

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 20, 2001

Cornelia G. Clark
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. 00-2930

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:
STANLEY A. MILLER, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Mary Jane M., *pro se*, appeals from an order dismissing her petition for failure to state a claim upon which relief may be

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

granted. The petition alleged that the current guardian for Mary Jane's thirty-nine-year-old disabled daughter should be removed, and that Mary Jane should be appointed as the new guardian. The issue in this appeal is whether the trial court properly determined that the petition failed to allege facts upon which relief could be granted. Because the petition fails to allege sufficient facts, this court affirms.

I. BACKGROUND

¶2 Mary Jane is the biological mother of Mary Kate M., the ward. In 1985, Mary Kate was removed from her mother's home due to neglect and abuse. There is no dispute that Mary Kate is mentally disabled and in need of a guardian. On October 5, 1999, ARC-Milwaukee, Inc. (ARC) was appointed successor corporate guardian. On July 18, 2000, Mary Jane petitioned the trial court to remove the corporate guardian and appoint herself as guardian. On October 8, 2000, the trial court held that the petition failed to state facts upon which relief could be granted and dismissed the petition. Mary Jane now appeals.

II. DISCUSSION

¶3 A trial court's ruling on a motion to dismiss for failure to state a claim is a question of law, which the court reviews *de novo* without deference to the trial court. *See Atkinson v. Everbrite, Inc.*, 224 Wis. 2d 724, 727, 592 N.W.2d 299 (Ct. App. 1999).

¶4 Mary Jane's petition seeks: (1) the removal of ARC as corporate guardian pursuant to WIS. STAT. § 880.16(2) (1999-2000);² and (2) appointment of

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

herself as guardian pursuant to WIS. STAT. § 880.34(3). The Wisconsin Rules of Civil Procedure, WIS. STAT. Chapters 801 to 847, govern procedures in circuit courts, including all civil actions and special proceedings. *See* WIS. STAT. § 801.01(2). Probate is considered a series of special proceedings. *See Goldstein v. Goldstein*, 91 Wis. 2d 803, 810, 284 N.W.2d 88 (1979). Probate jurisdiction extends to the appointment of guardians. *See Marak v. Marak*, 59 Wis. 2d 139, 144, 207 N.W.2d 648 (1973). Therefore, WIS. STAT. Chapters 801 to 847 are applicable to guardianship proceedings.

¶5 Under WIS. STAT. § 802.02 the requirements for pleadings are:

General rules of pleading. (1) CONTENTS OF PLEADINGS.
A pleading ... shall contain all of the following:

(a) A short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief.

The petition must contain “a statement of the general factual circumstances in support of claim presented.” *Ziemann v. Village of North Hudson*, 102 Wis. 2d 705, 713, 307 N.W.2d 236 (1981).

¶6 In determining whether a claim for relief has been stated, the complaint must be liberally construed but, “ ... ‘it must still state a cause of action and must fairly inform the opposite party of what he is called upon to meet by alleging specific acts.’” *Wilson v. Continental Insurance Cos.*, 87 Wis. 2d 310, 317, 274 N.W.2d 679 (1979) (citation omitted). To determine whether the petition states a claim upon which relief can be granted pursuant to a motion under WIS. STAT. § 802.03(2), “is to test the legal sufficiency of the complaint.” *See Town of Eagle v. Christensen*, 191 Wis. 2d 301, 311, 529 N.W.2d 245 (Ct. App. 1995).

Additionally, in deciding whether a complaint states a claim, we accept as true the facts pleaded in the complaint and all reasonable inferences that can be drawn from those facts. *Voss v. Middleton*, 162 Wis. 2d 737, 748, 470 N.W.2d 625 (1991).

¶7 In following these standards, we consider WIS. STAT. § 880.16(2). The grounds for removal of a guardian for cause are: “REMOVAL FOR CAUSE. When any guardian fails or neglects to discharge the guardian’s trust the court may remove the guardian after such notice as the court shall direct to such guardian and all others interested.”

¶8 Mary Jane’s petition does not allege any occurrence of neglect or failure to discharge the guardian’s trust. In her petition, Mary Jane asserts that because she is a caring mother, and a corporate guardian is only used when there is no family member available, ARC should be removed and she should be appointed guardian. Even if this court were to assume these allegations to be true, they are not relevant to the statutory requirements sufficient to sustain the petition. The petition must detail events and circumstances tending to show that standards were violated by specific acts, or failure to act, by the guardian. This petition is void of any specific acts done by ARC. Although Mary Jane makes some conclusory allegations with respect to pictures attached to the petition, she does not provide any specific factual information to support her claim that ARC is neglecting, mistreating, or otherwise failing to discharge its duties as guardian of Mary Kate. The petition also alleges that Mary Kate stated she wants to return to live with her mother. However, the record indicates that because of Mary Kate’s mental disability, Mary Kate is incapable of making an informed decision pertaining to whether it would be advisable for her to return to her mother’s home.

Although this court can certainly understand Mary Jane's belief that her daughter should be at home with her, proper legal procedures must be followed.

¶9 Additionally, the petition does not provide sufficient facts that would give the other parties proper notice. See *Hertlein v. Huchthausen*, 133 Wis. 2d 67, 72, 393 N.W.2d 299 (Ct. App. 1986). The complaint must give defendant fair notice of not only the plaintiff's claim, but also, "the grounds upon which it rests," *Hlavinka v. Blunt, Ellis & Loewi, Inc.*, 174 Wis. 2d 381, 403, 497 N.W.2d 756 (Ct. App. 1993) (citations omitted). Here, the pictures attached to the petition suggest that ARC is responsible for Mary Kate's weight gain, but Mary Jane does not provide any specific information to support this allegation. Therefore, the petition must be dismissed because the facts set forth in the petition do not state any reasons which would support removal of ARC for cause under WIS. STAT. § 880.16(2).

By the Court.—Order affirmed.

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

