2015 IL App (1st) 141182-U

FIRST DIVISION
August 31, 2015

No. 1-14-1182

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE ESTATE OF LEONARD KOENEN, a Disabled Person	)	Appeal from the
	)	Circuit Court
(DAVID KOENEN,	)	of Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 11 P 6642
	)	
LEONARD KOENEN,	)	Honorable
	)	Jane Louise Stuart,
Respondent-Appellant.)	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court's finding that respondent-appellant was unable to manage his affairs was not against the manifest weight of the evidence, and the trial court did not improperly rely upon the report of the court-appointed expert. The trial court did not improperly revoke respondent's power of attorney for property granting authority to his wife. Petitioner's appointment as plenary guardian of respondent's estate did not create a conflict of interest. We therefore affirm the judgment of the trial court.

¶ 2 After an extensive evidentiary hearing, the trial court found respondent Leonard Koenen unable to manage his own affairs and appointed petitioner David Koenen (Leonard's son) as

plenary guardian of Leonard's estate. On appeal, Leonard contends that the court erred: (1) because the evidence that he was unable to manage his affairs was not clear and convincing; (2) by relying on the report of an expert whom the court appointed even before Leonard was served with summons, and Leonard was denied the right to request either an independent expert or his own physician to examine him; (3) by improperly revoking Leonard's power of attorney for property in favor of his wife, Nancy Sibrava Koenen, and failing to make specific findings or hold a hearing as required by statute; and (4) by appointing David as plenary guardian notwithstanding David's conflict of interest. For the following reasons, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 On November 15, 2011, petitioner-appellee David Koenen filed a "Petition for Appointment of Guardian for Disabled Person" for his father, Leonard Koenen, due to Leonard's poor memory, suspected dementia, and "manifestations of impaired judgment." The petition nominated David as the guardian of Leonard's person, and David and Chris Koenen (David's brother) as coguardians of Leonard's estate.[1]

¶ 5 On November 29, 2011, David filed a motion for an independent medical evaluation. His motion did not recommend any specific physician. Instead, it merely sought appointment of a "physician licensed in the State of Illinois." The trial court granted the motion and appointed Dr. Mark Amdur to evaluate Leonard's ability to make personal and financial decisions. The following day, David issued the summons for the petition, which included a notice that Leonard,

[1] The petition was later amended to remove Chris as a nominated coguardian of Leonard's estate.

as the respondent, had the right to ask the trial court to appoint an independent expert to examine him and to tell the trial court whom Leonard would prefer to be his appointed guardian.

¶ 6 Dr. Amdur examined Leonard on January 7, 2012, and issued a written report concluding that Leonard was "totally" incapable of making personal and financial decisions because he was disabled by dementia.

¶ 7 Leonard's counsel entered an appearance on January 27, 2012. On April 5, 2012, Leonard filed his answer to David's petition. Leonard's answer denied the substantive allegations in the petition and included two physician's reports from Dr. Richard J. Cash (dated January 14, 2012) and Dr. Monica Argumedo (dated January 17, 2012). Both physicians' reports opined that Leonard was capable of making his own personal and financial decisions.

¶ 8 Also on April 5, 2012, Leonard filed a complaint in the Chancery Division of the Circuit Court of Cook County against David, Chris, and Leonard's other son John, alleging, *inter alia*, undue influence and breach of fiduciary duty (the chancery complaint). Leonard's chancery complaint alleged that his three sons exerted undue influence over him and forced him to transfer property to them while he was under duress. Leonard sought an accounting and constructive trust, among other remedies. Leonard's sons denied the substantive allegations of this complaint. That complaint is still pending in the circuit court.

¶ 9 A four-day hearing on David's petition began on April 17, 2013. Immediately before the hearing began, David filed a petition to invalidate Leonard's previously-executed powers of attorney for property and healthcare. David's counsel explained that it was a "housekeeping matter" to enable the court to have jurisdiction to invalidate the powers of attorney if it found Leonard disabled. Counsel confirmed that the petition was only being filed and not set for a hearing. The following evidence was then adduced.

¶ 10 Leonard was born on March 1, 1931, and he was 82 years old at the time of the hearing. Leonard was married to his first wife, Carol, for 46 years until her death in 1996, and their marriage produced three sons: David, Chris, and John. Leonard and his cousin Charles each owned 50% of the family business, Mayfair Lumber, until 1993, when Leonard transferred his ownership interest to his three sons. Leonard worked at Mayfair Lumber all of his life until his retirement in 2010. In addition, Leonard owned a one-half interest in 4825 Lawrence, LLC (the LLC) (the entity that owns the land on which Mayfair Lumber sits), a vacation home in Wisconsin, and his principal residence in Barrington, Illinois. On March 3, 2011, Leonard met Nancy at the furniture store where she worked. At that time, Leonard was 80 years old, and Nancy was 56. They went on their first date around the end of April 2011, became in engaged in mid-August 2011 (at which point Leonard moved out of the Barrington home and into Nancy's condominium), and then married on January 24, 2012. On February 27, 2012, Leonard executed powers of attorney for property and for healthcare, each of which appointed Nancy as his agent.

¶ 11 Dr. Amdur's Testimony

¶ 12 Mark Amdur testified without objection as an expert witness in the area of forensic psychiatry. Dr. Amdur stated that he has a medical degree and has been a board-certified psychiatrist since 1976. He also estimated that he has conducted between 1,200 and 1,300 guardianship evaluations. Dr. Amdur stated that, for a guardianship evaluation, he asks the individual about his income, bill paying, the size of his estate, and similar matters. He then administers the Montreal Cognitive Assessment (MOCA), a twelve-minute test with standardized questions, as well as writing and "copying" tests. According to Dr. Amdur, the MOCA, with a maximum score of 30, is a more difficult test than the Folstein or "mini-mental" examination, and the MOCA detects more substantial cognitive impairment than a mini-mental

test would. In addition, Dr. Amdur said that a common practice when performing guardianship evaluations is to contact friends, family, or a physician to obtain collateral information, if feasible.

¶ 13 Dr. Amdur first met with Leonard at the Barrington home on January 7, 2012, for about two hours. David was also at the home, but Dr. Amdur could not recall whether David was also physically present in the same room where the evaluation took place. Dr. Amdur submitted a written report concluding that Leonard suffered from dementia that had possible "alcoholic or vascular" contributing factors. Dr. Amdur's report indicated that Leonard initially refused to talk for about 20 minutes before the interview began and had called other sons and attorneys. The report also noted that Leonard said that he spent about $15,000 per month but he could not explain how the money was spent. In addition, Dr. Amdur observed Leonard confusing the chronology in terms of when he signed his estate documents (purportedly under duress) and when he became engaged to Nancy. Leonard also stated that he was arrested for driving under the influence of alcohol (DUI) in November or December 2011. Leonard's score on the MOCA was 26 out of 30, at the low end of the normal range, and all points lost were related to memory.

