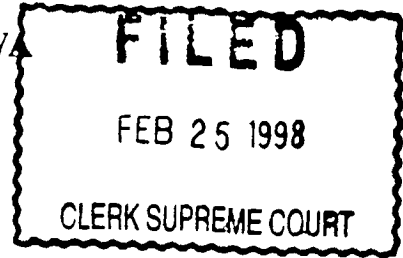


IN THE COURT OF APPEALS OF IOWA

No. 7-682 / 97-112



**IN THE MATTER OF THE GUARDIANSHIP
AND CONSERVATORSHIP OF JAMES ROBERT AUSTIN,**

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JAMES ROBERT AUSTIN, Ward,

Appellant.

Appeal from the Iowa District Court for O'Brien County, Patrick M. Carr,
Judge.

James Austin appeals a district court ruling granting his two daughters' petition
for appointment of a conservator to manage his real estate and farm assets.

AFFIRMED.

John P. Loughlin of Loughlin Law Firm, Cherokee, for appellant.

Michael L. Zenor of Zenor & Houchins Law Office, Spencer, for conservators
appellees.

Heard by Cady, C.J., and Sackett, and Vogel, JJ.

CADY, C.J.

James Austin appeals the district court ruling granting his daughters' petition for appointment of a conservator to manage his real estate and farm assets. We affirm.

James Austin was born March 25, 1919, and was seventy-seven years old at the time of trial. His wife died several years ago, and he lives alone. He has three daughters. James has farmed since 1941, and owned his own farm since 1946. He currently owns approximately 640 acres of farmland.

Throughout the years, James has engaged in some unusual farming practices such as planting his crops later than most farmers. Yet, in addition to planting the crops late in the spring, James has failed to maintain farm liability insurance and has recently failed to adequately care for his cattle. A veterinarian testified James' cows were malnourished, lacked flesh and body fat, were below normal weight, and had a lice problem. Furthermore, the fences were in such disrepair the cattle would escape from his property. The sheriff's department confirmed this occurred on at least six occasions.

In addition to the problems maintaining his farm, James also failed to pay real estate taxes due September 1995 and March 1996. Since 1979, however, James established a pattern of allowing the taxes to become delinquent.

James' daughters, Jenny and Sarah, filed an application for guardianship and conservatorship on behalf of their father. At trial, they claimed the condition of the

farm had deteriorated substantially. They testified the condition of their father's home was filthy, and there was no central heating system or working shower. They further maintained the condition of the crops, livestock, and taxes put the farm at serious financial risk.

James testified he is capable of taking care of himself and making his own financial decisions. He claimed he had always been an eccentric farmer and was in good physical and mental health.

The district court declined to appoint a guardian for James. It found no evidence he could not care for himself. The trial court did find, however, a limited conservatorship was necessary to the management of his farm assets and real estate. The district court concluded James was capable of maintaining his other obligations, and determined he should receive his social security benefits and farm income free of the conservatorship.

On appeal James claims the trial court erred by failing to apply the correct standard in determining whether a conservator should be appointed. He further maintains the district court erred in applying the correct burden of proof. Finally, he argues the trial court's decision is unsupported by the evidence.

I. Standard of Review

Actions for the appointment of a guardian or conservator are triable at law. *See* Iowa Code § 633.33 (1995); *In re Leonard*, 563 N.W.2d 193, 194 (Iowa 1997). Our review, therefore, is for errors at law. *See Leonard*, 563 N.W.2d at 195.

Because we review for errors of law, we affirm if substantial evidence exists to support the district court's findings. *Id.*

II. Conservatorship

We first consider the applicable standard to establish a conservatorship. Prior to the 1997 amendments to the guardianship and conservatorship statutes, section 633.566 permitted a petition for the appointment of a conservator to be granted if “[b]y reason of mental, physical or other incapacity ... [the proposed ward] is unable to make or carry out important decisions concerning the proposed ward's financial affairs.” Iowa Code § 633.566 (1997).¹ In determining whether a conservatorship should be granted pursuant to section 633.566, we apply the same standard established in *In re Hedin* for the appointment of a guardian as it relates to the capacity to handle financial affairs. *See Leonard*, 563 N.W.2d at 195 (relationship between the *Hedin* standard and conservatorships is whether the proposed ward's “decision making process to handle his own financial affairs was impaired according to the *Hedin* standard”)²; *In re Hedin*, 528 N.W.2d 567, 579 (Iowa 1995) (to avoid any constitutional vagueness problems, a guardianship should only be granted if a

¹ Iowa Code section 633.566 was amended in May 1997 to provide for the appointment of a conservator if the proposed ward's “decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.” Iowa Code § 633.566 (Supp. 1997); *see also* Kristin Mueller, Note, *The Evolution of Guardianship Law in Iowa: A Search for Fairness and Justice in Guardianship Proceedings*, 45 Drake L. Rev. 963 (1997).

