2018 IL App (1st) 170645-U

THIRD DIVISION
March 28, 2018

No. 1-17-0645

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF JAMES J. McCOMBS, a Disabled Adult	)	Appeal from the
	)	Circuit Court of
(Rush University Medical Center,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 16 P 2495
	)	
James J. McCombs,	)	
	)	
Respondent	)	
	)	
(Mark McCombs,	)	
	)	
Cross-Petitioner-Appellant;	)	
	)	
Kathryn Crivolio,	)	Honorable
	)	Shauna L. Boliker,
Cross-Petitioner-Appellee)).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed; the trial court erred when it ruled the father of a disabled adult lost standing to submit evidence concerning the qualifications of a proposed guardian even after his own petition to be appointed

guardian had been denied; however, the error was harmless because the evidence the father intended to submit was considered by the court before making the appointment; the trial court did not abuse its discretion when it appointed respondent's mother guardian of respondent's person and estate.

¶ 2 Petitioner Rush University Medical Center (RUMC) filed a petition to appoint a guardian for respondent, James McCombs (James), an alleged disabled person, and nominated the Office of State Guardian (OSG) to be appointed as guardian. Subsequently, Kathryn Crivolio (Kathryn) and Mark McCombs (Mark), James' parents, each filed separate cross-petitions to have themselves appointed James' guardian. After a hearing, the trial court found Mark was not qualified to be James' guardian due to his being a convicted felon and denied his petition. After his petition was denied, the court considered the issue of Mark's standing in the litigation. Although the trial court found Mark had standing as a parent, the court ruled his standing was limited and the court did not allow Mark to present evidence of Kathryn's qualifications to be James' guardian except on the issue of whether Kathryn met the statutory qualifications to be a guardian. Upon the recommendation of James' guardian *ad litem* (GAL) and James' consent, the court adjudged James a disabled adult and appointed Kathryn as the guardian of James' person and estate. For the following reasons we find the trial court erred when it did not allow Mark to testify and submit evidence on the issue of a proposed guardian's qualifications, but we find under the facts of this case the error was harmless and we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 James is currently 21 years old and according to a medical evaluation in the record suffers from autism spectrum disorder and schizoaffective disorder. Following an altercation between James and Kathryn, James was placed in the care of RUMC. RUMC sought to secure a placement for James in Abbott House, an intermediate care facility, and James needed to have a guardian appointed to allow the placement. On April 20, 2016, RUMC filed a petition for

temporary guardian of alleged disabled person, claiming appointment of a temporary guardian was necessary for James' immediate welfare. RUMC nominated the OSG to be appointed temporary guardian of James' person. RUMC also filed a petition for appointment of guardian of disabled person. The petition indicated James both "lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of the Respondent's person;" and "is unable to manage the Respondent's estate or financial affairs." The OSG was again nominated as plenary guardian of the person for James. RUMC, Kathryn, and Mark were all served with notice of the April 22, 2016 court date for appointment of a temporary guardian and the May 31, 2016 hearing for appointment of a guardian of disabled person.

¶ 5 RUMC filed the petitions for guardianship based on a report of physician, prepared by Doctor Michael Easton, MD. Dr. Easton performed an evaluation of James on April 13, 2016. He diagnosed James as suffering from "autism spectrum disorder as well as schizoaffective disorder." Dr. Easton found James "has very poor social skills," and "functions at the level of a young adolescent child." Dr. Easton determined James could not take care of himself or his financial affairs. Dr. Easton reported James "requires a guardian for most decisions. Given he functions at the level of an adolescent he requires a guardian to make financial, housing, and medical decisions for him."

¶ 6 On April 20, 2016, the trial court appointed attorney Ian Fidler to be James' GAL. In the course of his investigation, on April 21, 2016 the GAL met with John Henricks, a social worker representing petitioner RUMC. The GAL noted: "According to Petitioner, James was admitted to Rush 158 days ago after a fight with his mother. As a result of the fight, James's mother has a restraining order against him." The GAL further ascertained from Henricks "that James and his mother have a very complicated relationship. James calls his mother daily, but his mother has an

order of protection against him returning to her home." The GAL met with James later that day: "I explained the reason for my visit and informed him orally and in writing of the contents of the petition for appointment of guardian for his person and of his rights under 755 ILCS 5/11a-11. He appeared to understand his rights and asked me several follow up questions regarding whether he should attend." James indicated he wanted Kathryn to serve as his guardian, and the GAL discussed with James his at times turbulent relationship with his mother.

