

*This opinion is nonprecedential except as provided by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
A23-1742**

In re the Guardianship and/or Conservatorship of: Sherry Linn.

**Filed July 29, 2024
Affirmed
Wheelock, Judge**

Crow Wing County District Court
File No. 18-PR-23-2470

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Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from the district court's appointment of a guardian and conservator, appellant argues that the appointment was an abuse of discretion because the district court's findings are not supported by the record. We affirm.

FACTS

Appellant Sherry R. Linn is a 70-year-old woman with significant physical disabilities and mental-health diagnoses. Over the course of roughly nine years, Linn has

been the subject of more than 18 reports to the Minnesota Adult Abuse Reporting Center, 24 adult-services intakes with respondent Crow Wing County Community Services (the county), and significant contacts with law enforcement. Most of the reports involved Linn's self-neglect, including her inability to obtain and refusal to receive necessary medical care and other services. Other reports concerned her verbal and physical abuse of her family and other caregivers. Linn has consistently declined voluntary services the county has offered.

Linn was civilly committed in 2002 and in 2006 based on her conflicts with her caregivers and her abuse of OxyContin, which she was prescribed to manage chronic pain and still used as of March 2023. Linn testified that the county had her civilly committed for chemical dependency because the county was helping to pay for her medication and wanted her to stop taking it because it was expensive. With regard to her personality-disorder diagnosis, she testified that the county "tacked it on" and that she believes everyone has a personality disorder "of some sort."

Linn has used a wheelchair since May 2020, when she was severely injured in a car accident. Linn has been unable to clean her home, causing it to be very cluttered and dirty to the extent that the state of the floor has prevented Linn from using her wheelchair. She also has had difficulty administering medication and feeding herself because she could not access her refrigerator. Law enforcement and the county determined that Linn's disabilities and the state of Linn's home posed a safety risk to her because she could not get out of the home in the event of an emergency and could not descend the stairs outside her home.

Linn has often fallen to the floor and been unable to get back up and into her bed or chair without assistance. When she has fallen without a caregiver present, she has used a medical-alert device to call for lift assists, which caused an ambulance and law enforcement to be dispatched to her home. She has refused further medical assistance beyond the lift assists and instead asked officers and emergency personnel to perform other tasks for her, including retrieving items and cleaning up garbage. Some of these falls rendered her unconscious and unable to use her medical-alert device, which led to her lying on the floor in her own waste for hours.

Linn has never had a professional caregiver with medical training in her home, such as a home-care nurse. Linn's daughter periodically served as her caregiver, but Linn's behavior toward her made it difficult for her daughter to effectively provide care and led to Linn's daughter requesting that police perform several welfare checks on Linn. Linn's daughter also informed law enforcement that she was concerned about how Linn was spending her money because Linn had spent up to \$21,000 between January and March of 2023.

Linn has had other informal caregivers who stayed in her home or visited her home or with whom she shared a living space. Prior to the initiation of the guardianship and conservatorship proceedings, her most recent caregivers were a couple whom she had met through mutual friends. Linn agreed to let the couple live in her home in exchange for rent and caregiving services. The couple's caregiving abilities were limited, however, because one of them used a wheelchair and the other worked outside of the home. Additionally, the couple planned to move their son, who is a registered sex offender, into Linn's home.

When the couple did not pay rent, Linn called law enforcement. Linn later reported to police that she believed the couple stole \$100,000 in family heirlooms from her home.

In July 2023, the county filed an emergency petition for guardianship and conservatorship of Linn, proposing that the district court appoint respondent Presbyterian Family Foundation (PFF) to serve as Linn’s guardian and conservator on an emergency basis. The district court granted the petition the same day and appointed counsel to represent Linn. After a hearing, the district court confirmed the emergency appointment.

Linn then moved in with a different couple whom she had not met before because she did not have a caregiver at that time. Linn’s guardian from PFF met with Linn at the couple’s home and determined that Linn was not doing well and had a urinary-tract infection, and that the home was unclean. Linn’s primary-care physician opined that Linn needed assistance with managing her medical care.

In August 2023, Linn was hospitalized and diagnosed with “failure to thrive.” A court visitor¹ interviewed Linn at the hospital and prepared a report. The court visitor recommended continuing the guardianship because Linn requires full-time care as a result of her physical disabilities and frequent falls. Linn also needs help with the basic tasks of daily life but has indicated that she is not willing to pay for that help. The court visitor recommended continuing the conservatorship because, although Linn understood her

¹ In guardianship and conservatorship proceedings, a “court visitor” is a person appointed by the court to inform the person subject to the petition about the petition and their rights, interview the person, and submit recommendations to the court, including whether the guardianship and conservatorship should be continued on a nonemergency basis. Minn. Stat. §§ 524.5-304(a), (d)-(f), -406(a), (d)-(f) (2022).

finances and could afford to pay for necessary services, she was not willing to do so. The court visitor also noted that Linn stated she was delinquent on her property taxes.

