STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0344

In re the Guardianship of Travis Trong Khuong Nguyen.

Filed September 18, 2023
Affirmed
Kirk, Judge[*]

Olmsted County District Court
File No. 55-PR-22-7120

Gerald S. Weinrich, Rochester, Minnesota (for appellant Travis Nguyen)

Anthony Moosbrugger, Kasson, Minnesota (for respondent Lauren Nguyen)

Keith Ellison, Attorney General, Nathan J. Hartshorn, Allen Cook Barr, Assistant Attorneys General, St. Paul, Minnesota (for intervenor State of Minnesota)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant, a person subject to guardianship, challenges the district court's decision depriving appellant of the right to vote, arguing that provisions in the Minnesota Constitution and Minnesota statutes permitting this deprivation are unconstitutional and

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

that the record does not support the decision. Because this court lacks authority to alter a statute, and because the record provides ample support for the decision, we affirm.

FACTS

In December 2004, respondent Lauren Nguyen gave birth to her son, appellant Travis Nguyen; he turned 18 in December 2022. In September 2022, a doctor from the Division of Community Pediatric and Adolescent Medicine at the Mayo Clinic stated that appellant

> has autism spectrum disorder (level 3) with sensory processing deficits, elopement behaviors with cognitive skills in the delayed ranged based. (sic) He has severe language impairment and is essentially nonverbal. He has severe receptive and expressive language deficits. He requires very substantial support for social communication and very substantial support for restricted, repetitive behaviors.
>
> As he approaches the age of 18 he will require guardianship for medical decision making, for daily functioning, and for his safety.

In October 2022, respondent petitioned to be appointed the guardian for appellant. In December 2022, a visit was conducted in connection with respondent's petition. The visitor's report said that appellant did not respond to questions as to the time of day, the date, and the place of the visit; did not stay present for the interview; did not use words to communicate when asked if he understood the nature, purpose, and effect of the guardianship proceedings; did not answer when asked if he understood what he was being told; had no interest in or understanding of the purpose of the visit; did not answer when asked if he knew the proposed guardian, i.e., respondent, his mother; and did not stay for a question on what powers he would like his guardian to have. The visitor's recommendation

said, "It is clear from today's visit that [appellant] does look to [respondent] for support, direction, protection[,] and care[]. It is also clear at our visit today that he is in need of [a] [g]uardianship to protect his rights and provide for his needs."

Following a hearing on the petition, the district court issued an order with findings that appellant: (1) had been diagnosed with autism spectrum disorder, (level 3); (2) had sensory processing deficits, elopement behaviors with cognitive skills in the delayed range, and severe language impairment; (3) was essentially nonverbal; (4) required very substantial support for social communication and for restricted, repetitive behaviors; (5) needed 24/7 supervision and assistance with all aspects of daily living; (6) was unable to manage property and business affairs because of an impairment in his ability to receive and evaluate information, or make decisions; (7) had property that would be dissipated without proper management; (8) needed funds for his support, care, education and welfare; and (9) was unable to comprehend the purpose or process of voting. Based on these findings, the district court appointed respondent as appellant's guardian and revoked appellant's right to vote.

Appellant challenges only the revocation of his right to vote, arguing that article VII, section 1 of the Minnesota Constitution violates the equal protection and due-process rights of those under guardianship and is therefore unconstitutional, that Minn. Stat. § 524.5-120(15), and Minn. Stat. § 524.5-313(c)(8) (2022) violate equal protection and due

process because they do not give specific guidelines for denying a fundamental right, and that the record does not support the district court's revocation of appellant's right to vote.[1]

DECISION

1. Minn. Const. art VII, § 1

This court reviews issues of constitutional interpretation de novo. *Schroeder v. Simon*, 985 N.W.2d 529, 536 (Minn. 2023). The Minnesota Constitution provides that those over 18 who have been citizens for three months and resided in a precinct for thirty days before an election "shall be entitled to vote in that precinct," but also that "a person under guardianship" is among those not entitled to vote. Minn. Const. art. VII, § 1. Appellant argues that this constitutional provision is unconstitutional because it deprives him of equal protection and due process.[2]

Intervenor State of Minnesota argues that declaring a constitutional provision to be unconstitutional violates basic logic. Appellant in his reply brief concedes that this is a "facially reasonable sounding argument" and that it "appears superficially reasonable," but he relies on *Schroeder* to argue that "considerations of equal protection and due process can sometimes override other provisions of the Minnesota constitution."

