

*This opinion is nonprecedential except as provided by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
A24-0938
A24-0939**

Guardianship of the Person of Lance Alvin Melser,
In re the Guardianship of Cory James Wojtowicz.

**Filed April 28, 2025
Affirmed
Ede, Judge**

Anoka County District Court
File No. 02-P1-99-005622

Cory C. Wojtowicz, Ramsey, Minnesota (pro se appellant)

Brad Johnson, Anoka County Attorney, Carl E. Erickson, Assistant County Attorney,
Anoka, Minnesota (for respondent Anoka County Social Services)

Mary Szondy, St. Paul, Minnesota (for respondents Lance Alvin Melser and Cory James
Wojtowicz)

Considered and decided by Ede, Presiding Judge; Harris, Judge; and Florey, Judge.*

NONPRECEDENTIAL OPINION

EDE, Judge

In these consolidated appeals following a district court's order removing appellant from serving as guardian and appointing a successor guardian for the vulnerable adults who are the subjects of these proceedings, appellant challenges his removal in both underlying

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

cases and seems to argue that the district court did not properly weigh the evidence. We affirm.

FACTS

Appellant Cory C. Wojtowicz (Cory Sr.) was appointed the guardian of Lance Alvin Melser in 2009 and the guardian of Cory James Wojtowicz (CJ) in 2019.¹ Following vulnerable adult maltreatment reports for both Lance and CJ, respondent Anoka County Social Services petitioned for the appointment of successor guardians. The district court removed Cory Sr. from serving as Lance and CJ's guardian and appointed a successor guardian for both. On appeal, Cory Sr. challenges his removal. Below, we summarize the relevant facts.²

Original Guardianship and Maltreatment Investigation

In 1999, a district court appointed Lance's sister as his conservator. In 2003, Lance's sister married Cory Sr. Following the death of Lance's sister, a district court appointed

¹ In the interest of clarity and because they share the same first name and surname, we refer to appellant Cory C. Wojtowicz as "Cory Sr." and to Cory James Wojtowicz as "CJ."

² Cory Sr. did not provide this court with a transcript of the proceedings. "The documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. "An appellant has the burden of providing an adequate record for appeal[.]" *Custom Farm Services, Inc. v. Collins*, 238 N.W.2d 608, 609 (Minn. 1976), including any necessary transcripts, Minn. R. Civ. App. P. 110.02. "When an appellant fails to provide a transcript, the reviewing court is limited to deciding whether the [district] court's conclusions of law are supported by the findings." *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 492 (Minn. App. 1995). In other words, when an appellant does not furnish a transcript of an evidentiary hearing that is relevant to findings of fact, we do not review those findings of fact and instead assume that they are correct.

Cory Sr. as Lance's guardian. A district court also appointed Cory Sr. as guardian for CJ, who is Cory Sr.'s son. Lance and CJ lived with Cory Sr. in Cory Sr.'s home.

While living with Cory Sr., Lance was enrolled in a day program called Rise. On April 11, 2023, Lance arrived at Rise crying, distraught, and disengaged. The program supervisor noticed that Lance's clothes were soiled and that his pants smelled of urine. Lance told Rise staff that he did not like living with Cory Sr., that Cory Sr. was an alcoholic, and that he was scared to go home. When he made these allegations about Cory Sr., Lance was disengaged and emotional, a "remarkable difference from his usual cheery, friendly, and loud personality." Because this behavior was not normal for Lance, the Rise program supervisor contacted Anoka County Social Services.

A county investigator, L.S., met with Lance for an interview that same day. During the interview, Lance told L.S. that "he sometimes gets slapped on the face, locked in his room, and [his] mouth gets duct taped." Lance also expressed concern for CJ because of Cory Sr.'s behavior. L.S. created vulnerable adult maltreatment reports for Lance and CJ based on the allegations Lance made on April 11.