In September 2023, the county filed a petition to appoint PFF as guardian and conservator on a nonemergency, nontemporary basis. During the time between filing the emergency petition and the nonemergency petition, the county considered less restrictive alternatives to guardianship and conservatorship and determined that there are none. Linn previously had declined the county's offer of a representative payee to manage her finances but testified at the hearing on the nonemergency petition that she would consent to it. However, the county later determined that a representative payee was not an appropriate long-term solution because a representative payee does not have the power to manage certain types of accounts Linn owns, including her pension. The county also determined that, short of a formal conservator, there were no appropriate candidates to serve as a healthcare agent or attorney-in-fact because Linn's daughter, with whom she has had significant conflict, is her only family member. The county also determined that a third civil commitment would likely be ineffective because the previous two commitments had failed to correct the conditions leading to the petition. Because of Linn's ongoing self-neglect and refusal of voluntary services, the county determined that, without a court-appointed guardian and conservator in place, Linn would likely die.

In October 2023, the district court held an evidentiary hearing at which the district court heard testimony from a Crow Wing County Adult Protection social worker, Linn's emergency guardian from PFF, Linn's emergency conservator from PFF, and Linn. After

the hearing, the district court granted the petition appointing PFF as Linn’s guardian and conservator.

Linn appeals.

DECISION

Linn challenges the district court’s decisions to appoint a guardian and conservator, arguing that the district court abused its discretion because the decisions are not supported by clear and convincing evidence in the record.

We review a district court’s appointment of a guardian or conservator for an abuse of discretion. *In re Guardianship of Pates*, 823 N.W.2d 881, 885 (Minn. App. 2012); *In re Conservatorship of Geldert*, 621 N.W.2d 285, 287 (Minn. App. 2001), *rev. denied* (Minn. Mar. 27, 2001). Therefore, we are “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), *rev. denied* (Minn. Sept. 18, 2007). When reviewing factual findings for clear error, appellate courts (1) view the evidence in the light most favorable to the findings, (2) do not find their own facts, (3) do not reweigh the evidence, (4) do not reconcile conflicting evidence, and (5) “need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. . . . [A]n appellate court’s duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations omitted).

I. The district court acted within its discretion when it appointed a guardian for Linn.

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 but not limited to use of appropriate technological assistance, supported decision making, community or residential services, or appointment of a health care agent under section 145C.01, subdivision 2.

Minn. Stat. § 524.5-310(a) (2022). Here, the district court found by clear and convincing evidence both that Linn is an incapacitated person and that her needs could not be met by a less restrictive alternative.

A. Incapacitated Person

“Incapacitated person” is defined by statute as

[1] an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and [2] who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance.

Minn. Stat. § 524.5-102, subd. 6 (2022).

As to the first component of the definition, the district court found that Linn is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, primarily with regard to her medical needs. The district court based its finding on the evidence in the record showing that Linn (1) has been committed twice for her mental-health and chemical-dependency diagnoses based on her personality disorder and

opioid dependency, (2) is unable to make appropriate medical decisions, and (3) lacks insight into her medical needs.

Linn argues that she does not lack sufficient understanding or capacity to make personal decisions because she “is not suffering from any disease of the mind such as dementia, Alzheimer’s, or any other type of illness.” But the statute does not contain any such requirement. *See id.* Moreover, the district court found that Linn has two diagnoses that have affected her capacity to make personal decisions. These findings are supported by evidence that Linn has been committed twice based on these diagnoses, is often incapacitated for hours after falling, causes significant conflict with people who try to care for her, routinely refuses necessary medical care, and does not believe she needs assistance on a daily basis.

As to the second component of the definition, the district court found that Linn is unable to meet her personal needs even with appropriate technological assistance and supported decision-making because her inability to make personal decisions has had a severe negative impact on her daily functioning and physical health, including that she was diagnosed with “failure to thrive” after a visit to the emergency room. The district court also found that Linn is unable “to appropriately obtain services in her home and community,” instead relying on emergency personnel and strangers to assist her. Linn does not appear to challenge this finding, and it is amply supported by the record. We discern no clear error as to the district court’s finding that Linn is an incapacitated person.

B. Less Restrictive Alternatives

The district court determined that there are no less restrictive alternatives to guardianship because (1) Linn cannot meet her own complex medical needs, (2) a limited guardianship would be insufficient to address the risk associated with Linn's continued self-neglect, and (3) Linn has repeatedly declined voluntary services.

Linn argues that the district court abused its discretion by failing to consider the less restrictive alternatives of using her medical-alert device and having someone come to her home on a weekly basis to "clean her house and provide other services."

With regard to using a medical-alert device, the district court found that Linn is unable to meet her own medical needs in part because her incapacitation has led to numerous emergency responses to her home. The court visitor opined that relying on a medical-alert device is insufficient in Linn's situation because falling sometimes renders her unconscious and unable to use the device, and also because the device "does not repair the damage the fall causes." The medical-alert device does not prevent Linn from falling but instead is used to contact emergency services for assistance after she has fallen and may be injured or unable to get back into her bed or chair. With regard to weekly in-home assistance, the record amply demonstrates that Linn requires full-time assistance with her medical, nutritional, and other personal needs. We discern no clear error as to the district court's finding that there are no less restrictive alternatives to guardianship.

