2016 IL App (1st) 151010-U

FIFTH DIVISION
June 3, 2016

No. 1-15-1010

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Estate of MARY JOAN MCCABE, an Adjudicated Disabled Person,	)	Appeal from the Circuit Court of Cook County
(Dr. Mary Joan McCabe,	)	
Respondent-Appellant,	)	No. 13 P 6321
v.	)	
William Secinaro,	)	Honorable Daniel B. Malone,
Petitioner-Appellee).	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where the court's determination that respondent was disabled and a guardian should be appointed was not against the manifest weight of the evidence. Moreover, the circuit court did not abuse its discretion when it (1) excluded the respondent's expert witnesses first disclosed in the middle of the trial or (2) admitted a summary of the respondents voluminous financial documents into evidence.

¶ 2 Respondent, Dr. Mary Joan McCabe (Mary), appeals the judgment of the circuit court of

Cook County granting petitioner, William Secinaro's (William), petition to be appointed the guardian of her person and estate. On appeal, Mary contends that: (1) the evidence was insufficient to find her disabled pursuant to section 11a-3 of the Probate Act of 1975 (Act) (755 ILCS 5/11a-3 (West 2012)); and (2) the trial court abused its discretion when it (a) excluded three of her witnesses, Dr. Molly Pachan (Dr. Pachan), Dr. Jason LaHood (Dr. LaHood), and Stephen Hamm (Hamm), and (b) entered a summary of her voluminous financial documents into evidence. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On October 29, 2013, William filed a petition for his appointment as temporary and plenary guardian for a disabled person, his adoptive mother Mary. William alleged Mary was disabled due to his concern that in her advanced age she was being financially exploited.

¶ 5 A. Pretrial Proceedings

¶ 6 On November 5, 2013, the circuit court granted the temporary petition and appointed William as the temporary guardian of Mary's estate. According to the court's order, William was vested with the authority to investigate, collect and safeguard all of her assets, to freeze any bank accounts, and to use her funds for payment of her bills, care, and support. The circuit court further ordered that Mary submit to a medical evaluation to be conducted by either Dr. Mark Amdur or Dr. Geoffrey Shaw (Dr. Shaw). In addition, the court entered an order allowing Mary to obtain her own independent evaluation, by November 19, 2013, to be performed by a physician of her choice. Mary, however, did not obtain an independent medical examination pursuant to this order.

¶ 7 On November 17, 2013, Dr. Shaw conducted a medical evaluation of Mary at her home and opined that she suffered from dementia. According to Dr. Shaw's report, "Her deficits

predominantly involve the frontal lobes of her brain. Even though she is oriented in all areas and has only mild difficulties with short term memory recall she has significant problems with executive functioning." In his opinion, Dr. Shaw stated in his report that Mary was able to make minor decisions regarding her person and her estate, but would need assistance with all important decisions.

¶ 8 Thereafter, on December 16, 2013, the circuit court ordered the parties by January 8, 2014, to submit their witness lists for trial. The record, however, only contains a supplemental witness list filed by William on March 14, 2014. The record does not contain a witness list which includes the names of Dr. Pachan, Dr. LaHood, or Hamm.

¶ 9 B. Trial

¶ 10 The trial commenced on March 19, 2014, and proceeded over the course of five days: March 19-21 and July 14-15. During the trial, William called four witnesses: (1) Mary, the respondent; (2) himself; (3) Dr. Shaw; and (4) Enid Kempe, the guardian *ad litem* (GAL). Mary's financial records from U.S. Bank, Bank of America, JPMorgan Chase Bank, CitiBank, and Bridgeview Bank were entered into evidence without objection. During her case-in-chief Mary testified on her own behalf and offered no exhibits into evidence. The following testimony was adduced at trial.

¶ 11 1. Mary

¶ 12 Mary testified that at the time of the trial she was 81 years old. Mary obtained her medical degree in 1962 and practiced psychiatric medicine until 2011, when she retired. She presently resides alone in a multiunit residence, which she purchased in 1978 and on which there is a small mortgage. In 1979 she married William's father, Donald, and thereafter adopted William and his sister, Sandra. By 1988, however, Mary and Donald separated. The couple

divorced in 1999.

¶ 13 The facts pertinent to this appeal arose in March of 2013, when Mary began taking large elective distributions from her individual retirement account (IRA) which was held at U.S. Bank. Specifically, $17,047 and $14,366 were distributed from her IRA in March and April, respectively. Mary could not recall what she did with these funds, but surmised they were used to pay bills and taxes.

