

SUPREME COURT OF NORTH DAKOTA

In Regard to the Guardianship/Conservatorship of Bruce M. Van Sickle

694 N.W.2d 212 (N.D. 2005) · No. Nos. 20040195, 20040224 · Decided April 4, 2005

SUMMARY

The Supreme Court of North Dakota addresses appeals arising from the guardianship and conservatorship of Bruce M. Van Sickle. The court dismisses as untimely the appeal from the order appointing Guardian and Protective Services, declines to dismiss as moot challenges to the ward’s placement and related orders, and affirms the district court’s rulings. It holds that a locked unit of a basic care facility is not a “mental health facility” under N.D.C.C. § 30.1-28-12(2), and that the proposed transferor bears the burden of proving a placement is the least restrictive alternative.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Maring, Justice; Gerald W. Vande Walle, Chief Justice; William F. Hodny, Surrogate Judge; Norman J. Backes, Surrogate Judge; William A. Neumann, Justice, did not participate
JURISDICTION	North Dakota
DECIDED	April 4, 2005
DOCKET	Nos. 20040195, 20040224
DISPOSITION	other
PROCEDURAL POSTURE	David Van Sickle appealed an order appointing a guardian and conservator, an order denying an application seeking removal of the guardian and reversal of the ward's residential placement, and an order denying a motion for a new trial. The Protection & Advocacy Project separately appealed the latter two orders.
STANDARD OF REVIEW	The court reviewed the district court's denial of a request to testify by telephone for abuse of discretion; its findings concerning the least restrictive placement under N.D.R.Civ.P. 52(a) under a clearly erroneous standard; and its denial of the motion for a new trial for abuse of discretion. The court also independently determined appellate jurisdiction and mootness.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential

PARTIES

David Van Sickle, Protection & Advocacy Project v. Craig B. Van Sickle, Susan Cooper, John Van Sickle, Guardian and Protective Services, Inc.

TOPICS

guardianship procedure

elder law

guardianships

appellate jurisdiction

statutory interpretation

PRACTICE AREAS

guardianship

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QUESTIONS PRESENTED

1. Whether the Supreme Court had jurisdiction over David Van Sickle's appeal from the July 30, 2003 order appointing Guardian and Protective Services as guardian and conservator.
2. Whether appeals concerning the December 15, 2003 and July 8, 2004 orders were moot after the ward left Edgewood Vista.
3. Whether the district court abused its discretion by refusing to permit David Van Sickle to testify by telephone.
4. Whether a locked and secured dementia unit of a basic care facility is a mental health facility under N.D.C.C. § 30.1-28-12(2), requiring a guardian to obtain a court order before placing a ward there.
5. Which party bears the burden of proving that a proposed residential placement is the least restrictive alternative and whether Edgewood Vista was the least restrictive placement.
6. Whether the district court erred by refusing to remove Guardian and Protective Services as guardian.
7. Whether the district court abused its discretion in denying the motion for a new trial based on newly discovered evidence and alleged procedural errors.

HOLDINGS

1. The court lacked jurisdiction to consider David Van Sickle's appeal from the order appointing Guardian and Protective Services as guardian and conservator because the notice of appeal was filed nearly one year after service of notice of entry and was untimely.
2. The appeals from the orders concerning the ward's placement and the motion for a new trial were not dismissed as moot because the issues were capable of repetition yet evading review.
3. The district court did not abuse its discretion by refusing to permit David Van Sickle to participate in the hearing and testify by telephone.
4. A locked and secured unit of a basic care facility is not a mental health facility within the meaning of N.D.C.C. § 30.1-28-12(2); therefore, GPS had authority to place the ward at Edgewood Vista without first obtaining a court order.
5. The party proposing to transfer a ward to a more restrictive living arrangement bears the burden of proving by clear and convincing evidence that the proposed placement is the least restrictive alternative

available.

6. The district court's finding that Edgewood Vista was the least restrictive alternative for the ward's placement was not clearly erroneous.
7. The district court did not err in refusing to remove Guardian and Protective Services as guardian.
8. The district court did not abuse its discretion in denying the motion for a new trial.

