STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1507

In re the Guardianship of Gretchen Lucking.

Filed May 12, 2025
Affirmed
Bentley, Judge

Clay County District Court
File No. 14-P3-93-000586

Joni (Joan) J. Perna, Moorhead, Minnesota (self-represented appellant)

Brian J. Melton, Clay County Attorney, Kathleen M. Stock, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent Clay County Social Services)

Ryan C. McCamy, Conmy Feste Ltd., Fargo, North Dakota (for respondent Lutheran Social Services)

Alexis L. Madlom, Vickers Law, PLLC, Fargo, North Dakota (for respondent Gretchen Lucking)

Considered and decided by Harris, Presiding Judge; Ede, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

Appellant Joni J. Perna challenges the district court's denial of her petition for removal of respondent Lutheran Social Services (LSS) as her adult daughter's guardian and appointment of herself and her sister as successor co-guardians. We affirm.

FACTS

Perna's adult daughter, respondent Gretchen Lucking, has severe congenital health issues. She requires 24-hour care, and she lacks the capacity to meet her own needs and to make important life decisions. As a result, she has been subject to guardianship since 1993. Perna served as Lucking's legal guardian until September 2020, when she was removed as guardian for cause. Since then, Perna has unsuccessfully petitioned to be reappointed as guardian numerous times. This appeal arises from the dismissal of her most recent petition, which was filed in July 2024. For context, we summarize the proceedings leading up to it.

Perna Removed as Guardian

In September 2020, respondent Clay County Social Services (the county) filed an emergency petition to remove Perna as guardian and appoint LSS as temporary substitute guardian. The county alleged that Perna repeatedly "obstructed hospital staff's ability to provide needed treatment for [Lucking]" by disregarding medical staff's orders and "refusing" and "disrupting . . . critical care." The district court scheduled a telephone hearing for one week out and granted the county's petition in the interim. After the hearing, the district court extended LSS's appointment as temporary substitute guardian based on the "serious and specific" allegations in the county's petition that, if true, would endanger Lucking's short-term welfare. An evidentiary hearing was scheduled for January 2021.

In November 2020, Perna filed an emergency petition to remove LSS as the temporary substitute guardian or, alternatively, to "remove LSS's power to establish Lucking's place of abode and order that Lucking live with [Perna]." Perna alleged that Lucking's exposure to COVID-19 in a group home posed a "high risk for severe

complications." The district court promptly held a hearing and determined, based on argument from counsel and sworn testimony from an LSS staff member, that continuing LSS's emergency guardianship "will not result in substantial harm to [Lucking's] health, safety, or welfare," and denied Perna's petition.

By January 2021, the parties reached an agreement that it was in Lucking's best interest for Perna to be removed as guardian and for LSS to be appointed Lucking's successor guardian. Perna, Lucking (through counsel), LSS, and the county signed a stipulated order to that effect.

Perna Petitions to Regain Guardianship

In December 2021, Perna petitioned to remove LSS as guardian and appoint herself as successor guardian. Her petition stated that: (1) due to the risks of COVID-19, Lucking should live outside of a group home, with Perna; (2) the county did not prove its factual basis for removing Perna as guardian; (3) Lucking's medical professionals recommended that Perna be appointed guardian; and (4) LSS was not acting in Lucking's best interests. The district court set the matter for a three-day evidentiary hearing.

In May 2022, before the hearing, Perna filed another emergency petition to appoint herself as temporary guardian so that Lucking could be seen by "her expert medical providers" at the Mayo Clinic. Perna alleged that LSS had "negligently refused" her requests to have Lucking see those providers. Later that week, the district court held a hearing and denied Perna's request for relief. The court found that the request was "fueled by [Perna's] personal opinions and beliefs, which are not supported by the medical evidence."

