# MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

**LEE ALLEN FISHER,**

**Appellant,**

**v.**

**NINA M. SLINGER,**

**Respondent,**

**and**
**KEITH A. MAYER,**

**Respondent.**

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DOCKET NUMBER WD84058

**Date: October 26, 2021**

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Appeal from:

Jackson County Circuit Court
The Honorable Mark A. Styles, Jr., Judge

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Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt and Edward R. Ardini, Jr., Judges

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Attorneys:
Michael P. Swisher, Lee's Summit, for appellant.
John S. King, Blue Springs, and Linda P. Marshall, Overland Park, for respondents.

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**LEE ALLEN FISHER, Appellant,**
**v.**
**NINA M. SLINGER, Respondent,**
**and**
**KEITH A. MAYER, Respondent.**

WD84058 Jackson County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt and Edward R. Ardini, Jr., Judges

Lee Fisher appeals from the circuit court's judgment denying his motion to be appointed guardian and conservator of his sister, Nina Slinger, and granting Keith Mayer's competing motion for appointment. Fisher contends that the circuit court misapplied the factors for the order of appointment priority in Section 475.050, RSMo Supp. 2020.

**AFFIRMED.**

**Division Three holds:**

(1) The circuit court did not err in finding that Slinger's request to have Fisher appointed as guardian and conservator was not reasonable. Although Slinger testified that she wanted Fisher to be her guardian, substantial competent evidence supported the court's finding that, due to her cognitive decline, Slinger could not communicate a reasonable choice for who should be appointed her guardian and conservator. Moreover, Fisher failed to meet his burden to show that the court's decision was against the weight of the evidence or that the court erroneously declared or applied the law.

(2) The circuit court did not err in finding that Mayer's durable power of attorney, executed by Slinger, gave him priority over Fisher under Section 475.050.1(2). The "springing" nature of Mayer's power of attorney has no effect on Section 475.050.1(2)'s applicability. Fisher's arguments to the contrary are based on the erroneous premise that Slinger could communicate a reasonable choice of guardian and conservator.

(3) The circuit court did not err in finding that Mayer, Slinger's nephew by marriage, has priority over Fisher, Slinger's brother. Mayer meets the requirement for a higher priority under Section 475.050.1(2) because of the durable power of attorney that Slinger executed.

**Opinion by: Lisa White Hardwick, Judge** October 26, 2021

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**