

2018 IL App (1st) 171128-U
Nos. 1-17-1128 & 1-17-2986 (Consolidated)
Order filed May 11, 2018

Fifth Division

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re ESTATE OF VIOLET REZACK, a Person with a Disability (Charles P. Golbert, Cook County Public Guardian, Plenary Guardian of Violet Rezack’s Estate and Person,
Petitioner-Appellee,
v.
CHARLES REZACK,
Cross-Petitioner-Appellant).

) Appeal from the
) Circuit Court of
) Cook County.
)
) No. 15 P 6278
)
)
) Honorable
) Daniel R. Degnan,
) Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by appointing the Public Guardian to serve as a disabled woman’s plenary guardian instead of her husband because the court’s findings—that the husband did not fully understand the level of care his wife required, was not able to provide that care, and had failed to make a sufficient accounting of his management of his wife’s financial matters—were not against the manifest weight of the evidence.

¶ 2 Charles Rezack appeals the trial court's order denying his cross-petition to be appointed the guardian of his wife, Violet Rezack, to whom he has been married for 33 years. Mr. Rezack argues that the trial court abused its discretion when it granted the Cook County Public Guardian's petition for plenary guardianship because Mr. Rezack was qualified to act as his wife's guardian pursuant to the Probate Act of 1975 (Probate Act) (755 ILCS 5/1 *et seq.* (West 2014)). Furthermore, he wanted to be his wife's guardian, his wife preferred him to be appointed as her guardian, and his appointment as guardian was in his wife's best interest and welfare.

¶ 3 For the reasons that follow, we affirm the trial court's decision.

¶ 4 I. BACKGROUND

¶ 5 In 2015, Mrs. Rezack, who was 75 years old, came to the attention of the authorities when a neighbor reported that she was wandering unaccompanied outside the home she shared with Mr. Rezack in Lemont, Illinois. In September 2015, she was removed from the home, despite her husband's objections, based on allegations of abuse and neglect and was placed in a skilled nursing facility. In October 2015, the Public Guardian petitioned the trial court for temporary and plenary guardianship of Mrs. Rezack's estate and person.

¶ 6 On October 5, 2015, the trial court appointed the Public Guardian as temporary guardian of Mrs. Rezack and suspended the powers of attorney she had signed. In December 2015, the Public Guardian petitioned the court to invalidate the powers of attorney for healthcare and property Mrs. Rezack had signed and demanded an accounting from Mr. Rezack. Thereafter, Mrs. Rezack's daughter Gail Lofman and Mr. Rezack filed cross-petitions to be appointed Mrs. Rezack's plenary guardian.

¶ 7 In August 2016, the court adjudicated Mrs. Rezack to be a disabled person. A doctor's report that was admitted into evidence indicated that Mrs. Rezack suffered from dementia with prominent aphasia, type II diabetes, hereditary and idiopathic neuropathy, hyperthyroidism, hypertension, and hyperlipidemia. The doctor opined that Mrs. Rezack was unable to make decisions or function independently and had been incapable of making personal and financial decisions since at least November 2012. No appeal was taken from the adjudication of disability.

¶ 8 At the February 2017 hearing on the guardianship petitions, Mrs. Rezack's counsel informed the court that Mrs. Rezack maintained that she did not need a guardian, she would like to be with her husband, and she preferred for him to become her guardian. She did not express a desire to return to the Lemont home she had shared with Mr. Rezack.

¶ 9 Dr. George Savarese, a licensed clinical social worker, was qualified to testify as an expert. He met with Mr. and Mrs. Rezack in their Lemont home in April of 2015 to conduct an assessment due to a concern about physical abuse in the home. As Mr. Rezack talked about the situation, he would vacillate between appearing depressed and very agitated. He was verbally abusive toward Mrs. Rezack, cursing and "being very rough with her." Mrs. Rezack was very passive and quiet and seemed reluctant to speak in front of her husband. However, Mrs. Rezack told Dr. Savarese that she was being physically and emotionally abused by her husband. She said that Mr. Rezack had grabbed her by her arms and shook her. Mr. Rezack admitted that he had shaken his wife as a result of his inability to understand her actions and manage his own behavior and his increased frustration with her care. Dr. Savarese testified that Mr. Rezack said the frustration was so great that at times he felt like the only resolution was to kill himself.

