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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Person and Estate of
REGINALD S.

REGINALD S.,

Objector and Appellant,

v.

KEVIN G. SMITH,

Plaintiff and Respondent.

G050264

(Super. Ct. No. 30-2014-00716317)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gerald G. Johnston, Judge. Affirmed in part and remanded.

Monica Vogelmann, under appointment by the Court of Appeal, for Objector and Appellant.

Nicholas S. Chrisos, County Counsel, and James C. Harvey, Deputy County Counsel, for Plaintiff and Respondent.

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The trial court appointed respondent, the public guardian, as conservator of the person and estate of appellant Reginald S. The sole issue in his appeal is whether the court erred in appointing the public guardian, rather than Reginald's mother, Heidi D., as his conservator.

We conclude the trial court did not abuse its discretion in appointing the public guardian as conservator of Reginald's person. But the record is inadequate to permit us to determine whether the court abused its discretion in appointing the public guardian, rather than Heidi D. as conservator of Reginald's estate. We therefore remand the matter for the court to take evidence and determine this issue.

It is undisputed Reginald, an adult suffering from a schizoaffective disorder – bipolar type, is in need of a conservator of his person. At the time of the trial, Reginald was confined to an institution, Royale TRC, under a Welfare and Institutions Code section 5150 hold. His mother, Heidi D., who had been his caretaker until his confinement, encountered a conflict with the institution's staff after she came to visit her son. Although she first denied having given a "white pill" to her son, she later claimed the "pill" was actually a piece of candy. Based on this incident, she was denied visitation with her son.

The investigator's report, which was considered by the court, also noted, "the staff at Royale TRC has stated [mother] is intrusive and demanding with staff and makes frequent calls and stops by the facility at non-visitation hours. The treating staff does not feel that [mother] would be appropriate to act as [Reginald's] Conservator and has been and would continue to be disruptive to his treatment."

Based on this evidence, we cannot conclude the court abused its discretion in appointing the public guardian as conservator of Reginald's person. The court noted that, once Reginald was transferred to another institution, mother should avoid the type of conflicts she encountered at Royale TRC and, at that time, she could petition to be made

conservator. Probate Code section 1812, subdivision (a) provides that, subject to the right of conservatees or their immediate relatives to nominate themselves as conservators, “the selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.” (See *Conservatorship of Durham* (1988) 205 Cal.App.3d 548, 553-554.)

The appointment of the public guardian as the conservator of Reginald’s estate is more problematic. A review of the testimony and documents considered by the court indicates this issue never was addressed. The evidence shows the sole source of Reginald’s income was Social Security. It may be that, for practical purposes it makes sense to have the public guardian take charge of this income, presumably to deal with financial charges of the institutions wherein Reginald resides. We agree with respondent that “[u]nder the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision.” (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48, 58.) But in the absence of any evidence, we are hard put to infer such an implied finding. We therefore remand this matter to the trial court to further consider the appointment of a conservator for Reginald’s estate and to receive additional evidence on this issue should the parties desire to present such evidence.

DISPOSITION

The portion of the order appointing the public guardian as conservator of Reginald's person is affirmed. The matter is remanded for the court to determine if a conservator of Reginald's estate is warranted and, if so, to appoint a guardian of his estate.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.