¶ 14 In June of 2013, Mary began speaking on the telephone with an individual named Donald Jordan (Jordan). Mary identified Jordan as "somebody I was told to send money to *** because it's my considered opinion that he was going to pay some of the bills so I could win my sweepstake prize." Mary clarified that she had won a sweepstakes, but in order to claim her prize ($3.7 million and two vehicles), she needed to first provide Jordan with funds for fees. These fees were for insurance, "stamps," and storage of her prize winnings. Mary, however, acknowledged she had nothing in writing that stated she had won such a prize. In addition, Mary could not recall sending Jordan $22,400 in June of 2013, although she did acknowledge wiring $17,000 to the "Jamaican Building Fund" around that same time.

¶ 15 In July of 2013, Mary began speaking with someone named Dr. Richard Reed (Dr. Reed) over the telephone. Dr. Reed informed her that the individual she had been previously communicating with (presumably Jordan) had died. Although she never met Dr. Reed in person, Mary spoke with him on the phone five times a week, including the very morning of the day she testified. Dr. Reed told Mary he was affiliated with the Make a Wish Foundation and resided in Macomb, Illinois, despite the fact he spoke with an accent and had a telephone number with a Jamaican area code.

¶ 16 During their conversations, Dr. Reed promised Mary that she would be receiving her

prize as long as she provided the funds to cover the sweepstakes fees. At Dr. Reed's direction, Mary sent an individual named Jarvis Wagner (Wagner) $10,000 in United States Postal Service (USPS) money orders. The USPS, however, intercepted the funds because, according to Mary, Wagner was "a crook." Dr. Reed also instructed Mary to purchase "Green Dot Money Pack cards." Mary would purchase these cards at Walmart or CVS and then call Dr. Reed to provide him with the pin number from the back of the cards so he could access the funds. Mary testified these cards would be loaded with either $500 or $1,000. Mary further testified she purchased at total of 30 of these cards and provided the pin numbers to Dr. Reed. The last card which she purchased and provided the pin number to Dr. Reed was a week before she testified. According to Mary, she loaded the card with the entirety of her social security check for the month of March.

¶ 17 Mary also testified that she had taken numerous loans from friends and family ranging in amounts from $100 to $10,000 with the average loan amount being $2,500. All of the money she borrowed she forwarded to Dr. Reed so she could claim her prize.

¶ 18 Mary further testified that many accounts she had were closed by the banking institutions due to fraudulent activity: (1) U.S. Bank; (2) Bank of America; (3) JPMorgan Chase; and (4) Citibank. Mary explained that these banks believed she was "being scammed" and accordingly closed her accounts. According to Mary, "Everybody thinks I'm being scammed, but I don't think I am. I couldn't care less."

¶ 19 In addition, Mary testified extensively regarding her charitable contributions. According to Mary, she donates to as many charities as she can, but does not donate when she cannot pay her bills. Mary, however, acknowledged she had not made a mortgage payment in one year, had used her credit cards to their maximum limits, and had not paid her real estate taxes, despite the

fact she was making charitable contributions during this time. Mary testified she intended to retain $200,000 of her prize winnings and use that money to pay her back taxes and bills. When specifically asked by her counsel if Dr. Reed ever told her that the funds she provided him were to be used for a charitable purpose, Mary replied, "No. He tells me that they're for storage and insurance fees and for stamps."

¶ 20 Mary further testified she had sold her automobile and now uses public transportation; however, she did accept a ride home from a man she met at the grocery store because, according to Mary, her bags were heavy and "[h]e was the nicest man."

¶ 21 2. William

¶ 22 William, Mary's adopted son, testified as follows over the course of two days; first on March 20 and then on July 14, 2014. William first met Mary in the fall of 1978. In 1979, William was Mary's administrative assistant, helping her with Medicare and Medicaid billings associated with her psychiatry practice. In assisting her in this manner, William observed Mary's fastidiousness when it came to paying her bills and balancing her checkbook. William and Mary did not communicate during the 1990s, but beginning in 2003 they became quite close; William would speak with her on the telephone twice a month and would visit her four times a year. In 2008, Mary asked him to be the co-owner of her accounts at U.S. Bank "in case anything happened to her." William was subsequently named on Mary's accounts.

¶ 23 On March 22, 2013, Mary telephoned William and informed him that she had won a $100,000 sweepstakes prize. Mary stated that in order to claim the prize she would have to send a check to Canada. William advised Mary that this was a scam and that she should inform the attorney general if she received any similar telephone calls in the future. According to William, Mary agreed it was a scam and indicated she would follow his advice. Thereafter, on April 27,

2013, William visited Mary and she again mentioned the sweepstakes she had won. William reiterated his prior advice. In May of 2013, Mary disclosed to William that she had sent $3,000 to Canada, but acknowledged she had been scammed as she did not receive anything in return.

