IN THE COURT OF APPEALS OF IOWA

No. 2-029 / 11-0937
Filed February 15, 2012

IN THE MATTER OF THE GUARDIANSHIP AND CONSERVATORSHIP OF ESTHER C. SLUYTER,

ESTHER C. SLUYTER,
Ward-Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A ward appeals the district court's decision denying her application to terminate the guardianship and conservatorship. **AFFIRMED.**

Andrea Hiatt Buckley and Frank Cal Tenuta, Iowa Legal Aid, Sioux City, for appellant.

Michael P. Murphy of Murphy, Collins & Bixenman, P.L.C., LeMars, for appellee.

Considered by Vaitheswaran, P.J., Tabor, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, SJ.

I. Background Facts & Proceedings.

This case involves Esther Sluyter, who at the time of the present proceedings was eighty-six years old. Esther has several physical health problems. She was diagnosed with multiple sclerosis in 1978 and was paralyzed for a period of time. She has also been diagnosed with type 2 diabetes, sleep apnea, respiratory failure, coronary atherosclerosis, and hypertension. She takes medication for these conditions. On December 1, 2009, Esther suffered injuries when she fell. She was hospitalized for a period of time and then went to a skilled nursing facility.

On July 23, 2010, two of Esther's three children, Curt Sluyter and Karen DeVaney, filed a petition for appointment of guardian and conservator. An evaluation by Dr. Clayton Toddy, clinical psychologist, found Esther demonstrated mild cognitive decline. She was diagnosed with a major depressive disorder and cognitive disorder. Dr. Toddy concluded Esther "needs monitoring of her medications, nutrition, hydration and fall safety due to known medical conditions more than cognitive impairment. She would benefit from structured residential living to provide those services." The district court entered an order on August 25, 2010, appointing Curt and Karen as co-guardians and co-conservators for Esther.

On February 28, 2011, Curt and Karen filed an application for court approval to sell Esther's home in order to pay her nursing home expenses. Esther filed a petition to terminate the guardianship and conservatorship, stating

she would like to return to her home. The two matters were set for a combined hearing.

Esther had a second evaluation with Dr. Toddy. Testing showed she continued to have mild neurocognitive decline. Esther did not know all of her medications or why she was taking them. She continued to show symptoms of depression. Dr. Toddy concluded Esther had functional decision-making capacity. He stated, "If she decides to leave the structured residential living and return home, it is strongly recommended that she has significant and sufficient in-home services to provide medication management, monitoring of her nutrition, hydration and fall safety."

The district court entered an order on May 16, 2011. The court found Esther made a prima facie showing that she had decision-making capacity. The burden then shifted to Curt and Karen to show her decision-making capacity was so impaired the guardianship and conservatorship should not be terminated. The court found Esther's ability to make decisions on her behalf was impaired and denied her request to terminate the guardianship and conservatorship. The court noted Esther did not recognize her physical or financial limitations. The court approved the request for approval to sell Esther's home. Esther now appeals.

II. Standard of Review.

Actions to terminate a guardianship or conservatorship are equitable in nature. *See* Iowa Code § 633.33 (2011); *In re Guardianship of B.J.P.*, 613 N.W.2d 670, 672 (Iowa 2000). We review equitable actions de novo. Iowa R. App. P. 6.907. Generally, in a de novo review we find the facts anew. *In re Guardianship of Hedin*, 528 N.W.2d 567, 581 (Iowa 1995). However, "[w]e pay

close attention to the credibility findings of the trial court because it had the opportunity to observe and listen to the parties and other witnesses." *In re Guardianship of Stewart*, 369 N.W.2d 820, 824 (Iowa 1985).

III. Merits.

Esther contends the co-guardians and co-conservators failed to establish by clear and convincing evidence her decision-making capacity was so impaired the guardianship and conservatorship should be continued. Under section 633.675(3), "[i]n a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity." Once the ward has made the showing, "the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired," as provided in section 633.552 (petition for appointment of guardian)[1] or section 633.566 (petition for appointment of conservator),[2] "that the guardianship or conservatorship should not be terminated." Iowa Code § 633.675(3).

The district court concluded Esther had made a prima facie showing that she had decision-making capacity. The burden then shifted to the co-guardians and co-conservators to prove by clear and convincing evidence that Esther's decision-making capacity was impaired. *See Hedin*, 528 N.W.2d at 581. Clear

[1] Under section 633.552(2)(a), a guardianship may be opened for a person whose decision-making capacity is so impaired that "the person is unable to care for the person's personal safety or to attend to or provide for the necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur."

[2] A conservatorship may be opened for a person "whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs." Iowa Code § 633.566(2)(a).

and convincing evidence means "that there is no serious or substantial doubt about the correctness of the conclusion drawn from it." *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983).

The evaluation by Dr. Toddy indicated Esther did not know all of her medications or why she was taking them. At the hearing Esther testified she felt she was overmedicated. When questioned whether she would have a medical provider come to her house on a daily basis to assist her with medication and monitoring of her nutrition and hydration, she stated she did not believe she needed it. She also denied having certain conditions, such as type 2 diabetes, sleep apnea, anemia, and coronary atherosclerosis. As the guardian ad litem noted at the end of the hearing, Esther cannot care for her medical condition if she does not acknowledge her condition.

Furthermore, the district court determined Esther had unrealistic expectations about her physical abilities. During the hearing Esther indicated she might regain her driver's license and plant a seventy-five foot garden. The court, which had the advantage of observing Esther, concluded both of these activities were clearly beyond her physical abilities.

Esther also did not fully realize her financial limitations. Esther received Social Security benefits, a pension, and income from a rental property. Although she stated she believed she could get in-home help to assist her to stay in her own home, she did not have any information about the cost of these services, and therefore did not know whether she could afford them or not.

This case was an emotional and difficult matter for both parties. Esther simply wants to go home. Curt and Karen love their mother and want her to be

safe. In looking at the evidence as a whole, we conclude there is clear and convincing evidence in the record to support a finding that Esther's decision-making capacity was so impaired the guardianship and conservatorship should not be terminated. There is no "serious or substantial doubt about the correctness of the conclusion" drawn from the evidence. *Raim*, 339 N.W.2d at 625. Dr. Toddy gave the opinion Esther could return to her home only if she had "significant and sufficient in-home services to provide medication management, monitoring of her nutrition, hydration and fall safety." Esther, because she denied her physical limitations, did not believe she needed these services, and thus could not be relied upon to obtain them.

We affirm the decision of the district court continuing the guardianship and conservatorship for Esther.

AFFIRMED.