

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF: : JUDGES:
: Hon. Julie A. Edwards, P.J.
THE GUARDIANSHIP OF : Hon. W. Scott Gwin, J.
: Hon. Sheila G. Farmer, J.
SANDRA DEWILDE :
: Case No. 09CA0062
: OPINION

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Probate Division, Case No. 65609

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 14, 2010

APPEARANCES:

For Appellant

JAMES A. FIELDS
117 West Main Street
Suite 206
Lancaster, OH 43130

For Appellee/Guardian

JEFFREY FEYKO
115 North Center Street
Pickerington, OH 43147

For Sandra DeWilde

DAVID A. BHAERMAN
19 West Columbus Street
Pickerington, OH 43147

Farmer, J.

{¶1} On December 23, 2008, appellee, Jeffrey Feyko, filed an application for the appointment of guardianship of the person and estate of Sandra DeWilde. Several evaluations were conducted.

{¶2} On March 23, 2009, appellant, Ms. DeWilde's daughter, Marie Brofman-Crosby, filed her application to be appointed guardian of Ms. DeWilde. A trial was set for March 23, 2009. The matter was continued at the request of Ms. DeWilde's attorney and rescheduled to May 18, 2009.

{¶3} On May 12, 2009, appellee requested a continuance. The request was granted and the matter was rescheduled to August 3, 2009.

{¶4} A trial commenced on said date. On the trial court's own motion, the matter was continued to hear additional testimony. The matter was reconvened on September 21, 2009. Appellant did not appear for trial. Her counsel requested a continuance due to her absence. The request was denied.

{¶5} By entry filed October 7, 2009, the trial court found Ms. DeWilde was in need of a guardian and appointed appellee as guardian. Appellant's application was denied.

{¶6} Appellant filed an appeal and the matter is now before this court for consideration. Assignment of error is as follows:

I

{¶7} "THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S COUNSEL'S MOTION FOR A CONTINUANCE."

I

{¶8} Appellant claims the trial court erred in denying her request for a continuance as she had never previously requested a continuance, and the trial court abused its discretion in so denying her request. We disagree.

{¶9} The grant or denial of a continuance rests in the trial court's sound discretion. *State v. Unger* (1981), 67 Ohio St.2d 65. In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶10} At the commencement of the September 21, 2009 hearing, appellant's trial counsel requested a continuance:

{¶11} "ATTY. FIELDS: And I don't know why she's not here.

{¶12} "THE COURT: Okay.

{¶13} "ATTY. FIELDS: I mean she was here for the last trial date. Um, I, as I spoke with counsel in the hallway, I'm surprised because she's been to everything else and been very adamant about being a part of this so I'm kind of surprised that she's not here. Um, and I advised counsel that at the appropriate point I'd be asking for a continuance, but we'll get to that when the Court is ready.

{¶14} "THE COURT: Okay. Um, the Court had continued this matter for the purposes of hearing the testimony of the APS worker in this case. And, uh, I'm assuming that this is the APS worker in this case?

{¶15} "ATTY. FEYKO: Yes, your Honor, it is. Janet Stout is the APS caseworker who has intimate knowledge about the, um, goings on with this, uh, family.

{¶16} "THE COURT: Okay. Are you ready to proceed?

{¶17} "ATTY. FEYKO: Your Honor, I'm ready to proceed. Um, the uh, I, my witness is Janet Stout that was the former APS caseworker who was assigned to this matter, so if there are no objections to the contrary, I'll, I'll move forward with this.

{¶18} "THE COURT: Mr. Fields, I'm gathering that you're asking for a continuance, is that right:

{¶19} "ATTY. FIELDS: That would be, that would be correct, your Honor.

{¶20} "THE COURT: Why would, why would that, why would we do that?

{¶21} "ATTY. FIELDS: Your Honor, we were here previously. We did have one day of trial regarding this matter and Ms. Brofman-Crosby was here for that hearing. Uh, as I indicated, I am surprised that she is not here. Um, she has been very active, uh, throughout this case. I don't have an excuse as to why she's not here, but I would feel that in, for our application, it would be able to be here in order to hear the testimony and to advise me upon cross-examination of the witness.

{¶22} "****

{¶23} "THE COURT: Mr. Bhaerman, you want to respond?

{¶24} "ATTY. BHAERMAN: Um, I have no objections to the continuance.

{¶25} "THE COURT: Mr. Feyko?

{¶26} "ATTY. FEYKO: Well, your Honor, with no offense to Mr., to, and with all due respect to Mr. Fields, but I would oppose the motion for continuance. The, this matter needs to have some closure to it and, uh, the proposed ward is, is, uh, in an extended care facility and I've been operating under temporary orders as far as authorizing medical care and medical decisions and that sort of thing, but that's not the

most comfortable, uh, position to be in and, uh, I would ask that the motion for continuance be overruled and be allowed to proceed and allow the Court to make a decision as to who should be appointed as guardian.

{¶27} "THE COURT: Yeah. It will be overruled. You can proceed.***" T. at 2-4.

{¶28} Appellant argues that appellee and Ms. DeWilde had requested continuances that were granted so therefore the trial court should have afforded her the same courtesy. The two continuance requests were as a result of the delay in receiving Ms. DeWilde's independent evaluations. These continuances were for a substantive issue, whereas appellant's request at the thirteenth hour was because she was not present at the hearing and her trial counsel was unable to articulate or give a reason for her absence.

{¶29} Upon review, we find no abuse of discretion by the trial court.

{¶30} The sole assignment of error is denied.

{¶31} The judgment of the Court of Common Pleas of Fairfield County, Ohio, Probate Division, is hereby affirmed.

By Farmer, J.

Edwards, P.J. and

Gwin, J. concur.

s/ Sheila G. Farmer

s. Julie A. Edwards

s/ W. Scott Gwin

JUDGES

SGF/sg 824

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:
THE GUARDIANSHIP OF
SANDRA DEWILDE

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JUDGMENT ENTRY

CASE NO. 09CA0062

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Fairfield County, Ohio, Probate Division, is affirmed. Costs to appellant.

s/ Sheila G. Farmer

s. Julie A. Edwards

s/ W. Scott Gwin

JUDGES