KEY QUOTATIONS

“The decisions of a guardian and conservator for a ward with progressive dementia or Alzheimer's disease could effectively be shielded from review because of continuing changes in the ward's condition.” (694 N.W.2d at 217-218)

“Because of the similar interests at stake in a guardianship proceeding, we conclude that the party proposing the transfer of a ward to a more restrictive living arrangement has the burden of proving by clear and convincing evidence that the proposed placement is the least restrictive alternative available.” (694 N.W.2d at 220)

“We conclude a “mental health facility” within the meaning of N.D.C.C. § 30.1-28-12(2) does not include a locked and secured unit of a basic care facility.” (694 N.W.2d at 219)

FACTUAL BACKGROUND

Bruce Van Sickle, who was eighty-eight and had Alzheimer's disease, left his marital home and lived with Helen Monteith. After a guardianship petition was filed, examinations and reports indicated that his Alzheimer's disease was moderate to severe and that he needed a guardian. Guardian and Protective Services was appointed guardian and conservator and later moved Bruce to Edgewood Vista after Monteith fractured her pelvis and concerns arose about her ability to continue caring for him. The district court found Edgewood Vista was the least restrictive placement and refused to remove GPS as guardian.

PROCEDURAL HISTORY

Craig Van Sickle and Susan Cooper petitioned for appointment as guardian and conservator for Bruce Van Sickle. The district court appointed Guardian and Protective Services, Inc. as guardian and conservator, later approved the ward's placement at Edgewood Vista and denied an application seeking removal of GPS and reversal of that placement. The court denied David's motion for a new trial, and the appeals followed. The Supreme Court dismissed the appeal from the original appointment order as untimely and affirmed the two later orders.

DISPOSITION

other

CASES CITED

- Dietz v. Kautzman, 2004 ND 164, ¶ 6, 686 N.W.2d 110

- State v. Gohl, 477 N.W.2d 205, 207 (N.D. 1991)
- Morley v. Morley, 440 N.W.2d 493, 494 (N.D. 1989)
- Larson v. Larson, 2002 ND 196, ¶ 6, 653 N.W.2d 869
- In re D.P.O., 2005 ND 39, ¶ 8, 692 N.W.2d 128
- In re E.T., 2000 ND 174, ¶ 5, 617 N.W.2d 470
- In re W.O., 2004 ND 8, ¶¶ 10-11, 673 N.W.2d 264
- St. Claire v. St. Claire, 2004 ND 39, ¶ 6, 675 N.W.2d 175
- State v. Hilgers, 2004 ND 160, ¶¶ 22-23, 685 N.W.2d 109
- State v. Lemons, 2004 ND 44, ¶¶ 9-11, 675 N.W.2d 148
- Praus ex rel. Praus v. Mack, 2001 ND 80, ¶ 6, 626 N.W.2d 239
- Van Klootwyk v. Baptist Home, Inc., 2003 ND 112, ¶ 12, 665 N.W.2d 679
- Public Serv. Comm'n v. Wimbledon Grain Co., 2003 ND 104, ¶¶ 20-21, 663 N.W.2d 186
- Shiek v. North Dakota Workers Comp. Bureau, 2002 ND 85, ¶ 12, 643 N.W.2d 721
- Guardianship of Muellner v. Blessing Hosp., 335 Ill. App. 3d 1079, 270 Ill. Dec. 240, 782 N.E.2d 799, 802-803 (2002)
- Matter of Guardianship of Braaten, 502 N.W.2d 512, 516, 518 (N.D. 1993)
- In Interest of Cuypers, 389 N.W.2d 812, 814 (N.D. 1986)
- Conservatorship of Guerrero, 69 Cal. App. 4th 442, 81 Cal. Rptr. 2d 541, 543 (1999)
- Matter of Guardianship of Hedin, 528 N.W.2d 567, 581 (Iowa 1995)
- Matter of Sanders, 108 N.M. 434, 773 P.2d 1241, 1245 (N.M. Ct. App. 1989)
- Matter of Marvin W., 306 A.D.2d 289, 760 N.Y.S.2d 337 (N.Y. App. Div. 2003)
- O'Neill v. O'Neill, 2000 ND 200, ¶ 3, 619 N.W.2d 855
- Helbling v. Helbling, 541 N.W.2d 443, 445-446 (N.D. 1995)
- Killmer v. Duchscherer, 72 N.W.2d 650, 657 (N.D. 1955)
- American Nat. Watermattress Corp. v. Manville, 642 P.2d 1330, 1340 (Alaska 1982)
- Hoffman v. North Dakota Workers Comp. Bureau, 2002 ND 138, ¶ 15 n. 1, 651 N.W.2d 601
- Matter of Guardianship of Renz, 507 N.W.2d 76, 77 (N.D. 1993)
- Matter of Guardianship of Kelly, 184 Ariz. 514, 910 P.2d 665, 671 (Ariz. Ct. App. 1996)
- Hamilton v. Oppen, 2002 ND 185, ¶ 4, 653 N.W.2d 678
- Johnson v. Johnson, 2001 ND 109, ¶ 6, 627 N.W.2d 779
- Kirchoffner v. Quam, 264 N.W.2d 203, 206-207 (N.D. 1978)