² Although this case was tried before the *Leonard* decision, the district court's ruling conforms to the standard provided in *Leonard*.

proposed ward is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur); *In re Teeter*, 537 N.W.2d 808, 810 (Iowa App. 1995) (application of *Hedin* standard to involuntary appointment of a conservator). Thus, before appointing a conservator, the trial court must consider whether third-party assistance may effectively meet a ward's needs. *See Hedin*, 528 N.W.2d at 579. The trial court should also limit the conservator's powers to the extent necessary to protect the ward. *Id.*; Iowa Code § 633.635(3) (1997); Iowa Code § 633.570 (Supp. 1997).

James claims the trial court failed to correctly apply the *Hedin* standard in determining whether to appoint a conservator. The trial court did, however, recognize the correct statutory standards for the appointment of a conservator and the applicability of the *Hedin* standard in conservatorship proceedings. In fact, the trial court expressly stated the *Hedin* standard applied to the conservatorship proceeding in this case. Moreover, the district court clearly considered the *Hedin* standard in determining the appropriateness of a limited conservatorship.

James next contends the district court did not apply the correct burden of proof. The district court, however, identified the burden of proof as clear and convincing evidence and placed the burden of persuasion on the petitioner. *See*

Hedin, 528 N.W.2d at 581; *Teeter*, 537 N.W.2d at 809; Iowa Code § 633.551 (Supp. 1997). The correct burden of proof was used.

James further maintains the district court erred in failing to address James' preference for a conservator. We recognize courts "should attempt to make an intervention that is in accord with the [ward's] values and ideals and should take into consideration the ward's expressed preferences regarding living arrangements, activities or guardian." *Hedin*, 528 N.W.2d at 582 (citations omitted). The record in this case indicates, however, the trial court did consider James' values, and his positive relationship with his daughters in determining whether they should serve as conservators.

James next claims insufficient evidence existed to establish a conservatorship. Specifically, he claims he has the capacity to make important decisions concerning his financial affairs, the petitioners should have presented medical evidence of his competency, and the district court did not apply the least restrictive alternative.

Substantial evidence exists in the record to support the district court's finding that a conservatorship limited to the management and possession of James' real property and farm assets is necessary. James operates a substantial farming enterprise. The poor condition of the cattle, lack of liability insurance, and his failure to maintain necessary fencing all point to his inability to handle his farming operation and carry out important decisions concerning the financial affairs of his farm. Although James is intelligent and well meaning, he nonetheless fails to carry

out decisions affecting his financial well being. This is most evident from the extremely poor condition of his cattle. James has clearly failed to establish a reliable system to feed and care for his cattle. Additionally, despite numerous complaints of roaming cattle, James has not repaired his fencing. Moreover, his lack of liability insurance puts his financial affairs at further risk. Finally, James' inability to timely pay his taxes creates an additional risk to his financial security.

The district court properly limited the conservatorship to management and possession of James' real estate and farm assets. The trial court recognized James' ability to handle ordinary financial affairs such as paying for his meals, goods, and services. The record also indicates the limited effectiveness of third-party assistance. The net income from his farming assets and his social security benefits are properly his separate property free from the conservatorship. This arrangement correctly balances James' liberty interest with the necessary protection of his property.

James also argues conservatorship proceedings are analogous to the involuntary commitment process. He suggests the petitioners should bear the burden of providing a physician's examination and report, and the burden should be sustained by clear and convincing evidence pursuant to Iowa Code sections 229.10 and 229.12(3) (1997). While guardianship proceedings are analogous in some respects to involuntary commitment proceedings, our law does not require the petitioner to provide a physician's examination and report as in the involuntary

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commitment process.. We will not read such a requirement into the statute where no legislative intent exists to support it.

We have considered all issues raised by James. We affirm the decision of the district court.

AFFIRMED.