



MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING, JR. BLVD.
SAINT PAUL, MINNESOTA 55155

Mark Mestad
Examiner
Conservator Account Auditing Program

SCAO Executive Office
Minnesota Judicial Branch
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May 24, 2023

Judge of District Court
Winona County Justice Center
171 West Third Street
Winona, MN 55987

Re: Winona County Court File - 85-PR-19-1081

Your Honor,

Please find the attached Investigative Report for your review.

With the filing of this Report, our investigation into this matter is now concluded.

Please feel free to contact me with questions or concerns.

Sincerely,

Mark R. Mestad

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Cc: David Russell, Person Subject to Conservatorship/Guardianship and Complainant
Michael Hanratty, Adult Advocacy Program Director, o/b/o Catholic Charities of Southern
Minnesota



MINNESOTA JUDICIAL BRANCH

CONSERVATOR ACCOUNT AUDITING PROGRAM

Investigative Report

Complaint No. 22 - 030

Winona County Court File - 85-PR-19-1081

Report Date – May 24, 2023

Person Subject to Conservatorship/Guardianship and Complainant: David Austin Russell (“Mr. Russell” or “David”)

Guardian / Conservator: Catholic Charities of Southern Minnesota

Respondent to the Complaint: Michael Hanratty, Adult Advocacy Program Director, o/b/o Catholic Charities of Southern Minnesota (“Mr. Hanratty”)

Examiner: Mark Mestad (“Examiner”)

Purpose of the Investigation

The Goal of the Advancement of MN Vulnerable Adult Care project is to ensure that Persons Subject to Conservatorship or Guardianship in Minnesota are adequately protected, well cared for, and their rights safeguarded. Consistent with that goal, the Minnesota Judicial Branch has created a complaint and investigation process for guardianship and conservatorship matters under court jurisdiction. Each investigation and review shall be conducted impartially that is unbiased and free from conflicts of interest, and the Examiner shall not advocate for any person involved in the case.

A. Investigatory Process and Standard of Proof

During this Investigatory Process, complaints against Guardians and Conservators are reviewed for maltreatment, as defined in Minn. Stat. § 626.5572, Subd. 15, which means abuse as defined in subdivision 2, neglect as defined in subdivision 17, financial exploitation as defined in subdivision 9, or a violation of the Bill of Rights for Persons Subject to Guardianship or Conservatorship as defined in Minn. Stat. § 524.5-120.

The standard or degree of proof required to establish a conclusion of fact in this process is “by a preponderance of evidence,” which indicates evidence that establishes the fact sought to be true is more likely than not.

During the course of the investigation, the Examiner will reach one (1) of the following four (4) conclusions as to the allegations contained in the Complaint as to the suspected maltreatment of the person.

Substantiated means that there is a preponderance of the evidence that an act that meets the definition of maltreatment occurred. (Minn. Stat. § 626.5572, Subd. 19)

Inconclusive means there is less than a preponderance of the evidence to show that maltreatment did or did not occur. (Minn. Stat. § 626.5572, Subd. 11)

False means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur. (Minn. Stat. § 626.5572, Subd. 7)

Outside of the Investigatory Process means assuming the allegations are true, the conduct does not violate statute or standards, or are not subject to review pursuant to the guidelines of the complaint process as referenced above.

B. Introduction

A Complaint was submitted in this matter to the State Court Administrator’s CAAP Audit Office by the Complainant Mr. Russell concerning the conduct of the Guardian/Conservator assigned by Catholic Charities of Southern Minnesota.

As to Allegations 1, 2, and 3, the Examiner determined, after initial review and based upon the assumption that those claims were true, there was a legally sufficient basis to investigate those accusations.

C. Summary of Allegations and Background

Summary of Complaint Allegations

On December 8, 2022, Complainant submitted a written complaint (“Complaint”) alleging that:

- has not paid any of my bills for months resulting in damage to my credit and repossession of my vehicle.

- refuses to answer any questions and generally treats me as unimportant and makes decisions without input.
- has not made use of Medicare Open Enrollment Period leaving me without health insurance.

Background:

On May 28, 2019, a Petition for Emergency Guardianship was filed naming Mr. Russell as the Respondent and Independent Management Services as the proposed Guardian. On July 10, 2019, Findings of Fact, Conclusions of Law, and an Order for Limited Guardianship was issued naming Independent Management Services as Guardian with the power to apply on behalf of Mr. Russell for any assistance, services, or benefits available through any unit of government under Minn. Stat. 524.5-3 1 3(c)(7).