¶ 24 During a telephone conversation on July 16, 2013, Mary first mentioned to William that she was communicating with Dr. Reed. Mary informed William that she had won $3.7 million in a sweepstakes, but needed to send $20,000 to Dr. Reed in order to obtain the money. Mary asked William for a $13,000 investment loan. William was suspicious and asked Mary if he could come visit her and speak with Dr. Reed over the telephone. Mary said she would ask Dr. Reed. The following day, Mary informed William that he could speak with Dr. Reed.

¶ 25 On July 18, 2013, William visited Mary and spoke with Dr. Reed on the telephone. William testified Dr. Reed informed him he worked at "Cash Awards of Macoma, Illinois," but would not disclose the address, phone number, or names of officers of the company as this was "private" information. Dr. Reed disclosed to William that Mary had won $3.7 million and that he needed $20,000 for insurance, customs, and storage fees. During the course of the conversation, William became upset and told Dr. Reed he believed Mary was being scammed. Dr. Reed stated these were the "rules" as it was "an international sweepstakes." Thereafter, William hung up the telephone, but Dr. Reed called back and spoke with Mary "for a while." After Mary ended her conversation with Dr. Reed, she said to William, "I can't believe you talked to Dr. Reed that way." According to William, Mary did not believe Dr. Reed was orchestrating a scam and told William that she won the money and that he was jealous of her.

¶ 26 It was during this conversation that Mary informed William that her U.S. Bank account had been closed. William and Mary then went to U.S. Bank and spoke with the branch manager, Blanca Duartay (Duartay). According to William, there was a lot of "peculiar" activity on

Mary's account and the fraud department had been notified, subsequently closing her account. Duartay presented William with Mary's June/July bank statement and it demonstrated $131,000 in credits and $131,000 in debits. The credits to Mary's account came from sources such as wire transfers from her IRA and credit card cash advances. William further testified that Duartay informed him that Mary was at the bank "pretty much every day and trying to get money in, out, and other things."

¶ 27 At the end of July, 2013, Mary changed her telephone number and informed William she did not want anything to do with him. According to William, Mary was convinced he was "out to get her." They resumed communicating with one another in October of 2013.

¶ 28 On October 9, 2013, William called U.S. Bank and learned that there was a $67,000 disbursement from Mary's IRA account. William then called Bridgeview Bank, the financial institution Mary was currently banking with, and was informed by Jill Valentine that $24,000 of those funds were deposited into Mary's checking account, but had subsequently been withdrawn.

¶ 29 On October 10, 2013, William was contacted by the USPS inspector's office and was informed that they had intercepted ten $1,000 money orders from Mary to Wagner, a known "mule" for scam artists in Jamaica. William further testified that Mary had sold her automobile for $10,000 in October of 2013. The $10,000, however, was never deposited into any of her bank accounts.

¶ 30 Prior to William testifying regarding Mary's financial records on July 14, 2014, William's counsel sought to have a summary of Mary's financial records admitted into evidence, as William had reviewed the documents on which the summary was based and that it would assist him in his testimony. Mary's counsel objected on the basis that he had received the summary only a few days prior to trial,, that it was 51 pages in length and, thus, he had no ability to verify

the accuracy of the document. Over counsel's objection, the circuit court admitted the summary into evidence.

¶ 31 Regarding Mary's financial documents William testified as follows. In November of 2013, William was appointed temporary guardian of Mary's estate. In executing his duties as temporary guardian, William learned that Mary had not paid her mortgage since July of 2013, that she had obtained a $6,000 personal loan from U.S. Bank, that she had not paid her property taxes or utility bills, and that she owed $70,000 on her credit cards. According to Mary's financial documents that were admitted into evidence, as of January of 2013, the balance of Mary's IRA was $153,308. As of November 2013, however, Mary's only assets were an IRA consisting of approximately $60,000, her social security income of $1,800 each month, and the equity in her real estate. Upon examining her finances further, William discovered that in 2013, Mary had also made charitable donations in excess of $42,000.

