

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0617**

In re: Guardianship/Conservatorship of Chad Wayne Thornberg.

**Filed December 20, 2021
Reversed
Slieter, Judge**

Douglas County District Court
File No. 21-P5-05-000344

Chad M. Larson, Douglas County Attorney, Tara J. Ulmaniec, Assistant County Attorney,
Alexandria, Minnesota (for appellant Douglas County Social Services)

Thomas P. Klecker, Thornton, Dolan, Bowen, Klecker & Burkhammer, P.A., Alexandria,
Minnesota (for respondents Beverly Cullen, Bernard Cullen, and Heather Sorenson)

Chad Wayne Thornberg, Alexandria, Minnesota (*pro se* respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant Douglas County Social Services appeals the district court's decision to appoint it as successor guardian for Chad Wayne Thornberg in this private guardianship proceeding. Respondents filed a petition with the district court seeking to be discharged as co-guardians for Chad Wayne Thornberg and asked for the appointment of a successor private guardian. In this private guardianship proceeding, the co-guardians' petition did not seek a public guardianship pursuant to Minnesota Statutes chapter 252A, and the

requirements of the public guardianship statute were not satisfied. Therefore, we reverse the district court's order appointing appellant as public guardian.

FACTS

Respondents Beverly Jean Cullen, Bernard Myles Cullen, and Heather Sorenson are, respectively, the mother, stepfather, and sister of Chad Wayne Thornberg. In May 2005, respondents were appointed co-guardians¹ of Thornberg. In March 2021, the co-guardians filed a petition to be discharged and to appoint Presbyterian Family Foundation (PFF) as sole successor guardian for Thornberg. Because PFF would not accept the guardianship appointment absent a contract with appellant Douglas County Social Services, the co-guardians also sought an order requiring the county to enter a services contract with PFF. Although not made explicit by this record, it appears that the county refused to enter such a contract. PFF did not take part in this proceeding.

Present at the hearing on the petition were the co-guardians with their counsel, Thornberg, who was without counsel, and an assistant county attorney. The district court declined to order that the county contract with PFF, stating it did not believe it had “the authority to order [the county] to contract with [PFF].” The district court stated, however, that the guardianship “won’t fail for want of guardian/conservator,” it would “appoint [the county] as guardian/conservator,” and then the county could either “act in that capacity” or “contract with whomever” the county chose.

¹ Respondents were also appointed as co-conservators for Thornberg. For ease of our analysis and unless otherwise noted, we refer to them only as co-guardians.

The district court determined that “[b]ased on everyone’s appearance . . . at the hearing,” it would not require an amended petition, concluding that “it’s sufficient if [counsel] just submit a proposed order with the relief.” The district court asked the assistant county attorney whether she had any additional comments, to which she replied, “No, Your Honor.” The district court then stated:

And in the meantime, if there are some communications with [the county] after this hearing and they want to skip the step and just have PFF appointed or somebody else, you can just include that in the order, and otherwise we’ll just appoint [the county]. And then if they contract with PFF, keep it in-house or have some other guardian/conservator in mind with however they are contracting, that’s just fine with me.

The district court issued its written order concluding that “Minn. Stat. § 252A.03 supports a public guardianship[] when no other qualified and willing individual is available,” and it appointed the county as public guardian. The county appeals.

DECISION

“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). “The district court abuses its discretion by improperly applying the law.” *In re Guardianship of DeYoung*, 801 N.W.2d 211, 216 (Minn. App. 2011) (citation omitted). Questions of statutory interpretation are reviewed *de novo*. *In re Guardianship of Tschumy*, 853 N.W.2d 728, 742 (Minn. 2014).

This guardianship was established pursuant to the Minnesota Uniform Guardianship and Protective Proceedings Act (the Uniform Guardianship Act). Minn. Stat. §§ 524.5-101

to -502 (2020). The county argues that the district court erred by appointing it as guardian in this private guardianship matter. We agree.

The Uniform Guardianship Act plainly precludes the appointment of the county as guardian:

This article does not apply to any matters or proceedings arising under or governed by chapters 252A, 259, and 260C. Notwithstanding anything else to the contrary, chapters 252A, 259, and 260C exclusively govern the rights, duties, and powers of social service agencies, the commissioner of human services, licensed child placing agencies, and parties with respect to all matters and proceedings arising under those chapters.

Minn. Stat. § 524.5-106 (emphasis added). The unambiguous and plain language of the Uniform Guardianship Act precludes its application to matters “arising under or governed by chapter 252A”—the Minnesota Public Guardianship for Adults with Developmental Disabilities Act (the Public Guardianship Act).² See Minn. Stat. §§ 252A.01-.21(2020); see also Minn. Stat. § 252A.21, subd. 4 (“Nothing in sections 252A.01 to 252A.21 shall impair the right of individuals to establish private guardianships or conservatorships in accordance with applicable law.”).