¶ 14 On the next day, Dr. Amdur spoke to David and Chris by phone to obtain collateral information. He learned that Leonard's alcohol abuse had been a "long-standing problem," but Leonard had always refused the family's recommendation to seek treatment. The sons further informed him that Leonard had seen a neurologist three to four years prior who concluded that Leonard had had twenty " 'mini-strokes,' " and Leonard had had at least two hospitalizations in the prior two years (a double knee replacement necessitating a nursing home stay and a hospitalization for acute gout). In addition, Leonard took six medications, not the three that Leonard recalled during the evaluation. Dr. Amdur also learned that Leonard's DUI arrest was

in March 2010, not November or December 2011. Finally, Dr. Amdur learned that Nancy was not the first relationship since the death of his wife and that Leonard had been engaged to a woman named Denise for many years until he met Nancy.

¶ 15 Dr. Amdur met with Leonard again in January 2013 for about 90 minutes. Dr. Amdur submitted a letter to David's attorney stating that, following his evaluation and review of the 2012 report and depositions of Dr. Cash and Dr. Argumedo, his 2012 opinion that Leonard was suffering from dementia and totally incapable of managing his affairs was unchanged. Dr. Amdur further noted that Leonard's condition had deteriorated from the prior year: it was more difficult to keep Leonard to a topic of discussion, Leonard acknowledged his suspicion that his telephone conversations may have been bugged, and his score on the MOCA was now 22 out of 30, which was "fully consistent with dementia."

¶ 16 On cross-examination, Dr. Amdur confirmed that he spoke to David and Chris, but he did confirm the veracity of what David and Chris told him. In addition, Dr. Amdur agreed that the foundation of his January 2012 report was based heavily upon his conversations with David and Chris. Dr. Amdur further conceded that, in January 2012, it would have been difficult to conclude that Leonard was disabled based solely upon Leonard's self-report. Dr. Amdur was also asked whether Leonard could appreciate sharing his assets with his spouse, to which Dr. Amdur responded that Leonard could share some, but not all, of his assets. Dr. Amdur explained that, although he supported Leonard being married for the benefits of companionship, Dr. Amdur's concern was that there was an issue of impulsivity because of the speed with which Leonard met and married Nancy, and then wanted shared all of his assets with her.

¶ 17 On redirect examination, Dr. Amdur stated that there was nothing Leonard's counsel said that would make him question the veracity of what David and Chris said to him. In addition, Dr.

Amdur stated that, with respect to the January 2013 evaluation, his conclusion would still be that, to a reasonable degree of medical and psychiatric certainty, Leonard was totally incapable of managing his person and estate even ignoring all of the collateral information. On recross-examination, Dr. Amdur reiterated that his January 2012 conclusion would have been "a very close call" without the collateral information from David and Chris.

¶ 18 David's Testimony

¶ 19 David testified that he was 45 years old and that he worked at Mayfair Lumber as a manager. David described his relationship with his father, Leonard, as very good, explaining that he had a pleasant working relationship with him and David also would spend time with him going out to dinner, to play golf, or to their vacation home in Wisconsin for fishing. David added that, in the previous five years, he also took Leonard to various medical appointments, including three trips to the Mayo Clinic because of neck pain Leonard had been experiencing. David also took Leonard to Glenbrook Hospital for other medical problems and in 2010, following Leonard's knee replacement surgery, David helped Leonard with his medications and with his follow-up appointments.

¶ 20 Also in 2010, David testified that Leonard asked for his help in preparing an estate plan. According to David, Leonard asked David to gather information about Leonard's assets, and Leonard later agreed to have Chris complete the project. The information was then provided to Harold Bloom, the family's long-time accountant, to prepare the estate plan.

¶ 21 In March 2011, David said that he, Leonard, and Chris attended a meeting with Bloom to discuss Leonard's estate plan and certain business matters at Mayfair Lumber. Bloom recommended liquidating certain of Leonard's life insurance policies which were held by Mayfair Lumber. David stated that he and his brothers each received approximately $900,000

from the policies. In addition, David testified that Leonard informed his sons that an estate plan had been created to effectuate Leonard's wish to minimize his estate taxes. The plan called for Leonard to transfer the Wisconsin house and Leonard's 50% interest in the LLC to his sons.

¶ 22 David added that, on July 2, 2011, Leonard met with David, Chris, John, and Paul Zaleski, a family friend, at Leonard's home in Barrington. According to David, the meeting lasted five or six hours, and Leonard made lunch for them. Leonard first recounted the discussion at Bloom's office and then signed documents allowing Leonard to resign as trustee over his wife's trust, amend his own trust to name his three sons as cotrustees, and gift his 50% interest in the LLC to his three sons. David confirmed that Leonard was free to leave the house during the meeting, and David added that Leonard did leave for about 30 minutes to talk to a neighbor. On the following day, David said that, in accordance with his father's estate plan, David and his brothers transferred the Wisconsin home from Leonard's trust to themselves equally and gave Leonard a life estate in that house.

¶ 23 Around July 14, 2011, David met with his father at the Barrington home to discuss a monthly budget for his father. David said that, based upon information Leonard provided to him, he suggested a $7,000 monthly budget. According to David, his father agreed with the budget but wanted to take a couple of weeks to review it and make any necessary changes. Leonard, however, agreed to let David know the results of his review.

¶ 24 Around mid-September 2011, Leonard set up a meeting with his sons at Bloom's office. When everyone arrived, they asked Leonard to start the meeting. According to David, Leonard asked what the meeting was about and why everyone was there. Nonetheless, David said that, at some point during this meeting, Leonard said, "I only have $50 to my name. I have no money." David testified, however, that his father had an individual retirement account (IRA) with a

balance of about $1.5 million, Leonard had access to it throughout 2011, and the documents Leonard had previously signed did not affect the IRA. David said they reminded Leonard that they had prepared a preliminary budget for him of $7,000 per month and that Leonard was going to review it and let them know if any changes were necessary. Leonard responded that $7,000 per month was too little and he needed $18,000 per month instead. David was surprised because his father "had never spent money like that," "everything [was] paid for," and that Leonard did not travel extensively and lived a very simple life. When David asked why Leonard needed that much money, Leonard could not quantify it and only reiterated that he needed that amount.

¶ 25 Leonard also stated at that meeting that he needed the Wisconsin home transferred back into his name, but David said Leonard could not precisely explain why. Instead, Leonard only stated that he wanted to either retire there or sell the house. David testified, however, that Leonard's reasons did not make sense because Leonard already had a life estate in the Wisconsin home and if Leonard wanted to sell the house, everyone was in agreement that he could do so and purchase a new home.

¶ 26 Also at that mid-September 2011 meeting, Leonard was asked what a "fair amount" of estate taxes Leonard should pay, to which Leonard answered, "$500,000." David said this was out of character for his father, who had previously agreed that his tax liability should be zero and he had praised Bloom for suggesting various transactions after his first wife's death that saved him "a ton of money."

