

court later authorized two of the guardians to create a trust and to execute a new will for Lorraine. Lorraine's son, Anthony Phillips, appeals from that order and argues the new will is not in accord with Lorraine's wishes.

¶ 3 We hold that the manifest weight of the evidence sufficiently supports the trial court's finding that the new will serves Lorraine's "wishes as best as they can be ascertained," based on the 2010 will, within the meaning of section 11a-18 of the Probate Act (Act). 755 ILCS 5/11a-18(a-5) (West 2016). Accordingly, we affirm the trial court's order.

¶ 4 **BACKGROUND**

¶ 5 Lorraine owned and resided in a building on Wabash Avenue in Chicago when fire damaged the building in 2006. The fire and subsequent demolition of the building led to extensive litigation. Lorraine moved to another house she owned, where Anthony lived. When Lorraine had great difficulty preparing for court one day in 2007, Anthony took her to the hospital. Doctors found she had suffered a stroke.

¶ 6 Dementia and other illnesses gradually sapped most of Lorraine's abilities. On February 23, 2011, Anthony filed a petition asking the probate court to declare Lorraine disabled and to name him as her guardian. Lorraine's daughter, Katina Phillips, agreed to declaring Lorraine disabled, but opposed the appointment of Anthony as guardian. After extensive court proceedings and mediation, in 2012 the court named Anthony, Katina, and Associated Bank (the Bank) as guardians of Lorraine's estate.

¶ 7 The guardians used much court time and attorney work in handling the estate and addressing Lorraine's needs. In November 2016, Katina and the Bank filed a petition asking the court to permit them to prepare and execute trust documents and a new will on behalf of

Lorraine. Katina and the Bank contended the 2010 will created many problems, and the court should permit the guardians to rephrase and correct the will to carry out Lorraine's intentions. Katina and the Bank also asserted that Lorraine needed a trust to handle her assets for her benefit during her lifetime and to facilitate transfer of the assets after her death. They attached a proposed will and proposed trust documents to their petition.

¶ 8 Anthony filed an objection to the petition, arguing that the court should not alter the 2010 will, and the court should appoint Anthony to prepare the trust documents. Anthony contended that the proposed will was not in accord with Lorraine's intentions. He did not request an evidentiary hearing on Lorraine's intentions. The parties argued about the proposed will and trust at a hearing on December 8, 2016, but the court held no evidentiary hearing. The court granted the petition. On the same day, December 8, 2016, the court authorized Katina and the Bank to prepare trust documents, and the court specifically approved the following language for inclusion in those documents:

"A. Anthony Phillips shall be permitted to reside in my home *** for as long as he so desires, provided that he is required to timely pay any expenses related to the home. Should Anthony Phillips fail to pay the expenses related to the home, or should he choose to not reside at the home, the property shall be sold and the proceeds of same shall be added to the trust estate.

B. The balance of the trust estate shall be distributed in equal shares to my children, Katina Phillips and Anthony Phillips."

¶ 9 Katina and the Bank prepared and executed trust documents and a will in accord with the court's order.

¶ 10 Anthony filed a motion to reconsider the order dated December 8, 2016. He argued that the new will did not reflect Lorraine's intentions, and the trial court should have held an evidentiary hearing concerning Lorraine's intentions. Lorraine died on February 16, 2017.

¶ 11 At the hearing on the motion to reconsider, the court found that Anthony waived the request for an evidentiary hearing by failing to request such a hearing in his written objection to the petition for permission to prepare a new will, and by failing to suggest the need for such a hearing when the parties argued about the petition on December 8, 2016. The trial court denied the motion to reconsider. Anthony filed a timely notice of appeal.

¶ 12 ANALYSIS

¶ 13 Supreme Court Rule 304(b)(1) gives this court jurisdiction to consider Anthony's appeal. Ill S. Ct. R. 304(b)(1) (eff. Mar. 8, 2016); see *In re Estate of Rivera*, 2018 IL App (1st) 171214, ¶ 42.

¶ 14 Anthony presents his appeal *pro se*. His statement of facts focuses on matters not relevant to his arguments on appeal. He includes several paragraphs of factual assertions without any citation to the record. Katina and the Bank filed a motion to strike several pages from Anthony's brief. We find no need to strike those sections of the brief, but we will disregard all factual assertions and arguments lacking citations. See *Affiliated Health Group, Ltd. v. Devon Bank*, 2016 IL App (1st) 152685, ¶ 15.