In November 2022, the district court moved forward with the evidentiary hearing. Several witnesses testified about Lucking's health.[1] Lucking's dentist testified that Perna had refused his advice to remove several of Lucking's teeth, even though they were infected. A program director that worked directly with Lucking testified that Lucking's "difficult days . . . with behaviors such as yelling and swearing" became less frequent while LSS was guardian. And a pulmonologist with the Mayo Clinic testified that he had "no concerns regarding [Lucking's] current care . . . and has no immediate or specific reason to see [Lucking] currently." Perna testified, among other things, that LSS was caring for Lucking and that she did not want them discharged for any wrongdoing, but she believed that she could do a better job of caring for Lucking.

The district court determined that it was in Lucking's best interests for LSS to remain her guardian and denied Perna's petition. While recognizing that Perna "has been an incredible advocate for [Lucking] for several years," the court found that Perna's "passion . . . has reached a point where it is causing [Lucking] harm, as it is now presenting as obstructive and volatile." The court noted a "pattern of strained relationships" between Perna and nearly all of Lucking's providers. It found that Lucking was "doing quite well" under LSS's guardianship. Perna did not appeal the denial of her petition.

Perna Again Petitions for Guardianship

About a year later, Perna resumed efforts to remove LSS as guardian. In April 2024, Perna petitioned for herself and her sister to be appointed as Lucking's emergency

[1] The transcript was not transmitted to this court on appeal, so our understanding of the testimony presented is from the district court's order denying Perna's petition.

guardians. The petition alleged concerns about Lucking's health that arose under LSS's care and LSS's provision of medical treatment for Lucking, including LSS's "refus[al]" to take Lucking to the Mayo Clinic. Shortly thereafter, the district court held a hearing and informed Perna that "no action would be taken on the Petition as nothing within the pleadings constituted an emergency and a guardian was already appointed."

In July 2024, Perna filed the present petition asking the district court to appoint her and her sister as Lucking's co-guardians and co-conservators. The district court held a hearing at which Perna, LSS, the county, and Lucking's attorney appeared. All of the parties except Perna opposed the petition. Lucking's attorney and the county argued that the petition was not properly before the court.

In a written order, the district court explained that Perna's petition for guardianship was "not properly before the Court" because LSS "already serves as the Guardian." In any event, the court determined that "the petition lack[ed] prima facie evidence to even suggest an evidentiary hearing [was] necessary or appropriate." The court noted that it had held a three-day evidentiary hearing on LSS's removal and Perna's appointment less than two years earlier and that there were "zero concerns for the well-being of [Lucking] from her attorney, her caregivers, and her [county] social worker." The court pointed out that Perna's specific concerns were not raised in LSS's 2024 well-being report, which described Lucking's current mental, physical, and social conditions. According to the report, Lucking had "a happy demeanor," "enjoy[ed] socializing with peers and staff," and "ha[d] regular visits with her mother." The report stated that Lucking "uses a wheelchair and her ability to walk has continued to decrease this past year." The report also indicated that Lucking

has regular appointments with her primary care provider, neurologist, pulmonologist, and dentist. Considering Perna's pleadings and the well-being report, the district court summarily denied the petition.

Perna appeals.

DECISION

Perna argues that the district court's decision denying her petition must be reversed. She raises numerous concerns about Lucking's declining health and her belief that she could attend to Lucking's needs better than LSS. She asks this court to remand with instructions that the district court appoint her guardian or, in the alternative, remand for an evidentiary hearing.

The Uniform Guardianship and Protective Proceedings Act (Guardianship Act), Minn. Stat. §§ 524.5-101 to -502 (2024), governs the appointment and removal of a guardian for an incapacitated person, including a vulnerable adult. Under the Guardianship Act, an "interested person may petition for removal of a guardian . . . on the ground that removal would be in the best interest of the person subject to guardianship . . . or for other good cause." Minn. Stat. § 524.5-112(b). A petition for removal "may include a request for appointment of a successor guardian." *Id.* The Guardianship Act does not expressly require a district court to hold a hearing on a removal petition. *See* Minn. Stat. § 524.5-112(b); *cf.* Minn. Stat. § 524.5-304(a) (requiring a hearing on a petition to establish a guardianship).

