

State of Minnesota

District Court

County of Winona

Third Judicial District

Court File No. 85-PR-19-1081

**In re Guardianship and
Conservatorship of:**

David Austin Russell,

Respondent.

**Findings of Fact,
Conclusions of Law,
Order for Guardianship
and Conservatorship**

The above-entitled matter came before District Court Judge Matthew J. Opat on July 15, 2022, for hearing on the petition of Todd Bennick, Winona County Health and Human Services to appoint Catholic Charities as the guardian and conservator of David Austin Russell.

Respondent David Austin Russell appeared and was represented by attorney David Jones. Also present were Matthew Hanratty, Catholic Charities; Todd Bennick, Winona County Health and Human Services; Dr. Kenneth L. Dennis; and Paul R. Ellison, Assistant Winona County Attorney, representing the interests of the petitioner. The hearing was conducted by Zoom.

The Court, being duly advised, and upon the evidence adduced at the hearing, the petition, and all proceedings herein, now makes the following:

FINDINGS OF FACT

1. The petitioner Todd Bennick, Winona County Health and Human Services is interested in this matter as a case manager working with Respondent.
2. Respondent is 42 years old, having been born on March 13, 1980.
3. Respondent is a resident of Winona County. Winona County is the appropriate venue for this proceeding.
4. Respondent's nearest kindred are listed in the petition.

5. The Court considered the documents in the record including the petition and visitor's report along with the testimony at the July 15, 2022, hearing in making the findings and conclusions in this Order.
6. The Court admitted the following three exhibits at the hearing:
 - a. Report of Kenneth L. Dennis filed May 1, 2022.
 - b. Email written by Respondent on June 23, 2022.
 - c. Law enforcement reports regarding Respondent.
7. The petition requests full guardianship and conservatorship powers. The petition also requests a change in guardian from Independent Management Services to Catholic Charities. Independent Management Services has not raised an objection to Catholic Charities being appointed as successor guardian.
8. Respondent lacks sufficient understanding or capacity to make responsible decisions regarding his person, and is unable to meet his personal needs for medical care, nutrition, clothing, shelter and safety, even with appropriate technological and supported decision making assistance:
 - a. Respondent is diagnosed with schizoaffective disorder. Respondent has a long history of mental illness. Respondent is currently subject to a civil commitment. Respondent has been on commitment several times. Respondent has a history of significant mental health symptoms and behaviors when his mental illness is not controlled. The symptoms and behaviors include aggression, threats, and delusions. Respondent's delusions have a strong focus on corruption by the government and mistreatment of Respondent. Respondent's beliefs are shown in the email he sent on June 23, 2022,

which was admitted as an exhibit at the July 15, 2022, hearing. Respondent's mental illness impairs his ability to make rational and reasoned decisions.

- b. Respondent is prescribed medications for the treatment of his mental health. Respondent has a consistent cycle of stopping his medications once back in a community setting, leading to an increase in mental health symptoms and behaviors. Respondent has a consistent history of not meeting his need for appropriate mental health treatment when in the community.
- c. Respondent has been hospitalized for the treatment of his mental health. Respondent has refused to apply for appropriate insurance to cover the cost of his time in the hospital. The failure to apply for appropriate insurance has resulted in significant debt for Respondent. The debt is estimated to be more than \$250,000. The lack of appropriate insurance also impairs Respondent's access to appropriate health care and treatment when in a community setting.
- d. Winona County District Court previously appointed a limited guardian for Respondent. The appointment only gave the guardian the power to apply for government benefits on behalf of Respondent. Respondent has consistently refused to supply the guardian with the banking information necessary to apply for government benefits, including Medical Assistance. Due to the inability to apply for benefits, the size of Respondent's debt has continued to increase. Respondent has consistently stated that he will not apply for Medical Assistance. Respondent's refusal to apply is related to his longstanding delusions of government corruption and conspiracies against him.

- e. Respondent has resided in an apartment in the City of Winona. The management company of the apartment building informed Respondent that the company would not be renewing his lease. The non-renewal of the lease was caused by Respondent's ongoing behavior. The behavior has included behaviors that have caused other residents to feel uncomfortable and concerned about their safety. Respondent refused to move out of the apartment when the lease ended. There is a currently pending eviction action against Respondent. There is a lack of evidence showing any sort of plan by Respondent for alternative housing if he is unsuccessful in challenging the eviction.
- f. Respondent has refused voluntary services from Winona County. Winona County has offered to cover the cost of medication co-pays and to cover the cost of Adult Rehabilitative Mental Health Services. Respondent's mental illness, particularly his beliefs about government actors, causes him to strongly reject such offers of assistance. The goal of community supports such as the voluntary services would be to help Respondent avoid the cycle of civil commitments and hospitalizations caused by his mental health. Winona County does pay for an independent living skills program through Hiawatha Valley Mental Health Center. However, Respondent has not engaged with the program since August of 2021.
- g. The hearing in this matter was previously continued. While at Mayo Clinic, Respondent had expressed a willingness to take actions to address ongoing concerns, including concerns for his mental health and lack of insurance. However, upon returning to the community Respondent has not followed through with addressing any of the problems. Further, Respondent has continued to engage in behavior others have

found concerning. Due to his behavior, Respondent has been trespassed from several locations and has had frequent interactions with law enforcement.