In April of 2022, a Petition for Guardianship and Conservatorship was filed requesting a full Guardianship and Conservatorship noting that:

A limited Guardianship was established on July 10, 2019, by court order, provided the guardian with: “the power to apply on behalf of the ward for any assistance, services, or benefits, available to the ward through any unit of government under Minn. Stat. 524.5-313(c)(7).” This, unfortunately, was not sufficient as the Respondent refuses to supply the needed banking information to the guardian, so each application is rejected due to there being insufficient information provided. In addition, Winona County has offered to cover the cost of medication co-pays and covers the cost of Adult Rehabilitative Mental Health Services (ARMHS) which he would not otherwise receive due to the absence of MA. While it has been acknowledged that the Respondent is an intelligent person who, when stable, appears to be able to manage his own affairs, when he is refusing medications and symptomatic, it is felt he requires the support of a conservator to ensure he does not continue to increase the size of his debt, and that his medical and other bills are being paid in a timely manner.

Following a hearing and a review of the Physician’s Statement in Support of Petition dated April 6, 2022, the Visitor Report dated April 25, 2022, the Examiner’s Report dated May 1, 2022, and the Physician’s Statement dated May 9, 2022, on July 15, 2022, the court issued Findings of Fact, Conclusions of Law, and an Order for Guardianship and Conservatorship and Letters of Guardianship and Conservatorship appointing Catholic Charities as the successor Guardian and Conservator for Mr. Russell and discharging Independent Management Services as Guardian.

D. Investigative Findings

Allegation 1: has not paid any of my bills for months resulting in damage to my credit and repossession of my vehicle.

As to Allegation 1, Mr. Russell reported that his vehicle payment has not been paid by the Guardian/Conservator since assuming supervision of the case. He stated the monthly payment on the car loan is \$320.00 per month, which was last paid by him in July of 2022. David indicated that the lender (Bridgecrest) made contact with him by text message and reported that the car was repossessed, and he is required to pay \$10,000.00 in order to resecure possession of his vehicle. Mr. Russell reported that the vehicle is located at his brother's house in the Winona area. When asked, he stated that his brother would not have any information about the status of the vehicle, even though it is parked on his property.

When contacted, the lender would not provide this Examiner with information about the Mr. Russell's car loan, citing privacy and confidentiality concerns. Following an email request for documentation, Mr. Russell provided a screen shot of his payments, which confirmed the last payment made on the account was in June of 2022.

During his interview, Mr. Hanratty stated, with regard to the vehicle, Catholic Charities did not know the details of this particular vehicle until David's mother provided the VIN number in early November of 2022.

Catholic Charities provided documentation and case notes related to the vehicle. Those notes indicate that, at the outset of the case, there was suspicion that Mr. Russell may have owned multiple vehicles. Case notes denote the subject of repossession of the vehicle did not surface until November and a call to the lender in December of 2022 was not fruitful, as Bridgecrest would not discuss the loan unless David was present.

Case notes from January of 2023 also reflect that: "[l]oan has been charge off as of November out for repossession amount owed \$9,106.84. No way to reverse. Would need to pay off. By the time client sent us notice loan was 148 days past due."

The case notes were consistent with the information provided by Mr. Hanratty and other personnel with Catholic Charities during their interviews with the Examiner.

Mr. Russell did not indicate other, unpaid financial obligations, other than medical bills. As to other obligations, Mr. Russell indicated that his car insurance, rental insurance, and cell phone are paid by automatic withdraw and all those accounts are up to date, to the best of his knowledge. Mr. Russell presented no documents verifying any adverse effects on his credit rating or score from the nonpayment of his vehicle loan, but the inventory filed with the court on September 12, 2022 reports that Mr. Russell currently owes nearly two hundred thousand dollars for past medical expenses. It is unknown to what extent the past medical bills affected Mr. Russell's credit.

After a review of the relevant court files, the pertinent correspondence submitted, and the interviews related to this Investigatory Process, this Examiner determined that Allegation 1 is inconclusive for maltreatment as defined in Minn. Stat. § 626.5572, Subd. 15, or a violation of

the Bill of Rights for Persons Subject to Guardianship or Conservatorship as defined in Minn. Stat. § 524.5-120.

Allegation 2: refuses to answer any questions and generally treats me as unimportant and makes decisions without input.

As to Allegation 2, Mr. Russell reported that the guardian/conservator is slow to respond to his inquiries, and takes 5 to 7 business days for an answer. David indicated that over the course of his involvement with Catholic Charities, he has been assigned 3 guardians all of which have been non-responsive to him. He also indicated recent challenges with his search for an apartment in the Winona area and slow responses when he requested that he be provided clothing and personal items.

