

No. 1-13-1700

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

In re ESTATE OF)	Appeal from the
)	Circuit Court of
JAHSON KEYRON CADLE, a minor,)	Cook County
)	
(ARLEN CADLE,)	No. 2012 P 6374
)	
Respondent-Appellant,)	
)	
v.)	
)	
SHERILYN FLOWERS,)	Honorable
)	Daniel B. Malone,
Petitioner-Appellee.))	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court
Justices Simon and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order appointing petitioner guardian of minor Jahson K. Cadle is affirmed where notice of the guardianship hearing pursuant to the statute is not mandatory.

¶ 2 Respondent Arlen Cadle appeals the order of the circuit court appointing petitioner Sherilyn Flowers guardian of minor Jahson Cadle, and its order denying respondent's motion to vacate the guardianship order. On appeal, respondent contends (1) the trial court's determination that respondent had due notice of the guardianship hearing was against the manifest weight of the evidence; (2) as a result of the lack of notice, the trial court also lacked personal jurisdiction over respondent and subject matter jurisdiction over the guardianship petition as a matter of law. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court entered its order on the guardianship petition on December 20, 2012. Respondent filed a timely post-judgment motion to vacate the order which the trial court denied on April 22, 2013. Respondent filed a notice of appeal on May 21, 2013. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 Minor Jahson Cadle was born on January 13, 2005. At the time his mother, Sandra Flowers, and father, respondent Arlen Cadle, lived in an apartment on 3054 East 79th Street in Chicago, Illinois. When his parents separated later that year, Jahson, Sandra, and his half-brother went to live with Ivy Flowers, Sandra's mother. They lived in a house at 8040 S. Merrill Street in Chicago. Respondent moved to a friend's house on the north side of Chicago. For the next seven years, respondent lived in various places including the basement of Ivy Flowers' house on Merrill Street. Respondent also traveled to California.

¶ 7 Sandra died on April 10, 2012. After her death, Jahson moved in with his aunt, petitioner Sherilyn Flowers. The relationship between petitioner and respondent was strained and they avoided speaking to each other. However, respondent consented to Jahson's move into petitioner's home and voluntarily relinquished the care, custody, and control of him to petitioner on April 16, 2012. Respondent, however, shared responsibility with petitioner's cousin for transporting Jahson to and from school.

¶ 8 In October 2012, petitioner attempted to renew Jahson's medical card and the Illinois Department of Human Services advised her that she should become Jahson's legal guardian to ensure he receives the medical benefits and care to which he is entitled. On November 1, 2012, petitioner sought guardianship of Jahson and filed her *pro se* petition in which she alleged that it is in the best interest of Jahson to appoint a guardian because the mother is deceased and the father's "whereabouts are unknown." Petitioner served her motion and petition to respondent at 3054 East 79th Street in Chicago, on November 3, 2012.

¶ 9 On December 20, 2012, petitioner appeared in court on her petition for guardianship and presented an unopened enveloped addressed to respondent at 3054 East 79th Street, marked as "undeliverable." Respondent did not appear at the hearing and the trial court granted the petition and appointed petitioner guardian of Jahson.

¶ 10 When respondent learned of the guardianship, he filed a timely motion to vacate the order under section 2-1203 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1203 (West 2012)). His motion contained three counts alleging fraud, lack of personal jurisdiction and lack of subject matter jurisdiction. On its own motion, the trial court appointed a guardian *ad litem* for Jahson and continued the motion for a hearing. In his report, the guardian *ad litem* found that Jahson is well-adjusted and loves both petitioner and respondent. However, although

respondent shares a strong bond with Jahson, at present he is unable to provide day to day care of Jahson because he has no stable residence or income. The guardian *ad litem* therefore recommended that it was in Jahson's best interest that petitioner be appointed guardian and respondent continue reasonable visitation.

¶ 11 On April 22, 2013, the trial court issued an order denying respondent's motion, finding that respondent failed to present sufficient grounds to vacate the guardianship order based upon fraud and lack of notice. It noted the contradictory evidence in the case, but found that respondent failed to establish his residence on the date the petition was filed since "[h]e presented no rent receipts or utility bills to show where he lived." The court also found that in its determination, substantial justice was done between the parties because failure to notify respondent of the petition for guardianship "did not entitle him to remove [petitioner] as guardian." Rather, respondent has a right to file a petition to terminate the guardianship under section 5/11-14.1(b) of the Probate Act of 1975 (Probate Act). The trial court's order contained Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) language that "[t]here is no just reason or cause to delay enforcement or appeal." Respondent filed this timely appeal.

¶ 12 ANALYSIS

¶ 13 Respondent contends that the trial court erred in denying his motion to vacate the guardianship order because the evidence shows he did not receive due notice of the guardianship hearing. Respondent filed his motion to vacate pursuant to section 2-1203 of the Code. Whether to grant or deny a section 2-1203 motion is within the sound discretion of the trial court. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009). The court abuses its discretion if it errs in the application of existing law. *Id.*

¶ 14 Section 11-10.1 of the Probate Act provides for the appointment of a standby guardian or guardian of a minor. It states that "it is the duty of the petitioner to give notice of the time and place of the hearing on the petition, in person or by mail, to *** the relatives of the minor whose names and addresses are stated in the petition." 755 ILCS 5/11-10.1(a) (West 2012). However, the "failure to give notice to any relative is not jurisdictional." 755 ILCS 5/11-10.1(a) (West 2012). Thus, courts have determined that the notice requirement contained in section 11-10.1 "is not mandatory." *In re Marriage of Frazier*, 205 Ill. App. 3d 621, 623 (1990). Furthermore, although animosity exists between the parties, there is no indication that petitioner conducted fraud upon the court regarding the need for legal guardianship of Jahson or her qualifications to serve as guardian. See *In re Estate of Neuf*, 85 Ill. App. 3d 468, 470 (1980). In his report, the guardian *ad litem* concluded that although respondent shares a strong bond with Jahson, he is unable to provide day to day care of Jahson because presently he has no stable residence or income. He recommended that it was in Jahson's best interest that petitioner be appointed guardian and respondent continue reasonable visitation. Also, as the trial court noted, respondent maintains his right to file a petition to terminate the guardianship under section 5/11-14.1(b) of the Probate Act. The trial court did not abuse its discretion in denying respondent's motion to vacate.

¶ 15 Due to our disposition of this appeal, we need not consider the remaining issues put forth by respondent.

¶ 16 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 17 Affirmed.