¶ 10 Dr. Savarese opined that the source of Mr. Rezack's frustration was his inability to understand his wife's medical conditions and the extent of care she required. Mr. Rezack, who was a gun collector and hunter and had previously been a licensed gun dealer, stated that there were many guns in the home. Dr. Savarese believed the home was an extremely dangerous environment for Mrs. Rezack with a high risk for situations like murder or suicide. Mr. Rezack had markers of depression, some functional decline with his memory, a high degree of frustration, and exhibited an overall sense of being overwhelmed. Dr. Savarese recommended a psychiatric evaluation of Mr. Rezack's mental status and the removal of the weapons from the home. Dr. Savarese opined that there was not enough care in the home and there were indications that medications were not being administered properly. When Dr. Savarese described to Mr. Rezack the services available to aid in Mrs. Rezack's care, Mr. Rezack indicated that he was not interested.

¶ 11 Cook County Sheriff's Detective Johnny Thorns met Mr. and Mrs. Rezack in September 2015 after receiving a report of senior abuse. Detective Thorns testified that upon arriving at the Rezacks' home, Mr. Rezack initially refused to allow him access. Detective Thorns eventually gained access and had sheriff's deputies remove Mr. Rezack and take him to a hospital for observation due to concerns about his general well-being. As sheriff's deputies were taking Mr. Rezack to a squad car, he said, "I'm gonna kill the b***." Detective Thorns believed that statement was a credible threat directed at Mrs. Rezack. It was alleged that Mr. Rezack had a large number of guns in the home, and the gun suppression team inventoried 43 guns and 855 rounds of ammunition, which were not stored in gun cases or a safe.

¶ 12 Susan Spear was an adult protective services investigator. She testified that, between April and September of 2015, she attempted to enter the Rezacks' home and see Mrs. Rezack six times but succeeded only three times. On each occasion, Mr. Rezack either reluctantly allowed Spear to speak with Mrs. Rezack, or outright refused, or drove away from the home with Mrs. Rezack. Spear informed Mr. Rezack of services available to help him care for Mrs. Rezack, including in-home services and an adult day program, but he refused those services.

¶ 13 On her first visit, Spear tried to talk to Mrs. Rezack in the foyer of the home, but Mr. Rezack stood in the next room and loudly objected to the visit. Spear observed dark pink and blue bruises on Mrs. Rezack's right wrist. When Spear lifted Mrs. Rezack's shirt, Spear observed a bruise on Mrs. Rezack's back, which was about the size of a grapefruit. When Spear asked Mrs. Rezack about the bruises or emotional abuse, Mrs. Rezack just shrugged and said she did not know. Thereafter, sheriff's deputies had to intervene to enable Spear to enter the home.

¶ 14 On a subsequent visit inside the home, Spear observed that Mrs. Rezack was appropriately dressed, clean, and pleasant. Her home was neat and she appeared well cared for but she had another bruise on her arm. On Spear's fifth and unsuccessful attempt to visit, Mr. Rezack threatened that there would be a gun battle if Spear returned with a court order to enter the home and assess Mrs. Rezack. On Spear's sixth visit, she observed that Mrs. Rezack had a bruised and swollen right eye. Mrs. Rezack seemed guarded, looked suspiciously towards the adjacent kitchen where sheriff's officers were standing with Mr. Rezack, and said that she was strong enough to leave and needed to leave now but "they" were "playing games" with her. Spear encouraged Mrs. Rezack not to leave the home until Spear could secure a safe removal, and Mrs. Rezack agreed.

¶ 15 Nicole Goss-Smith, a case manager, visited Mrs. Rezack monthly since she came under the care of the Public Guardian. Goss-Smith testified that Mrs. Rezack was quiet and mild-mannered, was a fall risk, and required assistance with all daily living activities. Goss-Smith presented the care plan prepared by the Public Guardian, which was to maintain Mrs. Rezack in her current nursing facility.

