

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 19, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2005AP3043

Cir. Ct. No. 1983GN2092

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE MATTER OF THE GUARDIANSHIP OF MARY K.M.:

MARY JANE M.,

APPELLANT,

V.

MILWAUKEE COUNTY,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
MARTIN J. DONALD, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Mary Jane M. appeals *pro se* from the order dismissing her petition to be appointed guardian of her developmentally disabled

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

daughter, Mary K.M. Mary Jane contends that the trial court erred in dismissing her petition and that she should be appointed Mary K.M.'s guardian because she, as Mary K.M.'s mother, is best suited to be her guardian. This court concludes that the trial court properly exercised its discretion in dismissing Mary Jane's petition based on Mary Jane's courtroom behavior and refusal to submit to a psychological evaluation. Therefore, the order is affirmed.

I. BACKGROUND.

¶2 Mary K.M., born on July 20, 1961, has been diagnosed with mild mental retardation and has an I.Q. of 58. Mary K.M. has been found incompetent and a proper subject for a guardianship. Although Mary K.M. has had a guardian other than her mother since 1985, she resided with her mother, Mary Jane, until 1992. One of Mary K.M.'s guardians was Mary Jane's sister, but an apparent falling out between the two sisters resulted in severed relations and Mary Jane has apparently been suspicious of her sister ever since. In March 1992, Mary K.M. was removed from Mary Jane's care as a result of alleged physical and verbal abuse by Mary Jane, and has been living in a group home ever since. Since then, Mary Jane has been trying to become Mary K.M.'s guardian, and has advanced various conspiracy theories as support. In 1999, a corporate guardian, Association of Retarded Citizens (ARC), was appointed Mary K.M.'s guardian.

¶3 In 1990, a restraining order was issued against Mary Jane for threatening to kill her sister, brother-in-law and their two children. Since 1995, there has been a permanent restraining order in place to keep Mary Jane from interfering with the guardian's authority, by prohibiting Mary Jane from having contact with Mary K.M. or any entity that cares for, or has contact with, Mary K.M. In 1997, another restraining order was issued, prohibiting Mary Jane from

having contact with various clergy members, staff members and entities of the Roman Catholic Archdiocese of Milwaukee, who were then caring for Mary K.M. after Mary Jane apparently tried to interfere. In 2002, an order was issued giving Mary Jane permission to “send one letter or card to her daughter each month, mailed to the guardian, ARC of Milwaukee.”

¶4 On August 20, 2004, Mary Jane filed a petition to be appointed guardian of Mary K.M. A number of hearings were held to arrange adversary counsel for Mary K.M. During the hearings, Mary Jane tried to present her conspiracy theories. Her claims included that various tricks were being played on her by Milwaukee County to keep her daughter away from her, and that her sister was out to get her, slandering her, calling her names, and in cahoots with social services. She also claimed that Mary K.M. has been framed and falsely accused of carrying a knife and being dangerous because Mary K.M. would never do such things, and that it is Mary K.M. who has been threatened with a knife. She further claimed that Mary K.M. has been abused, neglected, drugged, and caused “great bodily harm” by others, who have told her to have sex with a mentally retarded man and a lesbian. By May 26, 2005, counsel for Mary K.M. had been appointed, but he had not yet met with Mary K.M., so the hearing was adjourned. At the hearing, the court also ordered that a supervised visit between Mary Jane and Mary K.M., who had not seen each other since 1999, take place.

¶5 A hearing was held on July 21, 2005, after an apparently fairly successful one-hour supervised visit between Mary Jane and Mary K.M. Mary K.M.’s attorney still had not met with Mary K.M., so the court adjourned the hearing and ordered another supervised visit. The court also learned that when Mary K.M.’s guardian had contacted Mary Jane to arrange the first visit, Mary Jane had been very suspicious of the guardian’s motives and had yelled at the

guardian for twenty minutes over the phone. As a result, and due to Mary Jane's aggressive demeanor and constant interruptions referencing conspiracy theories, the court ordered that Mary Jane undergo a psychological evaluation. Mary Jane indicated that she would. Despite initially agreeing, Mary Jane ultimately refused to submit to the evaluation.

¶6 On November 10, 2005, a hearing was held on the petition. Mary K.M.'s guardian *ad litem*, who had been present at the second supervised visit, described the visit and Mary K.M.'s wishes as follows:

[T]he mom questioned ... Mary [K.M.] extensively about where she wanted to live and continued to do that. Mary K.M. indicated, well, kept coming back to these other situations rather than addressing what mom wanted to talk about. And I felt that, basically, there was more of a cross-examination of my ward rather than a visit, if you will, and interchange of ideas and what's going on now. I think it was more so that [Mary Jane] could make her point and get her daughter to say that she wants to stay with her mother.