¶ 32 3. Dr. Shaw

¶ 33 Dr. Shaw, a qualified expert in geriatric psychiatry, testified as follows. On November 17, 2013, Dr. Shaw examined Mary at her home. According to Dr. Shaw, Mary exhibited two deficiencies: (1) short-term memory recall; and (2) judgment and decision-making capabilities. Dr. Shaw opined that the short-term memory loss Mary displayed, although relatively mild, was consistent with the dementia process. Mary's primary deficit, however, pertained to executive functioning. Executive functioning refers to functions that are organized and executed by the front part of the brain. According to Dr. Shaw, Mary exhibited deficits in her judgment and a lack of insight and a lack of problem solving.

¶ 34 Dr. Shaw further testified that, during a majority of the interview, Mary was focused on financial matters. According to Dr. Shaw, "It became apparent to me that she was under the

belief system that she had won $3.7 million in a sweepstake." Dr. Shaw asked Mary multiple questions regarding how a sweepstake works, how she intended to claim her prize, and how she was able to appraise the situation as being factually true or possibly a scam. Mary's answers to these questions made it apparent to Dr. Shaw that Mary "really lacked judgment as to correctly evaluate that situation."

¶ 35 Based on a reasonable degree of medical certainty, Dr. Shaw diagnosed Mary with frontotemporal dementia. Dr. Shaw testified that frontotemporal dementia is "a form of dementia that predominantly involves the front part of the brain. As a consequence, the functions that are the most affected are those functions that tend to be controlled by that particular part of the brain." According to Dr. Shaw, impairment of judgment, such as what Mary has, is typical of frontotemporal dementia. This type of dementia also interferes with those areas of the brain necessary to make rational decisions, problem solve, or engage in sequential thinking also known as executive functioning. According to Dr. Shaw, a sequential deficit can impair one's ability to manage their personal and financial affairs. Dr. Shaw ultimately opined that Mary requires a guardian both for the person and for financial decisions. Dr Shaw's report of November 24, 2013, was also admitted into evidence without objection.

¶ 36 On cross-examination, Dr. Shaw testified when he examined Mary in November of 2013, she appeared to be well cared for and did not have any other health issues. Dr. Shaw further acknowledged that he spent 60 minutes examining Mary. Dr. Shaw did not perform any diagnostic testing because there was no specific diagnostic test that would have been appropriate for the situation. Dr. Shaw testified, however, that a SPECT scan could be done to confirm that the dementia is in the front part of the brain, but this test is not routinely performed because Medicare will not fund the test and it is very expensive. According to Dr. Shaw, SPECT scans

are "really used more for research purposes."

¶ 37 4. Enid Kempe

¶ 38 Enid Kempe, the GAL, testified as follows. On November 4, 2013, she interviewed Mary at her home. Mary's home was neat, clean, and well maintained. Mary informed Kempe that she objected to the petition for guardianship. Mary admitted to Kempe that she was purchasing "sweepstake tickets" instead of paying her real estate taxes. In addition, when asked about the sale of her automobile, Mary could not recall what she did with the proceeds from the sale. When Kempe showed Mary copies of the postal money orders and informed Mary that William was concerned she was being scammed, Mary became angry.

¶ 39 On May 1, 2014, Kempe again visited Mary to determine if it would be beneficial for her to have someone appointed from the Office of the Public Guardian. Mary indicated that she would prefer William to be her guardian over an individual from the Office of the Public Guardian. After these visits and upon review of Dr. Shaw's report, Kempe testified she recommends a plenary guardian for Mary's estate and person. Kempe further testified that she believed William would make an appropriate guardian for Mary.

¶ 40 5. Mary's Case-In-Chief

¶ 41 On Monday, July 14, 2014, the fourth day of trial, Mary's counsel indicated he would be presenting three expert witnesses on her behalf: (1) Dr. Pachan, (2) Dr. LaHood, and (3) Hamm. According to Mary's counsel, these individuals were experts in the area of clinical psychology with the exception of Hamm who was a clinical psychology extern. William's counsel objected to their testimony arguing that these witnesses were not disclosed prior to the commencement of the trial in March and, in fact, counsel had just become aware of these witnesses on Friday, July 11, 2014. William's counsel argued that allowing the testimony of these three witnesses severely

prejudiced him due to the fact their disclosure was untimely and was made in the middle of the trial after he had already presented a majority of his case. The GAL concurred in William's objection. In response, Mary's counsel argued that Mary had procured the neuropsychological report authored by these witnesses on her own accord and it was also not disclosed to him until July 11, 2014. The circuit court found the disclosure of the witnesses to be untimely and did not allow them to testify.

¶ 42 Mary then testified on her own behalf that between William and the Office of the Public Guardian, she would choose William if a guardian were to be appointed. Mary, however, did not believe she needed a guardian. Mary further testified that in the recent months she has been doing her own grocery shopping and preparing her own meals. According to Mary, she can drive a car and clean her house, but "would like some help once in a while." In addition, Mary testified that she would like to select who assisted her around the house.

