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DISTRICT II

December 27, 2013

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You are hereby notified that the Court has entered the following opinion and order:

2013AP669

In the matter of the guardianship of Jason M. S.: Cheryl R. v.
Waukesha County (L.C. # 2000GN127)

Before Brown, C.J., Reilly and Gundrum, JJ.

Cheryl R. appeals from a circuit court order removing her as guardian for her son. She also challenges the circuit court's denial of her request for the payment of her advocate counsel's fees from her son's estate. Based on our review of the briefs and record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm the order of the circuit court.

Cheryl has an adult son named Jason S., who is autistic, blind, and unable to care for himself. Between 2000 and 2011, Cheryl served as both guardian of Jason's person and guardian of his estate. In 2011, the circuit court expressed concern about how the money in Jason's trust account had been spent by Cheryl. Consequently, it referred the case to corporation counsel for review.

Corporation counsel subsequently filed a petition for the appointment of a successor guardian and a petition for review of Cheryl's conduct as guardian of Jason's person. The parties eventually agreed to the appointment of a successor guardian for Jason's estate. However, they disagreed as to the appointment of a successor guardian for Jason's person. Consequently, the circuit court held a contested hearing on the matter.

Jason was not present at the hearing contesting the guardianship of his person. Citing a letter previously submitted to the court,² the guardian ad litem (GAL) explained that Jason would not understand the proceedings and might find them to be confusing and upsetting. Consequently, the GAL waived Jason's appearance. Cheryl did not object to the waiver, and the matter proceeded without Jason.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

² The letter, which was filed in advance of an earlier hearing, indicates that the guardian ad litem considered the ability of Jason to meaningfully participate, the effect of his attendance on his physical or psychological health, the importance of the proceedings, and his expressed desires.

At the conclusion of the hearing, the circuit court removed Cheryl as guardian of Jason's person and appointed a successor guardian. The court also denied Cheryl's request for the payment of her advocacy counsel's fees from Jason's estate. This appeal follows.

On appeal, Cheryl contends that the circuit court lacked competency to proceed at the guardianship hearing because Jason's appearance was not properly waived under WIS. STAT. § 54.44.³ She further contends that the court erroneously exercised its discretion when it denied her request for the payment of her advocacy counsel's fees from Jason's estate.⁴ We disagree on both counts.

With respect to Cheryl's first argument, it is evident from the record that the GAL followed all of the requirements of WIS. STAT. § 54.44 when waiving Jason's appearance. The GAL referenced those requirements in an earlier letter to the court and explained why he elected to waive Jason's appearance. No additional action or explanation was required. Even if that were not the case, Cheryl forfeited the ability to challenge the circuit court's competency when

³ WISCONSIN STAT. § 54.44(4)(a) provides in relevant part:

The petitioner shall ensure that the proposed ward or ward attends the hearing unless the attendance is waived by the guardian ad litem. In determining whether to waive attendance by the proposed ward or ward, the guardian ad litem shall consider the ability of the proposed ward or ward to understand and meaningfully participate, the effect of the attendance of the proposed ward or ward on his or her physical or psychological health in relation to the importance of the proceeding, and the expressed desires of the proposed ward or ward.

⁴ At times in her brief, Cheryl uses the phrase "abuse of discretion." We have not used the phrase "abuse of discretion" since 1992, when our supreme court replaced the phrase with "erroneous exercise of discretion." See, e.g., *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

she failed to object to the waiver of Jason's appearance. *See Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶30, 273 Wis. 2d 76, 681 N.W.2d 190.

With respect to Cheryl's second argument, we are satisfied that the circuit court properly exercised its discretion in denying her request for payment of advocate counsel's fees from Jason's estate. Here, the court had authority to require Cheryl to pay personally any fees in the case. *See* WIS. STAT. § 54.68(6). By denying her request for payment of advocate counsel's fees from Jason's estate, it was simply exercising that authority. Given the court's previous concern about how the money in Jason's trust account had been spent by Cheryl, this was a reasonable result.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals