

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1193**

In re: Guardianship of Matthew Lee Johnson, Ward

**Filed May 7, 2018
Affirmed
Bratvold, Judge**

Nobles County District Court
File No. 53-P9-02-000415

Aaron M. Kinser, Ahlquist & Wiltrout PC, Worthington, Minnesota (for appellant ward)

Jari Johnson, Worthington, Minnesota (former guardian)

Prairie Support Services, Walnut Grove, Minnesota (guardian)

Considered and decided by Bratvold, Presiding Judge; Cleary, Chief Judge; and
Florey, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges the district court's decision to deny his petition for termination or modification of guardianship and discharge of guardian. Because the district court did not abuse its discretion, we affirm.

FACTS

Appellant Matthew Johnson is 33 years old and has been under guardianship since he was 18 years old. According to Johnson's original guardianship petition and testimony

at his hearing, he has Asperger's syndrome and suffers from reactive detachment disorder and obsessive compulsive disorder. Based on the information in the record, Johnson's last psychological evaluation was in 2007. According to that evaluation, Johnson's "intellectual skills" were in the "low average range," and he had "short-term memory deficits." For example, Johnson had "a deficit" in his math skill, which was at a "second grade level of functioning," and this impacted his ability to manage his own affairs. The 2007 evaluation also stated that Johnson's "daily living skills" were equivalent to that of a 15 year old.

Johnson was placed under guardianship based on events during his late childhood and adolescence. He has been living in a group home since he was 11 years old, when a social worker encouraged his placement there after he made threats to "kill" or "maim" other children at school. While at a group home, he extinguished matches on others and started a fire in the attic. Around 2003, Johnson was convicted of making terroristic threats towards a judge. In 2015, he broke the finger of a staff member at his group home.

In February 2017, Johnson petitioned to terminate or modify his guardianship. At the time of his petition, Johnson's mother, Jari Johnson, was his court-appointed guardian. On February 22 and 23, a court-appointed visitor met with appellant. During the visit, Johnson insisted he did not need a guardian, but preferred that a guardian keep some statutory powers, such as the power to pay for his support and maintenance and pay his debts.

In a written submission to the court, the court visitor recommended preserving the guardian's powers of supervision, support and maintenance, payment of debts, and management of Johnson's estate. The court visitor also recommended restoring Johnson's

power to care for his clothing, furniture, vehicles, and other personal effects. Lastly, the court visitor declined to make any recommendations on whether to restore the following powers: determining living arrangements; providing for care, comfort, and needs; and providing for medical care and treatment.¹

In April 2017, the district court held a hearing, during which Johnson, his mother, and his employer testified. The court visitor did not testify. At the hearing, Johnson clarified his motion. First, Johnson asked the court to terminate his guardianship. Alternatively, Johnson asked for modification of the guardianship, with the guardian maintaining control over his finances. Additionally, Johnson asked for the appointment of a new guardian. If the district court granted his motion to modify his guardianship, Johnson asked that he receive the power to determine his place of living and that the guardian maintain control over his finances. The district court took the matter under advisement.

In May 2017, the district court denied Johnson's petition to modify or terminate the guardianship, finding that a guardian remains in Johnson's "best interests." In July 2017, upon a subsequent motion, the district court terminated his mother's appointment as Johnson's guardian and appointed Prairie Support Services. Johnson appeals the district court's May order denying his petition for termination or modification of guardianship.

¹ The court visitor withheld recommendations on these powers because it was "beyond the scope of [the visitor's] role." She recommended acquiring information from the "current guardian, [Johnson's] social worker, and group home staff." The record does not reflect whether these interviews occurred, although Johnson's guardian at the time—his mother—testified.

DECISION

This court reviews district court decisions regarding terminating or modifying a guardianship for abuse of discretion. *In re Conservatorship of Brady*, 607 N.W.2d 781, 784 (Minn. 2000). The district court abuses its discretion when its “findings are not supported by record evidence or when it misapplies the law.” *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). Johnson does not argue the district court misapplied the law, and so his challenge focuses on whether the record supports the district court’s decision. “A reviewing court will not set aside the district court’s factual findings unless they are clearly erroneous, giving due regard for the [district] court’s determinations regarding the credibility of witnesses.” *In re Guardianship of Pates*, 823 N.W.2d 881, 885 (Minn. App. 2012) (quotation omitted). “A finding of fact is clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

A district court may appoint a guardian if it finds by “clear and convincing evidence” that the proposed ward is an “incapacitated person” whose needs “cannot be met by less restrictive means.” Minn. Stat. § 524.5-310(a) (2016). An “[i]ncapacitated person” is someone who, for reasons besides being a minor, “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 (2016).

