

IN THE COURT OF APPEALS OF IOWA

No. 2-574 / 11-2025
Filed October 31, 2012

**IN THE MATTER OF THE
GUARDIANSHIP OF REX
LOUIS WILLIAMS,**

REX LOUIS WILLIAMS,
Ward-Appellant.

Appeal from the Iowa District Court for Van Buren County, James Q. Blomgren, Judge.

Rex Williams appeals from the district court order granting the petition for an involuntary guardianship. **AFFIRMED.**

Paul A. Miller of Miller Law Office, Fairfield, for appellant.

R. Kurt Swaim of Swaim Law Firm, Bloomfield, for petitioner-appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

BOWER, J.

Rex Louis Williams appeals from the district court order granting Kent William's petition to appoint a guardian for him. He contends the court abused its discretion in disallowing certain testimony into evidence. He also contends the court erred in failing to make a finding regarding his competency.

I. Background Facts and Proceedings.

Rex Williams, who was eighty-one years of age at the time of trial in this matter, lives on a farm in Birmingham. He has six children, including Kent and Myron. His wife, Evelyn, passed away in June 2009.

Following Evelyn's death, Kent became concerned about Rex's ability to care for himself. He discovered Rex had been digging a trench just ten days after hernia surgery—in contravention of his doctor's orders—in extremely hot conditions and was sweating profusely inside his house without the air conditioning or any fans running. Kent contacted Dr. Blair, Rex's physician, who recommended Rex be placed in assisted living. Dr. Blair invoked Rex's existing power of attorney and Rex was admitted to an assisted-living facility, where his physical health improved.

In August 2010, Rex signed a voluntary petition for appointment of a conservator, which stated he was "a person whose decision-making capacity is so impaired that [he was] unable to make, communicate, or carry out important decisions concerning [his] financial affairs." Kent was appointed Rex's conservator. That same month, neuropsychological testing revealed Rex suffered from "dementia of Alzheimer's type."

In December 2010, Rex revoked his designation of Kent as his medical power of attorney. He designated Myron his attorney-in-fact to make health care decisions when he is unable to do so. Rex pays Myron \$500 per month to be his medical power of attorney.

Rex moved out of the assisted-living facility on June 1, 2011. He lived alone on his farm, with Myron assisting him with chores and shopping. On July 5, 2011, Rex filed a petition to terminate his conservatorship.

Kent had filed an involuntary petition for guardianship on October 8, 2010. A bench trial was held in July 2011. Rex moved for a directed verdict at the close of the petitioner's case, which the district court denied. On October 13, 2011, the district court entered its order appointing Kent as Rex's guardian in a limited guardianship. Kent is required to call Rex twice a week, visit him once a week, assist with Rex's medical care and make his medical decisions when he is unable, and to discuss Rex's status with Myron and request Myron's assistance when necessary. Rex's motion for new trial was denied.

II. Scope and Standard of Review.

Actions for appointment of a guardian are triable at law and, therefore, are reviewed for errors at law. Iowa Code § 633.33 (2009); *In re Conservatorship of Deremiah*, 477 N.W.2d 691, 692 (Iowa Ct. App. 1991). The district court's findings of fact have the effect of a special jury verdict and are binding on us if supported by substantial evidence. *Id.* at 693. We construe the trial court's findings broadly and liberally to uphold, rather than defeat, the trial court's

judgment. *Id.* We may not weigh the evidence or the credibility of the witnesses. *Id.*

We review the district court's evidentiary rulings for an abuse of discretion. *Hall v. Jennie Edmundson Memorial Hosp.*, 812 N.W.2d 681, 685 (Iowa 2012). We will not reverse the district court's evidentiary rulings unless the record shows prejudice to the complaining party. *Whitley v. C.R. Pharmacy Serv., Inc.*, 816 N.W.2d 378, 385 (Iowa 2012).

III. Analysis.

A petition for appointment of guardian may be made where the proposed ward is "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 necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur." *Id.* § 633.522(2)(a); *see also id.* § 633.3(23). The petitioner has the burden of showing the need for appointment of a guardian by clear and convincing evidence. *Id.* § 633.551. Limited guardianships assign the guardian only those duties and powers that the incapacitated person is incapable of exercising. *In re Guardianship of Hedin*, 528 N.W.2d 567, 572 (Iowa 1995).

Rex first assails the district court's refusal to allow him to introduce into evidence portions of Dr. Blair's deposition.¹ Dr. Blair was Rex's treating physician until December 2010, when he retired. Dr. Blair was also designated as an expert witness by the petitioner.

¹ It is undisputed that Dr. Blair was unavailable to testify at trial and therefore his deposition was generally admissible under Iowa Rule of Evidence 5.804(b)(1).

Rex sought to introduce into evidence his cross-examination of Dr. Blair during his deposition. During the cross-examination, Dr. Blair was questioned about reports made by two other doctors after examining Rex.² These reports were dated February 17, 2011, and March 4, 2011.