9. No less restrictive alternative to guardianship exists. Respondent's mental illness impairs, and has impaired, his ability to make responsible and rational decisions. The previous limited guardianship was not successful in meeting Respondent's needs. Respondent's continued opposition to assistance renders him unwilling to engage with any less restrictive options that could be provided on a voluntary basis.
10. The appointment of Catholic Charities as the guardian of the person is in Respondent's best interest to protect and supervise his person.
11. Catholic Charities is willing and able to serve as the guardian of the person of David Austin Russell.
12. Respondent is unable to manage property and business affairs because of an impairment in his ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance. Respondent has demonstrated behavioral deficits showing his inability to manage his estate:
 - a. Respondent is diagnosed with schizoaffective disorder. The mental illness impairs Respondent's ability to meet his financial needs. Respondent's ongoing beliefs of corruption and mistreatment cause him to be resistant to requests or offers of assistance by government and other actors. This has resulted in negative financial consequences, including a large amount of debt, for Respondent.
 - b. As mentioned earlier in this Order, Respondent has consistently refused to apply for appropriate health care benefits. Such benefits would allow Respondent access to appropriate health care treatment and treatment. Respondent has Medicare and a

- Medicare supplement, which are not sufficient to cover the cost of Respondent's hospitalizations. The lack of appropriate insurance results in Respondent incurring more and more debt each time he is hospitalized for the treatment of his mental health.
- c. Respondent has expressed the incorrect belief that all of his civil commitments have been illegal. Related to this belief, Respondent believes that government agencies owe Respondent thousands of dollars in withheld taxes. Respondent's fixed delusional beliefs impair his ability to manage his finances and cause him to take actions that negatively impact his overall financial situation.
 - d. Due to Respondent's refusal to apply for Medical Assistance, Respondent has accumulated significant debt. The debt is estimated to be in excess of \$250,000.
 - e. The limited guardianship has not been successful in helping Respondent's financial situation. Without necessary information, the guardian was not able to apply for government benefits and services. Respondent never received the benefits that could have been obtained if the guardian had the necessary information. Respondent has continued to accumulate additional debt since the limited guardian was appointed.
 - f. Respondent requires assistance to ensure that he does not further increase the size of his debt and that his bills are being paid, particularly when Respondent is actively symptomatic. Respondent has consistently exhibited active mental health symptoms when he returns to a community setting and stops taking his prescribed medications.
13. Money is needed for the support and welfare of Respondent. Respondent will continue to require funds for needs such as food and housing. Protection is necessary to ensure ongoing ability of Respondent to obtain such funds. Respondent has shown no regard for

accumulating hundreds of thousands of dollars in debt and the impact on his financial capabilities moving forward.

14. No less restrictive alternative to conservatorship exists. Respondent's ability to manage his property and financial affairs is impaired by his mental illness. Respondent's continued opposition to assistance renders him unwilling to engage with any less restrictive options that could be provided on a voluntary basis. The less restrictive option of the limited guardianship was not successful.
15. The appointment of Catholic Charities as the conservator of the estate is in Respondent's best interest to protect and supervise his estate.
16. Catholic Charities is willing and able to serve as the conservator of the estate of David Austin Russell.
17. Respondent is under the temporary custody of the Commissioner of Human Services.
18. Catholic Charities is the most suitable and best qualified among those available and willing to discharge the trust and is not excluded from appointment pursuant to Minn. Stat. 524.5-309(c) and Minn. Stat. 524.5-413(d).

CONCLUSIONS OF LAW

1. David Austin Russell is an incapacitated person within the meaning of Minn. Stat. § 524.5-102, Subd. 6.
2. Respondent's identified needs cannot be met by less restrictive means.
3. Respondent continues to need the assistance of a guardian. The previous limited guardianship appointment is insufficient to provide for Respondent's level of need.
4. A conservator should be appointed for Respondent. The appointment of a conservator is in Respondent's best interest.

5. The appointment of Catholic Charities as successor guardian and as conservator is in Respondent's best interest.

NOW, THEREFORE, IT IS ORDERED:

1. Catholic Charities is hereby appointed as the successor Guardian of the Person of Respondent David Austin Russell with all the powers and duties as set forth in Minn. Stat. 524.5-313(c).
2. Independent Management Services is hereby discharged as Guardian in this matter.
3. Catholic Charities is hereby appointed as Conservator of the Estate of Respondent David Austin Russell with all the powers and duties as set forth in Minn. Stat. 524.5-417(c).
4. The issue of whether Conservator is required to file a bond is reserved.
5. Letters of Guardianship and Conservatorship shall issue to Catholic Charities, PO Box 379, Winona, MN 55987.
6. Respondent maintains the right to vote.

By the Court:

Matthew J. Opat
Judge of District Court