¶ 16 James Meyer, the guardian *ad litem*, visited Mrs. Rezack three times between October 2015 and May 2016. Meyer recommended that Mr. Rezack should not be appointed as his wife's guardian because he had interfered with certain medical treatment for his wife and was influenced by his daughter, Debra Seger. Meyer testified that Mrs. Rezack told him that she did not want her stepdaughter Seger involved in her finances.

¶ 17 Lofman testified that she resided in Plano, Texas and had visited her mother multiple times since she was removed from her Lemont home to a nursing facility. Lofman believed that her mother was thriving, was more outgoing and seemed happy in her current nursing facility. Lofman's care plan for her mother included keeping her in her current nursing facility.

¶ 18 Mr. Rezack was about 81 years old. He had arthritis and asthma. He admitted that he shook his wife in a fit of frustration but he denied telling Dr. Savarese that he wanted to kill himself. He asserted that the statement Detective Thorns heard him make about killing someone was not directed at Mrs. Rezack, but at Spear, whom Mr. Rezack believed was waging a vendetta against him. He admitted that he was uncooperative with the various individuals who came to the house to check on his wife.

¶ 19 Mr. Rezack testified that a neighborhood woman and Seger had helped him care for his wife. On a daily basis, he cleaned her, cooked for her, fed her, and took her to all her medical

appointments. Although he had left her at home alone on occasions to attend to doctor visits for himself, he believed that he had cared for her better than her current caretakers. His care plan for his wife was to return to the original situation before the court had removed her from their Lemont home, with the exception that he intended to move his wife into the apartment he currently occupied so that they would be closer to Seger's home and work.

¶ 20 Mr. Rezack testified that he had used his power of attorney for Mrs. Rezack to sign a deed in trust in January 2014 that transferred their jointly owned Lemont home to a trust. When he signed that document, he intended that, upon his death, the house would transfer to Seger. Mr. Rezack also explained that, as a result of financial difficulties that arose from Seger's divorce, he wrote a \$241,000 check to Seger's ex-husband from Mr. and Mrs. Rezack's joint account so that Seger would be able to keep her home. He asserted that Seger had repaid \$200,000 of this amount and he did not expect or wish to recover the outstanding \$41,000 balance.

¶ 21 Seger testified that her father was not overwhelmed by the demands of Mrs. Rezack's care. Seger asserted that she had repaid \$200,000 of the \$241,000 loan to her father in cash. She claimed that she had paid about \$35,000 of the remaining \$41,000 balance but did not specify how.

¶ 22 The trial court considered the care plans submitted by the Public Guardian, Lofman, and Mr. Rezack. The court also took judicial notice of the accounting of Mr. Rezack's actions from April 16, 2013, through October 5, 2016, under his power of attorney for his wife.

¶ 23 On March 10, 2017, the court's written order concluded that the Public Guardian was the only viable and adequate option to serve as guardian in this matter. Specifically, the court acknowledged the general preference favoring the appointment of family members, Mrs.

Rezack's stated preference for her husband to be her guardian, and Mr. Rezack's love for his wife. Nevertheless, the court found that Mr. Rezack failed to fully appreciate the level of care his wife required and his own limitations in providing that care. He had refused offers to identify services to assist in providing care for his wife and attempted to interfere with her medical treatment and efforts to assess her. The court was very concerned about Mr. Rezack's volatile temperament and frustration with his wife's care because the demands of her care would continue to increase. Although the evidence did not establish that Mr. Rezack has caused Mrs. Rezack's bruises by hitting or otherwise abusing her, the bruises—which Mr. Rezack asserted had resulted from her falls or his method of helping her down the stairs—occurred under his care. There was no question that Mrs. Rezack was a fall risk and required 24-hour supervision, and the evidence showed that Mr. Rezack was not able to provide that level of supervision.

¶ 24 The trial court also found that Mr. Rezack's insufficient accounting of his actions under his wife's power of attorney and his transfers of real property and funds to Seger showed that he either failed to understand his duty to act in his wife's best interest or placed Seger's needs above his wife's needs. The court revoked all powers of attorney executed by Mrs. Rezack based on Mr. Rezack's deficient accounting, the contradiction between the accounting and the testimony of Mr. Rezack and Seger, and the unclear nature of the financial activity surrounding Mrs. Rezack's assets.