¶ 27 Next, David recounted an incident in October 2011 where he received a call from someone at a Verizon store asking David for some personal information. The store employee explained to David that Leonard was there and wanted a new phone. David asked his father why he wanted a new phone. Eventually, Leonard claimed that he was hearing voices on the phone,

specifically, two men who were talking about "bugging" Leonard's phone, and Leonard was also concerned that someone had "cloned" his phone. David said he was very concerned about this because his phone and Leonard's were on the same plan. David told his father that David would pick him up and they would go the Verizon store, but Leonard would not meet him. This continued for about three weeks, and Leonard never obtained a new phone.

¶ 28 David also confirmed that the house at 40 Valley Drive in Barrington was Leonard's principal residence, noting that Leonard had lived there for over 50 years and built the house by hand. Leonard, however, stopped living there and moved into Nancy's townhome in Schaumburg, Illinois, in August 2011, about five months after they began seeing each other. Leonard would occasionally ask David to go to the Barrington residence to pick up mail and feed the "wild cats" that were outside. David explained that, although there were occasionally deer or cats on the property, he became more concerned because the cats were living in the garage. Leonard had cut a hole in the garage wall so that the cats could enter, and David observed cardboard boxes, blankets, pillows, and rugs for the cats to sleep on. David placed a board over the cat entrance in the garage wall, but Leonard removed it. David noted that the garage was foul-smelling, raccoons were sometimes present in the garage, and the cats would occasionally drag dead animals inside. Leonard also plugged in a 20-year-old space heater in the garage to keep it warm in the winter for the animals and left it running overnight. Concerned that the space heater could be easily tipped over and cause a fire, David would unplug it whenever he saw it left on. Overall, David said he was very surprised at his father's behavior because, about eight to ten years prior, one of the feral cats bit Leonard on the hand. Leonard's hand had

swollen to two- to three-times its normal size, and Chris had to take Leonard to the hospital, where Leonard was diagnosed with a "staph infection" requiring intravenous antibiotics.[2]

¶ 29 On cross-examination, David confirmed that these events occurred around July 2011, when David believed his father was capable of understanding and agreeing to those transactions, but that David filed a petition seeking guardianship of his father four months later, despite the fact that his father suffered no "significant debilitating event" during that time.

¶ 30 Chris's Testimony

¶ 31 Chris testified that he was Leonard's son and worked at Mayfair Lumber as a lumber purchaser. Chris worked at Mayfair Lumber full time since 1985, his work relationship with his father was "fantastic," and he could not imagine a better father-son work relationship. He said that, during the prior ten years, he had seen his father every other day, and almost every Saturday and Sunday. On weekends, Leonard would frequently call Chris asking to come over to either help fix things around the house or to go shopping together.

¶ 32 Chris also noted that his father would frequently take Chris's children, Alex (who was 15 years old at the time of trial) and Natalie (who was 12) to a nearby fishing store or to have a hamburger. Chris added, however, that his father did not attend Natalie's tenth birthday party in October 2011, but a few days after her birthday, Leonard arrived with Nancy driving. Leonard got out of the car, took out a pink bag and gave it to Alex, instructing Alex to give the bag to Natalie. Chris said that Leonard and Nancy then left, and Natalie went into the house with the gift bag. When Natalie reached into the bag, however, it contained a large men's sweatshirt and some opened junk mail. Chris was very surprised at this because he had expected Leonard to have given Natalie a diamond ring that Chris's deceased mother had purchased shortly before

[2] The appellee's brief incorrectly attributes this testimony to Leonard.

dying of brain cancer. Chris stated that his mother had expressed an intention that Natalie, her only granddaughter, should get the ring. Chris further explained that Leonard had had a girlfriend after his wife's death and gave her the ring, but the girlfriend returned the ring when the relationship ended. Chris offered to pay for the ring and Nancy had agreed that the ring should go to Chris's daughter, but Leonard only said that they would "talk about it" later.

¶ 33 Chris also recounted a pizza party with all of Leonard's friends present, and which took place before he gave Natalie the birthday gift. Chris said that all of Leonard's friends were concerned about him and seen "some signals." Chris described his father at the party as confused, claiming that Chris and his brothers had stolen all of Leonard's money and that Leonard did not have any money. Chris, however, explained that Leonard had $1.5 million in cash as well as a Schwab brokerage account with $700,000 in it, and the other transactions were completed as part of a plan to minimize Leonard's taxes.

¶ 34 With respect to Leonard's healthcare, Chris described a phone call he received from Leonard's and Chris's urologist, after which Chris called his father and asked why Leonard did not call the urologist's office after they had called Leonard three times and left messages for him. According to Chris, his father denied getting any message, despite the fact that Leonard had voice mail on his phone. Chris then told his father that, at the urologist's office, he was supposed to go down the hallway to provide a urine sample, and Chris asked why his father went to the hospital lab and "prescribed [his] own test." Leonard said he did not know.

¶ 35 On cross-examination, Chris stated that he did not believe his father suffered from a poor memory or suspected dementia in July 2011, but that he did in November 2011. Chris, however, admitted that he said in an earlier deposition that his father did not have any such impairments in November 2011. Chris also admitted that his father provided a $1.5 million loan to Chris to

purchase a property in Barrington Hills in May 2011. Chris, however, denied that his father was forced to sign any documents at the July 2, 2011, meeting. Chris also stated that Leonard was free to leave his house at any time during the July 2, 2011, meeting, and he did so when Leonard left the house to speak to the neighbors for about half an hour. Chris stated that Leonard was still supposed to pay the bills (including property taxes) on the Barrington and Wisconsin homes.

¶ 36 Chris denied harming his father in any way, but the trial court took judicial notice of an agreed order of protection entered on May 18, 2012. On redirect examination, Chris stated that, until May 18, 2013, the order prohibited Chris from going to either Nancy's condominium (where Leonard resided) or Leonard's prior residence in Barrington. Chris, however, noted that, despite the order, Leonard went to Chris's home in December 2012 to discuss a settlement, and Leonard also asked Chris to come to Leonard's Barrington home during a snowstorm to help pull Leonard's car out of a snowdrift. Chris, however, told Leonard that he could not help him because of the order of protection. Chris also explained that the $1.5 million loan had been given to Chris in installments annually from 2005 through 2008, and that the loan had not been memorialized in writing until 2011.

¶ 37 Leonard's Testimony

¶ 38 Leonard testified on direct examination that he was happily married to Nancy, but his relationship with his sons has changed because of the current "situation" he was in. Leonard rarely saw them around the time of trial, but he had a very good prior relationship with his sons and was very involved in their lives when they were growing up. When asked whether Chris ever abused him, Leonard said Chris took "a couple of swings" at him last year and there was "a little choking." Leonard also confirmed that an order of protection had been entered related to that incident.

