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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

Conservatorship of the Person of JASON
STEVEN SANFORD.

B236302

AUDREY HUGHES,

(Los Angeles County
Super. Ct. No. BP126115)

Petitioner and Respondent,

v.

STEPHEN SANFORD et al.,

Objectors and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County. Mitchell Beckloff, Judge. Affirmed.

Stephen Sanford, Susan Sanford, in pro. per., for Objectors and Appellants.

Audrey Hughes, in pro. per., for Petitioner and Respondent.

Appellants Stephen and Susan Sanford challenge a trial court order appointing Audrey Hughes as limited conservator of Jason Sanford. Jason is Stephen Sanford's son, and Susan Sanford's stepson.¹ We affirm the order.

PROCEDURAL AND FACTUAL BACKGROUND

In December 2010, Audrey Hughes petitioned to be appointed the limited conservator of the person of Jason Sanford. Hughes represented she was Jason's legal guardian. The petition alleged Jason has a developmental disability as defined in Probate Code section 1420,² and further asserted he is unable to provide for his needs for physical health, food, clothing, or shelter. At the time, Jason was under the jurisdiction of the dependency court.

In January 2011, psychiatrist Pablo Davanzo submitted an evaluation and letter to the court. Davanzo treated Jason between 2006 and 2010. Davanzo reported Jason had been diagnosed with schizoaffective disorder and paraphilia. Jason had a history of "recurrent episodes of grandiosity, hypervigilance . . . flight of ideas, irritability, paranoid ideation and somatization anxiety in the context of poor intermittent medication compliance." Davanzo noted Jason had at times "presented with voiced homicidal ideation," although this improved following a change in medication. Davanzo further reported that at age 16, Jason demonstrated "intense sexual urges, fantasies, and behaviors that involve unusual activities . . . and situations . . . began to cause clinically

¹ To avoid confusion, we will refer to Jason and Susan Sanford by their first names, and to Stephen Sanford by his last name, or to Stephen and Susan Sanford collectively as "appellants."

² Probate Code section 1420 defines "developmental disability" as follows: "[A] disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term includes mental retardation, cerebral palsy, epilepsy, and autism. This term also includes handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but does not include other handicapping conditions that are solely physical in nature."

significant distress and impairment in social areas of functioning.” Davanzo recommended Jason be placed in a residential facility.

In late January 2011, Jason’s appointed counsel reported that while his client did not oppose the establishment of a conservatorship, he was unable to decide whether he wanted Hughes or Susan, his stepmother, to serve as conservator. In February 2011, Stephen Sanford petitioned to be appointed Jason’s conservator. Sanford’s petition alleged: “The juvenile court removed [Hughes] as my son’s legal guardian on 2-1-11 and my son wants to live with me and my wife and wants us to be his conservators. My son has made progress and is now able to cook his own meals and drive a car. He is now 18 years old and wants his father and/or his stepmother for conservators.”

In March 2011, Jason’s counsel filed a supplemental report with the court. He reported that Jason understood he needed a conservator and wanted the court to appoint his father, or his stepmother as a second choice. Hughes was Jason’s third choice. Jason also wanted to live closer to his father. Counsel recommended that if the court appointed Hughes as conservator, it also direct her to find a suitable placement acceptable to Jason and closer to Sanford. Counsel further suggested it would be preferable if Hughes had no financial interest in the new placement.

In April 2011, Hughes filed an opposition to Sanford’s petition to be appointed limited conservator. Hughes alleged Sanford had served a seven-year prison term in connection with the death of his infant son. Hughes also alleged that Sanford failed or refused to understand Jason’s disability and his related limitations. She detailed several instances in which Sanford minimized the significance of Jason’s inappropriate behavior. Hughes contended Susan would also be an ineffective conservator because Sanford “dominated” her, and she had health issues that might impede her ability to effectively serve as a conservator. Hughes asserted she received no financial benefit from having Jason placed in a home affiliated with her nonprofit organization.³

³ Hughes described herself as an employee or administrator of Free To Be Programs, a non-profit agency serving developmentally disabled children and adults.

In May 2011, Sanford filed an objection to Hughes’s petition for conservatorship. Sanford alleged Hughes had been overly restrictive in limiting his visits with Jason. He asserted Jason did not want Hughes to serve as his conservator, and that he and Susan were willing and able to care for Jason. Sanford further alleged Jason’s “diminished capacity is greatly exaggerated,” Hughes had a “harsh and negative” outlook on Jason, and he requested that the court appoint him or Susan as the conservator, or choose a new independent conservator.

