

IN THE COURT OF APPEALS OF IOWA

No. 0-573 / 09-1484
Filed December 8, 2010

**IN THE MATTER OF THE GUARDIANSHIP
OF RODERICK SEYMOUR JR.**

**JACQUELYN SEYMOUR and
EULAH BOOMER,**
Appellants.

Appeal from the Iowa District Court for Polk County, Ruth B. Klotz,
Associate Probate Judge.

Appellants appeal the probate court decision appointing a successor
guardian for the adult ward. **AFFIRMED.**

Gary Dickey of Dickey & Campbell Law Firm, P.L.C., Des Moines, for
appellants.

Thomas J. Miller, Attorney General, Gretchen Kraemer, Assistant Attorney
General, John P. Sarcone, County Attorney, and Romonda Belcher-Ford,
Assistant County Attorney, for appellee State.

Michael J. Manno, West Des Moines, guardian ad litem and attorney for
the ward.

Considered by Vaitheswaran, P.J., Eisenhauer, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

HUITINK, S.J.**I. Background Facts & Proceedings**

Roderick Seymour Jr. is a mentally ill dependent adult. His mother, Jacquelyn Seymour, was appointed as his guardian in 2007 under Iowa Code section 633.552 (2007).

On October 7, 2008, the State filed a petition for an emergency order enjoining Jacquelyn from acting as Roderick's guardian or payee under various public assistance programs.¹ The State alleged that Jacquelyn abused Roderick or otherwise interfered with treatment for his mental health issues. The State subsequently filed an application for the appointment of a successor guardian and conservator. On January 9, 2009, after notice to Jacquelyn and a hearing on the merits of the State's petition, the probate court entered an order removing Jacquelyn as Roderick's guardian and appointing D. Thomas Smith as his temporary guardian and conservator. Jacquelyn did not appeal from this order.²

Jacquelyn's mother, Eulah Boomer, filed a petition to intervene in the guardianship proceedings requesting appointment as Roderick's permanent guardian. The probate court granted her motion to intervene. Following a hearing on the merits of the State's petition to appoint D. Thomas Smith as Roderick's permanent guardian and conservator, the court entered an order on September 8, 2009, appointing Smith as Roderick's permanent guardian and

¹ A proposed decision by an administrative law judge of the Iowa Department of Inspections and Appeals later reversed the Iowa Department of Human Services' founded report of dependent adult abuse.

² Jacquelyn appealed a June 30, 2009 order approving a medical procedure for Roderick, but not the January 9, 2009 order. Her appeal of the June 2009 order was dismissed for failure to make prompt and satisfactory arrangements for the preparation of a transcript.

conservator. The court found Jacquelyn “has caused problems both for herself and for Roderick by making decisions that appear to interfere with his care by those charged with being the caretakers.” The court also rejected Eulah’s request to be guardian, noting it would be “difficult for her to accept the recommendations of doctors and caretakers if Jacquelyn was not in agreement with those recommendations.” Jacquelyn and Eulah appeal.

II. Standard of Review

Actions for the involuntary appointment of guardians and custodians are tried at law, but “all other matters triable in probate shall be tried by the probate court as a proceeding in equity.” Iowa Code § 633.33. A determination of the proper person to serve as a guardian is a proceeding in equity. See *In re Guardianship of Knell*, 537 N.W.2d 778, 780 (Iowa 1995). We determine this case is in equity, and our review is de novo. See Iowa R. App. P. 6.907. We give weight to the fact findings of the district court, especially concerning the credibility of witnesses, but are not bound by those findings. Iowa R. App. P. 6.904(g).

III. Jacquelyn

Section 633.36 provides, “All orders and decrees of the court sitting in probate are final decrees as to the parties having notice and those who have appeared without notice.” *In re Estate of Adams*, 599 N.W.2d 707, 709 (Iowa 1999). The probate court has jurisdiction of guardianship and conservatorship proceedings. Iowa Code § 633.10(3); *In re Guardianship of B.J.P.*, 613 N.W.2d 670, 672 (Iowa 2000). Thus, section 633.36 regarding final orders applies in

guardianship proceedings. See *In re Guardianship & Conservatorship of Liggett*, 327 N.W.2d 778, 780 (Iowa Ct. App. 1982) (discussing section 633.36).