> "James confirmed the fight with his mother led to his hospitalization and joked that he has had plenty of time the last few months to think about it. He even gave me his mother's phone number so I could call her to discuss the hearing tomorrow. In response to the last time he saw his father, James said his father does not matter and became agitated."

At the conclusion of the GAL's first meeting with James, the GAL confirmed James wanted to have a temporary guardian appointed and that he did not want to attend the court hearing: "Before leaving, James once again confirmed that he wanted the OSG to be appointed to place him at Abbott and asked me whether I would visit him there before the second hearing date. He did not want an attorney appointed on his behalf or to attend the court hearing." The GAL filed his written report with the trial court on April 22, 2016. He recommended it was in James' best interest for the OSG to be appointed temporary guardian of the person of James. On April 22, the trial court entered an order appointing the OSG temporary guardian of alleged disabled person. The court found James "is totally incapable of making personal and financial decisions. A temporary guardian is necessary to sign consents, secure placement and investigate, safeguard and secure assets."

¶ 7 On May 31, the trial court entered an order extending the temporary guardianship over

James for an additional 120 days, and continuing the matter for status on June 29, 2016. On June 1, James was personally served with a summons for appointment of guardian for disabled person, the petition for appointment of guardian for disabled person, and a Notice of Rights pursuant to 755 ILCS 5/11a-10(e) (West 2016).

¶ 8 On June 29, the court granted Mark and Kathryn leave to file cross-petitions. Mark, a former attorney, filed *pro se* a cross-petition for appointment of guardian of disabled person, and nominated himself as James' guardian of the estate and person. That same day, Kathryn filed *pro se* her cross-petition for appointment of guardian of disabled person, and nominated herself as James' guardian of the person.

¶ 9 On August 18, the trial court entered an order granting the GAL leave to file a new petition for temporary guardian, and then set a date for trial. On August 19, the court entered an order appointing the OSG as temporary guardian of James' person for 60 days. On September 27, James was served with a summons "to appear at a hearing on a Petition for Appointment of Guardian of Disabled Person to adjudge you a disabled person and to have a Guardian appointed to make decisions for you regarding yourself or your property or both." James was provided a copy of the petition and a notice of rights.

¶ 10 Mark filed a motion for summary judgment against Kathryn and RUMC, and requested a hearing on the motion set for October 6. The motion for summary judgment is not contained in the record on appeal. On October 6, the trial court entered an order continuing the matter for status for October 13. On October 13, the court entered an order setting a hearing on Mark's motion for summary judgment and motion to compel discovery for December 1, setting a hearing on the impact of Mark's felony conviction for December 1, and extending the OSG's temporary guardianship over James for an additional 60 days.

¶ 11 On December 1, the trial court held a hearing to determine whether Mark was disqualified from acting as James' guardian in light of his felony conviction. The court ruled Mark was not qualified to act as guardian of the estate or person of James. Mark did not appeal from this ruling. The court continued the matter for a hearing on status on December 15, 2016.

¶ 12 On December 15, the court entered an order granting RUMC and Mark leave to file a memorandum of law regarding Mark's standing in the proceedings. The court's order continued the matter to February 9, 2017 "for status and ruling on standing," and granted Kathryn leave to retain an attorney. RUMC and Mark subsequently filed briefs supporting their respective positions. While the record contains a transcript of the February 9 hearing, transcripts from all other hearings are absent. On February 9, 2017, the court heard arguments concerning Mark's standing and determined Mark only had limited standing as an interested party because he had been disqualified from serving as James' guardian but was still James' father. The court further ruled that due to Mark's limited standing, Mark could only submit evidence going to Kathryn's statutory qualifications to serve as guardian.

¶ 13 The court then provided Mark an opportunity to argue his motion for summary judgment. Mark requested the court provide him time to prepare argument in support of his motion for summary judgment because he was not prepared to argue the motion. Mark claimed he was only prepared to argue the issue of his standing because the hearing for that day was only set for a determination of his standing and for status. The court remarked "you've been ready on many occasions to argue this and had wanted to get this – get this argued. I am ready to rule on it." The court found the motion did not raise "an issue that has anything to do before the Court. This has to do with many financial issues, issues of the trust that was put together for your son *** as part of the marital settlement agreement." The court denied Mark's motion for summary

judgment because Mark lacked standing to bring the motion.