¶ 15 Anthony argues the trial court should not have approved the trust because Katina and the Bank did not support the proposed trust and will with an analysis of the effect of the proposals on estate taxes, and because the trust violates the rule against perpetuities. Anthony separately attacks the will for failing to reflect Lorraine's wishes, and he contends

that the court should have granted his motion to reconsider so that the court could hold an evidentiary hearing concerning Lorraine's intentions.

¶ 16 Anthony waived his argument about the lack of tax analysis by failing to raise it in the trial court. *Wagner v. City of Chicago*, 166 Ill. 2d 144, 147 (1995). The argument also lacks merit. Section 11a-18(a-5) of the Act establishes the probate court's power to authorize a guardian to create a trust and execute other estate planning documents for a ward. 755 ILCS 5/11a-18(a-5) (West 2016). The Act permits the court to consider the ward's likely goal of the "minimization of State or federal income, estate, or inheritance taxes." 755 ILCS 5/11a-18(a-5) (West 2016). The Act's "consistent and exclusive use of the term 'may' throughout section 11a-18(a-5)" indicates that the trial court does not need to consider the tax effect in all cases. *In re Estate of Ahmed*, 322 Ill. App. 3d 741, 746 (2001). Just as the court may approve a trust "whether or not tax savings are involved," (*In re Estate of Michalak*, 404 Ill. App. 3d 75, 85 (2010), quoting 755 ILCS 5/11a-18(a-5) (West 2008)), the court may approve a trust without any explicit analysis of its tax effects.

¶ 17 Anthony also waived his argument concerning the rule against perpetuities by failing to raise it in the trial court. *Wagner*, 166 Ill. 2d at 147. This argument also lacks merit. The trust documents provide that "[u]pon [Lorraine's] death," after paying the estate's debts, the trustee will distribute the estate in equal shares to Katina and Anthony, except that Anthony could continue to live in Lorraine's home, as long as he paid the expenses of maintaining the property. If he no longer paid the expenses, or if he no longer lived in the home, the trust documents provided, "the property shall be sold and the proceeds of same shall be added to the trust estate" for equal distribution to Katina and Anthony. Thus, the trust provided for the

rights to all assets to vest either when Anthony no longer lived in the home, or, if Anthony moved out before Lorraine died, upon Lorraine's death. No interests would fail to vest after the deaths of both Anthony and Lorraine, two persons alive at the time of the creation of the trust. The trust distribution provisions comport with the rule against perpetuities. See *Marcy v. Markiewicz*, 233 Ill. App. 3d 801 (1992); *In re Harrison's Estate*, 70 P.2d 522, 525 (Cal. App. 1937).

¶ 18 Anthony's motion to reconsider does not advance any proper grounds for reconsideration of the court's order. "The purpose of a motion to reconsider is to bring to the trial court's attention (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, or (3) errors in the court's previous application of existing law." *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140 (2004). Anthony does not seek to present evidence unavailable at the time of the December 8, 2016 hearing, but he instead wants to elicit evidence that he failed to present at the hearing and expressly relies on evidence that predates December 2016. In his brief on appeal, Anthony claims that he had no reason to expect the court to hold a substantive hearing on December 8, 2016. He asserts that the court set December 8, 2016, as a date for a status hearing. However, Anthony provides no citation to the record for his assertion, and in our review of nearly 5000 pages of record, we found no order setting December 8, 2016 as a status date. Anthony did not raise proper grounds for a motion to reconsider. Therefore, the trial court did not abuse its discretion when it denied the motion. See *Stringer*, 351 Ill. App. 3d at 1140.

¶ 19 Anthony has preserved for review the issue of whether the order permitting Katina and the Bank to execute the new will they prepared in 2016 accords with the court's duty under

section 11a-18(a-5), which provides that when the court permits a guardian to exercise power over the estate, "[t]he ward's wishes as best they can be ascertained shall be carried out." 755 ILCS 5/11a-18(a-5) (West 2016). We review the court's ruling under the manifest weight of the evidence standard. *Michalak*, 404 Ill. App. 3d at 96.

¶ 20 The will Lorraine executed in 2010 gives the court evidence of Lorraine's wishes. The will, however, requires considerable construction. After the will states a preference for simplified procedures, the following sentence fragment appears, without any verb and without any clauses labeled (a) or (b):

"(c) funeral expenses;

(d) expenses of administering my estate; and

(e) taxes, including any interest and penalties, imposed by reason of my death upon any transfer of property."

¶ 21 The will names Anthony as "Personal Representative of my Last Will and Testament," and names Katina as successor "Personal Representations" if Anthony does not serve. The next section states:

"I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, of which I may die seized or possessed, or to which I may be entitled at the time of my death, of whatsoever kind or nature, real, personal or mixed, and wheresoever situate, *** to my children, Anthony Phillips and Katina Phillips, if they survive me, in equal shares, share and share alike."