¶ 43 C. Circuit Court's Order

¶ 44 In a written order dated July 21, 2014, the circuit court determined Mary was "totally unable to manage her estate or financial affairs" and "lacked some but not all the understanding or capacity to make or communicate responsible decisions concerning the care of her person." The circuit court, thus, granted William's petition and appointed him the limited guardian of the person and plenary guardian of the estate of Mary. The court based its determination on Dr. Shaw's medical report and testimony that Mary has frontotemporal dementia, "very significant problems with executive functioning, very poor judgment pertaining to financial matters, impairment of memory recall, and lacks the capacity to process information and to discriminate between situations which are unlikely to be true." The circuit court further indicated its decision was based on Mary's certified financial documents and the witness testimony of Mary, William,

Dr. Shaw, and the GAL. This appeal followed.

¶ 45 ANALYSIS

¶ 46 On appeal, Mary argues (1) the circuit court's decision to grant William's petition was against the manifest weight of the evidence and (2) that the circuit court erred when it (a) excluded three of her expert witnesses from testifying and (b) allowed the summary of her financial documents to be admitted into evidence. We address each of Mary's arguments in turn.

¶ 47 1. Against the Manifest Weight of the Evidence

¶ 48 A plenary guardian was appointed for Mary under the Probate Act of 1975 (Act) (755 ILCS 5/1-1 *et seq*. (West 2012)). The Act provides, in pertinent part, that the term "person with a disability" means:

> "a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering, or (d) is diagnosed with fetal alcohol syndrome or fetal alcohol effects." 755 ILCS 5/11a-2 (West 2012).

When adjudicating an individual's status, the trial court,

> "may adjudge a person to be a disabled person, but only if it has been demonstrated by clear and convincing evidence that the person is a disabled person as defined in Section 11a-2. If the court adjudges a person to be a disabled person, the court may appoint (1) a guardian of his person, if it has been demonstrated by clear and convincing evidence that

> because of his disability he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person, or (2) a guardian of his estate, if it has been demonstrated by clear and convincing evidence that because of his disability he is unable to manage his estate or financial affairs, or (3) a guardian of his person and of his estate." 755 ILCS 5/11a-3(a) (West 2012).

The Act further states, however, that a "[g]uardianship shall be utilized only as is necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations." 755 ILCS 5/11a-3(b) (West 2012).

¶ 49 When rendering its determination regarding guardianship, the circuit court "shall inquire" regarding:

> "(1) the nature and extent of respondent's general intellectual and physical functioning; (2) the extent of the impairment of his adaptive behavior if he is a person with a developmental disability, or the nature and severity of his mental illness if he is a person with mental illness; (3) the understanding and capacity of the respondent to make and communicate responsible decisions concerning his person; (4) the capacity of the respondent to manage his estate and his financial affairs; (5) the appropriateness of proposed and alternate living arrangements; (6) the impact of the disability upon the respondent's functioning in the basic activities of daily living and the important decisions faced by the respondent or normally faced by adult members of the respondent's community; and (7) any other area of inquiry deemed appropriate by the court." 755 ILCS 5/11a-11 (West 2012).

¶ 50 Whether an individual needs a guardian is a factual determination that is made by the circuit court. *In re Estate of Silverman,* 257 Ill. App. 3d 162, 168-69 (1993). We will not disturb the circuit court's determination on guardianship unless it is against the manifest weight of the evidence. *Id.* A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on the evidence, or when the opposite conclusion is clearly evident from the record. *In re Estate of Savio,* 388 Ill. App. 3d 242, 247 (2009). "Under the manifest weight standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses." *In re Estate of Michalak,* 404 Ill. App. 3d 75, 96 (2010). "A reviewing court, therefore, must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *In re D.F.*, 201 Ill. 2d 476, 499 (2002).

¶ 51 Mary contends the evidence presented at trial was insufficient to support the circuit court's judgment. Specifically, Mary asserts the evidence demonstrated she had a history of charitable giving throughout her life and that no evidence was presented that she suffered from physical incapacity, mental illness, developmental disability, gambling, idleness, debauchery, or excessive use of intoxicants or drugs, fetal alcohol syndrome, or fetal alcohol effects under section 11a-2 of the Act. Mary maintains that Dr. Shaw's testimony was given improper weight by the court where it was based on a one-hour discussion with her and he conducted no diagnostic testing. According to Mary, the evidence presented failed to demonstrate that she suffered from any condition that bears a connection to her alleged inability to manage her estate or person.

