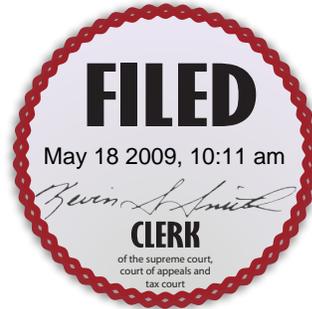


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT HEFLIN,)
)
Appellant-Respondent,)
)
vs.) No. 27A02-0812-CV-1163
)
STAR WEALTH MANAGEMENT,)
)
Appellee-Petitioner.)

APPEAL FROM THE GRANT CIRCUIT COURT
The Honorable Mark Spitzer, Judge
Cause No. 27C01-0804-GU-22

May 18, 2009

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Robert Heflin appeals the trial court's appointment of appellee-petitioner Star Wealth Management (Star Wealth) as the guardian of his estate. Specifically, Heflin argues that the trial court abused its discretion in determining that he is an "incapacitated person" as defined in Indiana Code section 29-3-1-7.5. In the alternative, Heflin maintains that even if the determination of incapacity was correct, the trial court should have appointed his wife, Yolanda, as guardian. Finding no error, we affirm the judgment of the trial court.

FACTS

Heflin, who was born in 1946, is an outpatient at the Department of Veterans Affairs (the VA) in Marion, and has a history of mental health treatment at that facility. On April 7, 2008, the VA issued a "Certificate of Incompetence," stating that Heflin was rated incompetent by that agency on June 22, 2005. Appellee's App. p. 19. Over the years, Heflin submitted to various psychological examinations, and in 2005, it was determined that he was unable to maintain and manage his bank accounts. On one occasion, Yolanda reported that Heflin had given money to drug dealers. Additionally, a psychological report indicated that when Heflin was examined in 2008, he admitted that "his credit cards are not getting paid because his bills exceed his income." *Id.* at 8. Heflin's test scores suggested that he was "semi-independent . . . in managing money and managing health and safety." *Id.* at 112.

Dr. Kriscinda Whitney, a clinical neuropsychologist, diagnosed Heflin with depression, post-traumatic stress disorder (PTSD), cognitive disorder, and anti-social personality disorder. Dr. Whitney concluded that Heflin "appears to be experiencing

symptoms of psychiatric distress, for which he is seeking treatment. He is currently receiving medication and psycho-therapeutic services for management of depression and [PTSD].” Id. at 13. It was also determined that Heflin has poor impulse control and anxiety, and takes several medications for depression, seizures, panic disorders, schizophrenia, and physical pain.

Heflin receives approximately \$610 per month from the VA, a monthly retirement check from the Public Employees Retirement Fund (PERF) in the amount of \$284, and \$1182 in monthly social security benefits based on the PTSD ailment.

Yolanda receives \$800 per month in social security benefits for a back injury, and Heflin’s daughter, Gretchen, receives approximately \$500 per month because she suffers from autism. Although the Heflins’ “base” monthly expenses total approximately \$1873, Donna Rust, a vice president and trust officer with Star Wealth, testified that the Heflins’ monthly income exceeds their expenses by nearly \$1338. Tr. p. 15.

At some point, Heflin obtained and used credit cards from Wells Fargo and Washington Mutual. The debt owed to Wells Fargo is approximately \$800, and the amount owed to Washington Mutual is nearly \$1400. As a result, the expenses have exceeded the family’s income, and Yolanda acknowledged that they have been struggling with their finances for nearly two years. Yolanda has not been able to relieve the family of debt, and she believes that the family’s financial problems are “overwhelming” at times. Tr. p. 67. Heflin also admitted that he was struggling financially, and as of May 30, 2008, he was two months in arrears on the mortgage payments.

Following a review of the Heflins' financial situation, the VA field examiner contacted Star Wealth. The Veterans Service Center is authorized to select and appoint a person or legal entity best suited to receive VA benefits in a fiduciary capacity for a beneficiary who is mentally ill or incompetent.

On March 31, 2008, Star Wealth executed a corporate fiduciary agreement to act as legal custodian of Heflin's monthly VA benefits. Star Wealth began receiving those benefits in April 2008, and Heflin has not been cooperative with that company in handling his financial affairs. Moreover, Heflin has forbidden Yolanda from disclosing any financial information to Star Wealth.

On April 16, 2008, Star Wealth, in its capacity as custodian-in-fact for Heflin, filed a petition for appointment of guardian over Heflin's estate. In essence, the petition alleged that Heflin was unable to maintain and care for his own financial affairs. Following a contested hearing on September 26, 2008, the trial court took the matter under advisement and ultimately granted Star Wealth's petition. The trial court determined, among other things, that Heflin "is incapable of handling his financial affairs," that the appointment of a guardian was in Heflin's best interests, that Star Wealth "is suitable and willing to serve as guardian," and that all of the statutory requirements for the appointment of Star Wealth as Heflin's guardian have been satisfied. Appellant's App. p. 35. Heflin now appeals.