The next day, Cory Sr. brought Lance to Rise and told Lance that "he needed to tell Rise staff the truth." "While Cory Sr. was present, Lance stated that he had not told the truth the previous day." After Cory Sr. left, Lance continued to say that he loved Cory Sr. and that he needed to tell the truth. When asked what the truth was, Lance responded that it "was what Cory Sr. told him." Lance also told the program supervisor that he had not slept well the night before because "Cory Sr. [had taken] him to the casino as a reward for telling the truth."

After her interview with Lance, L.S. visited Cory Sr.'s home. L.S. "observed locks on the outside of Lance[']s and CJ's bedroom doors, urine stains on CJ's bedding, and notable clutter in the house." "Cory Sr. admitted to [L.S.] that he had locked CJ in his bedroom to keep him from wandering at night, . . . that he had locked Lance in his bedroom 'once or twice[,]' and [that he had] struck Lance once as a punishment."

Petitions for Removal and Successor Guardian

The same month, L.S. petitioned the district court for the emergency appointment of successor guardians for Lance and CJ. In CJ's petition, L.S. wrote that Lance's allegations "cause[d] concern for imminent harm to CJ" and that CJ "was removed from the home." L.S. proposed the appointment of Presbyterian Family Foundation as a professional guardian for CJ. In Lance's petition, L.S. reiterated the events of April 11. She included a description of what she observed during her visit to Cory Sr.'s home, including the placement of locks outside of Lance's and CJ's bedroom doors. L.S. proposed that Presbyterian Family Foundation also serve as a professional guardian for Lance. The district court appointed Presbyterian Family Foundation as emergency guardian for Lance and temporary substitute guardian for CJ.

On June 2, 2023, L.S. sent Cory Sr. a letter informing him that "Anoka County Community Social Services and Behavioral Health" had received a report about his alleged maltreatment of a vulnerable adult. The letter explained: that the allegations involved caregiver neglect, emotional/mental abuse, and physical abuse; that each allegation was substantiated, i.e., the acts met the definition of maltreatment by a preponderance of the evidence; and that Cory Sr. could request reconsideration of the determination. On June

13, L.S. sent Cory Sr. another letter, which stated that an allegation of physical abuse was substantiated. Cory Sr. requested reconsideration of the determination described in the June 2 letter, but the district court declined to do so and no appeal followed.

Following the maltreatment determinations, Anoka County Social Services petitioned the district court to appoint Presbyterian Family Foundation as successor guardian for both Lance and CJ. In support of the petitions, L.S. asserted that it was in Lance's and CJ's best interests to remove Cory Sr. as their guardian. In October 2023, the district court appointed Presbyterian Family Foundation as emergency successor guardian for Lance and CJ. And in November, the district court reappointed Presbyterian Family Foundation as Lance and CJ's temporary guardian.

Prior to the November 2023 reappointment of Presbyterian Family Foundation as guardian, a court visitor went to see Lance and CJ at their group home. During Lance's meeting with the court visitor, Lance stated that he did not want Presbyterian Family Foundation to be appointed his guardian. Lance repeated that Cory Sr. loved him and was a changed man. The court visitor was "concerned that Lance ha[d] been coached, as Lance could not explain what a 'changed man' was." Thus, despite Lance's statements, the court visitor recommended that Presbyterian Family Foundation be appointed Lance's guardian. And because CJ was severely impaired and relied on his caregivers for his needs, the court visitor also recommended that Presbyterian Family Foundation be appointed CJ's guardian.

Court Trial

The matters proceeded to a combined court trial in February 2024. The district court heard testimony from the following witnesses: Rise staff; L.S.; other social services contacts; Lance and CJ's case manager, M.L.; group home staff; Cory Sr.; Cory Sr.'s friends and family; Lance; a professional guardian; the court visitor; and CJ. The district court's factual findings in its removal order summarize the witnesses' testimony as follows.