¶ 39 Leonard then described the events of on July 2, 2011. At around 9 a.m., his sons arrived at the Barrington home and David parked his car against Leonard's garage. Leonard said that he had an appointment that day, but his sons asked him to go inside, and Leonard also noticed that his cell phone was missing. Leonard said that Paul Zaleski was also present inside the house. During this eight-hour visit, Leonard said that his son John kept "shoving" documents in front of him asking him to sign them. Leonard said that he refused, but his sons were "hollering and pounding on the table." At some point, Zaleski left and went into the living room to watch television for "most of the rest of the day." The shouting and pounding continued until about 5 p.m., at which point Leonard signed the documents under duress. Everyone then left. Leonard said a similar encounter with his sons occurred on July 14, 2011, but it involved his sons demanding that Leonard sign a power of attorney form, which Leonard refused to do.

¶ 40 Leonard also confirmed that he filed the chancery lawsuit against his sons seeking the return of his assets. When asked to describe his assets, Leonard began to read from a list. The trial court directed Leonard to turn the list over, so he would not be able to read from it. Leonard did so, and stated that he owned homes in Barrington and Wisconsin, the LLC, an IRA, and the checking account. Leonard also said that he and Nancy jointly pay the daily expenses of the Barrington home, but that he alone pays the Barrington property taxes and the expenses regarding the Wisconsin home. Leonard testified that he manages his own medication.

¶ 41 On cross-examination, Leonard confirmed that, from about 9 a.m. to around 5 p.m. on July 2, 2011, only his sons and Zaleski were with him at the Barrington home. When confronted with his prior deposition testimony that "Moose Adler" was also present, Leonard stated, "I think Moose and two other guys" were at the July 14, 2011, meeting, instead. Leonard further stated that the allegations in the chancery complaint that his sons improperly benefited from the life

insurance proceeds were inadvertently left in the complaint and should have been taken out. In addition, Leonard disagreed with the chancery complaint's allegation that Chris took unfair advantage of Leonard with respect to the $1.5 million loan Leonard had provided to him. Leonard stated that he is only taking five medications and that he has never taken Lasix—Dr. Cash, his primary care physician, only talked to him about it.

¶ 42 With respect to his finances, Leonard could not account for more than $437,000 in spending from September 21, 2011, to December 31, 2012, only stating that he had spent around $174,000 in legal fees and approximately $72,000 in taxes. Leonard claimed he only had two credit cards, but acknowledged having paid nine from his checking account. Leonard also denied paying any mortgages, but when confronted with a cleared check made payable to "CCO Mortgage," Leonard recalled was the mortgage for the "condo." Leonard testified that it was "not correct" that Nancy was already his wife when she was added to the joint accounts, but he was shown his deposition testimony in which he stated that Nancy was his wife at the time she was added to them. Leonard claimed they were "two little accounts" that they had opened up together prior to marriage, but he was then confronted with documents adding Nancy to the following accounts prior to their marriage: the Bank of America account; the $700,000 Charles Schwab account; to Leonard's $1,500,000 IRA (as the 100% beneficiary); and another bank account. When asked where the other bank account was held, Leonard refused to answer, even after the trial court instructed him to do so. Leonard explained that $200,000 had been "taken" from the account, but he did not report it to the police. Leonard believed the bank had done so.

¶ 43 On redirect examination, Leonard's counsel immediately began by referring Leonard to his statement on cross-examination about "money that was taken out two years ago from this Harris Bank account." The trial court noted opposing counsel's objection that Leonard had not

named the bank. Leonard then testified that it was his bank account, and the money had been taken out to fund another "insurance company [*sic*]" that Bloom had set up with a cash surrender value of $650,000 "or something like that." On recross-examination, Leonard denied saying the $200,000 was stolen from the bank account.

¶ 44 Dr. Cash's Testimony

¶ 45 Leonard presented the testimony of Richard Cash, who testified that he was Leonard's primary care physician.[3] Dr. Cash noted that Nancy (who had been Dr. Cash's patient for about 25 years) had referred Leonard to him. Dr. Cash first saw Leonard on September 1, 2011, and then on October 4, November 7, and January 14, 2012. On September 28, 2012, Dr. Cash administered a mini-mental examination on Leonard, which Dr. Cash described as a superficial screening exam that does not go into "deep depth [*sic*]" as to an individual's cognitive abilities or memory. In addition, Dr. Cash stated that the exam results do not explain everything, but a score of 30 points out of 30 would be a "pretty good" indication that an individual's cognitive abilities are "okay or good." Leonard scored 30 points on the 12-question exam.

¶ 46 On cross-examination, Dr. Cash admitted that he was not an expert in neurology, psychology, or neuropsychology, and that only the September 28, 2012, appointment related to the legal proceedings; the other visits were for medical and "all around" purposes. Dr. Cash further conceded that he only asked Leonard whether he handles his own financial affairs, and based solely upon Leonard's statement, he concluded that Leonard was in fact handling his own financial affairs. Dr. Cash agreed that he did not try to verify this statement and did not ask Leonard about Leonard's finances, because he usually does not do that with patients.

[3] Dr. Cash was not offered as an expert witness.

¶ 47 Dr. Cash also confirmed that, as of September 20, 2012 (eight days before Dr. Cash's mini-mental examination), Leonard had been prescribed six medications (including Lasix), but when Leonard gave his deposition on that same day, he testified that he was only taking three medications. Dr. Cash nonetheless maintained that Leonard was capable of making his own healthcare decisions. Dr. Cash was surprised that, at Leonard's deposition, Leonard could not recall Dr. Cash's name. Dr. Cash, however, still opined that Leonard has "all his cognitive abilities," and reacted to Leonard's "moment of forgetfulness" by stating, "He's an 81[-]year[-]old man. That can happen." Dr. Cash admitted that, when he first saw Leonard, he did not have the medical records from Leonard's prior primary care physician.

¶ 48 Leonard had never lived independently when Dr. Cash met him, but Dr. Cash still opined that Leonard could do so based upon the results of the exam. Dr. Cash was then asked how he learned that Leonard makes breakfast for Nancy and Nancy's mother. Dr. Cash said that Nancy's mother (who had also been Dr. Cash's patient for about four or five years) told him, but he could not recall when Nancy's mother told him that. Dr. Cash indicated that there had been some discussion about "discourse [*sic*]" in the family, but he could not recall when that occurred, and he did not investigate to determine whether Leonard's recollection was accurate. Although he opined that Leonard could live independently, Dr. Cash did not see him do so because Leonard was married when Leonard came to see Dr. Cash in September 2011. Dr. Cash was asked how he learned that Leonard was married in September 2011, but Dr. Cash merely stated that that was what he "gathered" from Leonard and Nancy, and he could not recall any specifics.

