was hospitalized on a psychiatric unit where she refused medication and became abusive to staff. The district court found that appellant's judgment and insight remained poor and that there was no reason to believe that she would obtain needed psychiatric treatment on her own. In 2010, the district court continued appellant's commitment, finding that, although she had improved and resided in an assisted-living facility, she had not adjusted to that location and needed continued monitoring to ensure her medication compliance and a safe transition to living in the community.

In June 2011, the district court heard a petition seeking appointment of a guardian for appellant, with powers specified under Minn. Stat. § 524.5-313 (2010). The district court appointed respondent Close to Home Advocate and Guardian Services, LLC, as

guardian, finding that appellant was incapacitated and that, by clear and convincing evidence, she had shown behavioral deficits evidencing her inability to meet her needs for medical care, nutrition, safety, and shelter. The district court found that appellant's condition and demonstrated behavior showed that she needed a guardian to protect and advocate for her and meet her needs for personal care, which could not be met in a less-restrictive environment. In May 2012, the district court re-committed appellant as mentally ill and authorized the administration of neuroleptic medication, finding that she had refused to take prescribed medication and had engaged in outbursts and belligerent actions at a nursing home and a hospital and that she was unable to recognize her symptoms or control her behavior.

Three months later, appellant filed a petition seeking her restoration to capacity. She argued that, because she is able to care for her own needs, including performing personal care, taking public transportation and timely paying rent, she made out a prima facie case that she was no longer an incapacitated person. She alleged that there was no evidence that the guardian had acted for her benefit, that she no longer needed a guardian's assistance, and that the guardianship was not in her best interests.

At a hearing, appellant testified that she last worked in 2009 or 2010 performing part-time private home health care. She testified that she was able to care for her personal possessions, vote, purchase her own clothing and personal-care items, and prepare her own meals. She testified that she has never needed a guardian and that one was appointed only because her mother mismanaged her finances. She denied that she had a mental illness or outbursts and testified that, although she takes prescribed

medications, if she were not under commitment or guardianship, she would not do so because she does not need them.

The district court denied appellant's petition for restoration to capacity and termination of the guardianship. The district court found that appellant continues to be ill with an organic brain injury, which grossly impairs her behavior, judgment, and capacity to recognize reality and ability to reason or understand, including judgment relating to her need for assistance. The district court found that appellant's appearance in court, her demeanor, and her responses to questioning showed that she lacks insight into her current limited abilities, continues to be delusional, and lacks capacity to make realistic and responsible decisions regarding her residence, to provide for her care and maintenance needs, to consent to medical treatment, and to apply for public benefits. The district court therefore determined that guardianship was necessary, even if concurrent with a commitment, to ensure her well-being in areas not subject to the commitment and that appellant failed to present a prima facie case for terminating the guardianship. This appeal follows.

D E C I S I O N

This court reviews the district court's decision relating to termination or modification of a guardianship, including the best interests of the ward, for abuse of discretion. *In re Conservatorship of Brady*, 607 N.W.2d 781, 784 (Minn. 2000). In doing so, we review the district court's findings of fact for clear error. Minn. R. Civ. P. 52.01.

The district court may appoint a guardian if it finds by clear and convincing evidence that the subject of the guardianship is an incapacitated person whose needs cannot be met by less-restrictive means. Minn. Stat. § 524.5-310(a) (2012). An incapacitated person is defined as a person who “is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions” and “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).

A ward or interested person may petition the district court to 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 that establishes a “prima facie case for termination” of the guardianship, the court shall order termination unless it is proved that continuation of the guardianship is in the ward’s best interests. *Id.* (c) (2012); *see also Coker v. Ludeman*, 775 N.W.2d 660, 664–65 (Minn. App. 2009) (stating that the commitment statute requires a person petitioning for transfer or discharge to produce evidence that satisfies statutory criteria), *review dismissed* (Minn. Feb. 24, 2010). The district court may also modify the guardian’s appointment or powers if a change in the ward’s capacity to provide for care, support, education, health, and welfare warrants that action. Minn. Stat. § 524.5-307(b). The district court found that appellant failed to present a prima facie case for terminating the guardianship and that, by clear and convincing evidence, she was incapable of exercising for herself the powers granted to the guardian.

Appellant argues that she gave unrebutted testimony that she was able to meet her personal needs, including performing daily living activities and taking her prescribed medication. The district court, however, was able to observe appellant as she responded to questions and found that her demeanor and responses showed that she lacks insight and understanding of her limited ability and condition and the capacity to make responsible and realistic decisions regarding her care. We defer to the district court's determination of witness credibility. *In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 61 (Minn. App. 1990).

Appellant also argues that the district court made no specific findings to support its general finding on her lack of capacity. But the record in this action contains a series of recent commitment orders with specific findings, including appellant's history of failing to take medications on her own and her denial of diagnosed mental illness, which contributed to her inability to care for herself and raised the possibility of harm to herself and others. *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 174–75 (Minn. App. 1997) (stating that court records and files from prior adjudicative proceedings are an appropriate subject of judicial notice by the district court). Based on this record, together with appellant's testimony, the district court was justified to infer that appellant continued to lack insight into the seriousness of her condition and judgment about when to seek help. For instance, appellant testified that, if the guardianship were terminated, she would not keep taking her medication because she did not need it. The evidence supports the district court's determination that appellant continues to be an incapacitated person.

Appellant maintains that, because she is currently committed as a mentally ill person, which is less restrictive than commitment along with guardianship, she does not need a guardian. But although appellant's mental-health commitment placed her in the custody of the Department of Human Services for care and treatment, the district court did not clearly err by finding that a guardianship was necessary to ensure appellant's well-being in areas not subject to her commitment. *See* Minn. Stat. § 524.5-313(c) (2012) (stating the broad powers and duties that district court may grant to a guardian).

Appellant finally argues that the guardianship is no longer needed because the guardian has not exercised the powers granted under the guardianship. She maintains that the evidence does not show that she had a treatment plan and that the guardian does not return her phone calls or accompany her to medical appointments. But even if true, these arguments do not relate to appellant's continued need for a guardian, but rather to the quality of the current guardian's performance. If appellant believes that the guardian is not effectively performing designated duties and that her welfare requires immediate action, her appropriate remedy is to seek the appointment of a temporary substitute guardian. *See* Minn. Stat. § 524.5-312 (2012) (stating the circumstances under which a district court may appoint a temporary substitute guardian). The district court did not abuse its discretion by denying appellant's petition to terminate her guardianship.

Affirmed.