

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 8, 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. 00-2960-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN THE MATTER OF THE GUARDIANSHIP OF ESTHER  
L.K.:**

**PATRICIA A.M.,**

**APPELLANT,**

**V.**

**PATRICIA S. AND LEGAL GUARDIANSHIP SERVICES,  
INC.,**

**RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Juneau County:  
JOHN W. BRADY, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Patricia M. appeals from a judgment appointing Legal Guardianship Services, Inc., (LGS) guardian of the person of Esther L.K., Patricia's mother. She contends that the trial court's appointment represents an erroneous exercise of its discretion. We disagree, and therefore affirm.

¶2 Esther suffers from Alzheimer's-related dementia and resides in a nursing home in Elroy, her long-time home. The administrator of the home commenced this action to protectively place Esther in the home and to appoint LGS her guardian. Patricia counter-petitioned, asking the court to appoint her as her mother's guardian.

¶3 The trial court subsequently held a hearing on the petitions in September 1999, and heard the following evidence. When Esther first became afflicted, she gave her husband, Hugh K., a health care power of attorney, with a neighbor as the alternative agent. In 1997, when she entered the nursing home she and Hugh informed the administrator that Patricia was to have no contact with her. Patricia was also omitted from the list of those allowed access to information from the home.

¶4 Esther receives at least one visitor per week, usually a neighbor, friend, or church member. Her older sister, now deceased, came from out-of-state to visit her once a year. Patricia, who lives in Minnesota did not see Esther for two years prior to her admission to the nursing home. Since then she visits occasionally. Esther's other daughter, Jeanette R., last visited her in September 1997.

¶5 When Hugh died in December 1998, Patricia had his body removed to Minnesota for an autopsy and cremation. This violated Hugh's express wish that his remains stay in Juneau County.

¶6 Jeanette testified that when Esther died Patricia would probably have her cremated in Minnesota also, despite Esther's similar desire to have her remains stay in Elroy. Nevertheless, Jeanette supported Patricia's petition but admitted that she had initially opposed it. She also admitted to a prior statement that Patricia was "controlling," and that her appointment would violate Hugh's and Esther's wishes. She testified, "[Esther] didn't want [Patricia] to be in charge, executor of the will or estate, everything. My mother really didn't want [Patricia]." She also stated that Patricia had stated a wish to move Esther to a Minnesota nursing home. However, Jeanette thought that Patricia would be an appropriate guardian and had Esther's best wishes at heart. She also attributed most of Esther's problems with Patricia to Hugh.

¶7 Esther's sister also supported Patricia's petition and testified to a closeness between mother and daughter. However, her knowledge of the situation was limited by her infrequent communication with Esther.

¶8 Patricia attributed all of her prior problems with Esther to Hugh's influence. She believed that he became irrational and hostile to her in his later years because he also suffered from Alzheimer's. She explained that she did not see her mother for two years to avoid confrontations with Hugh. Both the administrator and Patricia testified to Patricia's dissatisfaction with the nursing home staff, as shown by complaints Patricia had filed with the nursing home owner and with the state.

¶9 LGS is a state-certified professional guardianship service. It serves eighty clients in five counties.

¶10 After the hearing, the trial court chose LGS as Esther's guardian. The court reasoned that Patricia's dissatisfaction with the nursing home created a

probability that as guardian Patricia would move Esther elsewhere. The court concluded that Esther's best interest was served by her remaining in her home town.

¶11 On Patricia's first appeal, we reversed that determination, concluding that Patricia's potential decision to remove Esther from the home was not a proper consideration to use in order to disqualify Patricia as the guardian. On remand we directed the trial court to determine the guardianship appointment under the proper legal standards.

¶12 On remand, the parties agreed that no further testimony was necessary. At the court's request, each side submitted proposed findings of fact, conclusions of law, and judgment. The court adopted the proposal submitted jointly by LGS and the guardian ad litem, and appointed LGS guardian. The most significant factors in the decision were: (1) Patricia's conduct regarding Hugh's remains; (2) Esther's expressed wishes before her dementia that Patricia should not be involved in her affairs; and (3) the inconclusive and/or uninformed nature of the family support for Patricia.

¶13 WISCONSIN STAT. § 880.33(5) (1999-2000)<sup>1</sup> directs that:

In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

The overriding concern in a guardianship proceeding is the best interest of the ward. *Winnebago County v. Harold W.*, 215 Wis. 2d 523, 528, 573 N.W.2d 207 (Ct. App. 1997). The trial court's selection of the guardian under these standards is a discretionary determination. *Id.* at 528-29. We will affirm a discretionary decision if the trial court relies on facts of record, applies the proper legal standards, and uses a demonstrated rational process to reach a reasonable conclusion. *See State v. Kuntz*, 160 Wis. 2d 722, 745-46, 467 N.W.2d 531 (1991).

¶14 The trial court's choice of LGS as guardian was a proper exercise of its discretion. WISCONSIN STAT. § 880.33(5) required the trial court to consider Esther's opinion, which it did. The facts of record fully support the court's finding that Esther could not presently express a meaningful opinion as to her guardian, but previously would have opposed Patricia's appointment. The court also fulfilled its duty to consider the opinion of Esther's family, and the record fully supports its conclusion that their opinions should not be determinative. Under any reasonable view, Esther's sister did not possess the facts necessary to give a fully informed opinion. Jeanette's support of Patricia was, at best, equivocal.

¶15 Consequently, the court properly chose to focus solely on Esther's best interest, and reasonably concluded that it was best served by appointing LGS. By her own admission, Patricia had an autopsy performed on Hugh's brain not because of the circumstances of his death, or for the family's or Esther's benefit, but instead so that "others would know" that the bad things Hugh said about her were attributable to Alzheimer's. To accomplish this self-serving end, she willfully violated Hugh's specific instructions for disposing of his remains. Additionally, she caused Hugh's estate to pay for the autopsy. From these facts, the court determined that Patricia's actions:

suggest a failure by [Patricia] to act in the best interest of the person she purports to serve, and contrary to the wishes of other family members. While the incident regarding her step-father's estate does not provide direct evidence that [Patricia] would act inappropriately as guardian for [Esther], it does provide indirect evidence of [Patricia's] propensity to ignore the wishes of a loved one to serve her own self-interest, and demonstrates the exercise of poor judgment in the expenditure of another's funds.

That was a reasonable inference from the facts, and provides sufficient support for the ultimate conclusion that appointing Patricia would not serve Esther's best interest.

*By the Court.*—Judgment affirmed.

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