We therefore conclude that the district court acted within its discretion by appointing a guardian for Linn.

II. The district court acted within its discretion when it appointed a conservator for Linn.

The district court may appoint a conservator only if it finds

(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 . . . 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 but not limited to use of appropriate technological assistance, supported decision making, representative payee, trusts, banking or bill paying assistance, or appointment of an attorney-in-fact under section 523.01.

Minn. Stat. § 524.5-409, subd. 1(a) (2022). Here, the district court found (1) by clear and convincing evidence that Linn is impaired in her ability to make financial decisions, (2) by a preponderance of the evidence that Linn's property would be wasted or dissipated unless management was provided, and (3) that Linn's needs could not be met by less restrictive means.

A. Impairment

The district court found that Linn is impaired in her ability to receive and evaluate information or make decisions regarding her property because her medical and mental-health diagnoses have led to poor financial decision-making and render her vulnerable to financial exploitation. This finding is supported by the evidence that although Linn can afford housing, professional services, and other necessities that are

crucial to her health and safety, she refuses to use her money for those things. This evidence includes the court visitor's report that Linn has financial resources but was not willing to pay for necessary services, Linn's choices of inappropriate caregivers whom she has reported for theft, Linn's daughter's statement to police that she was concerned about Linn's significant spending, and Linn's failure to maintain her bank accounts, pay bills, and obtain medical care necessary to her survival.

Linn appears to assert that she does not meet the definition of "impaired" because her management of her finances is no worse than "a great majority of Americans." Linn does not provide any argument to support this assertion or explain how it is relevant to the conservatorship statutes, and even if it was relevant, there is no support for this assertion in the record. Regardless, the question is whether the individual's mismanagement of their finances is the result of an impairment, not how their mismanagement compares to that of others. We discern no clear error as to the district court's finding that Linn is impaired in her ability to make financial decisions.

B. Wasted or Dissipated Property

The second requirement can be satisfied in two ways, including a showing that (1) "the individual has property that will be wasted or dissipated unless management is provided" or that (2) "money is needed for the support, care, education, health, and welfare of the individual . . . and that protection is necessary or desirable to obtain or provide money." *Id.*, subd. 1(a)(2). The district court found that both prongs were met here. As to the first prong, the district court found that Linn's property would be wasted or dissipated unless management is provided because her mismanagement of her finances led to the

cancellation of her homeowner's insurance, her home going into tax foreclosure, her living in a home without utilities, multiple overdraft charges, and banks closing her accounts. The district court also found that her inability to manage her finances would lead to increased vulnerability to financial exploitation. These findings are supported by the evidence that Linn is vulnerable to exploitation, including that she uses caregivers whom she does not know and has reported theft by those caregivers. The record also demonstrates that Linn does not make financial decisions in her best interest because she spent nearly \$21,000 on items in the course of three months and refuses to spend money on her necessary medical care.

As to the second prong, the district court found that money is needed for Linn's support, care, education, health, and welfare and that protection is necessary or desirable to obtain or provide money, based primarily on Linn's medical needs. Specifically, the district court found that Linn's mismanagement of her finances could impede her ability to obtain medical care and other supportive services and that protection is necessary to maintain Medicaid coverage, Social Security benefits, and Linn's assets to ensure that Linn can afford necessary services.

Linn appears to argue that a conservatorship is not necessary to prevent waste or dissipation of her property because she was up to date on her property taxes at the time of the hearing, but she does not challenge the other examples the district court cited in its findings. Moreover, she does not argue that her spending does not constitute waste or that she does not need help managing Medicaid, Social Security, or money for medical and other personal needs. We discern no clear error as to the district court's findings that the

Linn has property that will be wasted or dissipated unless management is provided and that protection is necessary to obtain or provide money for her support, care, health, and welfare.

C. Less Restrictive Means

The district court determined that Linn's needs cannot be met by less restrictive means because her mismanagement of her finances, repeated refusal of voluntary services, and impaired ability to acknowledge her medical needs necessitated the full powers possessed by a court-appointed conservator.

Linn argues that the district court failed to consider the less restrictive alternative of voluntarily using a representative payee to help her manage her finances, shop for necessities, and obtain other services to allow her to remain in her home. But the record demonstrates that a representative payee would not have the power to manage all of Linn's accounts and, more significantly, that a voluntary arrangement would not be an appropriate solution because of Linn's long history of conflict with her caregivers and repeated declination of voluntary services. We discern no clear error as to the district court's finding that there are no less restrictive alternatives to conservatorship.

We thus conclude that the district court acted within its discretion by appointing a conservator for Linn.

In sum, because the district court's findings support its decisions and those findings are supported by the record, the district court did not abuse its discretion by appointing a guardian and a conservator for Linn.

Affirmed.