

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

In Re the Estate of:)	No. ED91483
WILBUR JACK POSEY,)	
Incapacitated and Disabled, Appellant,)	Appeal from the Circuit Court
)	of the Montgomery County
v.)	
)	
JULIA POSEY BERGIN, Respondent.)	Filed: November 3, 2009

Wilbur Jack Posey (Father) appeals the trial court's denial of his Motion to Compel Visitation and Communication Privileges and/or for Removal of Guardian and his Petition to Restore Ward/Protectee and to Terminate Guardianship/Conservatorship.

AFFIRMED.

Division Four holds: The trial court gave due consideration, as required by Section 475.082.5, to Daughter, Father's guardian and conservator, and her exercise of any discretion vested in her by law. The trial court did not err in its refusal to act as "co-guardian" and second-guess Daughter's decisions regarding Father's visitation and communication privileges. Moreover, when viewing the evidence in the light most favorable to the trial court's judgment, we find the trial court did not err in ruling that Father had failed to prove by a preponderance of the evidence that Father is no longer incapacitated to the extent that he is capable of receiving and evaluating information and communicating decisions to meet his essential requirements for food, clothing, shelter and safety. The trial court also did not err in its refusal to remove Daughter as Father's guardian and conservator, as she was acting in Father's best interest and placed him in the least restrictive environment to assure his receipt of medical attention and other necessary care, according to Section 475.120. Finally, the trial court correctly declared and applied the law in finding that Father is not allowed to vote due to his incapacity, as stated in Section 115.133.2. Each of Father's points on appeal is denied.

Opinion by: Kurt S. Odenwald, P.J.
Kenneth M. Romines, C.J., and George W. Draper III, J., Concur.

Attorney for Appellant: Matthew J. Rossiter and Lisa M. Montano

Attorney for Respondent: Dennis G. Schafer

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