¶ 52 Our review of the record reveals the circuit court's decision was not against the manifest

weight of the evidence. As previously discussed, William need only present clear and convincing evidence that Mary qualified as a disabled person under the Act. See 755 ILCS 5/11a-3(a) (West 2012). At trial, Dr. Shaw testified he had diagnosed Mary with frontotemporal dementia, a type of dementia that interferes with the areas of the brain necessary to executive functioning. Dr. Shaw based his opinion on a clinical examination of Mary wherein she exhibited deficits in her judgment and a lack of insight and problem solving as well as short-term memory loss. On cross-examination, Dr. Shaw acknowledged that he did not perform any diagnostic testing, but testified that it was because such testing was expensive and typically used for research purposes. Dr. Shaw was the only medical expert to testify; as discussed herein, Mary did not present any contradictory medical testimony during her case-in-chief. Accordingly, we conclude the circuit court's finding that Mary suffered from frontotemporal dementia was not against the manifest weight of the evidence.

¶ 53 In addition, the testimony and evidence supported the circuit court's conclusion that Mary is unable to manage her estate or her financial affairs. William, Dr. Shaw, and Mary each testified regarding the sweepstakes Mary believed she had won. The uncontroverted testimony clearly and convincingly established that Mary had been sending large sums of money to Dr. Reed to secure a purported $3.7 sweepstakes prize. According to Mary and William's testimony, Mary was to pay Dr. Reed $20,000 in order to receive the $3.7 million prize. The evidence demonstrated, however, that Mary sent Dr. Reed more than $20,000, yet had not received her prize money in return. In spite of this fact, Mary continued to communicate with Dr. Reed and send him money, including on the day she testified. Furthermore, Mary testified she provided the entirety of her March 2014 social security check to Dr. Reed. According to William, this decision left Mary with no funds for food or other necessities. More importantly, the evidence

established that in January of 2013, Mary's IRA contained $153,308, but by the close of trial in July of 2014, due to Mary's withdrawl of the funds, only $60,000 remained in the account. Accordingly, we find the circuit court was provided with an extensive amount of evidence that Mary had been engaging in poor financial decisions to her detriment since March of 2013.

¶ 54 Mary further argues that the evidence reflects a history of charitable giving which was not the result of any mental deterioration. While the evidence does indicate Mary made $42,000 in charitable donations, it also demonstrates that Mary provided tens of thousands of dollars to Dr. Reed. Mary herself testified she did not view the money she forwarded to Dr. Reed to be a charitable donation; when asked whether the funds Mary provided to Dr. Reed were to be used for charitable purposes, Mary replied, "No. He tells me that they're for storage and insurance fees and for stamps." Therefore, the evidence does not support Mary's argument that the evidence reflected a history of charitable giving. Thus, the circuit court's decision appointing William as the plenary guardian of Mary's estate and the limited guardian of Mary's person was not against the manifest weight of the evidence.

¶ 55 2. Trial Errors

¶ 56 Mary next argues that the circuit court erred in excluding Dr. Pachan, Dr. LaHood, and Hamm from testifying on her behalf. According to Mary, Drs. Pachan and LaHood are licensed clinical psychologists while Hamm is a clinical psychology extern. Mary maintains that it was reasonable for her to call these individuals to testify where the core issue at trial is her mental competency. Mary further asserts that she obtained the assistance of these individuals, along with their 18-page report, on her own accord and in good faith. Mary concludes the circuit court abused its discretion when it failed to consider this expert testimony and the report.

¶ 57 Illinois Supreme Court rules concerning discovery are mandatory and strict compliance is

required. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109 (2004). Rule 213(f)(3) requires parties to furnish, among other things, the subject matter, conclusions and opinions of controlled expert witnesses who will testify at trial. Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007). Rule 213(g) limits expert opinions at trial to "information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition." Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2007). Rule 213(f) permits litigants to rely on the disclosed opinions of opposing experts and to construct their trial strategy accordingly. *Firstar Bank of Illinois v. Peirce*, 306 Ill. App. 3d 525, 532 (1999). Rule 213 is further designed "to give those involved in the trial process a degree of certainty and predictability that furthers the administration of justice and eliminates trial by ambush." (Internal quotation marks omitted.) *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 381 (2003).