¶ 14 The court then addressed Kathryn's cross-petition. The GAL testified that he reviewed Kathryn's petition with James, and that James consented to her being appointed his guardian. The GAL noted the petition was only for the Kathryn's appointment as guardian of James' person, not estate, but that he had discussed the matter with James and James "did agree to allow her to handle all of his finances *** he consented to a full guardianship over the estate portion."

¶ 15 At this point Mark objected to the court's appointment of a plenary guardian arguing the hearing that day was only set for arguments on Mark's standing and for status. The GAL stated the matter had been set for appointment of a plenary guardian since May of the previous year. The court also indicated the hearing on appointment of a plenary guardian had been set multiple times. The court stated "this is something that has been discussed in front of you. You've been here for every court date. You've been advised of every court date. And now in the best interest of James we need to proceed on the plenary at this point." The court then allowed Mark to make "an offer of proof of some evidence that you'll bring before this court that will show that Ms. Crivolio is not qualified to be a guardian." Mark objected and nevertheless made an offer of proof to incorporate by reference Kathryn's order of protection against James. The court interrupted Mark and told him that he was limited to statutory disqualifying issues. The court denied Mark's incorporation of the order of protection. Mark replied by arguing those issues demonstrated Kathryn's unsoundness of mind. Kathryn's attorney then addressed the altercation between Kathryn and James, and noted the GAL's report even referenced James' altercation with Kathryn and the nature of their relationship. Mark again attempted to bring to the court's attention Kathryn's previous altercations with James. The court acknowledged

> "that over the course of time [Mark has] brought up altercations and things [he

> has] alleged. I know that that has been addressed *** by Mr. Fidler in his report as well as your verbal reports to the court. And I believe James' responses to that was – it was actually very appropriate in that he confirmed the fight, joked that he had *** plenty of time to think about what had happened. He wanted to discuss the hearing *** with his mother at that point. And then when his father was brought up, he had become very agitated."

Mark then stated Kathryn "has filed financial disclosures in post-decree divorce proceedings showing that she's financially unable to continue as guardian." The court found "that has nothing to do with this hearing," and moved on to the appointment of James' plenary guardian of the estate and limited guardian of the person.

¶ 16 The court entered an order on February 9, 2017, finding James disabled. The court found James "is totally unable to manage his estate and/or financial affairs," and appointed Kathryn plenary guardian of James' estate and limited guardian of James' person. The court evaluated the report of the GAL, which noted James' altercation with his mother. The court allowed Kathryn to amend her cross-petition to include that she was petitioning for guardian of James' estate as well as his person. The court ruled Mark "had limited standing in this matter, limited to only presenting evidence as to the baseline qualifications of Kathryn Crivolio set forth in 755 ILCS 5/11a-5(a) to be appointed guardian." The court denied Mark's motion for summary judgment and motion to compel discovery. Mark timely filed his notice of appeal.

¶ 17 ANALYSIS

¶ 18 This appeal concerns the appointment of a guardian of an adult adjudged disabled. In his appellate briefs Mark claims the trial court's order should be reversed because 1) the court lacked jurisdiction to enter the order appointing Kathryn guardian because James was never

served with a copy of her petition; 2) the court abused its discretion when it limited his ability to present evidence of Kathryn's unfitness to serve as James' guardian on grounds of standing; and 3) Mark and James were not served with adequate notice that Kathryn's petition was going to be heard or that she was amending her petition to include being guardian of James' estate as well as his person.

¶ 19 Initially we note Mark's notice of appeal indicated he was also appealing the trial court's order denying his motion for summary judgment and motion to compel discovery. However, Mark's appellate briefs failed to include any argument on those matters or to make his motion for summary judgment a part of the record. A party forfeits review of "claims that could have been raised on direct appeal but were not." *People v. Newbolds*, 364 Ill. App. 3d 672, 675 (2006). Accordingly, Mark has forfeited review of those issues.

¶ 20 Under the Probate Act (Act), a court may appoint a guardian over respondent's person and estate if the respondent is adjudged to be disabled and lack some, but not all, capacity. 755 ILCS 5/11a-3 (West 2016). "Selection of a limited guardian is within the trial court's discretion, which must give due consideration to the preference of the disabled person. [Citation.] The primary consideration in the selection of a guardian is the best interest and well-being of the disabled person." *In re Estate of Johnson*, 219 Ill. App. 3d 962, 965 (1991). A trial court's selection of a guardian will not be disturbed absent an abuse of discretion. *Id*. at 712. "A court abuses its discretion where its decision is arbitrary, fanciful or unreasonable, or when no reasonable person would take the same view." *Lisowski v. MacNeal Memorial Hospital Ass'n*, 381 Ill. App. 3d 275, 288 (2008). "If a trial court's decision rests on an error of law, then it is clear that an abuse of discretion has occurred, as it is always an abuse of discretion to base a decision on an incorrect view of the law." *North Spaulding Condominium Ass'n v. Cavanaugh*,