¶ 49 Dr. Argumedo's Testimony

¶ 50 Monica Argumedo also testified on behalf of Leonard, stating that she has been a licensed psychiatrist since 2004 with a specialization in forensic psychiatry, and that she works

as a consultation liaison psychiatrist for the Alexian Brothers Medical Center. This was the first time she had been involved in a guardianship proceeding. Dr. Argumedo stated that she first met Leonard in October 2011 at her office for an evaluation following a motor vehicle accident that resulted in Leonard losing his license. Dr. Argumedo said that she conducted a general mental status evaluation, and concluded that there was no psychiatric illness or impairment affecting his ability to drive. She then met with Leonard on January 17, 2012, at Nancy's townhome at his request for an additional evaluation following David's petition for guardianship. She noticed no changes in Leonard since her October 2011 meeting. She also met with him a third time on January 14, 2013. On each of the three occasions, she conducted a general psychiatric evaluation, asking Leonard about his past history, "his life, his career, that kind of thing," and she also had Leonard "do some clock drawing and other techniques" to test his cognitive status. His answers to her questions were appropriate, and he performed well on the tests. He was also neatly dressed and well groomed. She read from her report that Leonard managed his own finances, assisted in the household, managed several properties, and manages his own medical care. Dr. Argumedo opined that, to a reasonable degree of medical and psychiatric certainty that Leonard did not suffer from a mental disease or defect that would impair his ability to function independently, and he was able to totally manage his financial and personal affairs.

¶ 51 Dr. Argumedo's conclusion following her January 2012 meeting with him was substantially the same. She noted that Leonard was neatly dressed, well groomed with good hygiene. He had fluent speech and his mood and emotional expression were appropriate. She added that Leonard was logical and goal directed, coherent, alert and oriented to person, place, time, and situation. She further observed that he was able to count backwards from 100 by 7's, and name the "current, immediate, and past president." He drew a clock without difficulty, his

"insight as to what was going on" was very good, and his judgment was also good. She reiterated that Leonard managed his assets, finances, and the household, and was maintaining properties. In addition, she found that Leonard was able to manage his medical condition, sign for elective procedures, and maintain relationships.

¶ 52 After her third meeting, in January 2013, her conclusion again did not change, and she only noted that there was a neuropsychological evaluation completed earlier that month that had a diagnosis of cognitive disorder, specifically, a "mild cognitive impairment." Nonetheless, Dr. Argumedo kept her prior opinion that Leonard could handle his personal, financial, and healthcare affairs independently.

¶ 53 On cross-examination, however, Dr. Argumedo conceded that she never asked Leonard at any of the three meetings whether he groomed and dressed himself, or performed other activities of daily living (*e.g.*, remembering to shower, etc.) (ADL's) on his own. Dr. Argumedo also agreed that, in January 2012, Leonard had a "timeline of events" with him, but she stated that he only looked at the timeline for specific dates after he described the specific event. She conceded, however, that despite her conclusion that Leonard was able to engage in "reality based discussion," she did nothing to verify whether the events in Leonard's timeline were accurate. In addition, although she wrote in her report that Leonard was able to "list and discuss his assets," she admitted that Leonard brought a list of his assets with him and, "[a]t times," worked from that list during that discussion. Dr. Argumedo further confirmed that she never included in her report the fact that Leonard brought with him a timeline of events and a list of his assets. Dr. Argumedo then recounted that Leonard told her that (1) he owned the Barrington home; (2) the Wisconsin property had been signed over to his "son," but that Leonard should own the home; (3) Leonard was going to sign over his IRA to Nancy; (4) he owned a limited partnership with

"A.J. Rogers"; and (5) Leonard owned the Mayfair Lumber property. Dr. Argumedo, however, stated that, although Leonard brought the Wisconsin title and the IRA documentation with him, she did not verify whether his recollection was accurate as to the other assets. Dr. Argumedo also testified that Leonard brought a list of medications with him, but she neither disclosed that in her report nor verified whether the four medications listed were the only ones prescribed to him. Finally, she agreed with Dr. Leahy that Leonard suffered "mild" cognitive impairment.

¶ 54 Dr. Leahy's Testimony

¶ 55 Brian Leahy testified that he was a clinical neuropsychologist and director of the Neuropsychology Service at Alexian Neuropsychology Science Institute. Dr. Leahy stated that he met Leonard at his office a few months prior to the time of his testimony at the hearing. Dr. Leahy conducted a clinical interview, asking Leonard about his history, background, and any current symptoms he was experiencing. Dr. Leahy said there was nothing that appeared unusual during this interview, and Leonard appeared well-groomed and neatly dressed. Dr. Leahy then had 17 tests administered to evaluate Leonard's cognition. Dr. Leahy explained that he chose the tests, but a technician would administer the tests in another room. Dr. Leahy was not in the room during the administration of the tests but would periodically enter the room to see how the testing was going and determine whether any changes or additional tests were needed. He described his test as much more comprehensive than the MOCA. According to Dr. Leahy, Leonard's score in the test of verbal memory (*i.e.*, the ability to learn and remember a list of words) and Leonard's performance in the "immediate recall" were mildly impaired. Dr. Leahy added that, after a delay, his performance was considered moderately impaired, but his recognition memory after that was mildly impaired. Leonard's ability to rapidly generate words starting with a given letter was also mildly impaired. Leonard otherwise scored in the average or above-average range in

the other tests. Dr. Leahy opined that Leonard was able to make personal and financial decisions without the need of a guardian, but Dr. Leahy only asked Leonard in general about his assets and had no corroborating evidence to verify the accuracy of Leonard's responses. In essence, Leonard only provided a "very general description that seemed reasonable."

¶ 56 On cross-examination, Dr. Leahy confirmed that he was neither a medical doctor nor a psychiatrist, but had a doctorate. In addition, Dr. Leahy agreed that Leonard's test results were compared only to people his own age and not the entire population. Dr. Leahy further noted that Leonard informed him that Leonard had had as many as 20 lacunar infarctions, or mini-strokes, and Dr. Leahy agreed that those mini-strokes could affect mental functioning and cause vascular dementia. Dr. Leahy further conceded that he did not meet with anyone other than Leonard in his evaluation, even though it is his common practice to meet with family members. Dr. Leahy acknowledged he did not evaluate Leonard's ability to remember his assets because he did not have any confirmatory information. He also did not determine whether Leonard did in fact manage his finances independently, and he did not ascertain whether Leonard had a jointly-owned or individually-owned checking account.

¶ 57 Nancy's testimony

¶ 58 Nancy then testified that, on July 2, 2011, she had tried calling Leonard (who was at the Barrington house), but he did not answer. She went to the house out of concern, and, although they were "just dating" at that time, their relationship was serious. She rang the bell, and Chris eventually answered, telling her that Leonard was sleeping and to leave. Nancy said Chris was animated and threatening, so she left, but she admitted on cross-examination that she did not call the police after she left. In addition, she conceded that, although they were "just dating" as of July 2, Leonard had bought her a $40,000 car.

¶ 59 The Trial Court's Decision and Post-Hearing Events

¶ 60 On July 22, 2013, the trial court issued a written order denying David's petition for the appointment of a guardian of Leonard's person, and finding that the power of attorney for health care that Leonard signed in February 2012 naming Nancy as his agent "remains in effect." However, the trial court granted David's petition for the appointment of a guardian for Leonard's estate, and named David as the guardian. The trial court's order noted that its finding was based upon the "evidence adduced at the hearing *** on April 17, 18, 19, [and] 26, 2013," as well as Dr. Amdur's report. On August 7, 2013, the trial court appointed a guardian *ad litem* (GAL) for Leonard. On August 15, 2013, the trial court directed the GAL to review the chancery action and to participate in and discuss possible settlement. Finally, on December 11, 2013, the trial court issued another written order that "expanded" the GAL's role to take part in "any and all matters relating to" Leonard.

