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DISTRICT II

January 7, 2015

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

2014AP1939-FT

In the matter of the guardianship and protective placement of
Gary W. B.: Waukesha County DH&HS v. Gary W. B.
(L.C. #2014GN34)

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

Gary W. B. appeals from an order of the circuit court denying his request to terminate the WIS. STAT. ch. 54 (2011-12)¹ guardianship of his person and estate. On appeal, Gary W. B. challenges that portion of the order declining to terminate the guardianship of his estate. Waukesha County Department of Health and Human Services and the guardian ad litem have briefed this appeal. Pursuant to a presubmission conference and this court's order of

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

September 9, 2014, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we affirm.

Gary W. B. became subject to a WIS. STAT. ch. 54 guardianship on March 20, 2014. On April 29, 2014, Gary W. B. moved the circuit court to terminate the guardianship of his person and estate on the grounds that he had regained competency to manage himself and his financial affairs. After an evidentiary hearing, the circuit court found that Gary W. B.'s mother was not credible in her testimony in support of terminating the guardianship. The court then considered the evidence presented by the experts and placed greater weight on the opinion rendered by Dr. Robert VerWert that Gary W. B. was not competent. Based upon these findings, the court concluded that Gary W. B. did not meet his burden to show that he was no longer incompetent such that the guardianship of his estate should be terminated. Gary W. B. appeals.

Termination of a WIS. STAT. ch. 54 guardianship of the estate is governed by § 54.64(4).² As relevant to this appeal, § 54.64(4)(a) provides that the guardianship shall terminate if the court determines that “a ward who was formerly found to be incompetent [is] no longer incompetent....” Gary W. B. had the burden to show by a preponderance of the evidence that he is no longer incompetent. *Colliton v. Colliton*, 41 Wis. 2d 487, 491-93, 164 N.W.2d 480 (1969).

² Gary W. B. argues that because he is no longer incompetent, he should not be subject to the guardianship. As we hold in this appeal, the circuit court's determination that Gary W. B. remains incompetent is based upon findings of fact that are not clearly erroneous.

Gary W. B. also argues that the guardianship should not have been established in the first instance and therefore WIS. STAT. § 54.64(4) governing termination of the guardianship should not apply. Gary W. B. did not appeal from the March 20, 2014 circuit court order establishing the guardianship. This appeal is from the order declining to terminate the guardianship of the estate. The provisions of § 54.64(4) apply.

On appeal, Gary W. B. essentially argues that the circuit court should have placed greater weight on the evidence that he is no longer incompetent and in need of a guardianship of his estate. We do not reweigh the evidence before the circuit court. The circuit court was “the ultimate arbiter of the credibility of the witnesses and the weight given to each witness’s testimony.” *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (citation omitted). We will uphold the court’s findings of fact unless they are clearly erroneous. *Klinefelter v. Dutch*, 161 Wis. 2d 28, 33, 467 N.W.2d 192 (Ct. App. 1991).

The circuit court’s findings of fact are supported in the record. Dr. VerWert, a psychologist who evaluated Gary W. B., opined that based upon his evaluation, Gary W. B. is incapacitated as a result of his Parkinson’s diagnosis and a form of dementia, and he lacks the ability to receive and evaluate information and make decisions. Gary W. B. bases his claim that he is now competent upon the opinion of Dr. Paul Nausieda, a neurologist and psychiatrist. However, the circuit court was not bound to accept Dr. Nausieda’s opinion.³ The weight to be accorded the experts’ testimony was for the circuit court as the finder of fact. *Cf. Riehl v. De Quaine*, 24 Wis. 2d 23, 32, 127 N.W.2d 788 (1964) (the weight of the testimony of qualified experts is for the fact finder).

Gary W. B. did not meet his burden to show that he is no longer incompetent such that the guardianship of his estate should be terminated. Gary W. B.’s status is that of an incompetent, and he did not establish that he is no longer in that status.

³ Because the court found Gary W. B.’s mother not credible, Gary W. B. cannot rely upon her testimony to challenge the circuit court’s findings of fact.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

Diane M. Fremgen
Clerk of Court of Appeals