Rise staff testified about the April 11 incident and other issues they had witnessed. Prior to April 2023, Lance's attendance at Rise varied, so much so that Rise staff talked to Cory Sr. about filling Lance's spot if Lance was not going to attend. Additionally, at Rise, clients are responsible for their own lunch. While Cory Sr. was Lance's guardian, Lance would not bring a lunch or would bring insufficient food for lunch. But since the professional guardian was appointed, Lance's attendance had significantly improved. Lance's lunches had also improved and began containing a variety of food. Based on her experience with Lance, a program supervisor at Rise testified that it would be in his best interest for Presbyterian Family Foundation to remain his guardian. And another Rise employee also stated that it would be in Lance's best interest for Presbyterian Family Foundation to remain his guardian.

L.S. similarly testified that it was in Lance's best interest that Presbyterian Family Foundation remain his guardian. She expressed her belief that Cory Sr. was not equipped to serve as guardian and could not physically care for both Lance and CJ. In addition, L.S. reported that Cory Sr. had historically declined additional supports.

L.H., who was one of the social services contacts, testified about Cory Sr.'s caregiver fatigue. When L.H. completed an assessment of CJ's needs in 2018, Cory Sr. reported that he was struggling with CJ's aggressive behavior. L.H. noted that Cory Sr. appeared visibly exhausted "by the care he needed to provide CJ and Lance, and there was some discussion [about] placing CJ in a group home." And L.H. informed CJ's case manager of her concerns about Cory Sr.'s caregiver fatigue. Although L.H. did not opine who should be Lance and CJ's guardian, she did state that, if Lance and CJ were returned to Cory Sr., her uneasiness about caregiver fatigue would continue. L.H. also explained that, should something prevent Cory Sr. from caring for Lance and CJ, it would be unlikely that they would be placed together again.

Another social services contact, B.R., testified that she had investigated two maltreatment reports—one that arose in 2021 and another from 2022. B.R. explained that an incident at a gas station was the basis for the 2021 report. More specifically, CJ had climbed into the driver's seat, locked the doors, and would not stop playing with the blinkers and gear shift. Cory Sr. yelled at CJ to get out of the car. The 2022 report concerned an incident at a clinic in which CJ became aggressive and Cory Sr. restrained him.

M.L. testified to her opinion that it would not be in Lance's and CJ's best interests for Cory Sr. to be their guardian. Although M.L. believed that Cory Sr. loved Lance and CJ, she was concerned about the level of care they would receive from Cory Sr. She noted that Cory Sr. had struggled, that he had not engaged in additional services as needed, and

that, when she was assigned as CJ's case manager, "CJ was only receiving respite care a few times per month" and "was not receiving other services."

Two staff members from the group home where Lance and CJ were living testified about CJ's behaviors. The district director testified that CJ had behavioral issues, which included aggression toward staff and peers, damaging property, kicking, and hitting. Another staff member testified that those behaviors occurred every day and could last up to two hours. Because of his behaviors, CJ required two staff members when he was awake and a staff member at night so that he would not wander. If CJ tried to leave, the exterior doors of the group home and CJ's bedroom window would alert staff through an alarm system. The district director also testified that he believed Lance and CJ should continue to live together but he did not express an opinion about who should be their guardian. The other staff member, however, did state that, although she supports family being together, she did not believe Cory Sr. could provide adequate care for Lance and CJ in his home because of the care that they require. "She was particularly concerned about Lance not getting the emotional support he needs because she did not always see it provided during Cory Sr.'s visits."

The district court also heard from Cory Sr. about his plans for Lance and CJ. Cory Sr. anticipated having CJ spend some nights at his home and that he would "stay up at night to provide awake overnight staff and share daytime staffing responsibilities with his long-term live-in girlfriend." In addition, Cory Sr. was willing to give up his bedroom for staff members and sleep on the couch. But Cory Sr. acknowledged that he was 62 years old and that he had sciatica, compressed discs in his back, and injuries from a car accident.

