

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 1, 2008**

David R. Schanker  
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. 2008AP112-FT**

**Cir. Ct. No. 2000GN9**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE MATTER OF THE GUARDIANSHIP AND  
PROTECTIVE PLACEMENT OF PAUL V.:**

**KRISTIN M. S.,**

**APPELLANT,**

**V.**

**SAWYER COUNTY DEPARTMENT OF HUMAN SERVICES,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Sawyer County:  
NORMAN L. YACKEL, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Kristin S. appeals an order dismissing her petition for appointment as Paul V.'s successor guardian.<sup>1</sup> Kristin argues the circuit court both erred by concluding that she lacked standing and erroneously exercised its discretion by dismissing the petition without considering relevant facts. We reject these arguments and affirm the order.

### BACKGROUND

¶2 It is undisputed that Paul suffers from severe cerebral palsy and quadriplegia and has been developmentally disabled since his birth on August 22, 1980. In March 2000, the Sawyer County Department of Human Services filed a petition to appoint Vicki B., Paul's mother, his permanent guardian. The court consequently appointed Vicki guardian of Paul and his estate.

¶3 In September 2003, the Department sought to be appointed as successor guardian of both Paul and his estate. In correspondence to the corporation counsel, the Department explained that at the time Vicki was appointed guardian, the Department and Paul's medical providers were unaware that a guardianship order existed in Cook County, Illinois, naming Paul's grandparents as guardians of Paul's person and Harris Bank and Trust as guardian of the estate. Although Vicki had been named as Paul's guardian, Paul lived with his grandparents. The Department learned that Paul had a sizable cash estate resulting from a medical malpractice settlement. Although his assets would have made Paul ineligible for Wisconsin benefits, he had been the recipient of supplemental security income (SSI), exceptional expense supplemental for

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

recipients of supplemental security income (SSI-E) and medical assistance benefits. Acknowledging this was a complex case involving dual guardianship arising from two states, “questionable residential care, investigations yet to be concluded and unreported sizeable assets,” the Department felt it would be in Paul’s best interests that an objective agency be appointed as successor guardian.

¶4 After a hearing, the parties stipulated that the Department would be appointed as successor guardian, but Paul would remain in his grandmother’s home. Marshall & Ilsley Trust Company, N.A., was later appointed as permanent guardian of Paul’s estate. Following an investigation and criminal prosecution, Paul’s mother and grandmother ultimately pled guilty in federal court to mail fraud. As their sentencing approached, the Department sought to change Paul’s placement from his grandmother’s home to a certified adult family home.

¶5 Paul’s aunt, Kristin, consequently petitioned for appointment as successor guardian on grounds that continued involvement with his family was in Paul’s best interests. The Department moved to dismiss Kristin’s petition for guardianship on grounds that she was not an “interested party” as defined by WIS. STAT. § 54.01(17), and her petition failed to allege any malfeasance or misconduct on the Department’s part that would justify its removal as Paul’s guardian. The court ultimately dismissed Kristin’s petition and ordered that Paul be placed in a certified adult family home.<sup>2</sup> This appeal follows.

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<sup>2</sup> Kristin consequently had her home certified as an adult family home and Paul has been placed in her care. That placement is not challenged in this appeal.

## DISCUSSION

¶6 Kristin argues the circuit court erred by concluding that she lacked standing to petition for appointment as Paul’s successor guardian. WISCONSIN STAT. § 54.54(1) governs appointment of successor guardians:

If a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

Noting that § 54.54(1) allows the court, in its discretion, to direct that a petition for appointment of successor guardian be “heard in the same manner and subject to the same requirements” as an original guardianship proceeding, Kristin emphasizes that under the statute governing *original* guardianship proceedings, WIS. STAT. § 54.34, “any person may petition for appointment of a guardian of an individual.” According to Kristin, it therefore follows that any person can petition for the appointment of a successor guardian. We are not persuaded.

¶7 Despite the statute’s reference to proceedings governed by WIS. STAT. § 54.34, it is WIS. STAT. § 54.54 that controls the appointment of successor guardians and, under that statute, Kristin must be an “interested person.” Relevant to this case, the statute defines “interested person” as:

1. The guardian.
2. The spouse or adult child of the ward or the parent of a minor ward.
3. The county of venue, through the county’s corporation counsel, if the county has an interest.

4. Any person appointed as agent under a durable power of attorney under ch. 243, unless the agency is revoked or terminated by a court.

5. Any other individual that the court may require, including any fiduciary that the court may designate.

WIS. STAT. § 54.01(17)(b). Although Kristin claims she falls under the definition including “[a]ny other individual that the court may require,” she fails to show how this definition applies to her. Indeed, by dismissing Kristin’s petition, the court demonstrated that it did not “require” her as an interested person.

¶8 Outlining a number of factors Kristin believes support her petition for appointment as successor guardian, Kristin argues the circuit court erroneously exercised its discretion by dismissing her petition without making a record regarding its consideration of these factors. While whether to appoint a successor guardian is a discretionary exercise, *see In re Guardianship of James D.K.*, 2006 WI 68, ¶12, 291 Wis. 2d 333, 718 N.W.2d 38, whether a person meets the statutory definition of “interested person” in the first instance is a question of law. Therefore, the circuit court did not erroneously exercise its discretion by dismissing the petition without entertaining factual considerations.

*By the Court.*—Order affirmed.

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