Final orders and judgments are appealable as a matter of right. Iowa R. App. P. 6.103(1); *In re Estate of Troester*, 331 N.W.2d 123, 125 (Iowa 1983). If a party does not appeal within thirty days of a final order, we are without jurisdiction to entertain the appeal. *In re Estate of DeTar*, 572 N.W.2d 178, 182 (Iowa Ct. App. 1997). Section 633.36, however, does not provide finality to procedural orders, such as motions to continue and applications for a hearing. *Troester*, 331 N.W.2d at 126.

In this case, the probate court entered an order on January 9, 2009, removing Jacquelyn and appointing Smith as Roderick's temporary guardian and conservator. The probate court's order was not a procedural order like a motion to continue or an application for a hearing, such as were mentioned in *Troester*, 331 N.W.2d at 126. We conclude that under section 633.36, the probate court's order was a final order, appealable as a matter of right. Jacquelyn did not appeal from this order within thirty days and may not challenge the holdings of that order in this later appeal. See *Hayes v. Kerns*, 387 N.W.2d 302, 308 (Iowa 1986) (noting an unappealed judgment is a final adjudication of the issues determined therein). Therefore, we do not consider Jacquelyn's claims that she should not have been removed and Smith should not have been appointed because these relate to the earlier, unappealed decision. See *Board of Water Works v. City of Des Moines*, 469 N.W.2d 700, 703 (Iowa 1991) (finding court would not consider assignments of error based on earlier unappealed final judgment).

IV. Eulah

Eulah was not a party at the time of the probate court's order on January 9, 2009. She properly appealed the court's order of September 8, 2009. We will therefore consider the arguments Eulah raises on appeal.

A. Eulah contends there is a clear preference in section 633.559 for the appointment of a parent to serve as a guardian.³ She claims that due to these preferences, Jacquelyn should have resumed being Roderick's guardian. Eulah, however, is not Roderick's parent, and we determine she may not appeal based on Jacquelyn's rights, rather than her own. See *In re T.P.*, 757 N.W.2d 267, 272 (Iowa Ct. App. 2008) (noting a party does not have standing to assert the rights of another).

B. In the alternative, Eulah claims she should have been appointed as Roderick's guardian. She asserts that any problems with appointing Jacquelyn would not apply to her. Eulah testified she would make her own decisions. Jacquelyn also testified Eulah would make her own decisions.

The district court, which had the benefit of observing the parties, determined Eulah would find it difficult to be independent "as Jacquelyn would make it difficult for her to accept the recommendations of doctors and caretakers if Jacquelyn was not in agreement with those recommendations." Furthermore, Eulah clearly testified she believed Jacquelyn would be the best guardian for Roderick. Based on these circumstances, we affirm the court's decision refusing

³ On appeal, Eulah asserts this statutory preference is deeply rooted in the constitutional right of parents to make decisions for their children. This constitutional issue was not raised before the district court. We conclude it has not been preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

to appoint Eulah as the guardian. See *State v. Hatter*, 342 N.W.2d 851, 854 (Iowa 1983) (“In recognition of the trial court’s ability to observe the witnesses while they were testifying and thus better judge their credibility, we will in this case grant the trial court’s findings of fact considerable deference.”).

Lastly, our de novo review of the record confirms the court’s findings concerning Smith’s qualifications to serve as Roderick’s guardian. Smith is a retired educator and has served as a volunteer guardian for numerous wards. Smith has a history of timely filing required reports and attending case conferences, has stayed in contact with each ward, and has been available to make care decisions when necessary. The record also indicates Smith is familiar with the statutory parameters of a guardian’s authority.

We affirm the probate court’s decision appointing Smith as Roderick’s permanent guardian.

AFFIRMED.