The probate court held an evidentiary hearing over four days between June and August 2011. Hughes and Sanford, both representing themselves, presented evidence, as did Jason. We briefly summarize the testimony most relevant to this appeal.

Hughes’s Evidence

Hughes called Sanford as her first witness. Sanford testified he felt Jason needed love and the care of a father, good guidance, and someone to care for him. When asked if Jason needed a conservator, Sanford responded: “That’s kind of a gray area with me because recently I’ve seen him mature. And to the point where he is now, I think he can make it on his own. However, I’m willing to be the conservator to provide any extra advice he might request as far as medical things go.” Sanford admitted he had not had physical custody of Jason since 1995. Sanford also admitted that when told about Jason’s sexually inappropriate behavior—such as telling older women they aroused him—Sanford commented that famous people do similar things without repercussions.

A manager with Hughes’s residential program testified. She had known Jason for 13 years. The manager indicated Jason talked about Hughes as if she were his mother, and he had recently said he would still like to be part of Hughes’s family if he could not live with his father. The manager recalled that beginning in 2007, Jason exhibited inappropriate sexual behavior such as masturbating with the door open, making sexual comments to women at home or in public, and it was reported that he inappropriately touched a young girl on the bus. The manager also testified that between one and two and a half years earlier, Jason had episodes when he was eliminating into a laundry basket or closet instead of a toilet. The manager recounted a recent visit Jason had with

Sanford at which Sanford told Jason he ran away when he was 18 or 19 years old and was under court supervision, then returned, and the legal system “didn’t do anything” to him. Sanford made his comments around the same time that Jason had talked about running away from his foster home.

A behavior analyst who had periodically worked with Jason since he was four years old, also testified. The analyst opined that Jason tended to misread social situations and sometimes acted so as to elicit a strong, or shocked, reaction. The analyst further opined that Jason’s conservator should be a person with some knowledge of “pervasive development disorders.” She indicated this knowledge would allow the conservator to predict situations that might present problems for Jason in connection with his living environment.

Jason testified he considered Hughes a mother figure.

Hughes testified Jason was first placed in her group home when he was three years old. He lived in Hughes’s home intermittently over the years that followed. Eventually Hughes became Jason’s legal guardian. Hughes testified she was concerned that Sanford did not want to accept Jason’s limitations, and Sanford inaccurately attributed Jason’s behaviors to him not having enough freedom, or his lack of acceptable sexual activity. Hughes also noted Sanford felt Jason should be allowed to drive a car, but, according to Hughes, Jason has “slow processing reactive time,” and requires supervision around traffic because “he doesn’t necessarily pay attention to the traffic laws. He has run out into the street without looking, has almost gotten hit by a car.” Hughes expressed concern that Sanford would give Jason too much freedom too quickly.

Hughes further testified she felt Jason needed to have monitored visits with Sanford. She explained that if appointed Jason’s conservator, she would include him in all decisions and she wanted him to be an active participant in his own life.

Sanford’s Evidence

Sanford called Susan as a witness. In response to questions from the court, Susan described a “wrap-around” meeting she attended that she found confusing. Susan testified the participants “were saying things about Jason that sometimes I didn’t

understand why they were talking about, what they were talking about.” When the court asked if Susan thought Jason had any behavioral issues, Susan responded: “I’m not totally sure about all of that.”

Jason testified that he would prefer living in a residential facility in Santa Monica near Sanford to living with Hughes. He explained the reason for his preference: “Because I can finally stretch my wings and feel like an independent man which I already – I’m a man already, and I shouldn’t be locked up in my parents’ house all day. I feel like if I’m on my own, I can start afresh.” He admitted on cross-examination that he had recently called Hughes numerous times because he wanted to find out how the court process would work.

Sanford testified in his own presentation of evidence. Sanford opined that Jason had matured and “a diagnosis is not written in stone.” Sanford asked that he or Susan be appointed conservators, or that the court request an Evidence Code section 730 evaluation “to determine what level Jason is at now.”⁴ Sanford further opined: “[Hughes] passed a life sentence on Jason years ago, and she won’t change now. [Hughes] said in front of my wife and I, Jason is never going to amount to anything. I think her entire attitude is harsh and negative. Jason has matured over the years and is now ready and mature enough to make it on his own or with the help of my wife and I.” On cross-examination, Sanford testified he thought Jason could “make it on his own,” but he would “adopt the role as a conservator if so granted.” In response to a question from the court as to whether Sanford thought Jason had any behavioral issues, Sanford said he thought there were issues in the past, but now “nothing. He’s demonstrated no wrong things to me.” When asked why Sanford applied to be the conservator if he felt Jason did not need one, Sanford responded: “Well, your honor, because in the view of professionals, if they deem that he does need a conservator, then I would like to be that conservator. But I’m – in my layman’s viewpoint here, I think he has matured enough where he may not really need a conservator.”

