

**COURT OF APPEALS OF TEXAS, SECOND APPELLATE DISTRICT AT FORT WORTH**

**In the Guardianship of N.P., an Incapacitated Person**

No. 02-19-00233-CV · No. No. 02-19-00233-CV · Decided December 10, 2020

**SUMMARY**

This dissenting memorandum opinion addresses whether the evidence supported a full guardianship over N.P., including the removal of her rights to vote, marry, and operate a motor vehicle. Chief Justice Bonnie Sudderth concluded that the applicants failed to establish the need for a full guardianship by clear and convincing evidence and that available informal supports and services supported the trial court's limited guardianship order. She would have affirmed the trial court and disagreed with the majority.

**CASE DETAILS**

|                              |                                                                                                                                                                                                                                                                                        |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | Court of Appeals of Texas, Second Appellate District at Fort Worth                                                                                                                                                                                                                     |
| <b>WRITING FOR THE COURT</b> | Bonnie Sudderth, Chief Justice                                                                                                                                                                                                                                                         |
| <b>JURISDICTION</b>          | Texas                                                                                                                                                                                                                                                                                  |
| <b>DECIDED</b>               | December 10, 2020                                                                                                                                                                                                                                                                      |
| <b>DOCKET</b>                | No. 02-19-00233-CV                                                                                                                                                                                                                                                                     |
| <b>DISPOSITION</b>           | other                                                                                                                                                                                                                                                                                  |
| <b>PROCEDURAL POSTURE</b>    | Appeal from a guardianship proceeding in Probate Court No. 2 of Tarrant County concerning whether N.P. should receive a full or limited guardianship. The dissent would uphold the trial court's limited guardianship as to N.P.'s rights to vote, marry, and operate a motor vehicle. |
| <b>STANDARD OF REVIEW</b>    | The dissent applied appellate deference to the trial court's determination of witness credibility and the weight of the evidence, and concluded that the trial court did not abuse its discretion in finding that the clear-and-convincing burden had not been met.                    |
| <b>PRECEDENTIAL VALUE</b>    | Published dissenting memorandum opinion; dissenting views are nonprecedential as holdings.                                                                                                                                                                                             |

**TOPICS**

guardianships

guardianship procedure

appellate procedure

standard of review

evidence

## PRACTICE AREAS

Guardianship

Probate

Appellate procedure

Evidence

## QUESTIONS PRESENTED

1. Whether the evidence clearly and convincingly established that N.P. was incapacitated as to her rights to vote, marry, and operate a motor vehicle and that removing those rights was in her best interests and would protect her rights or property.
2. Whether feasible less restrictive alternatives, including available formal or informal supports and services, were considered and shown by clear and convincing evidence not to avoid the need for a full guardianship.
3. Whether the trial court abused its discretion by granting a limited guardianship rather than a full guardianship.

## HOLDINGS

1. The dissent would hold that the applicants failed to present clear and convincing evidence supporting divestiture of those rights, because the evidence consisted primarily of conclusory opinions and answers without underlying facts or reasons.
2. The dissent would hold that the record contained evidence of feasible and available informal supports and services, including assistance from N.P.'s family, and that the applicants failed to prove by clear and convincing evidence that such alternatives were unavailable or infeasible.
3. The dissent would hold that the probate court did not abuse its discretion by granting a limited guardianship that preserved N.P.'s rights to vote, marry, and operate a motor vehicle.

## KEY QUOTATIONS

*“Leading questions with “yes” or “no” answers do not clear and convincing evidence make.” (at 1)*

*“Clear and convincing proof is that “degree of proof which will produce in the mind of [the factfinder] a firm belief or conviction as to the truth of the allegations sought to be established.”” (at 3)*

*“Because there is some evidence supporting the trial court’s determination that alternatives to a full guardianship were both feasible and available, and because the evidence offered was scant, thus supporting the trial court’s determination that the clear and convincing burden of proof had not been met, I would hold that the trial court did not abuse its discretion by granting a limited guardianship in lieu of a full one as to N.P.’s right to vote, to marry, and to operate a motor vehicle.” (at 10)*

## FACTUAL BACKGROUND

The guardianship applicants presented testimony from N.P.'s parents, testimony from N.P., a Certificate of Medical Examination, and a physician's affidavit. The dissent characterized the evidence supporting removal of N.P.'s rights to vote, marry, and operate a motor vehicle as largely conclusory, including answers elicited through leading questions and check marks on medical forms without supporting facts or reasons. N.P. testified that she

needed her family's help to make good decisions, and the dissent viewed that testimony, together with the family's willingness to assist her, as evidence of available informal supports and services.

## PROCEDURAL HISTORY

The Tarrant County probate court declined to impose a full guardianship and instead granted a limited guardianship that allowed N.P. to retain the rights to vote, marry, and operate a motor vehicle. The majority of the court of appeals disagreed with the trial court's assessment of the evidence; Chief Justice Sudderth dissented and would not disturb the trial court's ruling.

## DISPOSITION

other

## CASES CITED

- Transp. Ins. Co. v. Moriel, 879 S.W.2d 10, 31 (Tex. 1994)
- State v. Addington, 588 S.W.2d 569, 570 (Tex. 1979)

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