

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 17, 2000

Cornelia G. Clark  
Acting Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-2889-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN THE MATTER OF THE GUARDIANSHIP OF:  
ESTHER L. K.:**

**PATRICIA A. M.,**

**APPELLANT,**

**v.**

**PATRICIA S., AND LEGAL GUARDIANSHIP  
SERVICES, INC.,**

**RESPONDENTS.**

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APPEAL from an order of the circuit court for Juneau County:  
JOHN W. BRADY, Judge. *Reversed and cause remanded with directions.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Patricia A.M. appeals from an order appointing Legal Guardianship Services, Inc. (LGS), as guardian of the person for her mother, Esther L.K. Because we conclude that the circuit court's decision improperly

relied on factors not relevant to the decision about whom to appoint as a personal guardian for Esther, we reverse and remand for further consideration.

¶2 The dispute in this appeal is not about whether a guardian of Esther's person should be appointed, but about who the guardian should be. Patricia argues that she should be the guardian, while the respondents and Esther's guardian ad litem argue that LGS, a corporation that also serves as the guardian of Esther's estate, should be appointed.

¶3 The parties agree that the appointment of the guardian is controlled by WIS. STAT. § 880.33(5) (1997-98),<sup>1</sup> which states in relevant part:

In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision.

The parties also agree that this is a discretionary determination. Therefore, we will affirm if the circuit court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. See *Winnebago County v. Harold W.*, 215 Wis. 2d 523, 528-29, 573 N.W.2d 207 (Ct. App. 1997) (citing *Brezinski v. Barkholtz*, 71 Wis. 2d 317, 327, 237 N.W.2d 919, 924 (1976)).

¶4 In its oral ruling, the court concluded that there was insufficient evidence to clearly establish whom Esther would choose were she able to do so. The court then concluded that Esther's best interest required appointment of a

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

guardian who is “independent of the family member” and does not have a “conflict with the nursing home.” The court acknowledged that the placement issue was not before it, but then stated that Esther was a long-time resident of the area, has friends and family there, “and I think every effort should be made to keep her in that area .... I think she should remain in the [local] area, [and] my goal [is] to see that that happens by making the decision I am making here today.”

¶5 Patricia asserts that the possibility that she may seek to move her mother from the area at some future time should not have been given significant weight in the court’s decision about who the guardian should be. She asserts she is a family member who is available for appointment as the guardian. The respondents apparently agree with the appellant that placement was not an appropriate consideration. Although the respondents’ brief argues several reasons why LGS would be a better guardian, it does not claim that one of them is the possibility that Patricia might want to move Esther.

¶6 We note that the statutes direct that consideration be given to the opinions of family members. And in this case, all family members requested that Patricia be appointed. Additionally, placement was not before the court. However, the court’s decision to appoint LGS, rather than Patricia, was based partly on placement and partly on Patricia’s alleged conflict with the nursing home in which Esther has been protectively placed. However, we do not believe that such a conflict is a sufficient basis to conclude that an individual guardian is unsuitable when all family members recommend her appointment and there is no factual record to support a finding that the individual has taken actions which are contrary to the best interests of the proposed incompetent. Therefore, we conclude that the circuit court erroneously exercised its discretion by basing its decision on concerns about placement.

¶7 Accordingly, for the above reasons, we reverse the order appointing LGS as guardian of Esther's person, and we remand for the circuit court to exercise its discretion by applying the factors provided in WIS. STAT. § 880.33(5) to the facts of record.

*By the Court.*—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