Delay in complete responses on behalf of Mr. Russell was confirmed by his facility staff. Staff members Mallory and Josephine both indicated that the guardian has been difficult to contact. For example, staff requested a release of information for a new therapist for Mr. Russell at the beginning of 2023 and it took 3 weeks to a month to get back that form. Facility staff was searching for a new therapist for him so that he could get assistance in changing his medication.

Staff reported that they sent Catholic Charities a treatment plan which took a month to return. The facility provided the plan to Catholic Charities on February 20, 2023 and received it back on March 20, 2023. In addition, there are 13 releases of information which are required when a new resident enters the facility, and it required significant time to get those documents signed and returned.

Staff also indicated that when multiple questions are contained on the same e-mail, some are not answered which requires a follow up e-mail for further clarification. Staff is of the opinion that the relationship between Mr. Russell and Catholic Charities staff is soured and the lack of responsiveness and delay in answering inquiries has caused acrimony and difficulty for Mr. Russell.

Staff reported that there is no plan or anticipated permanent residence for him. Staff did concede that while Catholic Charities has delayed responses in regards to a future residence for Mr. Russell, his difficulties with a past eviction and a criminal record is a substantial barrier to finding him a residence in the Winona area.

In response to this allegation, Catholic Charities reported that inquiries from Mr. Russell were responded to in a reasonable period of time and made known that there is a "48 business hour" rule for return communications, which was followed in this case. Mr. Bennick, social worker for Mr. Russell, indicated that he personally reviewed e-mail chains from Catholic Charities to Mr. Russell and inquiries were responded to within an appropriate period of time. Mr. Bennick did not indicate concerns that Catholic Charities was not responding to Mr. Russell in an appropriate time.

Catholic Charities provided 94 pages of emails and 20 pages of case notes in relation to Mr. Russell's file. Those emails and case notes establish numerous contacts related to Catholic Charities' involvement in the case, including numerous voicemails (left and received) and dozens of emails pertaining to his case.

Regarding the treatment plan, the original email from February 20, 2023 containing the treatment plan stated the plan was attached and indicated that there were no changes. Once the caseworker received a follow up email stating a signature was needed, she signed and returned the plan in short order.

As to the requested releases of information, emails show that Catholic Charities received the paperwork on December 20, 2022 and it was returned signed on January 3, 2023. The delay in obtaining signatures was, in part, the result of closure for the holidays, inclement weather, and weekends.

In addition, while it appears as though there were limited instances where Mr. Russell was not responded to in the required 48-hour period, the record establishes that, as whole, Mr. Russell was responded to without unreasonable delay.

In regard to a discharge plan for Mr. Russell to a permanent, long-term living arrangement, Catholic Charities reports continuing to search for a new permanent residence for Mr. Russell in the Winona area. That search is made difficult by Mr. Russell's past housing history, which includes an eviction, and other factors relating to Mr. Russell which are known by area landlords.

After a review of the relevant court files, the pertinent correspondence submitted, and the interviews related to this Investigatory Process, this Examiner determined that Allegation 2 is inconclusive for maltreatment as defined in Minn. Stat. § 626.5572, Subd. 15, or a violation of the Bill of Rights for Persons Subject to Guardianship or Conservatorship as defined in Minn. Stat. § 524.5-120.

Allegation 3: has not made use of Medicare Open Enrollment Period leaving me without health insurance.

As to Allegation 3, Mr. Russell indicated that he was not denied any medical care or service due to the delay in signing up for Medical Assistance but that he would prefer to be enrolled with Medicare due to the "spend down" requirement for eligibility for Medical Assistance.

In its written response to the Complaint received on December 15, 2022, Catholic Charities reported the completion of an application and Mr. Russell was approved for Medical Assistance, which was approved and in effect on August 1, 2022.

Mr. Bennick and Mr. Hanratty both confirmed that Mr. Russell is insured by Medical Assistance. While Mr. Russell disagrees with the decision to enroll in Medical Assistance rather than Medicare that determination was made for valid reasons, including that Medicare had not

previously paid for several Mr. Russell's services which resulted in a substantial amount owing by Mr. Russell. The decision to enroll Mr. Russell in Medical Assistance was not made solely by Catholic Charities. That enrollment occurred after consultation with Mr. Russell's treatment team, including Winona County Social Services, based upon all relevant factors related to his medical needs and the coverage available at that time.

After a review of the relevant court files, the pertinent correspondence submitted, and the interviews related to this Investigatory Process, this Examiner determined that Allegation 3 is false for maltreatment as defined in Minn. Stat. § 626.5572, Subd. 15, or a violation of the Bill of Rights for Persons Subject to Guardianship or Conservatorship as defined in Minn. Stat. § 524.5-120.