¶ 61 On August 6, 2013, Leonard filed an emergency motion for reconsideration, but nine days later, the trial court granted his emergency motion to withdraw the motion to reconsider so that he could appeal the trial court's July 22, 2013, order. Leonard duly filed his notice of appeal on August 15, 2013, but on August 21, 2013, he filed both another emergency motion to withdraw it and also an "amended" motion to reconsider. The trial court allowed Leonard to withdraw his notice of appeal. Finally, on October 4, 2013, Leonard filed a "First Amended" motion to reconsider. The trial court denied this motion on April 14, 2014.

¶ 62 This appeal followed.

¶ 63 ANALYSIS

¶ 64 At the outset, we note that the brief that Leonard's original appellate counsel has filed with this court violates Supreme Court Rule 341(h)(6).[4] Specifically, the statement of facts does not contain the facts "necessary to an understanding of the case, stated accurately and fairly without argument or comment." Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Instead, Leonard's appellate counsel filed a statement of facts that omits a good deal of the substantial evidence which was unfavorable to him. It makes no reference whatsoever to David's unchallenged testimony with respect to the feral cats that Leonard had allowed to live in his garage or Leonard's insistence that his cell phone was being "bugged," the cross-examination of Leonard's opinion witnesses, or Dr. Amdur's testimony with respect to Leonard's test results in January 2013 showing clear impairment. Rule 341 is not a cherry-picking license; it is a strict rule of appellate procedure. As we stated in *North Community Bank v. 17011 South Park Avenue, LLC*, 2015 IL App (1st) 133672, ¶ 14:

> "Supreme court rules are not mere suggestions; they are rules that must be followed. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. 'Where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal.' *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). In addition, this court may strike an appellant's brief for noncompliance with Rule 341. See *People v. Thomas*, 364 Ill. App. 3d 91, 97 (2006)."

[4] After it filed the reply brief, Leonard's original appellate counsel was replaced by a different law firm, which has appeared and orally argued this case.

We recognize, however, that striking a brief or dismissing an appeal is a particularly harsh sanction. *Id.* (citing *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005)). Although this deficient brief complicates, but does not completely frustrate, our review, we will consider the merits of the appeal.

¶ 65 The Evidence Underlying the Trial Court's Finding

¶ 66 Leonard first argues that the trial court erred in finding him totally unable to manage his estate of financial affairs. He argues that the evidence supporting the trial court's finding was far from clear and convincing; rather, according to Leonard, it established that he was "completely self-sufficient and independent," and he asks that we reverse the trial court's findings and reinstate his appointment of Nancy as his agent under his power of attorney for property.

¶ 67 Under the Probate Act of 1975 (the Act), a trial court may find a person disabled "only if it has been demonstrated by clear and convincing evidence," where disabled is defined in relevant part as an individual who is incapable of managing his person or estate due to mental deterioration. 755 ILCS 5/11a-2, 11a-3 (West 2014). Whether an individual suffers from a mental disability is a "uniquely factual question for the trial court," and we will not disturb those findings unless they are against the manifest weight of the evidence. *In re Estate of Wellman*, 174 Ill. 2d 335, 349 (1996). A trial court's finding is not against the manifest weight of the evidence unless an opposite conclusion is clearly evident; in other words, if there is any evidence in the record to support the trial court's judgment, we must do so. *In re Estate of Wilson*, 238 Ill. 2d 519, 570 (2010). We may neither reweigh the evidence nor make our own, independent assessment of the witnesses' credibility. *Id.*

¶ 68 In this case, there is ample evidence supporting the trial court's judgment. Dr. Amdur testified that, at the first meeting with Leonard in January 2012, Leonard initially refused to talk

for about 20 minutes before the interview began until he spoke to his sons and his attorneys. Leonard could not account for his monthly expenditures of about $15,000, and Leonard confused the timeline of events, such as when he signed his estate documents, when he became engaged to Nancy, and when he was arrested for DUI (which Leonard believed happened in November or December 2011, but in reality occurred in March 2010). Finally, although Leonard's score on the MOCA at the very bottom end of normal, all points that were lost related to memory. Dr. Amdur also learned from Leonard's sons that Nancy was not the first relationship since the death of his wife and that Leonard had been engaged to a woman named Denise for many years until he met Nancy. In the second meeting with Dr. Amdur in January 2013, Dr. Amdur testified that Leonard had difficulty keeping to the topic of discussion, Leonard admitted he believed his telephone was bugged, and his score on the MOCA was now 22 out of 30, fully consistent with dementia. Dr. Amdur also stated his concern that Leonard's marriage to Nancy (and wish to share all of his asserts with her) was impulsive. We note that there was no evidence presented to contradict anything Leonard's sons told Dr. Amdur.

¶ 69 Leonard's testimony revealed his lack of knowledge with respect to whether he was paying his wife's mortgage, how many credit cards he had, how many medications he was taking, and how he had spent over $400,000 from his IRA. Leonard confirmed that he owned homes in Barrington and Wisconsin, he had an ownership interest in the LLC, and he also had an IRA and a checking account. Leonard, however, did not realize that he paid nine (and not just two) credit cards from his checking account, and failed to recall that he paid Nancy's mortgage until he was confronted with a cleared check made payable to "CCO Mortgage."

¶ 70 Leonard was also confused as to who was present at the July 2, 2011, meeting, testifying at his deposition that Zalesky, Adler, and his sons were present and then testifying at the hearing

that only Zalesky and his sons were present. Leonard also disavowed the allegations in the Chancery complaint that his sons improperly benefited from the life insurance proceeds and that Chris took unfair advantage of Leonard with respect to Leonard's $1.5 million loan to him.

¶ 71 As to his healthcare, Leonard claimed that he only takes five medications and he has never taken Lasix—Dr. Cash, his primary care physician, only talked to him about it. He was later shown his medical records—which Dr. Cash confirmed—indicating that he was prescribed Lasix. Chris also noted that Leonard failed to submit to a laboratory test at their urologist's office, instead going to the hospital lab and "prescrib[ing]" his own test.

¶ 72 With respect to Leonard's finances, although "everything" was paid for, Leonard stated that he needed $15,000 monthly, rather than the $7,000 he initially agreed to, but Leonard could not explain why he needed more than double the amount originally budgeted for him. In addition, although Leonard had a life estate (via a trust) in the Wisconsin home, Leonard nonetheless insisted on having the house transferred back to him so that he could retire there or sell the house. Leonard also could not recall correctly whether Nancy was added to his accounts before or after marriage. When there was reference to an unspecified additional bank account, Leonard refused to provide details about that account, claiming that $200,000 had been improperly "taken" (but not stolen) from the account, but he conceded that he never reported this to the police. When Leonard's counsel prompted Leonard about money taken from "this Harris Bank account," Leonard then changed his testimony, explaining that the money had been used to fund an insurance policy "or something like that."

