

IN THE COURT OF APPEALS OF IOWA

No. 3-754 / 12-1813
Filed October 23, 2013

**IN RE THE GUARDIANSHIP OF
JAYTON DOUGLAS HINKHOUSE,**

SHANNA KELLOR,
Mother-Appellant.

Appeal from the Iowa District Court for Muscatine County, Thomas G. Reidel, Judge.

A mother appeals from the order removing her as guardian of her adult son. **AFFIRMED.**

Matthew J. Reilly of Eells & Tronvold Law Offices, P.L.C., Cedar Rapids, for appellant.

Shanna Kellor, West Liberty, appellant pro se.

Alan Ostergren, County Attorney, Muscatine, for guardian appellee.

Mark J. Neary, Muscatine, for appellee Jayton Hinkhouse.

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

BOWER, J.

A mother who was previously appointed as guardian appeals from the order removing her as guardian of her adult son. She contends there is a parental preference, she performed her duties adequately, she was never granted “other powers or duties” as provided in Iowa Code section 633.635(1)(f) (2009), and she is an appropriate guardian for her son. We affirm.

I. Background Facts and Proceedings

The mother was appointed guardian of her son in 2010 when he was seventeen because his decision-making capacity was so impaired by reason of his mental and intellectual limitations that he was unable to care for his personal safety or to attend to and provide for such necessities as food, shelter, clothing, and medical care. See Iowa Code § 633.552(2)(a). Once he reached majority, he qualified as a dependent adult because of autism, retardation, bipolar mood disorder, conduct disorder, disruptive behavior disorder, pervasive development disorder, and an IQ of forty-five.

During 2010 and into 2011 the ward was unsuccessful in residential placements because of his aggressive and disruptive behavior, was arrested for criminal mischief and received a deferred judgment, and was involuntarily committed due to his mental illnesses. A dispute arose between the guardian and the director of Muscatine County Community Services over the appropriate placement for the ward. Consequently, the director of Muscatine County Community Services applied to be appointed successor guardian, alleging the guardian was not acting in the ward’s best interests concerning his mental health

treatment and residential placement. The director was appointed temporary guardian pending trial on his application. During his temporary tenure as guardian, the director arranged for the ward's transfer from inpatient commitment to a community-based facility. Following an October trial on the director's application, the court denied the application and restored the mother to her duties as guardian, noting it was "not convinced that the ward's mother is inappropriate to serve as the ward's guardian." However, the court cautioned the guardian "she must cooperate with the provision of mental health services to the ward in the context of the ward's involuntary mental health commitment. Refusal or failure to do so ultimately could result in removal of the ward's mother as his guardian."

The ward's community-based placement was unsuccessful; over a period of a few months in 2011, the ward was taken to a hospital emergency room five times, four of which required hospitalization for his mental illness. In early 2012 the ward was arrested for arson. Through a plea agreement, the charge was reduced to criminal mischief, and the ward was sentenced to time served. Upon the ward's release from jail, the guardian had no placement arranged and could not take him into her home, so she placed him with his father, knowing the father has health issues, struggles with alcoholism, and has cognitive deficits as a result of a head injury. The ward soon was involved with the police—first when he stole some of his father's checks from a closed checking account and used them around town to buy snacks and cigarettes, then when he was walking down the middle of the road at night and almost caused a head-on collision, and again

when he was reported missing and found a few hours later soaking wet from walking in the rain in cold weather. An investigation into the guardian's placement of the ward with his father resulted in a founded abuse report for denial of critical care with the guardian as perpetrator and also in criminal charges against the guardian, which were resolved through a deferred prosecution agreement.

In February 2012 the court entered an order removing the mother as guardian and appointing Muscatine County Community Services as the emergency successor guardian. The successor guardian found a suitable placement for the ward. In September the court held a contested hearing to determine whether the emergency successor guardian should be appointed as permanent guardian or the guardianship should revert to the mother. The court noted the guardian had failed to cooperate with service providers, refused to sign appropriate releases to facilitate communication between professionals involved with the ward resulting in delays in the ward's placement, failed to authorize necessary medication changes, and failed to follow through on her obligations as guardian. The court found:

[The guardian] failed to heed the warning provided [in the previous reinstatement order]. There are serious responsibilities placed upon the guardian by the Probate Code. While [the guardian] is a strong advocate for her son, she views him as her little boy who needs to be protected, and this sometimes impacts her ability to do, in a timely manner, what is in [the ward's] best interest. Additionally, [the guardian] is parenting her thirteen-year-old daughter, working full time, and providing for the needs of her family. This places demands on her time and impedes her ability to respond promptly to the [ward's] needs. . . .

. . . .