¶ 58 Rule 219 provides that the circuit court may bar a witness from testifying as a sanction for a party's failure to comply with the discovery rules such as Rule 213. Ill. S. Ct. R. 219(c)(iv) (eff. July 1, 2002). Our supreme court has admonished that, "Where a party fails to comply with the provisions of Rule 213, a court should not hesitate sanctioning the party, as Rule 213 demands strict compliance." (Internal quotation marks omitted.) *Sullivan*, 209 Ill. 2d at 110 (quoting *Peirce*, 306 Ill. App. 3d at 533). "[T]he failure to comply with Rule 213 does not automatically require the exclusion of the noncomplying party's witnesses or testimony." *Zickuhr v. Ericsson, Inc.*, 2011 IL App (1st) 103430, ¶ 80. "In determining whether the exclusion of a witness is a proper sanction for nondisclosure, a court must consider the following factors: (1) the surprise to the adverse party; (2) prejudicial effect of the testimony; (3) the nature of the testimony; (4) the diligence of the adverse party; (5) the timely objection to the testimony; and (6) the good faith of the party calling the witness." *Id.*; see *In re Estate of Doyle*, 362 Ill. App. 3d 293, 302 (2005). "Of these factors, no single factor is determinative." *Shimanovsky v.*

General Motors, Corp., 181 Ill. 2d 112, 124 (1998). "The decision whether or not to impose sanctions lies within the sound discretion of the trial court, and that decision will not be reversed absent an abuse of discretion." *Sullivan*, 209 Ill. 2d at 110. The circuit court abuses its discretion where no reasonable person would take the view adopted by the court. *Trettenero v. Police Pension Fund*, 333 Ill. App. 3d 792, 802 (2002).

¶ 59 We initially observe that on December 16, 2013, the circuit court effectively set January 8, 2014, as a case management date for the parties to provide their witness lists and schedule the dates when the trial would occur. The record, however, does not contain the witness lists of either party that were to have been presented to the circuit court on January 8, 2014. In addition, there is no supplemental witness list for Mary included in the record. The only documents in the record pertaining to witnesses are (1) William's supplemental witness list filed on March 14, 2014, and (2) three subpoenas executed on Mary's behalf to Drs. Myrtle Mason, Remegio M. Vilbar, and Leonard Kranzler each filed on March 6, 2014. It is Mary's duty, as the appellant, to provide this court with a sufficient record to support her claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Accordingly, this court can only rely on the documents submitted within the record on appeal and, in the absence of a record of what occurred in the circuit court, we will presume the circuit court acted in conformity with the law. *Id.* In addition, any doubts arising from an incomplete record will be resolved against the appellant. *Id.* Furthermore, we note that Mary's failure to make either a formal or informal offer of proof regarding the nature of the testimony of Dr. Pachan, Dr. LaHood, and Hamm rendered this issue forfeited on appeal. See *In re Rayshawn H.*, 2014 IL App (1st) 132178, ¶ 35.

¶ 60 With these deficiencies in mind, however, we conclude the circuit court did not abuse its discretion when it excluded these witnesses from testifying. Considering (1) the surprise to the

adverse party, (2) prejudicial effect of the testimony, (3) the nature of the testimony, (4) the diligence of the adverse party, (5) the timely objection to the testimony, and (6) the good faith of the party calling the witness, we find that all of the factors weigh in favor of William. With regard to the first, second, and third factors, at the time Mary sought to have Dr. Pachan, Dr. LaHood, and Hamm testify, the trial had already commenced. Thus, it follows, that the testimony of these three undisclosed and alleged "expert" witnesses were a surprise to William. In addition, as these were purported expert witnesses, the prejudicial effect of the testimony at this stage of the trial was potentially great as William had no time to prepare and construct his trial strategy accordingly. See *Peirce*, 306 Ill. App. 3d at 532. Therefore, the circuit court properly excluded the testimony of these witnesses as being untimely. See *O'Brien v. Stefaniak*, 130 Ill. App. 2d 398, 405 (1970) (finding the trial court did not abuse its discretion when it excluded a witness from testifying where the witness was not previously disclosed and the trial was already underway).

¶ 61 As for the fourth and sixth factors, Mary argues that she, in good faith, was diligent where she underwent days of examination to obtain the testimony of her own expert witnesses and immediately disclosed the report to all parties as soon as was reasonably possible. We find this argument to be disingenuous where Mary had been previously provided an opportunity to obtain an independent medical evaluation on November 5, 2013, and failed to do so. In addition, Mary never requested an extension of time to acquire such an examination nor did she inform the court of her efforts to obtain the examination until the trial recommenced on July 14, 2014. Accordingly, the fourth and sixth factors weigh in favor of William. Lastly, William's objection was timely, thus the fifth factor also weighs in his favor.

