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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0452**

In re the Guardianship and Conservatorship of:
Reinhold Struhs.

**Filed December 3, 2018
Reversed
Smith, John, Judge***

Watonwan County District Court
File No. 83-PR-17-558

Steven D. Winkler, Jones Law Office, Mankato, Minnesota (for appellant Reinhold Struhs)

Zachary R. Strom, Sunde, Olson, Kircher & Zender, P.L.C., St. James, Minnesota (for
respondent Steven R. Sunde)

Robert Cunningham, Lake Crystal, Minnesota (pro se respondent)

Considered and decided by Rodenberg, Presiding Judge; Schellhas, Judge; and
Smith, John, Judge.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse the order appointing a guardian and conservator for appellant because
the district court's findings are insufficient to support the appointments and because the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

record evidence does not meet the clear and convincing standard of proof required to support the appointments.

FACTS

Respondent Steven R. Sunde, an attorney and friend of appellant Reinhold Struhs, petitioned to have respondent Ronald Cunningham appointed as guardian and conservator of Struhs. The petition states that the probable value of Struhs's assets, including his homestead and other real estate, investments, and personal property, totaled \$2,380,000. At the hearing on the petition, Cunningham testified that he had known Struhs since 1976 and that Struhs often spent holidays with Cunningham's family. Cunningham testified that he considered Struhs a good friend and that he had no financial interest in the guardianship and did not intend to charge a fee for his services. Struhs has no known relatives in the United States.

Cunningham testified that when Struhs had been at his home a few weeks earlier for Christmas, "[h]e was dribbling all over his clothes" and "urinated in his pants." Cunningham testified at other times he had seen Struhs in a local business with urine on his pants down to his knees. Cunningham testified that he had been approached by local business people, who knew he was a friend of Struhs's, asking him "to do something about [Struhs]." Cunningham testified that he was concerned about Struhs's mental state and described him as drifting, becoming frustrated, and not staying on track. In the past, Cunningham had always known Struhs to be "very alert" and "[v]ery intelligent."

Cunningham visited Struhs's home briefly the day before the hearing and described it as "dilapidated" and "unlivable." Cunningham smelled fuel oil in the house, like there

might be a leak. When Cunningham asked about Struhs's heating arrangements for the winter, Struhs stated that his fuel-oil furnace worked, that he had checked it, and that he also had electric space heaters. Cunningham testified that when he checked with the man who Struhs said had fixed the furnace, the man said that he had not checked it in ten years. Cunningham testified that he wanted to have the man check the furnace, but Struhs would not let him get the furnace checked.

Struhs lost his driver's license in 2017. Despite having lost his license, Struhs continued to live at his farm home, which was located seven or eight miles out of town.

Cunningham testified that during the 60 days he had been Struhs's emergency conservator and guardian, Struhs's diet consisted mainly of bread and sweets. After Cunningham questioned Struhs about his food choices about a week before the hearing, Struhs bought some healthier food.

Struhs owned 240 acres of good-quality farmland, had cash and other investments of about \$1 million, and owned close to \$50,000 worth of farming equipment. Struhs had a tenant who paid him approximately \$150 an acre to farm 145 acres, but Cunningham testified that there is a program that would pay \$225 to \$285 an acre for that quality of farmland.

Cunningham had no information about Struhs's medical records or any mental-health evaluations. The court-appointed visitor's report recommended that the county human services department be contacted to evaluate Struhs's needs. The visitor's report, filed with the court, described Struhs's appearance as disheveled but adequate. The report described the condition of Struhs's home as "very run-down, cluttered, and dilapidated"

and “possibly unsafe.” The report stated that Struhs might need assisted living for the winter. Struhs told the visitor that he did not want Cunningham appointed as his guardian, that he did not believe he needed a guardian, but that, if a guardian was needed, he would prefer his tenant. The visitor recommended that human services conduct an evaluation, that Struhs’s estate possibly be evaluated by an accountant, and that Cunningham not be appointed a guardian or conservator.

The district court found:

1. [Struhs] was present at the hearing. The Court observed, during the proceedings that [Struhs] was confused.
2. [Struhs] lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.
3. [Struhs] has demonstrated behavioral deficits evidencing inability to meet his needs for medical care, nutrition, clothing, shelter or safety.
4. [Struhs] lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his estate or financial decisions.
5. [Struhs] has demonstrated behavioral deficits evidencing inability to manage his estate.
6. [Struhs] has property which will be dissipated without proper management.

The district court found that Struhs needed a guardian to supervise and protect his person and a conservator to supervise and protect his estate and appointed Cunningham as Struhs’s guardian and conservator.