The Court concurs with the [county attorney] that [the guardian] is not a bad mother and does not have anything but the best interest of her son in mind. However, due to [her] commitments to her other child, her work that is required to support her family, and her other responsibilities, she is unable to satisfy the heavy burden that is placed upon a guardian to act in a proper and timely manner to ensure the ward's well-being. Based upon this, the Court finds that [the mother] should be removed as the guardian for [the ward] in order to protect [his] best interest. Muscatine County Community Services shall continue to serve as [the ward's] guardian.

II. Scope and Standards of Review

The parties do not agree on our scope of review. The guardian ad litem and the successor guardian both contend the action is at law and our review is for correction of errors at law. See *In re Guardianship of M.D.*, 797 N.W.2d 121, 127 (Iowa Ct. App. 2011); see also Iowa Code § 633.33 (“Actions . . . for the involuntary appointment of guardians . . . shall be triable in probate as law actions”) (2011). The guardian states the action is in equity and our review is de novo. See *In re Guardianship of Knell*, 537 N.W.2d 778, 780 (Iowa 1995); see also Iowa Code § 633.33 (“[A]ll other matters triable in probate shall be tried by the probate court as a proceeding in equity.”).

The district court tried this matter at law, ruling on objections and issuing an order instead of a decree. See *In re Guardianship of Murphy*, 397 N.W.2d 686, 687 (Iowa 1986). The action was for appointment of a successor guardian, not termination of a guardianship. See *M.D.*, 797 N.W.2d at 126-27; see also *In re Guardianship and Conservatorship of D.D.H.*, 538 N.W.2d 881, 883 (Iowa Ct. App. 1995). We conclude our review is for correction of errors at law. Iowa R. App. P. 6.907; see Iowa Code § 633.33. The district court's findings of fact are

binding on appeal if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a).

III. Merits

The guardian contends the court improperly removed her as guardian of her son. She first argues Iowa Code section 633.559 provides parents “shall be preferred over all others for appointment as guardian.” She asserts she is entitled to the presumption because she was appointed while the ward was a minor, even though the ward is no longer a minor. Under the plain language of the statute, the presumption in favor of parents applies only to appointment of guardians for minors. It does not apply here because the ward has attained his majority. His mental capacity is not a factor.

The guardian next argues she worked tirelessly to perform her duties and care for the ward. She contends she performed her duties under section 633.635(1) adequately. Section 633.635(1) sets forth the powers and duties the court may grant a guardian:

- a. Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward’s potential.
- b. Taking reasonable care of the ward’s clothing, furniture, vehicle and other personal effects.
- c. Assisting the ward in developing maximum self-reliance and independence.
- d. Ensuring the ward receives necessary emergency medical services.
- e. Ensuring the ward receives professional care, counseling, treatment, or services as needed. If necessitated by the physical or mental disability of the ward, the provision of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia is included, if the anesthesia is provided within the scope of the health care practitioner’s scope of practice.

f. Any other powers or duties the court may specify.

The guardian failed to sign releases and revoked the release for the ward's probation officer, which resulted in delays in communication between professionals concerning the ward and in delays in his placement, treatment, and receipt of services. The guardian refused to authorize a change in the ward's medication recommended by doctors, and she directed the police, who found the ward wandering alone in the cold rain, to return him to his father's home instead of taking him to the hospital for treatment. The guardian was removed temporarily in 2011. In the order reinstating the mother as guardian the court advised her to cooperate fully with services and placement for the ward, warning her that "[r]efusal or failure to do so could ultimately result in the removal of the ward's mother as his guardian." While we do not doubt the guardian desires what is best for the ward, her actions and inaction have resulted in harm to the ward, a founded report for denial of critical care, and criminal charges against the guardian. She has not, as she claims, performed her statutory duties adequately.

The guardian next contends the court never granted her "other powers or duties" as set forth in section 633.635(1)(f), specifically, the power to change the ward's permanent residence to a more-restrictive new residence. She asserts her first temporary removal as guardian was the result of a dispute over her determination the ward needed a more restrictive placement. She argues the less-restrictive placement made by the temporary guardian failed miserably. She further argues the ward's placement with his father was not her choice, but was made by the ward's probation officer in consultation with Muscatine County

Community Services. The evidence does not support her argument. Substantial evidence supports the court's finding the guardian

is not cooperative and is poor at follow-through regarding [the ward's] needs and placement options. In looking at the evidence as a whole, it is clear that [the ward] has been placed at risk and suffered harm due to a lack of follow-through from [the guardian] in signing releases and providing information.

If the guardian had cooperated with service providers and provided releases so an appropriate placement for the ward could have been pursued, the guardian would not have been left with the choice of leaving the ward in jail, taking him into her home, or placing him with his father. She did not need, and it does not appear she requested, "other powers."

We affirm the district court order removing the mother as guardian and appointing a successor guardian.

AFFIRMED.