¶ 25 In May 2017, this court allowed Mr. Rezack's motion for leave to file a late notice of appeal. Meanwhile, the Public Guardian petitioned the trial court to invalidate the January 2014 deed in trust that had transferred Mr. and Mrs. Rezack's interest in their Lemont home to Mr. Rezack as trustee of his revocable living trust. In August 2017, the trial court granted the Public

Guardian's petition to invalidate the transfer of real property. In November 2017, the trial court denied Mr. Rezack's motion to reconsider, and he filed a second notice of appeal. In February 2018, this court consolidated the appeals on review.

¶ 26

II. ANALYSIS

¶ 27 On appeal, Mr. Rezack argues that the trial court abused its discretion by not appointing him as his wife's guardian because he was qualified to act as her guardian pursuant to the Probate Act, he wanted to be her guardian, his wife preferred him to be her guardian, and granting him guardianship was in his wife's best interest and welfare.

¶ 28

A. Illinois Supreme Court Rules 341 and 342

¶ 29 Before addressing the merits of this case, we find that Mr. Rezack failed to comply with the provisions of Illinois Supreme Court Rules 341(h)(6) (eff. Nov. 1, 2017) and 342 (eff. July 1, 2017).

¶ 30 First, Mr. Rezack's statement of facts failed to comply with the requirement of Rule 341(h)(6) to "contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment." Specifically, Mr. Rezack omitted several of the trial court's key fact-findings, including the court's concerns about his interference with and inability to adequately provide for his wife's medical care, his insufficient accounting of his actions under his wife's power of attorney, and his transfers of real property and funds that he owned jointly with his wife. Mr. Rezack's omission of these relevant fact-findings, which are unfavorable to his claims of error, renders his statement of facts "insufficient to convey an understanding of the case as required by *** Rule 341." *In re R.G.*, 165 Ill. App. 3d 112, 115 (1986). "[A]ttorneys can properly present evidence that is favorable to their clients but not at the cost of this court's

understanding of the case.’ ” *Id.* (quoting *Midland Hotel Corp. v. Reuben H. Donnelley Corp.* 149 Ill. App. 3d 53, 57 (1986)).

¶ 31 Second, Mr. Rezack failed to prepare an appendix to his brief, as required by Rule 342, which made it difficult for this court to locate certain documents for purposes of reviewing his claims of error. The rules governing civil appeals are not merely suggestions but are necessary for the proper and efficient administration of the courts. See *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 691-92 (1992).

¶ 32 However, because Mr. Rezack’s violations of Rules 341 and 342 do not hinder or preclude this court’s review, we neither strike his brief nor dismiss his appeal. See *Gaston v. City of Danville*, 393 Ill. App. 3d 591, 601 (2009).

¶ 33 B. Standard of Review

¶ 34 The Probate Act states:

“The selection of the guardian shall be in the discretion of the court, which shall give due consideration to the preference of the person with a disability as to a guardian, as well as the qualifications of the proposed guardian, in making its appointment. However, the paramount concern in the selection of the guardian is the best interest and well-being of the person with a disability.” 755 ILCS 5/11a-12(d) (West 2014).

In cases involving the guardianship of a disabled adult, this court reviews the trial court’s decision appointing a guardian for an abuse of discretion. *In re Estate of Doyle*, 362 Ill. App. 3d 293, 303 (2005). An “abuse of discretion occurs when ‘the trial court’s ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial

court.’ ” *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)). Furthermore, this court reviews a challenge to the circuit court’s findings of fact under the manifest weight of the evidence standard. *In re Marriage of Charles*, 284 Ill. App. 3d 339, 342 (1996). “A finding of fact is against the manifest weight of the evidence where, upon review of all the evidence in the light most favorable to the prevailing party, an opposite conclusion is clearly apparent, or the fact finder’s finding is palpably erroneous and wholly unwarranted.” *Joel R. v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 613 (1997).