We turn first to the main issue on appeal: whether the decision should be reversed because the district court denied the petition without holding an evidentiary hearing. We then address Perna's other arguments.

I

The district court's order denying Perna's petition states the petition "is not properly before the Court[,]" and that even if it were, "the Petition lacks prima facie evidence to even suggest an evidentiary hearing is necessary or appropriate." For purposes of this appeal, we assume—without deciding—that Perna's petition was properly before the district court.[2]

The propriety of the district court's denial of Perna's petition, without an evidentiary hearing, depends on whether the petition and supporting documents met the standard for obtaining an evidentiary hearing. But the parties did not argue the standard for obtaining an evidentiary hearing to the district court or on appeal. Thus, the question of the standard for obtaining an evidentiary hearing on a motion to remove a guardian and appoint a new guardian is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts address only those questions previously presented to and

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[2] LSS argues that the district court did not err by dismissing Perna's petition because it was a petition for guardianship, not to remove a guardian and appoint a successor guardian. Although it is true that Perna's petition does not mention removal of a guardian, Perna filed several other documents with the petition, including a correspondence that states, "I, Joan Perna, am requesting removal of Lutheran Social Services of Minnesota (LSS) as guardian for my daughter, Gretchen Lucking and the appointment of me and my sister, Rochel Perna, as Co-guardians."

Courts construe pleadings to promote substantial justice, interpreting pleadings liberally "in favor of the pleader and judg[ing] them by their substance and not by their form," and "look[ing] at the pleadings as a whole." *Basich v. Bd. of Pensions of Evangelical Lutheran Church in Am.*, 493 N.W.2d 293, 295 (Minn. App. 1992). Moreover, the removal statute does not prescribe a specific form for a removal petition. *See* Minn. Stat. § 524.5-112(b). Considering the circumstances here, we construe Perna's petition as one for removal of LSS as guardian and appointment of a successor guardian. We therefore decline to affirm the district court's decision on the sole basis that the petition was not properly before the court.

considered by the district court); *see also State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to consider a question that was inadequately briefed); *In re Estate of King*, 992 N.W.2d 410, 418 (Minn. App. 2023) (citing *Wintz* in a probate appeal). Moreover, as set out below, Perna did not satisfy either of the two standards for obtaining an evidentiary hearing suggested by the posture and file in this case. In these circumstances, we simply note that whatever the standard may be for obtaining an evidentiary hearing on a motion to remove a guardian and appoint a new guardian, Perna did not satisfy it. Accordingly, we conclude that the district court's failure to hold an evidentiary hearing is not problematic.

A. Prima Facie Case

The district court's order alludes to the standard for obtaining an evidentiary hearing on a motion to modify child custody. In that context, if the movant alleges a "prima facie case" for the relief sought, "the district court must hold an evidentiary hearing on the motion." *Woolsey v. Woolsey*, 975 N.W.2d 502, 508 (Minn. 2022). But if the movant fails to allege a prima facie case for the relief sought, the district court is "require[d] . . . to deny [the] motion[.]" *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981). In the custody context, a movant "ma[kes] a prima facie case by alleging facts that, if true, would provide sufficient grounds for [the relief sought]." *Woolsey*, 975 N.W.2d at 507. A movant does not make a prima facie case if the movant's allegations are merely conclusory, or are "too vague," or are "devoid of allegations supported by any specific, credible evidence." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (quotations omitted). If the custody-related standard applies here, to obtain an evidentiary hearing,

Perna's petition had to allege—in a fashion that was nonconclusory, nonvague, and supported by the record—that removal of LSS would be in Gretchen's "best interest" or was appropriate for other "good cause." *See* Minn. Stat. § 524.5-112(b) (2024).

