

Important case decision from the Minnesota Court of Appeals, regarding harassment restraining orders on behalf of a person subject to guardianship and the right of the person to visitation with others of their choice.

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Harris, Banks v. Gellerman, A20-0527 Filed January 25, 2021, \_\_\_ N.W. 2d \_\_\_ (Minn.App. 2021).

When reviewing a petition for a Harassment Restraining Order (HRO) on behalf of a person subject to guardianship, the court must consider not only the HRO request, but also the relevant provisions of the bill of rights of persons subject to guardianship or conservatorship, particularly the right of visitation, in conjunction with the specific provisions of the guardianship order itself.

In this case, the guardian acquired an HRO against a person after a previous HRO expired. The HRO prohibited contact between the person the subject to the HRO and the person subject to guardianship. The person subject to guardianship objected to the HRO, and the person subject to the HRO appealed.

The person subject to guardianship said she wanted the visits. Therefore, the guardianship bill of rights and the right to visitation had to be taken into account when considering whether to grant an HRO. The court of appeals found that the lower court which granted the HRO was in error because it:

- Did not consider the guardianship order to determine what rights were retained by the person subject to guardianship;
- Did not determine what the person subject to guardianship wanted;
- Did not determine the person subject to guardianship's legal representation status (because she was represented at an initial hearing but that attorney later withdrew); and
- Did not even speak with the person subject to guardianship (who was somewhere in the courthouse during the hearing).

The MN Court of Appeals stated:

...courts have an affirmative duty in any proceeding involving a person subject to guardianship to examine the bill of rights, determine the rights retained by the person in question, and enforce those retained rights...Given the dispute over visitation, Banks's rights should have been front and center here. As a result, the district court had an obligation to not only hear from the guardian when considering the HRO request, but to also consider Banks's rights as a person under guardianship. The failure to consider Banks's rights was especially troubling here, where it was explicitly raised in a motion to dismiss, but we note that the obligation to consider the bill of rights in an HRO proceeding involving a person under guardianship is not limited to cases in which the issue is explicitly raised by a party....This obligation to consider an individual's preference

regarding visitation predates the bill of rights. In *In re Guardianship of Kowalski*, we emphasized the importance of both the protected person's best interests, as well as their stated preference regarding visitation. 382 N.W.2d 861, 867 (Minn. App. 1986), review denied (Minn. Apr. 18, 1986).

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