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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1141**

In re the Guardianship of
Daniel J. Carlson

**Filed April 23, 2018
Affirmed in part and remanded
Smith, Tracy M., Judge**

Pope County District Court
File No. 61-PR-15-337

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Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellant-ward Daniel Carlson appeals from the district court's denial of his petition to terminate or modify his guardianship and denial of his objection to respondent-guardian Presbyterian Family Foundation's (PFF) sale of his personal property. Because the district court did not abuse its discretion in concluding that Carlson failed to establish a prima facie case for termination, we affirm the decision to continue the guardianship.

However, because the district court made insufficient factual findings to permit appellate review of the personal-property sale, we remand that issue to the district court.

FACTS

In September of 2015, PFF was appointed as Carlson's guardian after the district court found that he was incapable of meeting his own needs for medical care, nutrition, safety, and shelter. Carlson did not appeal that appointment.

In October of 2016, Carlson received his annual notice of right to petition for restoration to capacity, and he promptly filed such a petition. A hearing was originally scheduled for December 23 but then rescheduled for March 8, 2017. In the interim, PFF filed a notice of intent to dispose of personal property, Carlson objected, and the disposal hearing was consolidated with the termination-of-guardianship hearing.

At the consolidated hearing, Carlson testified that he was able to make decisions regarding his health care, which mental health services he needed, and which physicians to see, without assistance from PFF. He also testified that he planned to start his painting business again. Carlson filed an affidavit stating that his circumstances and capacity "to provide for [his] support, care, education, health and welfare" had improved so much that he was no longer incapacitated. Further, Carlson submitted a recent rule 20 evaluation¹ that had found him competent to stand trial in an unrelated criminal case. Finally, Carlson objected to the sale of his personal property because "there is no harm in [his] retaining the

¹ A rule 20 evaluation is an evaluation to determine a criminal defendant's competency to participate in criminal proceedings. Minn. R. Crim. P. 20.01.

few items of personal property and vehicles/watercraft [he] possess[es] as they are of nominal value.”

In support of continuing the guardianship, PFF elicited testimony from Carlson that, although he planned to move out of his current housing facility, he had not begun looking for alternative housing and needed assistance in finding housing at that point in his life. Additionally, Carlson conceded that he was unable to obtain transportation to his criminal-case hearings on his own and that, contrary to his direct testimony, he did not “plan on getting back into the business” of painting.

PFF also presented testimony from Carlson’s guardianship-services provider. She testified that she did “most of the legwork” to find Carlson’s current housing and that he would be unable to find housing on his own. She then described Carlson’s financial decisions before the guardianship, saying that “he blew through [his funds] with everything he bought,” buying three pickups despite lacking a driver’s license. She testified that PFF’s accounting department managed Carlson’s social security income, that doing so was “extremely confusing for [them],” and that she could not “imagine how [Carlson] would have been able to handle it.” She concluded by saying that Carlson needed “assistance in securing the necessities of life such as food and clothing,” as well as “with medical matters in trying to set up medical appointments and things of that nature.”

The district court issued an order denying Carlson’s petition to be restored to capacity and denying his objection to PFF’s disposal of his personal property. The court found that, other than the rule 20 report, “Carlson has provided no further expert testimony . . . that provides an opinion that the conditions diagnosed” at the time the guardianship

was established “have dissipated or will likely dissipate with time or treatment.” Because the report evaluated only Carlson’s competence to stand trial and not his “ability to make responsible decisions regarding his medical care, nutrition, clothing, shelter, or safety,” the district court found it unpersuasive. Instead, the district court noted that the report “was similar to the assessment” made at the time guardianship was established “with regard to Carlson’s limited concentration, brain trauma from head injuries, delusions, chemical and alcohol addictions, antisocial behavior and depressive disorder.” As a result, the district court concluded that the report “does not provide . . . *prima facie* evidence that his guardianship should end.” With respect to its denial of Carlson’s objection to the sale of his personal property, the district court described PFF’s contention that sale was necessary to provide for Carlson’s needs but did not make any factual findings.

Carlson appeals.

D E C I S I O N

I. The district court did not abuse its discretion by denying Carlson’s petition to modify or terminate his guardianship.

Carlson challenges the district court’s conclusion that his guardianship should not be terminated, arguing that the district court failed to consider the necessary factors for continuing the guardianship, failed to consider converting the guardianship to a conservatorship, and failed to address his request to discharge PFF and appoint a different guardian. We review guardian-removal decisions for an abuse of discretion. *In re Guardianship of DeYoung*, 801 N.W.2d 211, 216 (Minn. App. 2011). “We defer to the district court’s factual determinations and credibility assessments. But because a district

court abuses its discretion when it misapplies the law, we apply a de novo standard of review to its interpretation of statutes[.]” *In re Guardianship of O’Brien*, 847 N.W.2d 710, 714 (Minn. App. 2014) (citations omitted).

“A ward . . . may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause.” Minn. Stat. § 524.5-112(b) (2016). “Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination and discharge the guardian unless it is proven that continuation of the guardianship is in the best interest of the ward.” Minn. Stat. § 524.5-317(c) (2016). Additionally, “the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian.” Minn. Stat. § 524.5-317(b) (2016). Finally, in addition to terminating the guardianship, a court “may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient.” *Id.*

The district court concluded that Carlson had failed in “establishing a prima facie case for termination,” Minn. Stat. § 524.5-317(c), because there was no evidence that the circumstances leading to the establishment of the guardianship had changed. This factual determination is supported by the record. Carlson’s guardianship was established in 2015 because he was unable to meet his needs for “medical care, nutrition, safety, and shelter.” In support of changed circumstances, Carlson relied primarily on the rule 20 evaluation that found him competent to stand trial. However, as the district court noted, that report “did not specifically address the question of Carlson’s restoration to capacity.” Instead, it

showed that the conditions leading to the guardianship were unchanged. Witness testimony confirms the district court's assessment. Carlson's guardianship-services provider testified that Carlson still required assistance for medical care, nutrition, and housing. In light of this testimony and the district court's appropriate weighing of the rule 20 report, the court was within its discretion in concluding that Carlson's guardianship should be continued.