⁴ The court indicated no funds were available to pay for a section 730 evaluation.

Jason's Evidence

In response to questions from his own counsel, Jason testified his first choice for conservator was Sanford, his second choice Susan. He testified he wanted the power to decide where he would live, the power to control access to his confidential records, the power to consent to marriage, and the power to control his social relationships. He consented to have his father or Susan have the power to enter into contracts, give consent for medical treatment, and make decisions about his education on his behalf.

Although he was represented by counsel, Jason regularly interrupted throughout the proceedings to respond to witness testimony or ask questions.

In August 2011, the trial court issued a ten-page decision. The court concluded that although Sanford had priority under Probate Code section 1810 as Jason's nominee, appointing Sanford as conservator would not be in Jason's best interests. The court reasoned:

“Father has an extremely naïve view of his son's circumstances and needs. Father's contact with the Proposed Conservatee throughout the Proposed Conservatee's life has been minimal and has always been supervised over the last fifteen years. Father's refusal to acknowledge his son's significant issues would put the Proposed Conservatee at risk of harm in the community. As Father does not appreciate his son's issues, Father could not know and predict what situations were likely to be problematic for the Proposed Conservatee and therefore Father likely would not provide necessary structure and support to avoid problems for the Proposed Conservatee in the community. [¶] There is no question that Father loves his son. Nonetheless, Father has chosen not to learn about his son's needs. Father's lack of knowledge about his son's needs makes him an unwise choice as conservator. He really has no plan to assist the Proposed Conservatee with maximizing his independence. [¶] Father's wife is similarly situated. The court has no doubt that she is well intentioned. Nonetheless, her history with the Proposed Conservatee is minimal. There was no evidence produced that Father's wife has any appreciation for the Proposed Conservatee's needs. [¶] In the court's view, Father, his wife, and Ms. Hughes are not equally qualified to serve. There is no question that Ms. Hughes is the most qualified person before the court to serve as conservator.”

In reaching a decision, the court considered a regional center report issued pursuant to Probate Code section 1827.5. Although the report is not included in the record on appeal, the trial court summarized it in the decision. The report described Jason as “ ‘an 18 year-old young man with a diagnosis of a condition similar to that of an

individual with Mental Retardation and Schizophrenia Paranoid type.’ ” The regional center recommended a limited conservator be given five of seven powers pursuant to Probate Code section 2351.5. The report noted the center believed Jason “has a ‘limited ability to follow directives,’ has deficient independent living skills, cannot identify educational goals, and engages in inappropriate social behaviors.” The report recommended that Jason not have the power to control social and sexual relationships because “ ‘of his past history of inability to judge whether a relationship is platonic as well as his inability to not become sexually explicit both verbally and at times physically with females that are in his environment. Jason engages in inappropriate relationships and he does demonstrate unsafe choice making in this area. Jason can and has in the past approached adult women and attempted to touch them. Jason may inadvertently place himself in a dangerous situation where people will not be aware of his deficits and his actions may lead to altercations with strangers.’ ”

The court denied Sanford’s petition to be appointed conservator and overruled the objections to Hughes’s petition. The court appointed Hughes as limited conservator and granted her all powers under Probate Code section 2351.5, subdivision (b).

This appeal timely followed.⁵

DISCUSSION

The Trial Court Properly Appointed Hughes as Limited Conservator

Appellants contend the trial court erred in denying their petitions seeking appointment as Jason’s conservator. They argue the trial court improperly ignored Jason’s request that they serve as his conservators instead of Hughes. We find no error.

The Probate Code sets forth guidelines for the trial court’s selection of a conservator. Under Probate Code section 1810, “[i]f the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the

⁵ The order appointing a conservator is an appealable order. (Prob. Code, § 1301, subd. (a); see also *Guardianship of Donaldson* (1986) 178 Cal.App.3d 477, 485.)

petition is filed. The court shall appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee.”

Nominations aside, under Probate Code section 1812, subdivision (a), the selection of a conservator is solely in the discretion of the court.⁶ “[I]n making the selection, the court is to be guided by what appears to be the best interests of the proposed conservatee.” (Prob. Code, § 1812, subd. (a).) Probate Code section 1812, subdivision (b) provides that, “of persons *equally qualified* in the opinion of the court to appointment as conservator,” the court is to give greater preference to a parent of the proposed conservatee than to an unrelated person. (Prob. Code, § 1812, subd. (b)(3), italics added.) Yet, “while statutory law gives preference to spouses and other persons related to the conservatee [(Prob. Code, § 1812, subd. (b))], who might know something of the conservatee’s health care preferences, the law also permits the court in its sole discretion to appoint unrelated persons and even public conservators (*ibid.*)” (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 545.)

