

**IN THE COURT OF APPEALS OF IOWA**

No. 3-224 / 12-1278  
Filed May 15, 2013

**IN THE MATTER OF THE  
GUARDIANSHIP OF J.K.W.,**

**WILLIAM WENDT,**  
Intervenor-Appellant.

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Appeal from the Iowa District Court for Crawford County, Steven J. Andreasen, Judge.

A father appeals the termination of his visitation rights with his adult dependent daughter. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney, Shindler & Anderson, P.C., West Des Moines, for appellant.

Allen Nepper, Denison, for appellee J.K.W.

Martha A. Sibbel, Carroll, guardian ad litem for J.K.W.

Erin Elizabeth McCullough, Lake City, for appellee Cindy Wendt.

Jessica Ann Zupp, Denison, for appellee Pat Wendt.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

A father appeals from the termination of his visitation rights with his adult dependent daughter. He contends that terminating his visitation rights is not in his daughter's best interests, and he asks us to reinstate the visitation rights he was granted under a previous order. We affirm.

**I. Background Facts & Proceedings**

J.K.W. was born in 1972 and has been diagnosed with autism and mental retardation. When J.K.W. was three or four years old, the mother left her in the father's care and moved away from Iowa. The mother had little or no contact with J.K.W. for approximately twenty years. The father married Cindy in 1976, and they had a daughter, A.T. The father and Cindy were appointed co-guardians when J.K.W. turned eighteen in 1990. Sometime thereafter J.K.W. moved into a residential care facility. J.K.W. worked and received adult day services at a rehabilitation facility that provided support to individuals with disabilities.

In 1993 the department of human services (DHS) investigated a sexual abuse claim against the father regarding J.K.W. and concluded the claim was "founded." Cindy alleges the father was also physically abusive to J.K.W., A.T., and her during the marriage. The father and Cindy divorced in 1994, and the court removed the father as co-guardian in 1995. Cindy continued as J.K.W.'s sole guardian. A.T. was appointed co-guardian in 2008.

The mother returned to Iowa in the mid-1990s and renewed her relationship with J.K.W.'s father. The mother and father began requesting

visitation with J.K.W. in 1997. The court granted them supervised visitation in 2000. The visitation arrangement has since been modified on several occasions, and its terms have been a continuing source of tension between the parents and co-guardians.

In 2009 the court approved a version of the visitation arrangement that granted the father and mother supervised visitations at J.K.W.'s vocational facility for two hours every other Sunday. They were also allowed supervised visits outside the facility but within the Denison area on Saturdays. The mother was given additional visitation on Tuesday evenings.

In late December 2009 or early January 2010, concerns about the quality of J.K.W.'s supervision at her residential facility led the co-guardians to decide that J.K.W. should move in with A.T. The new living arrangement limited the opportunity for supervised visitations because the father was not allowed to visit J.K.W. at A.T.'s house. Around that time the father and the mother made a report of dependent adult abuse against A.T. that DHS concluded was "unfounded." The filing of that report caused the relationship between the parties to deteriorate further. A.T. thereafter required all visits to take place at local restaurants rather than in her home.

Due to scheduling conflicts, lack of communication, or unexpected circumstances, the mother and father have not always been able to exercise their visits with J.K.W. The visits that have taken place have often resulted in arguments between the parents and co-guardians, sometimes causing such a

disruption that restaurant staff have had to intervene. Based on their relationship history, the co-guardians harbor personal animosities towards the mother and, particularly, the father.

The matters that culminated in the current action began with an application filed by the mother in 2009 to be appointed as co-fiduciary and to modify her visitation rights with J.K.W. In 2010, the father requested the court remove Cindy and A.T. as co-guardians and grant him greater visitation rights. Cindy and A.T. then moved to terminate the father's visitation rights. The mother also filed an application for the court to find the co-guardians in contempt for violating the visitation agreement. The court denied the motion to remove Cindy and A.T. as co-guardians, upheld the mother's visitation rights under modified terms, and found no parties in contempt. The court, however, determined that it would be in J.K.W.'s best interest to terminate the father's visitation rights, and this is the issue before us on appeal.

## **II. Standard of Review**

This case was tried as an equitable proceeding under Iowa Code section 633.33 (2009). We review equity cases de novo. Iowa R. App. P. 6.907.

## **III. Analysis**

The best interest of the ward is the supreme consideration in any guardianship matter. *In re Guardianship & Conservatorship of Ankeney*, 360 N.W.2d 733, 737 (Iowa 1985). The court reviews the evidence and considers its effect on the ward's emotional, social, moral, material, and educational needs. *See In re Guardianship & Conservatorship of D.D.H.*, 538 N.W.2d 881, 883-84

(Iowa Ct. App. 1995). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Guardianship of Stewart*, 369 N.W.2d 820, 822 (Iowa 1985).

The father contends that terminating his visitation rights is not in J.K.W.'s best interest and asks us to reinstate the visitation rights he received under the 2009 order.<sup>1</sup> Specifically, he claims the district court improperly considered the sexual abuse allegations from 1993 in making its decision and unjustifiably disregarded the positive effects of his visits with J.K.W.

In our de novo review, we find the record shows that terminating the father's visitation rights is in J.K.W.'s best interest. Though the founded abuse report was issued approximately twenty years ago, it is still an important factor to consider for its effect on J.K.W.'s emotional well-being. The district court noted that J.K.W.'s behavior at times would change following a visit with the father. For example, she sometimes felt the need to shower after their visits. The father also has a history of confrontational behavior. He has been involved in disputes with the staff at J.K.W.'s previous residential facility and current day treatment facility, as well as disputes with the co-guardians during visits with J.K.W. Though the conflicts between the father and the co-guardians may be attributed in part to the co-guardians' personal animosities towards the father, we can understand why those animosities exist.

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<sup>1</sup> There was no appellee brief filed in defense of the district court's decision to terminate the father's visitation rights.

The father highlights notes from J.K.W.'s case manager indicating J.K.W. enjoyed visits where the father took her out to eat and out shopping. While we do not dispute those observations, we cannot ignore the overall effect his presence has on J.K.W.'s emotional well-being. He is generally not an active participant in J.K.W.'s visits, and his presence causes tension and conflict with J.K.W.'s co-guardians and others. The unfounded claim of dependent adult abuse the father and the mother instigated against A.T. only amplified this problem. We also agree with the district court that his visits could trigger memories of the prior abuse.

The district court's thirty-three page ruling was thorough and addressed multiple issues, only one of which was the visitation issue now raised on appeal. Under one of that ruling's numerous headings, the court considered the credibility of the parties and witnesses, taking into account their testimony, demeanor, and motives. The court considered the testimony in comparison to other credible evidence and made certain determinations. Specifically, the court found the mother's testimony lacked credibility and was somewhat influenced by the father. The court also found A.T.'s testimony lacked credibility. Both witnesses' testimony, the court noted, was self-serving to an extent. The court found Cindy to be a credible witness.

Based on our de novo review of the circumstances as a whole, and giving deference to the credibility findings of the district court, we find that allowing visitation with the father would not be in J.K.W.'s best interest.

**IV. Conclusion**

For the foregoing reasons, we affirm the district court's termination of the father's visitation rights.

**AFFIRMED.**