We also reject Carlson's argument that the district court should have converted the guardianship to a conservatorship. Conservatorships invest the conservator with the power to manage the ward's financial matters, whereas guardianships invest the guardian with the power to establish an abode and impose the duty to ensure food and medical care. *Compare* Minn. Stat. § 524.5-313(c)(1), (2) (2016) (listing powers and duties of a guardian), *with* Minn. Stat. § 524.5-417(c) (listing powers of conservator). There was testimony that Carlson is incapable of more than just managing his finances; he also requires assistance in obtaining housing and medical care. Based on that testimony, the district court was within its discretion in refusing to convert the guardianship to a conservatorship.

Carlson also complains that the district court did not discharge PFF as his guardian and appoint a different entity. But Carlson raised that argument for the first time before this court. Although Carlson's petition to the district court did say "Petition for Termination of Guardianship/Conservatorship and Discharge of Guardianship/Conservatorship," at the hearing on his petition, Carlson indicated that the only issues before the court were terminating the guardianship and disposing of his personal property, not discharging his current guardian and appointing a new one. "It is well settled that a party may not raise for the first time on appeal a matter not presented to the court below."

In re Welfare of K.T., 327 N.W.2d 13, 16-17 (Minn. 1982). Because Carlson did not present the district court with a request that PFF be discharged, we do not consider this argument here.

II. The district court made insufficient factual findings to permit appellate review of its order denying Carlson’s objection to PFF’s disposal of his personal property.

Carlson challenges the district court’s denial of his objection to PFF’s disposal of his personal property, arguing that the evidence was insufficient to prove that the sale of the property was necessary to cover Carlson’s expenses. We review a district court’s approval of a guardian’s proposed property disposal for an abuse of discretion. *Cf. O’Brien*, 847 N.W.2d at 714 (“We review a district court’s determination of the terms of a guardianship for an abuse of discretion.”); *In re Conservatorship of Brady*, 607 N.W.2d 781, 784 (Minn. 2000) (“Because the district court’s determination of what is in the conservatee’s best interests is an ultimate issue deduced from other facts in the record, we review that determination for an abuse of discretion.”). But even discretionary decisions that fall within statutory limits must be supported by factual findings. *See Lee v. Lee*, 775 N.W.2d 631, 643 (Minn. 2009) (remanding for the district court to make factual findings supporting its discretionary decision regarding the effective date for modification of maintenance).

Guardians have “the duty to provide for the ward’s care, comfort, and maintenance needs, including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation.” Minn. Stat. § 524.5-313(c)(2). If these requirements cannot be met “through governmental

benefits or services to which the ward is entitled,” then the guardian may turn to the ward’s estate to do so. *Id.* In evaluating whether expenses should be incurred on behalf of the ward, “[t]he best interests of the ward should be the decisive factor in making any choice on his behalf.” *See Rickel v. Peck*, 211 Minn. 576, 583, 2 N.W.2d 140, 144 (1942).

The district court’s order deals almost entirely with whether Carlson’s guardianship should be terminated. Only one sentence in the findings of fact addresses the necessity of PFF’s sale of property. It reads, in its entirety, “PFF contends the sale of the personal property of Carlson is necessary to provide basic shelter, food, and medical treatment or care; including pharmacological treatment for mental illness.” Further, this one sentence merely recites PFF’s position, rather than explicitly saying the court found that position credible. This court has previously indicated that such recitations are not proper findings because they merely restate testimony rather than adopt that testimony as true. *O’Brien*, 847 N.W.2d at 716. The district court’s order goes on to conclude that conservators have the duty “to pay out of the protected person’s estate all lawful debts of the protected person.” However, the district court, in the order, never affirmatively finds that such debts exist, or that Carlson would be unable to obtain shelter, food, or medical care without the sale of his property.

Looking at the district court’s order, we are unable to determine whether the district court abused its discretion in denying Carlson’s objection because the district court made insufficient findings of fact to permit appellate review. *See Rosenfeld v. Rosenfeld*, 311 Minn. 76, 82, 249 N.W.2d 168, 171 (1976) (stating that findings of fact will “assure consideration of the statutory factors[,] . . . facilitate appellate review[,] . . . [and] satisfy

the parties that this important decision was carefully and fairly considered”); *see also In re Civil Commitment of Ince*, 847 N.W.2d 13, 26 (Minn. 2014) (citing this aspect of *Rosenfeld* and noting that, while “[t]he evidence in the record may be sufficient to support [the district court’s] conclusion, . . . in the absence of findings about that evidence, we cannot be certain”). Because we lack the factual findings needed to address Carlson’s argument that the sale of his property is unnecessary, we remand for the district court to make the requisite findings and fully consider Carlson’s argument. *See In re Estate of Eckley*, 780 N.W.2d 407, 415 (Minn. App. 2010) (“Because the district court failed to consider appellant’s arguments and failed to make the findings needed to address these contentions, we remand.”). In so doing, the district court may, in its discretion, reopen the record. *See State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808, 821 (Minn. 2014).

Affirmed in part and remanded.