Here, the trial court explicitly construed Jason’s expressed preference for either appellant to serve as his conservator as a valid nomination under Probate Code section 1810. But the court also found that appointing Sanford or Susan as Jason’s conservator would not be in his best interests. We review that finding for substantial evidence. This means “we view the entire record in the light most favorable to the trial court’s findings. [Citations.] We must resolve all conflicts in the evidence and draw all reasonable inferences in favor of the findings. [Citation.] Substantial evidence is evidence of ponderable legal significance.” (*Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 401.)

⁶ This discretion is subject to Probate Code sections 1810 and 1813. As discussed above, section 1810 concerns nominations by the proposed conservatee. Section 1813 concerns appointment of the spouse of the proposed conservatee.

Substantial evidence supported the trial court's finding. There was evidence that Jason suffers a significant developmental disability and needed a conservator. (Prob. Code, §§ 1420, 1801, subds. (a), (d)). However, there was also evidence that appellants did not understand the scope of Jason's limitations, and that they had not attempted to learn about his disability. Susan testified she did not really know anything about Jason's condition or behavioral issues. Sanford's testimony also suggested he minimized the impact of Jason's disability on his ability to function independently. Indeed, Sanford concluded Jason had matured to a point that he did not need a conservator. But evidence offered at the hearings indicated Sanford's conclusions were inaccurate. Sanford felt Jason was ready to drive a car; Hughes presented competing evidence that Jason would not be able to drive a car safely. There was evidence Sanford thought Jason needed a normal sexual relationship to put an end to his inappropriate sexual behavior; Davanzo's letter suggested Jason's sexual acting out was a psychiatric issue that needed to be addressed with treatment. The regional center's report opined Jason could not live independently and was potentially at risk of harm because of his inappropriate social behaviors. Since neither Sanford nor Susan demonstrated an understanding of the conditions that created a need for a conservatorship, the trial court could reasonably conclude appointing them as conservators would not be in Jason's best interests.⁷

There was also substantial evidence that appellants and Hughes were not equally qualified, making the preference under Probate Code section 1812, subdivision (b)(3) inapplicable. The behavior analyst opined it would be important for Jason's conservator to have some understanding of developmental disabilities, or for the person to acquire that knowledge. Appellants offered no evidence suggesting they had experience making decisions for persons with disabilities or psychiatric diagnoses similar to Jason's. In addition, they had spent only limited time with Jason, much of it monitored, and there

⁷ On appeal, Sanford asserts he was not forthcoming in the trial court about Jason's limitations because he did not wish to hurt Jason's feelings. Our role on appeal is only to consider the evidence offered in the trial court. We cannot reevaluate or reweigh the evidence.

was evidence they did not understand the scope of his limitations or behavioral issues. Jason had not lived with Sanford since he was three years old.

In contrast, Hughes was well qualified to serve in the role. She had known Jason since he was a young child, was involved in procuring treatment and services for him, and she had served as his legal guardian. Jason had lived in her home intermittently. Hughes also worked with persons with developmental disabilities as a vocation. Although Jason desired more freedom, he also acknowledged he had a bond with Hughes, and still relied on her for advice and guidance.

Much of appellants' argument on appeal concerns allegations that Jason's current living situation is inappropriate. However, it appears that the events described in the appellate briefing took place after the court issued the conservatorship order challenged in this appeal. In general, we review an order based on the circumstances as they were at the time the order was rendered, and we do not consider events occurring later.

(Vons Companies, Inc. v. Seabest Foods, Inc. (1996) 14 Cal.4th 434, 444, fn. 3.)

No exceptions to this rule apply here.

To the extent appellants' argument is that Jason's living arrangements at the time of the conservatorship order were inappropriate, and were evidence that appointment of Hughes was an abuse of discretion, we disagree. Although Jason was experiencing difficulties in the residential placement Hughes had arranged, there was still significant evidence that Hughes was well qualified to serve as conservator, as described above. The court was aware of the problems Jason was having in his home, and explicitly suggested different living arrangements might be beneficial. The trial court could reasonably conclude that, despite the problems with Jason's residential placement, appointing Hughes as Jason's limited conservator was in his best interests. There was no abuse of discretion.

DISPOSITION

The trial court order is affirmed. Each party to bear its own costs on appeal.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.