She does love her mother. She says she loves her mother. She indicated that she's been punished in the past if she mentions her mother's name, and I wrote that down. I don't know if that really is the fact, but that's what she stated....

There was a lot of tension in this visit between myself and [Mary Jane], the mom, daughter – her best interests were not being portrayed; that the cross-examination that was occurring was really not good for her, and the continued questions made Miss Mary [K.M.] look over to [the guardian] and say, you know, this is difficult for me. And of course, that immediately makes [Mary Jane], the mother, think that is some kind of conspiracy, control, whatever is going on.

It appears to me she's very happy where she is. She's upset at times with people.... It seemed to me that she's got an ongoing relationship there. She did say that she wanted to stay there. And this may be what [Mary Jane] thinks is a conspiracy, but that is what she said.

¶7 Mary Jane's guardian *ad litem* explained that the visit was terminated after about forty-five minutes because voices were being raised and Mary K.M. was getting upset, and he expressed concern about Mary Jane's ability to be a guardian.

¶8 Counsel for Mary K.M., who was also present, described the meeting and his client's wishes as follows:

[I]t appears that my client is very happy with the current arrangement as ARC being the guardian. My client seems to have a very close relationship with [the guardian] and seems to care about her quite a bit. I do believe ARC and [the guardian] have my client's best interest in mind.

My client has informed me that she would like that arrangement to continue, although I will say that my client has informed me that she does love her mother very much. I just think there is too much of a past that Mary Jane and Mary [K.M.] have that my client's particularly reluctant to have Mary Jane be the guardian of her. I have no doubt in my mind that Mary Jane ... loves her daughter very much and wants to be her guardian. I have no doubt about that. But I think at this point my client has informed me, and in terms that are quite clear to me that she wants things to remain as they are, although she is somewhat conflicted because she does know that Mary Jane is her mother, and she seems to think that that's the way it's supposed to be, but she doesn't want it to be that way.

¶9 Counsel for Mary K.M. also cautioned against Mary Jane becoming Mary K.M.'s guardian on grounds of the unusual history of this case, including the involvement of the FBI with respect to Mary Jane's actions.

¶10 When the court asked Mary Jane why she had refused to submit to the psychological evaluation, she responded that she did not think she needed one. The court then denied Mary Jane's petition to be appointed guardian for Mary K.M., stating:

I have had the opportunity to observe you at this hearing, as well as in many other hearings, and to be perfectly honest, your behavior has been peculiar. It has been bizarre at times. You have made it very difficult for this Court to truly interact with you. You have interrupted me on time and time again. I have asked you not to....

I have tried to look at this case in such a way that I would ensure that your rights were protected, as well as the rights of Mary [K.M.] And I've tried to approach this case in such a fashion that I didn't just make snap, quick decisions without really looking at everything.

Given the behavior that you've exhibited in this case, given the fact that you've refused to submit to the psychological evaluation puts this court in a position where that is a key piece of information, and as I indicated to you, it could have either helped you, or it could have hurt you. But the mere fact of refusing and the rationale that you give for the refusal only further demonstrates in my mind the concerns and question[s] that are raised with respect to your suitability to serve as a guardian.

[Interruption by Mary Jane]

One of the facts in this case that has also troubled me is that it was an injunction that was imposed that, in essence, prohibited contact and required that you could have contact through writings, and it is my belief that you should – that there should be contact between you and Mary [K.M.].

[Interruption by Mary Jane]

So with respect to the petition, your petition to serve as guardian, the Court at this time is going to dismiss that petition, but I'm going to indicate that at the discretion of the current corporate guardian, that there are to be supervised visits, and that visits can occur if the corporate guardian agrees....

I think we need to get beyond this obsession that you have with respect to becoming guardian and allow you to develop a relationship with your daughter.

¶11 The court issued an order dismissing the petition and ordering that future supervised visits be held at the discretion of Mary K.M.’s guardian. Mary Jane appeals the dismissal of her petition.

II. ANALYSIS.

¶12 On appeal, Mary Jane again presents various conspiracy theories, including that the attorney for Milwaukee County spread lies about her and used “devious methods” that were a “set up” to get Mary K.M., and that everything stems from her sister slandering her and colluding with social services against her. She insists that Mary K.M. is being threatened, drugged and controlled to say that she is happy and wants things to remain the way they are when in reality she is unhappy and wants to live with her. She further insists that reports of violent behavior by Mary K.M. against staff and care personnel are lies and that the opposite is true because Mary K.M. is the victim who has been “terribly abused.”

¶13 Mary Jane’s legal arguments are very difficult to decipher, but in addition to making various imprecise references to constitutional provisions, she appears to be arguing that her petition should not have been dismissed and that she should be appointed as Mary K.M.’s guardian because, as Mary K.M.’s mother, she is best suited to be her guardian. This court disagrees.