E. Materials Reviewed and Witnesses Interviewed

The Examiner examined documents deemed relevant for the investigation, including:
Complaint

Court File:

Petition for Emergency Guardianship – May 28, 2019

Petition for Guardianship – May 28, 2019

Visitor's Report – June 12, 2019

Findings of Fact, Conclusions of Law and Order for Limited Guardianship – July 10, 2019

Letters of Guardianship – July 10, 2019

Petition for Guardianship and Conservatorship – April 8, 2022

Physician Assistant's Statement in Support of Petition – April 8, 2022

Visitor Report – April 26, 2022

Examiner's Report – May 1, 2022

Physician's Statement – May 9, 2022

Order Granting Guardianship and Conservatorship – July 15, 2022

Case Notes – Catholic Charities

Email Exchanges – Catholic Charities

This Examiner also conducted interviews of relevant persons, including:

Mr. Russell - Complainant and Person Subject to Guardianship and Conservatorship

Mike Hanratty o/b/o Catholic Charities of Southern Minnesota - Respondent to the Complaint

Brittany Dannehy - Catholic Charities – current Guardian Caseworker for Mr. Russell

Mary Cumiskey – Catholic Charities – Financial

Malory Halliday – Program Director – Horizon Homes, Inc. - IRTS worker at Mr. Russell's

Josephine Bidwell – Mental Health Practitioner – Horizon Homes, Inc. Mr. Russell's facility

Todd Bennick, Winona County Social Services – social worker for Mr. Russell

F. Interview - Todd Bennick, Winona County Social Services

On March 30, 2023, this Examiner conducted an interview with Todd Bennick (“Mr. Bennick”) for Winona County Social Services.

Mr. Bennick has known David in the community for more than 10 years and has worked with David through Winona County for 2 to 3 years. Mr. Bennick has regular communication with and receives updates from Catholic Charities about decision making for David. The requested regular contact to Winona County is indicated in a July 2022 case note provided to this Examiner by Catholic Charities.

Mr. Bennick indicated that the reason for the full guardianship/conservatorship pertained to medical insurance and David's past unwillingness to sign releases and cooperate to secure insurance payments for medical treatment. Mr. Bennick stated that David has approximately \$200,000.00 in medical debt resulting from his refusal to allow facilities and other providers to bill his insurance for his commitments and medical care.

Mr. Bennick reported that Catholic Charities has been receptive in getting back to David and he, personally, reviewed several e-mail chains where David had emailed Catholic Charities five or six times in a day, and they appeared to provide timely responses.

Mr. Bennick stated that David's treatment team made the decision that Medical Assistance was most appropriate for him given all his unique challenges and his past history of not complying with insurance or requests for releases of information. Mr. Bennick indicated he knows that there is a large spend down on Medical Assistance but that was the best choice for David at that time. Mr. Bennick is supportive of and is not opposed to David enrolling with Medicaid in the future once he is out on his own and maintains demonstrated stability within the community.

Mr. Bennick indicated that Mr. Russell's difficulties with securing housing have little to do with decisions made by Catholic Charities, but more so with David's eviction and matters unrelated to his guardianship/conservatorship.

F. Exhibits

No exhibits are included with this report.

G. Status of Investigation

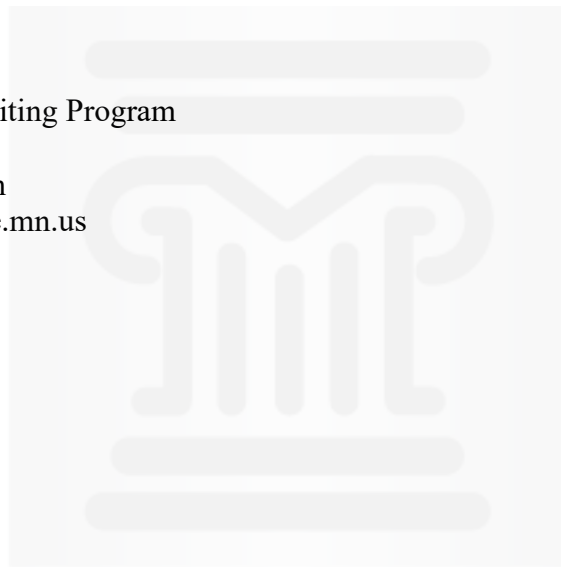
The status of this investigation is “**COMPLETED.**”

This Examiner, on behalf of the Conservator Account Auditing Program of the Minnesota Judicial Branch, continues to be available for further consultation and direction, if requested by the court.

APPROVED BY:

Mark R. Mestad

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