² Several sections of the Public Guardianship Act were amended during the 2021 regular legislative session. See 2021 Minn. Laws ch. 30, art. 13, §§ 4-47, at 600-12. Because none of those amendments contained an effective date, the amendments were effective August 1, 2021. Minn. Stat. § 645.02 (2020). Here the district court issued its order before August 1, 2021. Therefore, we review its decision pursuant to the unamended statute. We note that changes to the Public Guardianship Act have removed language permitting a public conservatorship. See 2021 Minn. Laws ch. 30, art. 13, § 17, at 604 (deleting the option that the commissioner be appointed to act as “public conservator” pursuant to Minn. Stat. § 252A.05 (2020)).

The establishment of public guardianship for adults with developmental disabilities is generally governed by Minn. Stat. §§ 252A.01-.21; *Autio*, 747 N.W.2d at 602. The Public Guardianship Act authorizes the commissioner of human services and its designees to supervise adults with developmental disabilities who are unable to provide for their own needs and “for whom no qualified person is willing and able to seek guardianship or conservatorship under sections 524.5-101 to 524.5-502.” Minn. Stat. § 252A.01, subd. 1(a)(1). “Public guardianship . . . is the most restrictive form of guardianship . . . and should be imposed only when no other acceptable alternative is available.” Minn. Stat. § 252A.01, subd. 1(b); *Autio*, 747 N.W.2d at 603 (citing Minn. Stat. § 252A.01, subd. 1(b) (2006)).

Before a district court is presented with a petition for public guardianship, the “commissioner may be nominated in a sworn written request” to act as guardian by an interested person, the successor guardian, or the person with a developmental disability. Minn. Stat. § 252A.03, subd. 1. Thereafter, the Public Guardianship Act provides several steps prior to the appointment of a public guardian:

- Upon receiving written nomination, “the commissioner shall promptly order the local agency of the county in which the proposed ward resides to coordinate or arrange for a comprehensive evaluation of the proposed ward.” Minn. Stat. § 252A.04, subd. 1.
- The local agency must prepare and forward the comprehensive evaluation to the commissioner within 90 days of the commissioner’s order. Minn. Stat. § 252A.04, subd. 3.
- “The commissioner shall accept or reject the nomination in writing within 20 working days of the receipt of a

comprehensive evaluation” Minn. Stat. § 252A.03, subd. 2.

- The commissioner must accept the nomination if the comprehensive evaluation concludes that 1) the subject is developmentally disabled, 2) the subject is in need of a guardian, and 3) no qualified person is willing to assume guardianship. *Id.*, subd. 3.
- The commissioner and the petitioner must consider whether qualified family members are willing to assume guardianship. *Id.*, subd. 4; Minn. Stat. § 252A.06, subd. 2(6).
- If the commissioner agrees to accept the nomination, the local agency files a petition with the court. Minn. Stat. § 252A.05.
- Whether the commissioner agrees to accept the nomination, a petition may be filed by a person with a developmental disability, a parent, stepparent, spouse or relative. Minn. Stat. § 252A.06, subd. 1.
- Upon the filing of a petition, the court shall appoint an attorney for the proposed person subject to the guardianship unless counsel is already provided. Minn. Stat. § 252A.09, subd. 1.

None of these steps occurred in this matter. Because the law for appointment of a public guardian was not followed, the district court abused its discretion in appointing the county as guardian.

The co-guardians principally argue that the county may, separate from the Public Guardianship Act, be appointed as guardian pursuant to the Uniform Guardianship Act because the county is a qualified guardian as defined by that statute. *See* Minn. Stat. § 524.5-309(b) (the district court may “appoint a person having a lower priority or no priority” as guardian); *see also* Minn. Stat. § 524.5-102, subd. 13 (The Uniform Guardianship Act defines a “person” among other things, as a “government, governmental

subdivision, agency, or instrumentality. . . .”). Therefore, the co-guardians argue, the failure to follow the public guardianship steps is not fatal and we should affirm the appointment. In short, the co-guardians ask that we not reverse merely because the district court’s decision was based on an incorrect reason or theory because the district court ultimately arrived at the correct decision. *See Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that “we will not reverse a correct decision simply because it is based on incorrect reasons.”). We are not persuaded.

As we explained, the unambiguous and plain language of the Uniform Guardianship Act prohibits appointment of the county in the circumstances of this case. Instead, the requirements set forth in chapter 252A must be met prior to the appointment of the commissioner at which time “[t]he commissioner may carry out the powers and duties prescribed . . . directly or through local agencies.” Minn. Stat. § 252A.111, subd. 5. We therefore reverse the district court.

Because we reverse the district court’s order appointing the county as guardian and that order of appointment also included the discharge of the co-guardians, the order discharging the co-guardians is reversed and respondents remain as the co-guardians for Thornberg pursuant to their appointment by the district court order issued on May 4, 2005.

Reversed.