Moreover, Cory Sr. admitted that, at the time of his trial testimony, he “had not undertaken efforts to find additional staff to help with CJ’s care.” As for Lance’s care, Cory Sr. thought that it would be ideal for Lance to continue living at the group home, even if Cory Sr. were allowed to remain Lance’s guardian. Cory Sr. also sought to minimize Lance’s absences from Rise by “explain[ing] it as [Lance] not wanting to go.”

Lance told the district court that he loved Cory Sr., that he wanted to live with Cory Sr., and that he wanted to go back home. Yet in communicating on Lance’s behalf, Lance’s attorney argued that it would be in Lance’s best interest to remain in the group home. Lance’s attorney would have been inclined to support Cory Sr. as a guardian if Cory Sr. had agreed to keep Lance and CJ in the group home. Nonetheless, counsel expressed significant concerns about the care Cory Sr. could provide Lance.

A professional guardian assigned by Presbyterian Family Foundation testified that she received training at an annual conference, quarterly day-long training through Presbyterian Family Foundation, and additional training at weekly meetings. She stated that she prioritized finding a home where Lance and CJ could stay together, where their daily needs would be met, and where Lance could both maintain his day program and be close to his girlfriend.

In lieu of CJ testifying at the hearing, the district court reviewed videos of CJ’s attorney asking CJ questions. CJ’s preference about the person or entity he wanted to serve as his guardian was unclear. When asked if Cory Sr. had ever hit him, CJ reported that Cory Sr. had hit him in the face. CJ’s attorney argued that it would be in CJ’s best interest if he remained at the group home. Counsel “ha[d] significant concerns about the care Cory

Sr. c[ould] provide for CJ.” CJ’s attorney believed that a professional guardian may be more educated on other services available to CJ.

Removal and Successor-Guardian Appointment Orders; Appeal

In April 2024, the district court filed an order in each case, which granted Anoka County Social Services’ petitions to remove Cory Sr. as Lance and CJ’s guardian and to appoint Presbyterian Family Foundation as successor guardian. Because all the witnesses testified that Lance and CJ should be placed together, the district court treated them “as one unit in its analysis.” The district court found by a preponderance of the evidence that it would be in Lance’s and CJ’s best interests to appoint a professional guardian and found good cause to remove Cory Sr. from serving as guardian.

In June 2024, Cory Sr. filed separate notices of appeal from each of the district court orders that removed him from serving as guardian. We consolidated the appeals.

DECISION

Cory Sr. argues that the district court “did not take in[to] consideration the time and excellent job that [he]” had done during his time as guardian for Lance and CJ. He asks us to “consider giving [him] back legal guardianship of [CJ] and Lance.” These arguments do not persuade us to reverse.

Appellate courts review the decision to appoint or remove a guardian for an abuse of discretion. *In re Guardianship of Wells*, 733 N.W.2d 506, 508 (Minn. App. 2007), *rev. denied* (Minn. Sep. 18, 2007); *In re Guardianship of DeYoung*, 801 N.W.2d 211, 216 (Minn. App. 2011). Appellate courts “will not set aside the decision absent a clear abuse

of that discretion.” *DeYoung*, 801 N.W.2d at 216. “The district court abuses its discretion by improperly applying the law.” *Id.*

An interested “person may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the person subject to guardianship or conservatorship or for other good cause.” Minn. Stat. § 524.5-112(b) (2024);³ *see also DeYoung*, 801 N.W.2d at 216 (citing Minnesota Statutes section 524.5-112(b) (2010) and stating that “[t]he district court may remove a guardian if removal would be in the best interest of the ward or for other good cause”). “The ward’s best interests must be the determinative factor in guiding the court when making any choice on the ward’s behalf.” *In re Guardianship of Doyle*, 778 N.W.2d 342, 347 (Minn. App. 2010). “A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.” Minn. Stat. § 524.5-112(b).