¶ 73 Finally, David's and Chris's testimony (none of which was included in Leonard's appellate brief) was unchallenged. David spoke of the feral cats living in the garage, resulting in the presence of raccoons, dead animals, and a foul smell. David also noted his concern about a

space heater that had been left on unattended in the garage. Leonard also exhibited unfounded concern that his phone was being bugged, and he claimed he could hear two people speaking about it over the phone. Finally, Leonard's birthday "gift" to Chris's 11-year-old daughter (Leonard's only granddaughter) was a large men's sweatshirt and opened junk mail.

¶ 74 These facts establish that there was overwhelming evidence to support the trial court's finding that Leonard was totally incapable of managing his person and estate. The opposite conclusion is not "clearly evident" and there is at least some evidence in the record to support the trial court's judgment, so the trial court's finding is not against the manifest weight of the evidence. *Wilson*, 238 Ill. 2d at 570. We therefore reject Leonard's claim.

¶ 75 Leonard nonetheless also argues that the trial court's order was not specific enough because the written factual basis for its findings was the "evidence adduced at the hearing *** on April 17, 18, 19[,] & 26, 2013," as well as Dr. Amdur's report. Leonard asserts that, absent a "higher standard of specificity," he must "guess as to which facts the trial court relied on," and whether the trial court relied at all upon his own opinion witnesses. Leonard's concerns are unwarranted.

¶ 76 Section 11a-12(c) of the Act provides in pertinent part that "If the respondent is adjudged to be disabled and to be totally without capacity ***, the court shall appoint a plenary guardian for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings." 755 ILCS 5/11a-12(c) (West 2012). It has long been held, however, that requirements under the Act are merely procedural. See *In re Estate of Steinfeld*, 158 Ill. 2d 1, 16 (1994) (citing *In re Estate of Mackey*, 85 Ill. App. 3d 235, 237 (1980)).

¶ 77 Moreover, the law presumes that statutory language that issues a procedural command to a government official indicates a directory intent. *In re Rita P.*, 2014 IL 115798, ¶ 44 (citing *In*

re M.I., 2013 IL 113776, ¶ 17). This presumption may be overcome, and the provision will be read as mandatory, under either of two conditions: (1) when the statute contains language prohibiting further action, or indicating a specific consequence, in the case of noncompliance; or (2) when the right or rights the statute was designed to protect would generally be injured by a directory reading. *Id.* (citing *M.I.*, 2013 IL 113776, ¶¶ 17-18). The first condition is plainly inapplicable: nowhere in section 11a-12 does it indicate that the absence of factual findings would prohibit the entry of the order, nor is there any language identifying a specific consequence for noncompliance with the statutory command.

¶ 78 With respect to the second condition, Leonard's appellate counsel provides no argument whatsoever. In *Rita P.*, our supreme court described certain rights that the statute in that case was designed to protect, namely, the respondent's appellate rights, her liberty interest, and her right to notice. See *Rita P.*, 2014 IL 115798, ¶ 46 (noting that "the parties" identified the rights). In this case, however, we decline to examine the applicability of those rights for two reasons. First, the *Rita P.* court did not indicate that the rights it examined were applicable to all cases and all statutes. *Id.* Second, this court is not a repository into which the appellant may dump the burden of argument and research (see *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56), nor is it proper for this court to act as an advocate or seek error in the record (*U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009)).

¶ 79 In any event, as we noted above, no guessing here is required: a mere cursory review of both the transcript of proceedings for the dates referenced in the trial court's order and also Dr. Amdur's report reveal ample evidence supporting the trial court's finding that Leonard was disabled and in need of a plenary guardian. Leonard therefore suffered no prejudice and his requested relief—that we vacate the order and remand for specific factual findings—would serve

no purpose. See *Estate of Mackey*, 85 Ill. App. 3d at 237 (finding remandment unnecessary where the ward was deceased and "the evidence presented fully established that she was entirely incapable of managing her estate and business affairs"). This is particularly true since Judge Stuart has retired, and her replacement would have to make findings of fact based only on a transcript, a document which is equally available to us.

¶ 80 Finally, Leonard's reliance upon *People v. Rogers*, 160 Ill. App. 3d 639 (1987), is misplaced. As David points out, *Rogers* concerned direct criminal contempt of court, not a guardianship proceeding. *Id.* at 641. There also was no transcript of proceedings relating to the contemnor's conduct or comments, and the court stated that it was unclear what specific conduct resulted in the contempt citation. *Id.* at 641-42. Here, there was a transcript of proceedings, and the factual underpinnings of the trial court's findings are crystal clear. *Rogers* is thus unavailing.

¶ 81 Dr. Amdur's Appointment and Report

¶ 82 Leonard next claims that the trial court erred in relying upon Dr. Amdur's report and evaluation. Leonard argues that the trial court should not have appointed Dr. Amdur when Leonard was not represented by counsel and before Leonard was served with the summons on the guardianship petition, which "deprived [him] of the right he had to request an independent expert to examine him, or the ability to request that [Leonard's] existing physician conduct such an examination." Leonard thus concludes that, since the trial court erred in appointing Dr. Amdur, it also erred in relying upon his report. This claim is meritless for several reasons.

¶ 83 At the outset, as David points out, Leonard has forfeited this claim by failing to raise it until his third motion for reconsideration. Leonard does not address this in his reply brief. Arguments raised for the first time in a motion for reconsideration in the circuit court are forfeited on appeal. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 36 (citing

Caywood v. Gossett, 382 Ill. App. 3d 124, 134 (2008)). The purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence that was not available at the time of the original hearing, changes in existing law, or errors in the court's application of the law. *Id.* (citing *Caywood*, 382 Ill. App. 3d at 133). Here, Leonard raised no objection: (1) when Dr. Amdur was appointed and the summons was issued; (2) when Dr. Amdur's report was tendered to the trial court; (3) when Leonard filed his appearance; (4) when Leonard filed his answer; or (5) when Dr. Amdur testified. For this reason alone, we may reject this claim.

¶ 84 Forfeiture aside, Leonard's claim also fails because it is squarely contradicted by the record. Here, setting aside the fact that David only requested a licensed physician to conduct the evaluation and not Dr. Amdur specifically, Leonard obtained not one, but *three* evaluations, all of which opined that he was not disabled and did not need a plenary guardian. Leonard's argument that this alleged error denied him the right to request his own independent evaluation is thus belied by the record. Finally, section 11a-9(b) of the Act merely states that, if there is no report attached to the petition, the trial court shall order "*appropriate* evaluations to be performed by a qualified person or persons and a report filed with the court at least 10 days prior to the hearing." (Emphasis added.) 755 ILCS 5/11a-9(b) (West 2014). Nothing in this section requires that the alleged disabled person receive service of the petition prior to the appointment of an individual to perform an evaluation. Leonard's claim is meritless.

