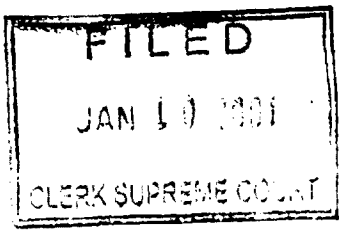
IN THE COURT OF APPEALS OF IOWA

No. 0-644 / 00-0195
Filed January 10, 2001

MILFORD L. JUHL,
Ward - Appellant,

vs.

NANCY JACOBSEN, SUSAN SLAUSON and PATRICIA McCULLOUGH,
Guardians - Appellees.



Appeal from the Iowa District for Boone County, David R. Danilson, Judge.

Plaintiff-Appellant appeals the trial court's decision establishing an involuntary guardianship for Milford L. Juhl. **AFFIRMED.**

Stephen A. Owen, Moothart & Owen Law Firm, Ames, for appellant.

Kirke C. Quinn of Dorsey & Whitney, L.L.P., Des Moines, for appellees.

Considered by Vogel P.J. and Hecht, J. and Honsell, S.J.*

Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (1999).

HONSELL, S.J.

Nancy Jacobsen, Susan Slauson and Patricia McCullough are the daughters of Milford L. Juhl who was eight-two years old at the time of trial. During 1996 Milford underwent open-heart surgery related to congestive heart failure. During that operation he suffered encephalitic hypoxia, deprivation of oxygen to a part of the brain. His diagnosis includes frontal lobe syndrome and organic brain syndrome, which are deemed to be chronic. The frontal lobe of the brain is involved in problem solving and judgment.

With assistance of a caregiver Milford was living in his home at time of trial. The assistance he was receiving included meal preparation, keeping the home clean, making his bed, giving him his medications, and helping him dress. He must have help with the medications he takes for his heart problems.

Milford appears to enjoy reasonably good cognitive ability. However, he has frequently exercised very poor and sometimes inappropriate judgment decisions concerning personal relationships with others, and the spending of money, i.e., on sweepstakes, repeatedly purchasing the same item. The Iowa Attorney General's office has been enlisted to aid in recovery of some of the funds. Testimony indicated that as of the time of trial Milford had received back $10,000 of the approximate $25,000 he had spent.

He cannot make appropriate judgment decisions concerning his health and welfare. He has less than one percent executive function ability. A clinical psychologist, Dr. Marcy B. Halvorson, has examined and tested Milford. The request to examine came in the form of a referral from a neurologist, Dr. Kitchell,

who was concerned about Mr. Juhl's decision-making ability after the stroke he suffered during heart surgery. Dr. Halvorson found at the time of testing that Mr. Juhl's delayed memory was in the low average range, i.e., he ranked in the 14th percentile of persons his age tested with regard to being able to reiterate information provided thirty minutes earlier. He was severely impaired concerning being able to learn from his mistakes. Despite being told that he was doing a task wrong he kept making the same mistake. In this area he ranked in less than one percentile of those persons his age that had performed the Wisconsin Card Sort Test. Dr. Halvorson stated:

> Basically it's a good measure of how people attack problems when they're faced with problems, how they come up with solutions, if they learn from their mistakes, if they can figure out alternative solutions when something isn't working right for them. He was getting very frustrated because he couldn't figure out the right answer, but yet he was unable to come up with alternative solutions.

Dr. Halverson also determined that Mr. Juhl was not suffering from depression, anxiety, or other forms of psychopathology.

The trial court succinctly and accurately summarizes the evidence and concludes:

> Here, the psychological testing supports the conclusion that Mr. Juhl's reason and good judgment are impaired. He was given several different tests to examine different types of intellectual functioning. Some of the test results were normal. However, Mr. Juhl's delayed memory was in the 14th percentile of functioning for individuals his age and his "executive functioning" was at less than one percentile.
>
> Mr. Juhl's impairments in intellectual functioning also co-exist with deficits in his behavior. He continues to justify his involvement in sweepstakes contests, although he has suffered a great financial loss while participation in them. Mr. Juhl has also pursued relationships with various women, asking three different

> women to cohabitate with him over the past three or four months. Apparently, Mr. Juhl's loneliness and impairment of his good judgment result in him making quick decisions to cohabitate with women acquaintances.
>
> Mr. Juhl's personal safety is at risk due to his inability to dispense his own medications to himself. This difficulty can be satisfactorily resolved through the third–party assistance of a certified nurses aid. Thus, if this was Mr. Juhl's only impairment, a narrowly drawn, limited guardianship might be appropriate.
>
> However, Mr. Juhl has also had difficulty in determining the trustworthiness of individuals with whom he comes into contact. . . .
>
> The inappropriate comments to the Salvation Army employee, the U-turn on University Avenue in Des Moines, Iowa, and auctioning all of his household goods including his bed are all acts which were potentially detrimental to Mr. Juhl's good health.

The trial court ordered the establishment of an involuntary guardianship and mandated that the appellees serve as co-guardians. The court found that Mr. Juhl lacks the capacity to contract marriage, empowered the guardians to change Mr. Juhl's permanent residence, empowered the guardians with the powers set forth in Iowa Code section 633.635(1)(a)(b)(c)(d)(e), and further ordered the guardians to comply with all statutory reporting requirements

An action to establish an involuntary guardianship is triable in probate at law. Iowa Code § 633.33. In this law case our review is for correction of errors at law, and findings of fact in jury–waived cases shall have the effect of a special verdict. Iowa R. App. P. 4.

Findings of fact in a law action, which means generally any action triable by ordinary proceedings, are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14 (f)(1).

The applicants in this involuntary guardianship proceeding bore the burden of proving by a preponderance of clear and convincing evidence that Mr.

Juhl's decision-making capacity is so impaired that he is unable to care for his personal safety or to attend to or provide for himself necessities such as food, shelter, clothing, or medical care, without which physical injury or illness might occur. Iowa Code §§ 633.551, 633.552, and 633.556, *In re Guardianship of Hedin*, 528 N.W.2d 567 (Iowa 1995).

The applicants carried their burden of proof. Therefore we affirm the trial court's decision in all respects.

AFFIRMED.