In its memorandum, the district court stated that “Petitioner [Sunde] made the Court’s determination somewhat more difficult in that he did not present any medical evidence concerning the condition, mental and physical, of Mr. Struhs” but that, “[t]he motives of [Sunde] and [Cunningham] cannot be questioned. They are long-standing

friends for Mr. Struhs and are acting in what they believe is in their friend's best interest." The court stated that it was not concerned about the relatively low rent being paid by Struhs's tenant.

Struhs appeals.

DECISION

Sufficiency of findings

The supreme court has stated that findings of fact explaining a district court's exercise of its discretion are necessary to "(1) assure consideration of the statutory factors by the [district] court; (2) facilitate appellate review of the [district] court's . . . decision; and (3) satisfy the parties that this important decision was carefully and fairly considered by the [district] court." *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976) (child-custody case); *see also In re Civil Commitment of Ince*, 847 N.W.2d 13, 26 (Minn. 2014) (citing *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 of fact about that evidence, we cannot be certain"); *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.").

The district court made only conclusory findings on Struhs's inability to meet his personal needs and manage his estate. The only references to evidence supporting the appointment of a guardian and conservator were Struhs's confusion during the hearing and the unquestionable motives of Sunde and Cunningham. Struhs's testimony on cross-examination indicated confusion when asked about whether Cunningham had taken him

on trips to various states, but the record evidence does not show when or if these trips occurred. Cunningham's testimony indicated that Struhs may have been confused about when he last had his furnace serviced and when he was most recently in contact with his financial advisers. While Struhs may have been confused about these issues, the evidence indicating confusion was not substantiated with specific evidence about whether or not the trips occurred, the condition of the furnace, or whether Struhs's financial estate was being mismanaged.

The district court made no findings on the visitor's recommendations that human services conduct an evaluation and that Cunningham not be appointed a guardian or conservator. The district court did not address the tenant's testimony, which tended to refute Cunningham's testimony about changes in Struhs's behavior. Further, the court did not consider Struhs's claim that he was willing to consider Cunningham's advice but that he was capable of managing his own affairs. The district court's findings on Struhs's confusion and the motives of Sunde and Cunningham are insufficient to support appointment of a guardian or conservator.

Evidence supporting appointment of guardian and conservator

"The appointment of a guardian is a matter within the discretion of the district court and will not be disturbed absent a clear abuse of that discretion." *In re Guardianship of Autio*, 747 N.W.2d 600, 603 (Minn. App. 2008). "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).

The district court may appoint a guardian “only if it finds by clear and convincing evidence that: (1) the respondent is an incapacitated person; and (2) the respondent’s identified needs cannot be met by less restrictive means, including use of appropriate technological assistance.” Minn. Stat. § 524.5-310(a) (2016). 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 (2016).

Minn. Stat. § 524.5-409, subd. 1(a) (2016), states:

The court may appoint a limited or unlimited conservator for a respondent only if it finds that:

(1) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance . . . ;

(2) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual’s support and that protection is necessary or desirable to obtain or provide money; and

(3) the respondent’s identified needs cannot be met by less restrictive means, including use of appropriate technological assistance.

Citing his testimony on direct examination, Struhs argues that the evidence does not support the finding that he was confused during the hearing and, on the contrary, show that he is capable of caring for his person and managing his estate. Struhs argues that his

responses on cross-examination were not “demonstrably wrong given the record.” Although Struhs’s responses during cross-examination suggest that he was confused, as we have already addressed, the evidence indicating confusion was not substantiated by specific evidence.

There was conflicting evidence about Struhs’s ability to meet his nutritional needs. Cunningham was concerned about Struhs consuming mainly bread and sweets, but he testified that after he expressed those concerns to Struhs, Struhs bought more nutritious food. The tenant’s testimony indicated that Struhs had friends who were willing to help him with grocery shopping. There was evidence that Struhs’s house was in disrepair and unclean. But there was no medical evidence regarding Struhs’s physical or mental health. Struhs’s apparent incontinence and the fact that his house was in need of repairs and cleaning do not necessarily mean that he needs a guardian.

Regarding Struhs’s financial estate, there was no evidence of dissipation. Although Cunningham testified that he could get more in rent than what Struhs was charging his tenant, the district court stated that it was not concerned about the relatively low rent.

There was no evidence presented and minimal testimony provided about the availability of alternative services that could have been provided to Struhs to avoid the need for a guardian and conservator. We conclude the record evidence was insufficient to meet the clear and convincing standard of proof required to support the appointment of a guardian and conservator. *See In re Conservatorship of Edwards*, 390 N.W.2d 300, 302-03, 305 (Minn. App. 1986) (stating that family members’ testimony alone may not have been sufficient to prove statutory definition of incapacity by clear and convincing evidence

but that, when viewed together with a doctor's notes and conclusions based on two weeks of observation and testing, which reflected extremely negatively on ward's mental capacity, evidence was sufficient to prove incapacity). We, therefore, reverse the order appointing Cunningham as Struhs's guardian and conservator.

Reversed.