¶ 35 C. Factors in Deciding Guardianship

¶ 36 A person is qualified to act as a guardian if the court finds that the proposed guardian (1) is capable of providing an active and suitable program of guardianship for the disabled person, (2) is at least 18 years old, (3) is a resident of the United States, (4) is of sound mind, and (5) has not been convicted of a felony (with statutory exceptions for certain considerations). 755 ILCS 5/11a-5(a) (West 2014). In selecting a guardian, the trial court should consider, but is not bound by, the disabled person’s preference. *Schmidt v. Schmidt*, 298 Ill. App. 3d 682, 689 (1998). Furthermore, in cases involving the estates of disabled persons, the Probate Act recognizes a preference for the appointment of spouses because the law recognizes the special and peculiarly intimate nature of the relationship they share. *Id.* at 693. However, the disabled person’s best interest is the paramount concern and it outweighs the disabled person’s guardian preference. *Id.* at 690.

¶ 37 In determining the best interest of the disabled person, the trial court may consider multiple factors, including:

“(1) the degree of relationship between the disabled person and the proposed guardian; (2) the recommendations of persons with kinship or familial ties to the disabled person; (3) conduct by the disabled person prior to the adjudication demonstrating trust or confidence in the proposed guardian; (4) prior conduct by the proposed guardian indicating a concern for the well-being of the disabled person; (5) the ability of the proposed guardian to manage the disabled person’s estate (the proposed guardian’s business experience and other factors); and (6) the extent to which the proposed guardian is committed to discharging any responsibilities which might conflict with his or her duties as a guardian.” *In re Estate of McHenry*, 2016 IL App (3d) 140913, ¶ 141.

¶ 38 Although the courts have articulated few factors that might disqualify an individual from acting as a guardian, this court has stated that guardians should have no “pecuniary or other adverse interest” that would impair their ability to protect the disabled person’s financial interests. *In re Estate of Robertson*, 144 Ill. App. 3d 701, 712 (1986) (the court rejected a proposed guardian who transferred money from the disabled person’s joint accounts with other parties to a joint account with the proposed guardian and used that money to make several large, highly questionable purchases).

¶ 39 Mr. Rezack argues that the trial court abused its discretion by not appointing him as his wife’s guardian because he was qualified to act as her guardian under the plain terms of the Probate Act, he wanted to be her guardian, his wife preferred him to be her guardian, and granting him guardianship was in his wife’s best interest and welfare. Mr. Rezack states that the trial court never met Mrs. Rezack and did not hear her input about the appointment of her

guardian. Mr. Rezack claims that his wife was lucid a majority of the time and emphatically indicated that she wanted her husband to be her guardian. He asserts that they had a longstanding successful and happy marriage, and it was wrong for the trial court to negate the strength and monumental stability of their relationship based on one alleged act of frustration. He also asserts that there was no credible evidence that he had physically abused his wife.

¶ 40 Mr. Rezack's assertion that the trial court did not consider his wife's input or guardianship preference lacks merit. Mrs. Rezack was adjudicated a disabled person, and both her counsel and the guardian *ad litem* told the trial court that Mrs. Rezack preferred that her husband be appointed as her guardian. Furthermore, the trial court did consider Mrs. Rezack's preference and the relevant factor of appointing her spouse as her guardian. Contrary to Mr. Rezack's assertion on appeal, the trial court's guardianship decision in favor of the Public Guardian was not based on a single act of Mr. Rezack's frustration. Moreover, the record refutes his implication that the trial court found he had physically abused his wife. To the contrary, the trial court expressly found that the evidence failed to establish that Mr. Rezack had caused Mrs. Rezack's bruises by hitting or otherwise abusing her. Consequently, allegations of physical abuse were not a factor in the trial court's guardianship decision and thus are not relevant to our analysis on appeal.

¶ 41 Our review of the record establishes that the trial court duly considered the requirements of the Probate Act and several relevant factors, including Mr. Rezack's lack of the appropriate temperament to handle the inevitable frustrations that accompanied the care of his wife, who suffered from dementia in addition to several other severe medical conditions. Although the trial court did not doubt Mr. Rezack's love for his wife or his wish to provide for her care, the

evidence presented at the hearing supports the trial court's findings that Mr. Rezack was overwhelmed by the situation, failed to fully understand the extent of the care Mrs. Rezack required, was unable to provide the necessary level of care, and had prevented others from providing the care she required or even some assistance with her care.