¶14 It is undisputed that Mary K.M. is an appropriate subject for guardianship. In guardianship proceedings where the need for a guardian has been established the overriding concern is the best interest of the ward. *See Anna S. v. Diana M.*, 2004 WI App 45, ¶7, 270 Wis. 2d 411, 270 N.W.2d 285. The guardianship determination is within the trial court’s discretion. *See Brezinski v. Barkholtz*, 71 Wis. 2d 317, 327-28, 237 N.W.2d 919 (1976). This court affirms discretionary decisions if the trial court applied the proper legal standard to the

relevant facts and used a rational process to reach a reasonable result. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶15 Under WIS. STAT. § 880.34(3) (2003-04),² which addresses the duration and review of a guardianship, “any interested person on the ward’s behalf, or the ward’s guardian may petition the court which made such appointment or the court in the ward’s county of residence to have the guardian discharged and a new guardian appointed....” WISCONSIN STAT. § 880.09 sets forth the procedure to be followed in the selection of a guardian, and provides in relevant part:

The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

....

(2) Preference. If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.³

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

³ WISCONSIN STAT. § 880.35, entitled “Nonprofit corporation as guardian,” provides:

A private nonprofit corporation organized under ch. 181, 187 or 188 is qualified to act as guardian of the person or of the property or both, of an individual found to be in need of guardianship under s. 880.33, if the department of health and family services, under rules established under ch. 55, finds the corporation a suitable agency to perform such duties.

¶16 Here, Mary K.M. has, as mentioned, had a guardian other than Mary Jane since 1985, has lived in a group home since 1992, and has had the current corporate guardian since 1999. While it is preferable that a parent be appointed as a guardian for a developmentally disabled individual and the appointment of a corporate guardian is only a last resort, it is clear from the record that the court appointed a corporate guardian only because it found that Mary Jane was not “suitable and willing” and because “no other individual guardian was available.” *See* WIS. STAT. § 880.09(2).

¶17 This court is satisfied that the trial court properly exercised its discretion in denying Mary Jane’s petition to be appointed Mary K.M.’s guardian. The record demonstrates that the trial court denied Mary Jane’s petition only after carefully examining the case. During the proceedings, in spite of the restraining order in place against Mary Jane, the trial court ordered supervised visits between Mary Jane and Mary K.M. The court learned that one visit appeared to have gone well, while the other one was terminated after Mary Jane seemed to be interrogating Mary K.M. in an effort to get Mary K.M. to say that she wanted to live with her, voices were being raised, and Mary K.M. was getting upset. The trial court had the opportunity to observe Mary Jane’s court room demeanor and was bothered by Mary Jane’s aggressive manner and her continuous interruptions, which gave the court concern, suggesting that Mary Jane’s own mental state is hindering her from being a suitable guardian. As a result, the court ordered a psychological evaluation of Mary Jane in order to evaluate her suitability as a guardian, which she initially agreed to submit to, but which she ultimately refused to undergo, insisting that such an examination was unnecessary, a contention Mary Jane repeats on appeal. The court told Mary Jane that it was troubled by Mary Jane’s refusal and her explanation for the refusal and called her pursuit of

becoming Mary K.M.'s guardian an "obsession," strongly indicating that Mary Jane appears to have mental health issues of her own that would interfere with her ability to serve as a guardian for Mary K.M.

¶18 The record also shows that Mary K.M. appears to be quite content with her current living situation, and has stated that although she loves her mother, she wants things to remain the way they are. This conclusion is supported by Mary K.M.'s counsel's position on appeal that Mary Jane's petition was appropriately denied because Mary K.M. does not want to live with her mother, and the concern expressed to the trial court by both counsel and guardian *ad litem* for Mary K.M. that suddenly assigning Mary Jane as Mary K.M.'s guardian would not be in the best interests of Mary K.M. See *Anna S.*, 270 Wis. 2d 411, ¶7.

¶19 Moreover, removal for cause may be appropriate only when any guardian "fails or neglects to discharge the guardian's trust." WIS. STAT. § 880.16(2). Beyond unclear allegations related to her conspiracy theory, unsupported by anything in the record, see WIS. STAT. RULE 809.19(1)(e), Mary Jane has not shown that ARC has failed to or neglected to perform its duties as Mary K.M.'s guardian. See also *In re Tina Marie W.*, 215 Wis. 2d 523, 573 N.W.2d 207 (Ct. App. 1997) (burden of proof to remove guardian and appoint successor guardian is on petitioner).

¶20 This court is thus satisfied that the trial court's decision to deny Mary Jane's petition based on her courtroom behavior and her refusal to submit to a psychological evaluation was a reasonable exercise of discretion. Therefore, this court affirms. See *Brezinski*, 71 Wis. 2d at 327-28.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)4.