When appointing a guardian, the district court must consider qualified persons in an order of priority specified by Minnesota Statutes section 524.5-309(a) (2024). A professional guardian is of lower priority than a guardian currently acting for the respondent in this state, a parent of the respondent, an adult with whom the respondent has resided for more than six months, and an adult who is related to the respondent by marriage, among others. *See* Minn. Stat. § 524.5-309(a)(1), (5), (6), (7), (8) (2024). But the district

³ We cite the most recent version of Minnesota Statutes section 524.5-112(b) because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”). For the same reason, we also cite the current versions of other statutes cited in this opinion.

court, “acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.” Minn. Stat. § 524.5-309(b) (2024).

Cory Sr. seems to argue that the district court did not properly weigh the evidence when it removed him as guardian and appointed Presbyterian Family Foundation as successor guardian. But we do not reweigh evidence on appeal. *See In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (explaining that, when reviewing factual findings for clear error, appellate courts do not reweigh the evidence). Additionally, because Cory Sr. failed to provide this court with a transcript, we are “limited to deciding whether the [district] court’s conclusions of law are supported by the findings.” *Mesenbourg*, 538 N.W.2d at 492. We therefore focus our analysis on whether the district court’s conclusions of law—(A) that there was good cause to remove Cory Sr. as guardian and (B) that it was in Lance’s and CJ’s best interests to appoint a successor guardian—were supported by its factual findings. As explained below, we conclude that the district court’s conclusions of law are adequately supported by its factual findings.

A. The district court did not abuse its discretion in determining that there was good cause to remove Cory Sr. as guardian.

The district court’s factual findings adequately support its conclusion that there was good cause to remove Cory Sr. as guardian.

First, the district court found that L.S. substantiated findings of Cory Sr.’s physical abuse against CJ and of caregiver neglect, emotional/mental abuse, and physical abuse

against Lance. Cory Sr. requested reconsideration on the maltreatment finding against Lance, but that finding was affirmed.

Second, the district court's factual findings highlight Cory Sr.'s tumultuous relationship with Lance and CJ. For instance, the district court detailed the April 2023 incident in which Lance arrived at his day program wearing clothes that were dirty and that smelled of urine. At that time, Lance told Rise staff that Cory Sr. was an alcoholic and that he was worried about CJ because they "got hit and locked in their rooms." In the wake of those revelations, L.S. visited Cory Sr.'s home and observed evidence—locks on the outside of Lance's and CJ's bedroom doors—corroborating Lance's report that Cory Sr. locked Lance and CJ in their bedrooms. Cory Sr. also admitted to L.S. that he had locked Lance and CJ in their bedrooms and that he had hit Lance once as punishment. And CJ told his attorney that Cory Sr. had hit him in the face. Following Lance's April 11 allegations, two vulnerable adult maltreatment reports were submitted. And B.R. investigated two other maltreatment reports, which arose in 2021 and 2022. On top of these events, there were concerns that Cory Sr. was coaching Lance. On April 12, Cory Sr. brought Lance to Rise and told Lance he had to tell the truth. After Cory Sr. left, a program supervisor asked Lance what the truth was, and Lance responded that "the truth was what Cory Sr. told him." Lance also mentioned to the same supervisor that he had not slept well the night before because Cory Sr. had taken him to the casino as a reward for telling the truth.

Third, the district court's determination that "Cory Sr.'s ability to be a guardian and make sound decisions on behalf of Lance [and CJ] was impaired by his ongoing caretaker fatigue" is supported by its other findings. *See Mesenbourg*, 538 N.W.2d at 492. According