¶ 42 The evidence showed that Mr. Rezack vacillated between exhibiting depression, pent-up frustration, and open hostility. He mentioned suicide to Dr. Savarese, he paced agitatedly during Dr. Savarese's assessment interview in the home, and Mr. Rezack admitted at the hearing to verbally threatening Spear. Dr. Savarese opined that the presence of numerous guns and large amounts of ammunition in the home constituted an extremely dangerous environment for Mrs. Rezack and recommended the removal of the weapons from the home and a psychiatric evaluation of Mr. Rezack. Furthermore, the evidence established that Mrs. Rezack was a fall risk. The bruises observed on her arms and back occurred while she was under Mr. Rezack's care and showed that he could not provide the level of supervision she needed.

¶ 43 The trial court also considered Mr. Rezack's insufficient accounting of his actions under his wife's power of attorney. Specifically, he had transferred real property out of joint tenancy with his wife and transferred a substantial amount of money from his joint accounts with his wife to his daughter. Based on the evidence, we cannot say that the trial court's finding that Mr. Rezack either did not understand his duty to act in his wife's best interest or placed his daughter's needs above those of his wife was against the manifest weight of the evidence.

¶ 44 To support his claims of error, Mr. Rezack cites *Schmidt*, 298 Ill. App. 3d 682, for the proposition that courts should appoint spouses as guardians even if they are potentially controversial. In *Schmidt*, a woman was involved in an automobile accident, suffered severe head

trauma, and was hospitalized in a comatose state. *Id.* at 684. She was adjudicated disabled and both her sibling and her husband of three years petitioned to be her guardian. *Id.* At the hearing, the husband presented evidence showing that he and his wife had a loving and trusting relationship, that she had told family members on several occasions that she did not want to be kept alive by artificial means if she were in a vegetative state, and that she wanted her husband and teenage daughter to make decisions concerning her care. *Id.* at 685. The court also heard testimony from family members who believed that the disabled woman would want to continue receiving her current level of care. *Id.* at 686. The family members also observed instances when the husband got upset with the disabled woman, slept on the couch, and made “dumb blonde” jokes about her. *Id.* The trial court granted the husband guardianship but imposed restrictions that required him to notify the disabled woman’s family before any action to withdraw life-sustaining treatment on her behalf. Furthermore, although family members were not given authority to make medical decisions, they were given access to her medical records and were given a court-ordered visitation schedule. *Id.* at 684. On appeal, this court held that the trial court did not abuse its discretion by appointing the husband as the guardian. *Id.* at 695.

¶ 45 Mr. Rezack’s reliance on *Schmidt* is misplaced. Although the record in *Schmidt* disclosed some antipathy between the husband and some members of the disabled woman’s family, the record revealed no fraudulent conduct or bad faith in prior dealings between the husband and his disabled wife that would disqualify him from acting as her guardian. *Id.* at 694. Here, in contrast, the record shows that in addition to Mr. Rezack’s inability to provide the level of care his wife needed due to his severe frustration and volatile temperament, his insufficient accounting of his management of financial matters affecting his wife established that he failed to either understand

his duty to act in his wife's best interest or placed the needs of his daughter above his wife's needs.

¶ 46 The trial court was in the best position to determine the credibility of the testimony and the weight to give the evidence. Based on our review, we cannot say that the trial court's fact-findings were against the manifest weight of the evidence. Furthermore, the trial court properly considered relevant factors in making its guardianship decision, which was not unreasonable. Consequently, we conclude that the trial court did not abuse its discretion by denying Mr. Rezack's cross-petition for guardianship and granting guardianship to the Public Guardian.

¶ 47

III. CONCLUSION

¶ 48 For the foregoing reasons, we find that the trial court's fact-findings were not against the manifest weight of the evidence. Moreover, the trial court's decision to deny Mr. Rezack's cross-petition for plenary guardianship of Mrs. Rezack and grant the Public Guardian's petition was not an abuse of discretion. The judgment of the trial court is affirmed.

¶ 49 Affirmed.