¶ 62 In sum, allowing, according to Mary, three expert witnesses to testify at such a late stage

in the proceedings with no notice would have caused William significant prejudice, particularly where William had already presented a majority of his case-in-chief. The purpose of Rule 213(f) is to prevent unfair surprise at trial without creating an undue burden on the parties. See Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007). Consequently, it is inherent in Rule 213(f) that the identities of the witnesses and the content of their testimony be disclosed *before* trial commences. Here, the lack of disclosure of the witnesses was particularly egregious where the witnesses were disclosed in the *middle* of the trial. Therefore, under this set of facts, we conclude the circuit court did not abuse its discretion when it excluded Mary's witnesses from testifying. It cannot be said that no reasonable person would take the view adopted by the circuit court in this instance. See *O'Brien*, 130 Ill. App. 2d at 405.

¶ 63 Lastly, Mary asserts that the circuit court erred when it admitted the summary of her financial documents as evidence. According to Mary, this summary was untimely as it was provided to her by opposing counsel two days prior to its admission into evidence. In addition, Mary argues the admission of the summary was improper as it was derived from financial records which were already in evidence and that William failed to lay the proper foundation for the summary.

¶ 64 A court's decision whether to admit evidence will only be disturbed if the court abused its discretion. *In re Estate of Doyle*, 362 Ill. App. 3d at 302-303. A party must make a proper objection to preserve his or her argument that the court erred in admitting evidence. *Id.* at 303. A specific objection only preserves the ground specified. *Id.* Objections must also be timely. *Id.*

¶ 65 We first note that Mary objected to the summary based on the timeliness of the disclosure, thus, Mary failed to preserve her foundation objection. See *id.* Mary also did not

raise as an objection the fact that her financial documents had already been entered into evidence. Accordingly, these arguments are procedurally defaulted on appeal. See *id.*

¶ 66 Turning to the propriety of the circuit court's admission of the summary, Mary argues that the circuit court failed to abide by Federal Rule of Evidence 1006 (Fed. R. Evid. 1006 (eff. Dec. 1, 2011). On September 27, 2010, our supreme court codified the existing rules of evidence in this state and adopted the Illinois Rules of Evidence. See *People v. Peterson*, 2012 IL App (3d) 100514-B, ¶ 23. Thus, Mary's argument, which is based on Federal Rule 1006 and not Illinois Rule 1006, is misplaced. We acknowledge, however, that Rule 1006 of the Illinois Rules of Evidence is modeled after Federal Rule of Evidence 1006. The rule states as follows:

> "The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court." Ill. R. Evid. 1006 (eff. Jan. 1, 2011), compare Fed. R. Evid. 1006 (eff. Dec. 1, 2011).

¶ 67 In this case, the parties do not contest that Mary's financial documents were voluminous nor do the parties challenge the admission of the underlying financial documents that were utilized to create the summary. Our review of the record reveals the summary was not being admitted for its veracity, but was instead admitted for its use as a testimonial aid during a bench trial. See *cf. People v. Wiesn*eske, 234 Ill. App. 3d 29, 42 (1992) (observing that federal courts have held that pedagogical devices should be used only as a testimonial aid and should not be admitted into evidence or otherwise be used by the jury during deliberations). However, "it is within the trial court's discretion to admit summary evidence even of documents admitted at trial

where the review of those documents would be inconvenient; the fact that reports or documents are already in evidence does not mean that in-court examination would be necessarily convenient." *Id.* Moreover, Mary was provided an ample opportunity to, and did, cross-examine William regarding the summary. See *People v. Crawford Distributing Co., Inc.*, 78 Ill. 2d 70, 78 (1979). Accordingly, as Mary's underlying financial documents were already admitted into evidence and had been provided to opposing counsel many months prior to William's testimony, we conclude the circuit court did not abuse its discretion in admitting the summary into evidence during the bench trial. See *Crawford Distributing Co., Inc.*, 78 Ill. 2d at 77 (admitting a summary of over 1,000 invoices); *F.L. Waltz, Inc. v. Hobart Corp.*, 224 Ill. App. 3d 727, 732 (1992) (admitting a summary of over 9,000 invoices); *Wiesneske*, 234 Ill. App. 3d 29, 43-44 (1992) (admitting a spreadsheet summarizing financial records).

¶ 68 CONCLUSION

¶ 69 For the reasons stated above, we affirm the judgment of the circuit court appointing William as the plenary guardian of Mary's estate and limited guardian of her person.

¶ 70 Affirmed.