The petitioner objected to the admission of Dr. Blair's deposition cross-examination on the basis that the reports he was questioned about were hearsay. The petitioner argued that because the reports were not reviewed by Dr. Blair in his capacity as an expert witness, the cross-examination about them was inadmissible. The petitioner also argued the cross-examination was beyond the scope of Dr. Blair's direct examination, which focused on his treatment and opinions of Rex while his physician; because Dr. Blair was no longer Rex's treating physician, at the time Rex was examined for those reports, Dr. Blair could not have relied on the reports in treating Rex.

Iowa Rule of Evidence 5.703 allows the trial court the discretion to admit hearsay into evidence if the evidence was a type "reasonably relied upon" by experts. Rule 5.705 provides that while an expert may testify as to an opinion without first testifying to the underlying facts or data, the court may require disclosure of the underlying facts or data on cross-examination. Looking at both rules, our supreme court has concluded that hearsay evidence that provides the underlying basis for an expert's opinion may be admitted. *Brunner v. Brown*, 480 N.W.2d 33, 35-37 (Iowa 1992). Such evidence is admissible "for the limited

² Neither of these doctors was designated as an expert witness in the case, nor did they testify at the trial. Therefore, their reports are hearsay. See Iowa R. Evid. 5.801(c).

purpose of showing the basis for the expert witnesses' opinions." *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168, 183 (Iowa 2004).

The district court sustained the objection on the basis that Dr. Blair was no longer Rex's treating physician at the time the reports were prepared. The record here is devoid of any evidence that Dr. Blair relied on either of the reports he was cross-examined about in forming his opinion—either as Rex's treating physician or in his capacity as an expert witness for the petitioner. The third-party reports that Dr. Blair was cross-examined about were, therefore, inadmissible hearsay. We find the district court was acting within its discretion in sustaining the petitioner's objection to the admission of Dr. Blair's deposition.

Rex also challenges the sufficiency of the evidence to support the court's finding that a limited guardianship was necessary. He contends the petitioner failed to establish by clear and convincing evidence that he is unable to care for his personal safety or to attend to or provide for his necessities. He also contends the court failed to consider the availability of third-party assistance to help him meet his needs.

We find the district court's order weighs the evidence and properly applies the law. The ruling details the neuropsychological report that revealed Rex performs poorly in areas that involve organizational skills, management skills, decision-making, sequencing tasks, and verbal recognition memory. The report found that Rex is vulnerable to influence by other individuals for secondary gain and requires supervision to prevent undue influence. The report diagnosed Rex with "dementia of Alzheimer's type" and recommended he obtain assistance for

financial and health decision-making. The report's author "was clearly of the opinion that it was in Rex[s] best interest to be under a guardianship at the time of deposition."

The court observed of Rex's testimony that "although he seemed confused at times, he was also coherent at times and is perhaps not in a position to require a full-fledged guardian but only a limited guardian." The court found Rex and Myron's testimony that Rex got weaker in assisted living to be "contrary to other credible evidence" and "does not make rational sense."

In addition to concerns about Rex's ability to take his medication and care for himself on a daily basis, the court noted evidence of Rex's apparent difficulty in understanding financial issues. For instance, Rex continues to build ponds on his farm because he gets a payback from the government. Although he believes this is income, the court observed that there is substantial expense in the construction of water-control structures, for which he is not completely reimbursed. Rex refused to pay bills, like his wife's funeral bill, and has resisted paying his property taxes even though he has ample liquid assets.

The court cited the testimony of Rex's current farm tenant, who testified that Rex has trouble understanding the farming observation and is forgetful. The tenant also "observed Rex operating motor vehicles at the farm and thinks his ability to drive is impaired and that it is risky for him to be operating machinery."

There was also evidence that Rex is susceptible to undue influence. In particular, the court noted the relationship Rex had with his neighbors, who the court found clearly attempted to undermine the relationship between Kent and

Rex “by supporting and agreeing with Rex and not being candid with him regarding his needs.” The court found that

although Kent has multiple jobs and is a responsible individual, the Bonars advised other individuals Kent was attempting to steal Rex’s money. This is clearly not the case, and it appears because Rex was searching for a support system, he was susceptible to undue influence. Rex also seeks out those who support his positions on various matters and manipulates them to resist Kent’s efforts.

Contrary to Rex’s position, the court did consider the availability of a third-party to help Rex meet his needs. The court noted that at the time of trial, Myron helped Rex “with shopping, mowing, helps around the farm, helps with his appointments, and presumably helps with his medication. He also assisted Rex in obtaining a driver’s license and has helped with a LifeWatch band, which is a method of providing safety for Rex.”

Substantial evidence supports the court’s finding that “Rex needs assistance in various aspects of his life, including medications, paperwork such as real estate taxes, making sure his automobile insurance is in effect, and taking care of his personal hygiene at least on a weekly basis.” Because the allegations in the petition for guardianship are supported by clear and convincing evidence, we affirm.

AFFIRMED.