¶ 85 The Revocation of Leonard's Power of Attorney for Property

¶ 86 Leonard next claims that the trial court improperly revoked the power of attorney for property he executed that appointed Nancy as his agent. Leonard argues that the trial court was required by statute to make factual findings, but it failed to do so, and it failed to hold a hearing on David's petition to revoke the POA.

¶ 87 Section 2-10(a) of the Illinois Power of Attorney Act provides in relevant part as follows:

> "Upon petition by any interested person ***, with *** a finding by the court that the principal lacks either the capacity to control or *** revoke the agency, the court may construe a power of attorney, review the agent's conduct and grant appropriate relief." 755 ILCS 45/2-10(a) (West 2014).

¶ 88 Both parties direct us to *In re Estate of Doyle*, 362 Ill. App. 3d 293 (2005), *appeal denied*, 218 Ill. 2d 539 (2006). In that case, the ward's daughter argued that the trial court's appointment of the ward's son-in-law as guardian of the ward's estate was void because the ward had previously executed a document giving the daughter power of attorney over the ward's property. *Id.* at 299. The court rejected that argument holding that, although no petition to revoke the power of attorney had been filed and no hearing had been held, the trial court "implicitly revoked" the ward's power of attorney under section 2-10 of the Act. *Id.* at 299-300. The court further commented that the petitioners did file a petition seeking guardianship over the ward, all interested persons knew of the guardianship petition, and there were "numerous hearings where the trial court heard testimony from a variety of witnesses." *Id.* The *Doyle* court concluded that, when the trial court found the ward a disabled person as defined in the Act and incapable of managing her own estate and person, "Implicitly, the court found [the ward] lacked the capacity to control or revoke the power of attorney." *Id.* at 300.

¶ 89 We agree that *Doyle* controls the outcome here. In this case, David filed a petition seeking guardianship over Leonard, all parties were aware of the petition, and the trial court held a hearing that included the testimony of multiple witnesses. Unlike *Doyle*, there was also a petition to revoke the power of attorney that had been filed, albeit immediately before trial. As

in *Doyle*, the trial court found Leonard totally disabled and appointed David as the guardian of his estate. In doing so, the trial court likewise implicitly found that Leonard lacked the capacity to control or revoke his power of attorney for property.[5]

¶ 90 David's Conflict of Interest

¶ 91 Finally, Leonard asserts that the trial court erred in appointing his son David as plenary guardian over Leonard's estate because of a conflict of interest. Specifically, Leonard argues that the trial court erred in failing to take into account the chancery complaint Leonard filed against David. Leonard concludes that, since David is "directly adverse to [Leonard] in a substantial piece of litigation," David should be disqualified from serving as Leonard's guardian.

¶ 92 In selecting a guardian for a disabled adult, a court may consider various factors, including the recommendations of persons with familial ties, the relationship between the disabled person and the proposed guardian, conduct by the disabled person prior to being adjudicated disabled that would demonstrate trust in the proposed guardian, prior actions by the proposed guardian that indicate concern for the disabled person's well-being, and the proposed guardian's ability to manage the incompetent's estate. *In re Estate of Johnson*, 303 Ill. App. 3d 696, 705 (1999). While the court is to give "due consideration" to the preference of the disabled person, the "paramount concern" is the best interest and well-being of the disabled person, regardless of that person's choice. 755 ILCS 5/11a-12(d) (West 2014); see also *Johnson*, 303 Ill. App. 3d at 705. The court's selection of the guardian is discretionary and, thus, its selection will not be disturbed absent an abuse of discretion. 755 ILCS 5/11a-12(d) (West 2014); *Johnson*, 303 Ill. App. 3d at 705. The abuse of discretion standard of review is "the most deferential standard

[5] We note that the trial court allowed Leonard's power of attorney for healthcare (naming Nancy as his agent) to remain in effect.

of review—next to no review at all." *In re D.T.*, 212 Ill. 2d 347, 356 (2004). "A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005).

¶ 93 In this case, there was no abuse of discretion. Although Leonard filed the chancery complaint against David and his other sons, Leonard's own testimony undermines the allegations in his complaint. Namely, Leonard testified that, although his complaint alleged that his sons wrongfully benefitted from the liquidation of the insurance policies, Leonard testified that that allegation should have been removed from the complaint. In addition, the chancery complaint asserted that Chris had taken advantage of Leonard in obtaining a $1.5 million loan from him, but Leonard conceded that this allegation was also unfounded. Under these circumstances, the trial court's decision to appoint David as Leonard's guardian is not "arbitrary, fanciful, or unreasonable," nor is it one that no reasonable person would adopt. See *Lindman*, 356 Ill. App. 3d at 467. Consequently, the trial court did not abuse its discretion, and we must reject Leonard's final claim of error.

¶ 94 Moreover, the record reveals that a guardian *ad litem* has been appointed to protect Leonard's interests with respect to the chancery complaint. See 755 ILCS 5/27-3 (West 2014). This would seem to vitiate any concerns that David, as guardian of his father's estate, would try to sabotage his father's chancery complaint.

¶ 95 Finally, our decision is unaffected by Leonard's citations to *In re Estate of Robertson*, 144 Ill. App. 3d 701 (1986), and *In re Estate of Bania*, 130 Ill. App. 3d 36 (1984). In both cases, the trial court rejected the cross-petitioner's proposed guardian, whereas here Leonard did not file a cross-petition indicating his preferred guardian. *Robertson*, 144 Ill. App. 3d at 703; *Bania*,

130 Ill. App. 3d at 36. In addition, a trial court must examine a variety of factors, including the proposed guardian's prior conduct, in light of the best interest and well-being of the disabled person, the "paramount concern." 755 ILCS 5/11a-12(d) (West 2014); *Johnson*, 303 Ill. App. 3d at 705. As such, this inquiry necessarily turns on the facts of each case. None of the cases relied upon by Leonard convince us that the trial court abused its discretion.

¶ 96 CONCLUSION

¶ 97 The trial court's finding that Leonard was unable to manage his affairs was not against the manifest of the evidence and the evidence in support of the trial court's finding was clear and convincing. The trial court did not improperly appoint Dr. Amdur to conduct an independent evaluation of Leonard, nor was Leonard denied his right to request an independent examination or an examination by a physician of Leonard's choosing. The trial court substantially complied with the statute with respect to the revocation of Leonard's power of attorney for property. Finally, the trial court's appointment of David as plenary guardian of Leonard's estate did not result in a conflict of interest in light of Leonard's chancery complaint against David and his brothers. Accordingly, we affirm the judgment of the trial court.

¶ 98 The guardianship and chancery cases are both still pending. We respectfully recommend that, on receipt of our mandate, the new judge presiding over the guardianship case consider taking action to have the cases assigned together as related cases and transferred to the Elder Law and Miscellaneous Remedies Division.

¶ 99 Affirmed.