Appellant's reliance is misplaced: *Schroeder* is distinguishable. It concerns the constitutional language prohibiting felons from voting and restoring felons' right to vote

[1] Appellant admits in his reply brief that he "is asking this Court to embrace a novel and creative approach to address the issues raised in this appeal."

[2] Those "not mentally competent" are also among those not entitled to vote under Minn. Const. art. VII, § 1. Appellant does not address the application of the "not mentally competent" phrase to his situation.

when they are released or excused from incarceration. *Schroder*, 985 N.W.2d at 536. But the disenfranchisement of convicted felons is a punitive measure that has nothing to do with felons' competence to vote, while the constitutional provisions appellant challenges, i.e., those disenfranchising people under guardianship, concern only the individual's competence to vote. The supreme court noted that the appellants in *Schroeder* did not argue "that the constitutional provision on felon voting is itself unconstitutional because it conflicts with other values—like equal protection—embedded in the Minnesota Constitution," and "do not contend that Article VII, Section 1 of the Minnesota Constitution is itself unconstitutional." *Id.* at 537, 546. *Schroeder* does not support appellant's argument that a constitutional provision restricting the voting rights of those under guardianship is itself unconstitutional.

2. Minn. Stat. § 524.5-120(15) and Minn. Stat. § 524.5-313(c)(8)

An appellate court presumes that Minnesota statutes are constitutional and reviews their constitutionality de novo. *Otto v. Wright County*, 910 N.W.2d 446, 451 (Minn. 2018). Appellant challenges the statutory provisions stating that those subject to guardianship retain the right to "vote, unless restricted by the court," Minn. Stat. § 524.5-120(15), and that "unless otherwise ordered by the court, the person subject to guardianship retains the right to vote," Minn. Stat. § 524.5-313(c)(8). He argues that they give the courts "unguided discretion to deny the right to vote to somebody physically impaired, but who might otherwise have all the mental faculties" and they do "not provide sufficient guidelines or criteria for a court to decide which individuals should be disenfranchised."

Even assuming this to be true, it is not relevant to this case. Both the doctor's report and the visitor's report indicate that appellant does not have all the mental faculties necessary to vote, and appellant presents no evidence to the contrary and makes no argument that he does have all the necessary mental faculties. At the hearing, the district court said it had read both the medical report and the visitor's report and asked, "I take it that's [appellant] in the background that I'm looking at, is that right?" Respondent's attorney answered, "Yes." Thus, appellant was actually observed by the district court judge, who could use that observance to inform his determination of appellant's condition.

To the extent that appellant is arguing the statutes are defective because they do not define mental impairment or state that the courts may revoke the voting rights of those under guardianship only if they are shown to be mentally impaired, that argument is beyond the scope of this court's review. An appellate court "may not add to a statute what the legislature deliberately or inadvertently omitted." *Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 667 N.W.2d 447, 450 (Minn. App. 2003), *aff'd*, 683 N.W.2d 274 (Minn. 2004).

3. Sufficiency of the Evidence

At the hearing, appellant's attorney was asked if he opposed the guardianship. He said, "I did meet with [appellant and respondent] at their home. I don't oppose the guardianship. I do object to the finding in the order to the extent it's seeking to revoke voting rights." The district court then discussed the voting rights issue with respondent's attorney:

> Q. What about voting rights . . . ?
> A. [Appellant] doesn't have the capacity to understand the purpose or procedure of voting. [It w]ouldn't be any benefit to him.
> Q. And so [respondent, appellant's mother] would advocate that given her knowledge of the situation that those be revoked; is that correct?
> A. Right, that's her position, that he wouldn't be able to do that, be able to participate in voting.

Appellant claims that "[t]he record does not support the [district] court's decision to revoke appellant's right to vote" because it is "based almost solely upon the medical report" from the doctor at the Mayo Clinic and "[t]here was no evidence offered with respect to the full extent of appellant's cognitive impairment, intellectual ability, or capacity to learn and process information." But the district court observed appellant on the screen and heard respondent's view on the voting issue, as well as reading the doctor's and the visitor's reports. Appellant does not mention what evidence would have been superior to that of a doctor who was familiar with appellant, or how the full extent of the cognitive impairment or intellectual ability of a person who does not use words to communicate could be ascertained, or why the opinion of appellant's mother, who is his caregiver and guardian, as to appellant's capacity to vote should be disregarded.

Appellant claims that, absent "specific information addressing [appellant's] cognitive functioning, ability to use and process information, and to come to level of decision" that ideally would "focus specifically upon the right to vote," the district court should not have denied appellant the right to vote. But how information focused on the

right to vote could have been presented to or obtained from a nonverbal individual is not explained.

Affirmed.