Many of Perna's allegations in support of her current petition concern issues that are similar, if not identical, to those raised at the three-day evidentiary hearing in 2022. The district court denied relief after making findings about Lucking's best interests, including that Lucking did not contract pneumonia and COVID-19 because of LSS's negligence. Perna did not appeal. Thus, Perna may not relitigate issues decided then. *See Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966) (stating that "[e]ven though the decision of the trial court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired"). Perna also raised issues that occurred after the 2022 evidentiary hearing to support her current petition. But a petition based solely on those allegations is also insufficient to merit an evidentiary hearing under the custody standard. Perna does not adequately explain why Lucking's issues with her vision and mobility are attributable to LSS's deficient care. As to the vision issues, Perna relies on her own observations and research to assert that LSS is negligent for not taking Lucking to an ophthalmologist. Those allegations are too conclusory, too vague, or are otherwise inadequately supported by specific evidence. *Szarzynski*, 732 N.W.2d at 292.

Thus, if the standard for obtaining an evidentiary hearing in the custody context applies here, Perna's submissions do not satisfy that standard.[3]

B. Abuse of Discretion

Generally, in civil matters, "[w]henever a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." Minn. R. Civ. P. 43.05. Rule 43.05 "vest[s] the decision to take oral testimony in the discretion of the trial court." *Mathias v. Mathias*, 365 N.W.2d 293, 297 (Minn. App. 1985). And the rules of civil procedure apply to probate proceedings, including guardianship proceedings, unless displaced by a probate statute. Minn. Stat. § 524.1-.304(a) (2024); *see also In re Conservatorship of Smith*, 655 N.W.2d 814, 820 (Minn. App. 2003) (holding that the rules of civil procedure apply to conservatorship proceedings). The parties cite no authority that displaces rule 43.05 in probate matters. Thus, if the general civil standard applies here, this court will reverse a district court's refusal to hold an evidentiary hearing if the district court's refusal to do so was an abuse of its discretion.

[3] We note that Perna raised these factual allegations in an unsworn letter to the district court, rather than an affidavit. An affidavit is a document that has been "notarized or signed under penalty of perjury." *Metro. Transp. Network, Inc. v. Collaborative Student Transp. of Minn., LLC*, 6 N.W.3d 771, 780 n.1 (Minn. App. 2024) (quotation omitted), *rev. denied* (Minn. July 23, 2024). A prima facie case in the custody-modification context must be supported by "an affidavit setting forth facts in support of modification." *Nice–Petersen*, 310 N.W.2d at 472. And in general, courts do not give the same weight to unsworn statements. *See City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 166 n.14 (Minn. 2017) (declining to consider an incident "based on an unsworn statement").

Generally, "[a] district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey*, 975 N.W.2d at 506 (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)). Here, most of the findings of fact in the district court's order address the procedural history of the case. And those findings of the history of the case are not contested on appeal. To the extent Perna challenges other findings by the district court, she fails to address why the alleged errors in those findings required an evidentiary hearing. Additionally, because Perna cites no authority addressing the propriety of holding or denying an evidentiary hearing on a motion to remove a guardian and appoint a new guardian, Perna has not shown that the district court misapplied the law regarding the holding of an evidentiary hearing. Finally, Perna has not explained why denying an evidentiary hearing was contrary to logic and the facts on this record. The district court's decision is consistent with the facts that (a) many of Perna's current submissions were, after a three-day evidentiary hearing, previously ruled insufficient to warrant relief; (b) no other party is presently concerned about the adequacy of Lucking's care; and (c) if circumstances change, Minn. Stat. § 524.5-112 allows an interested person to file a new petition to remove the guardian. Thus, if the general abuse of discretion standard applies to the district court's decision to not hold an evidentiary hearing in this case, Perna has not shown how she is entitled to relief under that standard.

For these reasons, we decline to reverse the district court's refusal to hold an evidentiary hearing on Perna's most recent petition.

II

We now address Perna's remaining arguments. First, Perna challenges the adequacy of LSS's well-being report that the district court referenced in its decision not to hold an evidentiary hearing. She argues that it omitted various health issues, including those relating to Lucking's sleep and vision, and fails to state that Lucking's health is declining. Under the Guardianship Act, a guardian must "report to the court in writing on the condition of the person subject to guardianship at least annually and whenever ordered by the court." Minn. Stat. § 524.5-316(a). The report must provide information required by statute, including "the current mental, physical, and social condition of the person subject to guardianship." *Id.*, (a)(1). If a guardian fails to comply with the reporting requirement, the court may remove the guardian. *Id.*, (h).

