

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 24-0519

IN THE MATTER OF THE GUARDIANSHIP AND
CONSERVATORSHIP OF:

J.F.R.,

A Protected Person and Petitioner,

v.

MONTANA THIRD JUDICIAL DISTRICT COURT,
GRANITE COUNTY, HON. RAY J. DAYTON,
Presiding Judge,

Respondent.

**JANA COOKE'S SUMMARY RESPONSE TO J.F.R.'S
PETITION FOR WRIT OF SUPERVISORY CONTROL**

On Petition from the Third Judicial District Court, Granite County
Cause No. DG-2023-02 GC
The Honorable Ray J. Dayton, Presiding

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INTRODUCTION

Pursuant to the Court's September 9, 2026, Order and Mont. R. App. 14(7), Jana Cooke ("Jana") submits the following summary response to J.F.R.'s Petition for Writ of Supervisory Control. The petition should be denied. The District Court did not commit a mistake of law causing gross injustice when it extended its May 16, 2024 Order appointing Temporary Full Co-Guardians and a Temporary Conservator to a date that would not exceed six months from the May 16, 2024 appointment order.

The May 16, 2024 order was issued upon the agreement of the parties for an initial 90-day period, which the parties and the District Court believed would allow for a hearing on the permanent appointments on August 1, 2024. When the August 1, 2024 hearing was continued to August 30, 2024 due to illness, the District Court properly extended the appointments to encompass the new hearing date. After the hearing on August 30, 2024, the District Court subsequently extended the appointments to allow time for further order and directed each party to provide proposed orders no later than September 20, 2024. Provided the District Court issues its order prior on or before November 16, 2024 - six months after the Court's May 16, 2024 Order - the appointments will remain within the six-month statutory limit. The District Court has committed no mistake of law and no gross injustice has occurred under these circumstances.

STATEMENT OF THE ISSUE

Whether the District Court committed a mistake of law causing gross injustice by extending its May 16, 2024 appointment of Temporary Co-Guardians and a Temporary Conservator to a date which, though unspecified, will almost certainly occur within the 6-month statutory limit for the appointment of a temporary guardian or temporary conservator.

STATEMENT OF FACTS

1. Jana petitioned the Court for the appointment of herself and her sister, Stephanie Ross (“Stephanie”) as Temporary and Permanent Full Co-Guardians and Co-Conservators of their mother, J.F.R. Exh. A, FOF ¶ 1. J.F.R.’s cognition had diminished, and Jana became concerned regarding J.F.R.’s welfare following certain uncharacteristic actions by J.F.R., involving J.F.R.’s contact with Jana and J.F.R.’s finances. *Id.* at FOF ¶¶ 3-4.

2. The District Court ordered the temporary appointments and set an initial hearing for July 6, 2023. Exh. A, FOF ¶ 8.

3. After receiving assurances of J.F.R.’s well-being from her counsel of record, the District Court vacated the temporary appointments and directed the parties to engage in discovery, while also directing that no party should interfere with Jana’s communications with J.F.R. Exh. A, FOF ¶¶ 10-11.

4. J.F.R. was subsequently interviewed by the Court-appointed visitor, who reported her observations regarding J.F.R.'s cognitive decline and lack of knowledge regarding her finances. Exh. A, FOF ¶¶ 17, 22. The visitor recommended that Jana and Stephanie be appointed J.F.R.'s full co-guardians along with a nonprofit entity, the Western Montana Chapter for the Prevention of Elder Abuse ("the Western Montana Chapter"). *Id.* at FOF ¶ 23. The visitor also recommended that the Western Montana Chapter be appointed J.F.R.'s conservator. *Id.*

5. J.F.R. was also evaluated by the Court-appointed physician, neuropsychologist Dr. Loretta Bolyard, who diagnosed J.F.R. with Major Neurocognitive Disorder and concurred with the Court-appointed visitor's recommendations regarding the appointments of full co-guardians and a conservator for J.F.R. Exh. A, FOF ¶¶ 27-29.

6. Dr. Bolyard determined that J.F.R. lacked understanding "regarding all aspects of her financial assets." Exh. A, FOF ¶ 28. Dr. Bolyard also determined that J.F.R. is at risk for financial exploitation and:

... lacks the necessary capacity for a range of decisions and tasks. She would have severe limitations in her ability to independently understand, appreciate, and communicate choices regarding her personal well-being, financial affairs, and other personal matters.

Id. at FOF ¶ 27.