to the district court's summary of L.H.'s testimony, L.H. stated that Cory Sr. looked visibly exhausted "by the care he needed to provide CJ and Lance" when L.H. completed an assessment on CJ's needs in 2018. L.H. informed CJ's case manager of her concerns about caregiver fatigue. And she "expressed continued concern for caregiver fatigue if [CJ was] returned to Cory Sr." The district court likewise described M.L.'s testimony that Cory Sr. had "struggled in the past and not engaged additional[] resources as needed." M.L. noted that, when she was assigned as CJ's case manager, "CJ was only receiving respite care a few times per month" and he "was not receiving other services." Moreover, the district court noted that L.S. testified similarly by saying that "Cory Sr. ha[d] historically been offered and declined additional supports." And in 2022, at the time that B.R. was investigating a maltreatment report, "all of CJ's care and daily supervision fell to Cory Sr." Although the district court acknowledged Cory Sr.'s testimony that he planned to share daytime staffing with his live-in girlfriend and would give up his bedroom for staff members to help care for CJ, Cory Sr.'s girlfriend was in the hospital and Cory Sr. had not "undertaken efforts to find additional staff to help with CJ's care" at the time of trial. Cory Sr. also reported that he was 62 years old and had sciatica, compressed discs in his back, and injuries from a car accident. Additionally, Cory Sr. told the district court that it would be ideal if the court ordered Lance to continue living at the group home despite all parties otherwise agreeing "that it would be in Lance['s] and CJ's best interests to be placed together as they are emotionally bonded."

Fourth, while Cory Sr. was guardian, Lance was not maximizing his participation in his day program. Instead, Lance's attendance at Rise varied. At one point, Lance's

attended so inconsistently that staff told Cory Sr. they would fill the spot if Lance was not going to participate. Cory Sr. did not deny these issues with Lance's attendance but tried to minimize Lance's absences. And although individuals who attend Rise are responsible for bringing their own lunch, Lance either did not bring a meal or would bring insufficient food while he was in Cory Sr.'s care.

Last, the witnesses who offered opinions about who should be guardian each testified that it would be in Lance's and CJ's best interests for guardianship by Presbyterian Family Foundation to continue. In particular, Rise staff, the county investigator, Lance and CJ's case manager, and a group home staff member all testified that it would be in Lance's and CJ's best interests if Presbyterian Family Foundation remained guardian. Lance's and CJ's attorneys likewise argued that maintaining Presbyterian Family Foundation as guardian was in Lance's and CJ's best interests. The district court expressly found four of the witnesses to be credible—two Rise staff, L.S., and the case manager for Lance and CJ. This court defers to such credibility determinations by the district court.⁴ *See Wells*, 733 N.W.2d at 510 (stating that a reviewing court gives “due regard to the district court’s determinations regarding witness credibility”).

⁴ We acknowledge that Lance told the district court that he wanted to live with Cory Sr. Although the guardianship statute requires that the district court consider “the ward’s expressed preferences,” *Wells*, 733 N.W.2d at 511, “[t]he ward’s best interests must be the determinative factor in guiding the court when making any choice on the ward’s behalf,” *Doyle*, 778 N.W.2d at 347. Here, the district court considered Lance’s expressed preference to live with Cory Sr. But the district court ultimately determined that Lance’s preference was “inconsistent with what would be in Lance’s best interests.” Based on the testimony summarized above, we conclude that this determination by the district court is reasonably supported by the court’s findings.

B. The district court did not abuse its discretion in determining that it was in Lance's and CJ's best interests to appoint Presbyterian Family Foundation as successor guardian.

The district court's findings also adequately support its determination that it was in Lance's and CJ's best interests to appoint Presbyterian Family Foundation as successor guardian.

With the help of a professional guardian, Lance's attendance and lunches at Rise significantly improved. The professional guardian testified that she receives a variety of training to assist her in providing services to Lance and CJ. And when locating an appropriate residence for Lance and CJ, the professional guardian "prioritized finding a home where they could stay together, their daily needs were met, and Lance could maintain his day program and be close to his girlfriend." At the time of trial, the group home where CJ was living was working on adding padding to a room to have a safe place for CJ when he engaged in aggressive behaviors. And instead of locks on the outside of bedroom doors, the exterior doors of the group home and CJ's windows were equipped with an alarm system that would alert staff if CJ tried to leave.

In sum, we conclude that the district court's factual findings establish that it was in Lance's and CJ's best interests to remove Cory Sr. from serving as guardian and to appoint Presbyterian Family Foundation as successor guardian. Thus, we discern no abuse of discretion by the district court.

Affirmed.