We are unpersuaded by Perna's argument that the district court abused its discretion in relying on the report. In its order denying Perna's most recent removal petition, the district court noted that the report "outlines [Lucking's] current medical status, including that [Lucking's] ability to walk continues to decrease." Based on our independent review of the report, we conclude that, to the extent the district court's discussion of the report in its order constituted a finding with respect to it, the district court's statements are supported by the record. Lucking offers no authority to support the argument that a well-being report must mention all health issues, and the relevant statute contains no such requirement. *See id.*, (a)(1)-(7). We therefore conclude that the district court did not abuse its discretion by declining to remove LSS based on the 2024 well-being report.

Second, Perna challenges the weight that the district court assigned to the lack of concerns for Lucking's well-being from her attorney, her caregivers, and her social worker. In her brief, Perna asserts that Lucking's attorney does not see her often, the social worker sees Lucking "once a quarter or semi-annually," and caregivers have told Perna they noticed that Lucking's "vision has gotten blurry." But at the hearing, Lucking's attorney and social worker told the court that they did not have concerns with LSS's guardianship. And the 2024 well-being report indicates that Lucking "regularly sees" her primary care provider, neurologist, and pulmonologist, and that Lucking continues to require guardianship. The court did not abuse its discretion in considering and weighing the positions of Lucking's attorney, caregivers, and social worker.

Third, Perna alleges that the record does not support the district court's statement that she has "regular visits" with Lucking. But in her correspondence to the district court, Perna stated that she visited Lucking for "four hours a day, two days a week for a year and a half." The most recent well-being report also states that Lucking "continues to have regular visits with [Perna]." While Perna might prefer more frequent visits, the record supports the district court's statement that Perna has "regular visits" with Lucking.

Fourth, Perna raises concerns about Lucking living in a group home, pointing to Lucking's sleep issues and inadequate mental stimulation. Perna also claims that staff do not know Lucking and her needs as well as she does. But Perna does not explain why these issues at the group home necessitate the removal of LSS as guardian. "[R]emoval is a fairly extreme remedy for resolving [guardianship] concerns," *In re Guardianship of DeYoung*, 801 N.W.2d 211, 219 (Minn. App. 2011), and Perna's concerns about the group home

would be more appropriately addressed through a petition to initiate a change in abode. *See* Minn. Stat. 524.5-313(c)(1) (providing mechanism for petitioning the court "to prevent or to initiate a change in abode"). The district court noted that option in an order denying one of Perna's prior petitions to modify guardianship. Either Lucking or Perna, as an "interested person," could bring such a petition at any time. *See id.* Perna's allegations regarding issues at the group home do not reveal an abuse of discretion by the district court.

Fifth, Perna argues that she received ineffective assistance from the lawyer who represented her in connection with her first removal petition. She alleges that the lawyer decided to call Perna as the sole witness and did not raise Lucking's other health issues from that time. But she does not cite any legal authority supporting her request for relief based on this claim. We also note that the record does not appear to support her argument that the lawyer did not call witnesses. An amended witness list included multiple witnesses other than Perna, and the district court's order recounts testimony from at least some of those witnesses.

Finally, Perna's brief raises several issues that were not raised before the district court. These include Perna's arguments that restrictions on her visitation with Lucking were not modified after "all of the allegations of abuse were found to be false" and that LSS provides Lucking with inadequate diet and hydration, which caused Lucking to have kidney stones and related complications. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele*, 425 N.W.2d at 582. Accordingly, we decline to consider any arguments that were not raised to the district court.

Before concluding, we acknowledge Perna's deep concern and love for her daughter and her genuine belief that she is the best person to serve as guardian. But, ultimately, the standard to remove a guardian is a high bar, and the decision falls within the district court's discretion. Considering all of Perna's arguments and the record before us, we see no basis to reverse the district court's decision to deny Perna's petition.

Affirmed.