7. Dr. Bolyard's report indicated that Judy stated at one point during their interview that Judy would be "pleased" to have both Jana and Stephanie serve as her Co-Guardians. Exh. A, FOF ¶ 30.

8. After discovery revealed that hundreds of thousands of dollars had been withdrawn from Judy's accounts in over just a few months, Jana petitioned the Court on October 4, 2023, for an emergency hearing, requesting the appointments recommended by the visitor and physician on a temporary basis. Exh. A, FOF ¶¶ 34-36.

9. The Court held an evidentiary hearing on October 27 and October 30, 2023, which included extensive testimony by Dr. Bolyard, Jana, a representative of the Western Montana Chapter, Judy's then-financial advisor, and Stephanie. *See generally* Exh. A, pp. 8-20.

10. At the hearing, Jana produced a power of attorney in which Judy specifically nominated Jana to serve as her guardian.¹ Exh. A, FOF ¶ 71.

11. Based on the hearing testimony and other evidence, the District Court on November 20, 2023, issued its Findings of Fact and Conclusion of Law and

¹ Throughout this matter, J.F.R., through counsel, has consistently confused J.F.R.'s nomination of Stephanie, (with Jana as an alternate), to serve as J.F.R.'s healthcare agent, with J.F.R.'s nomination of Jana to serve as her guardian. *See, e.g.*, Petition for Writ of Supervisory Control ("Petition"), p. 5 and Exh. A, FOF 71, 98. J.F.R.'s counsel of record also erroneously implies that J.F.R. has nominated Stephanie to serve as J.F.R.'s guardian in J.F.R.'s will. *See* Petition, p. 5. In addition to being an untrue statement, J.F.R.'s counsel misapprehends Mont. Code Ann. § 72-5-312(2)(a), which relates to the priority of a person nominated in the will of a decedent to serve as guardian for another person who is still living.

determined that there was an immediate need for the temporary appointments. Exh. A, p. 22.

12. J.F.R. appealed the Court's November 20, 2023 Order that same day.

13. J.F.R.'s Opening Brief on appeal indicates that J.F.R. recognizes her mental decline and has consented to the appointment of a guardian. *See* DA 23-0682, Opening Brief, p. 4, ¶¶ 7-8.

14. On April 5, 2024, Jana requested a hearing be set on the appointment of Permanent Co-Guardians and a Permanent Conservator in order to have those appointments in place prior to the expiration of the 6-month period following the District Court's November 20, 2023 Order. Exh. B.

15. The requested hearing was held on May 10, 2024. The parties agreed at the hearing to attend a mediation and to a 90-day re-appointment of the Temporary Co-Guardians and Conservator. The District Court issued an Order reflecting the parties' agreement on May 16, 2024, and set a hearing for August 1, 2024, on "all outstanding motions and petitions." Exh. C.

16. When the August 1, 2024 hearing had to be vacated due to illness, the Court set a scheduling conference for August 7, 2024, and ordered that the "current appointments of guardians and conservators shall remain in effect until the matters set for hearing on August 1, 2024, may be heard." *See* J.F.R.'s Exh. 1 to Petition for Writ of Supervisory Control.

17. At the scheduling conference, the parties agreed to set the hearing for August 30, 2024.

18. After oral argument was heard on August 30, 2024, the District Court directed that the parties “may filed Proposed Orders on or before close of business on September 20, 2024” and ordered that in the meantime, the temporary appointments would remain in effect. *See* J.F.R.’s Exh. 2 to Petition for Writ of Supervisory Control.

19. Later that same day, J.F.R. filed her Petition for Writ of Supervisory Control.

ARGUMENT

The Court’s authority to exercise supervisory control is derived from Article VII, Section 2(2) of the Montana Constitution and Mont. R. App. 14(3). Petitions for supervisory control are not routinely or freely granted. “Supervisory control is an extraordinary remedy, reserved for extraordinary circumstances.” *Stokes v. Mont. Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754.

Acceptance of supervisory control is decided on a case-by-case basis and is “limited to cases involving purely legal questions,” in which: (1) the district court is proceeding under a mistake of law causing a gross injustice; (2) constitutional issues of statewide importance are involved; or (3) the district court has granted or denied a motion for substitution of judge in a criminal case. *Id.*, ¶ 5 (citing Mont. R. App. P.

14(3)); *see also Tipton v. Mont. Thirteenth Judicial Dist. Ct.*, 2018 MT 164, ¶ 9, 392 Mont. 59, 421 P.3d 780.