When a guardianship is established, the district court may grant the guardian statutorily-enumerated powers over the ward. Minn. Stat. § 524.5-313(c) (2016). As was the case for Johnson’s mother, Prairie maintains all of the enumerated guardianship powers over Johnson, including: the power to establish a place of abode; the power to provide for Johnson’s care and comfort; the power to care for Johnson’s clothing, furniture, vehicles, and other personal effects; the power to give necessary consent to provide medical attention; the power to approve or withhold approval of any contract; the power to exercise supervisory authority over Johnson; and the power to apply on behalf of Johnson for any assistance, services, or benefits. *See id.*

Generally, a guardianship terminates only upon the ward’s death or order of the court. Minn. Stat. § 524.5-317(a) (2016). Any person interested in the ward’s welfare may, however, petition the court to terminate guardianship if it is no longer needed. *Id.* (b) (2016). Additionally, a court may modify a guardianship if it is “currently excessive or insufficient” or the ward’s “capacity to provide for support, care, education, health, and welfare has so changed as to warrant” a modification. *Id.* To successfully terminate a guardianship, a petitioner must establish a “prima facie case for termination,” and, upon such a showing, the district court must terminate the guardianship, unless it is proved that the guardianship is in “the best interest of the ward.” *Id.* (c) (2016).

The district court determined that, while Johnson “is able to exercise a degree of independence in areas of self-care and employment, the record makes clear that a [g]uardian remains in [his] best interests.” It also found that the current restrictions were “both necessary and the least restrictive means through which to meet [his] needs.”

Johnson makes three arguments why the district court abused its discretion when it denied his petition for termination or modification of guardianship. We will discuss each argument in turn.

First, Johnson argues he established a prima facie case for terminating or modifying his guardianship, and specifically contends that he should have all guardianship powers restored except the power to control his finances. He points to his ability to dress, bathe, and feed himself. In addition, Johnson has a job delivering newspapers, which he has done for a year. Further, Johnson's employer testified that he is satisfied with Johnson's performance. Johnson also receives some government benefits. Additionally, Johnson cites his mother's testimony that she is not concerned about his ability to feed and clothe himself or to maintain his personal hygiene. Lastly, Johnson argues that he has little autonomy while residing in a group home, which maintains strict conditions that are incongruous with his ability to care for himself.

But the district court found that Johnson's guardianship continues to be in his best interest. While Minnesota law favors termination of guardianship if the petitioner's evidence establishes "a prima facie case for termination," Minnesota law also provides that a court may decline to terminate the guardianship if "it is proven that continuation of the guardianship is in the best interest of the ward." Minn. Stat. § 524.5-317(c).

We conclude that the district court did not abuse its discretion in determining that guardianship is in Johnson's best interest. Johnson has a history of sporadic violence and limited impulse control. While his conviction for terroristic threats was over a decade ago, he assaulted one of the group home staff members in 2015, and his mother's testimony

indicated that he has been violent toward group home staff on other occasions that have not led to legal action. Johnson's mother testified that he can become "violent and verbally and physically abusive if he doesn't get his way" and that he does not know what is "socially acceptable." His 2007 psychological evaluation mentioned that he has had problems with "poor judgment, poor decision making, impulsivity, social skills difficulties and relationship problems."

While Johnson's social worker/case manager, who has known him for 15 years, did not testify in this case, the court-appointed visitor spoke with the case manager and supplemented her findings with that information. The case manager said that she believed Johnson is "unable to make decisions for himself." She further noted that he has difficulty with "verbal behaviors and interactions with others" and that his potential for retaliation is "quite significant." Additionally, Johnson is not in therapy, nor does he take medication, suggesting he is not receiving treatment for the underlying disorders that appear to cause his behavioral problems.

The court visitor's report also supports the district court's determination; the only power the visitor recommended restoring to Johnson was the power to care for his personal belongings. While the district court rejected restoring any powers to Johnson, it appears to have done so based on Johnson's mother's testimony that complete guardianship was in Johnson's best interest.

Second, Johnson argues the district court abused its discretion by denying his petition without articulating specific factual findings. But the district court made the necessary findings, including that "a [g]uardian remains in [Johnson's] best interests." *See*

Minn. Stat. § 524.5-317(b)-(c). Under the applicable standard of review, the district court's decision need only be supported in the record for this court to determine the district court did not abuse its discretion. *See Pates*, 823 N.W.2d at 885.

Third, Johnson argues the district court abused its discretion by not providing a reason for crediting his mother's testimony over his. It was the district court's role as fact-finder to credit one witness's testimony over another and its reasoning for crediting mother's testimony is sufficiently clear when the entire opinion is considered. Therefore, we defer to the district court's credibility determination. *See In re Kremer v. Kremer*, 827 N.W.2d 454, 457-58 (Minn. App. 2013), *review denied* (Minn. Apr. 16, 2013).

We conclude that the district court did not abuse its discretion in denying Johnson's petition to terminate or modify his guardianship because the record supports its determination that the continued appointment of a guardian remains in Johnson's best interest.

Affirmed.