DISCUSSION AND DECISION

I. Heflin's Incapacity

Heflin first argues that the guardianship order must be set aside because the evidence

failed to establish that he was an “incapacitated person” within the meaning of Indiana Code section 29-3-1-7.5. Specifically, Heflin contends that the evidence only established that the financial problems that the family experienced were related to “normal circumstances and not an incapacity.” Appellant’s Br. p. 3.

In resolving this issue, we initially observe that we review the trial court’s findings and orders in guardianship proceedings under the abuse of discretion standard. Ind. Code § 29-3-2-4; In re Guardianship of Atkins, 868 N.E.2d 878, 883 (Ind. Ct. App. 2007), trans. denied. An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances presented. Id.

Pursuant to Indiana Code section 29-3-5-1:

Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter. . . . The petition must state the following:

- (1) The name, age, residence, and post office address of the alleged incapacitated person or minor for whom the guardian is sought to be appointed.
- (2) The nature of the incapacity. . . .

Indiana Code section 29-3-1-7.5 states that an “incapacitated person” is an individual who is unable:

- (A) to manage in whole or in part the individual’s property;
- (B) to provide self-care; or
- (C) both; because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity. . . .

In this case, the initial evidence that Star Wealth presented in support of Heflin’s incapacity was the VA’s certificate of incapacity that was filed. In light of that certificate, a prima facie case was established that a guardianship was necessary, and the burden shifted to Heflin to rebut and contradict that prima facie case. I.C. § 29-1-19-7. Although Heflin points to isolated portions of the psychological report in an effort to show that he functions within the average range of his general intellectual abilities, the results of the examinations reveal that Heflin suffers from depression, PTSD, and anti-social personality disorder. Appellee’s App. p. 13-14. Those diagnoses clearly fall within the definition of mental illness or mental deficiency contemplated in Indiana Code section 29-3-1-7.5. Moreover, as discussed above, the evidence demonstrated that Heflin has given money to drug dealers, has fallen behind in his mortgage payments, and has obtained two credit cards with increasing balances. Tr. p. 26, 45-46, 49. Heflin also admitted that he has “poor impulse control” and anxiety issues. Id. at 92. Indeed, Heflin has not shown that the family’s expenses have increased for any reason other than his poor spending habits and his inability to appropriately manage his financial affairs. In essence, Heflin’s arguments amount to a request that we reweigh the evidence—a function in which we do not engage. Thus, we conclude that the evidence supports the trial court’s conclusion that Heflin is an incapacitated person within the meaning of Indiana Code section 29-3-1-7.5.

II. Appointment of Star Wealth as Guardian

Heflin argues in the alternative that even if the evidence established that he is an incapacitated person, the trial court should not have appointed Star Wealth as the guardian

over his estate. Specifically, Heflin asserts that the trial court “improperly bypassed Heflin’s wife, Yolanda, who was willing and able to serve.” Appellant’s Br. p. 3.

Pursuant to the Code of Federal Regulations, the Veterans Service Center is authorized to select and appoint the person or legal entity best suited to receive VA benefits in a fiduciary capacity for a beneficiary who is mentally ill, incompetent, or under legal disability by reason of minority or court action, and the beneficiary’s dependents. 38 C.F.R. § 13.55(a). Additionally, Ind. Code section 29-3-5-5 provides that

(a) The following are entitled to consideration for appointment as a guardian under section 4 of this chapter in the order listed:

(1) A person designated in a durable power of attorney.

(2) The spouse of an incapacitated person.

(3) An adult child of an incapacitated person.

(4) A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses.

(5) Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.

(6) A person nominated by the incapacitated person who is caring for or paying for the care of the incapacitated person.

(b) With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person or minor, may pass over a person having priority and appoint a person having a lower priority or no priority under this section.

The statute specifically permits the trial court to pass over a person having priority and appoint a person having lower priority or no priority, because the paramount consideration in making a determination of the person best suited to be appointed as guardian is the best interests of the incapacitated person. Atkins, 868 N.E.2d at 883. Although Heflin maintains that Yolanda should have been appointed as his guardian instead of Star Wealth, the evidence demonstrates that she is not capable of handling the family's finances. Tr. p. 47, 65. Heflin admitted that he suffers financially, and Yolanda told Star Wealth's vice president that she has not been able to relieve the family of debt. Id. at 17.

In light of this evidence, it is apparent that the trial court was provided with no alternative but to appoint Star Wealth because Heflin was unable to manage his finances and Yolanda also demonstrated an inability to control the family debt. Moreover, Star Wealth had already been appointed legal custodian by the VA to handle Heflin's funds, and it was familiar with the family's financial circumstances. For all these reasons, we conclude that the trial court did not abuse its discretion in appointing Star Wealth to serve as the guardian of Heflin's estate.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.