¶ 22 Although the will already disposed of all of Lorraine's assets, the next clause provides for a payment to Katina of \$350,000, "intended as a repayment of my debt." The will includes the line, "THE FOLLOWINGS ARE MY BANK ACCOUNTS (?????)." The will lists no accounts, and it lists no insurance policies in a clause regarding insurance. The will continues:

"OTHER ASSETS OR IMPORATNT [sic] INFORMATION MAY BE KEPT OR STORED EITHER IN THE SAFE LOCATED AT THE HOME ADDRESS MENTIONED ABOVE

Specific Gifts?

IS THERE ANY"

¶ 23 The 2010 will proceeds to a second distribution of assets:

"It is my intention that I give and bequeath all of my estate (after payment of all debts and expenses of my estate) to both of my children Anthony and Katina. In the event that either of my children fails to survive me, I then give and bequeath all of my estate to my remaining child. To my son, Anthony Phillips, I give and bequeath my current home ***. My intent is that he will remains [sic] at this home until his death."

¶ 24 The new will provides:

"I give my tangible personal property and household effects, jewelry, automobiles, collections and any insurance policies thereon, and other tangible personal property that I own at my death, equally to my children, Katina Phillips

and Anthony Phillips, to be divided as they agree. If Katina Phillips and Anthony Phillips are unable to agree on the division of said property within sixty days of my death, then the executor shall liquidate all tangible personal property and household effects, jewelry, automobiles, collections and any insurance policies thereon, and other tangible personal property that I own at my death, and the proceeds shall be distributed with the residue [of the Estate]. ***

*** I give the residue of my Estate, wherever situated, including lapsed legacies, to the Lorraine Phillips Revocable Living Trust *** to be held subject to the terms of that agreement as it is in force at my death and to be administered as a part of its principal."

¶ 25 The new will names Katina and Anthony as co-executors. In accord with the court's order, the trust documents provide:

"Anthony Phillips shall be permitted to reside in my home ***, for as long as he so desires, provided that he is required to timely pay any expenses related to the home. Should Anthony Phillips fail to pay the expenses related to the home, or should he choose to not reside at the home, the property shall be sold and the proceeds of same shall be added to the trust estate."

¶ 26 In accord with Lorraine's wishes, imperfectly reflected in the 2010 will, the new will provides for the executors to split the estate equally between Katina and Anthony. The new will, in accord with the intention of the 2010 will, permits Anthony to remain in Lorraine's home for as long as he likes, even until his death, as long as he pays the necessary costs of maintaining the home.

¶ 27 Anthony did not request an evidentiary hearing in his written objection to the petition for leave to prepare and execute trust documents and a new will, and the trial court did not need an evidentiary hearing because the new will was prepared in reliance on Lorraine's 2010 will.

¶ 28 Anthony stresses two differences between the 2010 will and the new will. He claims the 2010 will gave him the home outright and made him sole executor of the estate.

¶ 29 The 2010 will makes little clear, apart from the intention to split the estate's assets equally between Anthony and Katina. After a sentence fragment presumably intended to direct the executor to pay funeral costs and other debts, the 2010 will devises all the remainder of the estate, including the home, for equal distribution to Anthony and Katina. The subsequent clause specific to the home then seems to express an intent to permit Anthony to remain in the home for the rest of his life if he so chooses. But that clause does not expressly negate the prior clause splitting the entire estate equally between Katina and Anthony. We find the provisions of the new will concerning the home Anthony shared with Lorraine accord with Lorraine's wishes, as expressed in the terms of the 2010 will.

¶ 30 Finally, Anthony claims the 2010 will shows that Lorraine intended to name Anthony sole executor of her estate, and the new will's provision for co-executors does not accord with Lorraine's wishes. In view of the extensive litigation and the frequent disagreements between the siblings, we agree with the trial court that the provision for co-executors, along with the specification of a means for resolving any disputes concerning distribution, has the best chance for giving effect to Lorraine's intention to split her estate equally between her two children. We cannot say that the court's finding in favor of the new will is contrary to the manifest weight of the evidence.

¶ 31

CONCLUSION

¶ 32

Anthony waived most of the legal issues raised in his brief on appeal by failing to raise the issues in the trial court. The request for an evidentiary hearing concerning Lorraine's intentions did not state a proper ground for a motion for reconsideration. On the one issue preserved for review, we hold that the trial court's finding that the new will reflects Lorraine's intentions is not contrary to the manifest weight of the evidence. Accordingly, we affirm the trial court's order permitting Katina and the Bank to execute the new will and the trust documents.

¶ 33

Affirmed.