The “threshold” J.F.R. must first meet “is demonstrating that the [District Court] is proceeding under a mistake of law.” *Office of St. Public Defender v. Whitefish City Ct.*, 2008 MT 79, ¶ 15, 342 Mont. 141, 188 P.3d 43. J.F.R. cannot do so here because the District Court has not made an appointment of a temporary guardian or conservator that extends beyond six months.

Pursuant to Mont. Code Ann. § 72-5-317(2), a district court, with or without notice, may appointment a temporary guardian for a specified period, which should not exceed 6 months, if there is no appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action. Similarly, pursuant to Mont. Code Ann. § 72-5-421(1), a district court, with or without notice, may appoint a temporary conservator for a period not to exceed 6 months if the court finds that the welfare of the protected person requires immediate action. The statutory framework for guardianships and conservatorships does not prohibit a district court from making a subsequent temporary appointment, which is what happened here. Only an appointment which would exceed 6 months is prohibited.

Here, the District Court made its November 20, 2023 appointment order only after it had held an extensive evidentiary hearing and determined that J.F.R. had an immediate need for the appointments. J.F.R. herself recognizes the need for a

guardian. *See* Opening Brief, filed in DA 23-0682, p. 4, ¶¶ 7-8. The parties even agreed among themselves that the temporary appointments should not be allowed to expire (which would leave J.F.R. without any guardian or conservator) and agreed to a re-appointment to allow time for a subsequent hearing. The District Court ordered that re-appointment on May 16, 2024.

Due to illness, the planned-for hearing on August 1, 2024 had to be continued to August 30, 2024. The District Court, in line with the parties' prior agreement to keep the appointments in place until a hearing could be had, extended the appointments to August 30, 2024. Following the August 30, 2024 hearing, the District Court ordered the temporary appointments to remain in place pending the District Court's subsequent order.

Given that the parties submitted their proposed orders to the District Court on or before September 20, 2024, that order will almost certainly be issued prior to November 16, 2024, which marks the end of the six-month period since the District Court's re-appointment order on May 16, 2024. The District Court orders which prompted J.F.R.'s Petition for Writ of Supervisory Control therefore did not improperly extend the temporary appointments made on May 16, 2024 beyond six months.

Moreover, even if the District Court were mistaken in its understanding of the six-month limitation for temporary appointments, no gross injustice is occurring

here. J.F.R. herself acknowledges that she is not being harmed by the continuation of the temporary appointments. Instead, she asserts that she “is being well taken care of and her finances are in great shape.” *See* Petition, p. 5. That should come as no surprise given that among J.F.R.’s co-guardians are her prior first choice to serve as guardian (Jana) and her prior first choice to serve as her healthcare agent (Stephanie). Meanwhile, the expressed concerns and indications of financial exploitation are being addressed by having a professional third-party conservator.

Additionally, “although an application for a writ of supervisory control is sometimes used to seek immediate review of an interlocutory order, such applications are justified only where there is no remedy by appeal or other remedial procedure to provide relief and where extraordinary circumstances are present. *In re Custody of R.R.K.*, 260 Mont. at 193, 859 P.2d at 1005-06. J.F.R. is already pursuing a remedy by appeal of the November 20, 2023 temporary appointments. That appeal remains pending. J.F.R. identified no “extraordinary circumstances” warranting a writ of supervisory control, even if the District Court had made a mistake of law, which it did not.

CONCLUSION

For the reasons stated above, J.F.R.'s Petition for Writ of Supervisory Control should be denied.

DATED this 24TH day of September, 2024.

/s/ Julie R. Sirrs

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CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rules of Appellate Procedure 11 and 14(9), I certify that this Response to Petition for Writ of Supervisory Control is printed with a proportionally spaced Times New Roman text typeface of 14 points; is double-spaced, except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word is not more than 4,000 words pursuant to Montana Rule of Appellate Procedure 14(9)(b), being 1,919 words, excluding the caption, Table of Contents, Table of Authorities, Signature Block, Certificate of Compliance, Certificate of Service, and Exhibits.

/s/ Julie R. Sirrs

Julie R. Sirrs
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CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by ECF and email upon the following at their addresses this 24th day of September 2024:

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Susan Marshall, Paralegal

TABLE OF EXHIBITS

Exhibit A

Docket No. 98, Findings of Fact, Conclusions of Law and Order dated November 20, 2023.

Exhibit B

Docket No. 114, Request for Hearing dated April 5, 2024.

Exhibit C

Docket No. 133, Order dated May 16, 2024.