2017 IL App (1st) 160870, ¶ 46.

¶ 21 I. Jurisdiction

¶ 22 Mark claims the trial court here violated court rules and statutory notice requirements by failing to properly serve James with notice of Kathryn's cross-petition to be appointed his guardian. Mark concedes James was served with a copy of the petitions filed by RUMC to have him adjudged a disabled person. He argues Kathryn failed to serve James with a copy of her cross-petition and this constitutes reversible error because these violations meant the trial court acted without inherent authority, and therefore without jurisdiction. We disagree. Our supreme court has explicitly rejected this reasoning.

¶ 23 "Jurisdiction is most commonly understood as consisting of two elements: subject matter jurisdiction and personal jurisdiction." *People v. Castleberry*, 2015 IL 116916, ¶ 12. A court's subject matter jurisdiction "refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). While a court's power to review administrative decisions is conferred by statute, "a circuit court's subject matter jurisdiction is conferred entirely by our state constitution." *Id.* Article VI of our constitution confers the court with subject matter jurisdiction over all "justiciable matters." ILL. CONST. 1970, art. VI, § 9. "Generally, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota, Inc.*, 199 Ill. 2d at 335. "Personal jurisdiction refers to the court's power 'to bring a person into its adjudicative process.' " *Castleberry*, 2015 IL 116916, ¶ 12. "A plaintiff submits to the court's jurisdiction by filing a complaint, and a defendant may consent to the court's jurisdiction by his appearance or may

have personal jurisdiction imposed upon him by the effective service of summons." *Sutton v. Ekong*, 2013 IL App (1st) 121975, ¶ 17. When James was served with a copy of the petitions filed by RUMC to have him adjudged a disabled person and appointing a guardian over his estate and person, he was brought under the jurisdiction of the court. The GAL's report indicated the GAL spoke with James about the appointment of a temporary guardian and a plenary guardian, and the April 22, 2016 hearing to have the OSG appointed his temporary guardian so that he could be moved from RUMC to Abbott House. The GAL also spoke with James about the need for counsel and who would be appointed his guardian. James told the GAL he wanted his mother to be appointed his guardian, he did not want to attend the hearings, and did not want to be represented by counsel. The court entered an order of temporary guardianship for James, thereby acquiring continuing jurisdiction over the matter: "once the circuit court has appointed a guardian or issued a protective order, it has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the order expires by its own terms." *In re Estate of Kusmanoff*, 2017 IL App (5th) 160129, ¶ 73. Kathryn filed her cross-petition to be appointed James' guardian under the same case number, and James consented to her appointment as guardian of his person and estate under the same case number.

¶ 24 Mark claims the failure to comply with statutory provisions meant the trial court lacked jurisdiction to enter an order of guardianship, relying on *Matter of Sodini*, 172 Ill. App. 3d 1055 (1988). *Sodini* involved an appeal from a trial court's order appointing a guardian over a disabled adult. The petitioner, the disabled adult's sister, filed her appeal because she was not served with any notice of the petition to have her brother adjudicated a disabled adult and have a guardian appointed. *Id*. at 1057. The *Sodini* court found the statutory notice requirement was mandatory, and that "failure to give notice of the guardianship hearing to petitioner is a

jurisdictional defect." *Id*. at 1058. Because the mandatory notice requirements were not met, the *Sodini* court concluded the trial court lacked jurisdiction to issue its order, and vacated and remanded the trial court's order. *Id*. at 1059-60.

¶ 25 We find *Sodini* inapposite to the present case. James and Mark were served with notice of the hearings concerning appointment of a guardian over James. Unlike the petitioner in *Sodini* who never received notice and therefore did not attend the hearings on appointment of her brother's guardian, the record indicates Mark was present at every hearing. Additionally, *Sodini* predates our supreme court's decisions in *Belleville Toyota, Inc.*, and *Castleberry*. In *Castleberry* the court made clear

> "whether a judgment is void in a civil lawsuit that does not involve an administrative tribunal or administrative review depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter. 'Inherent power' as a separate or third type of jurisdiction applies only to courts of limited jurisdiction or in administrative matters. It has no place in civil actions in the circuit courts, since these courts are granted general jurisdictional authority by the constitution." *Castleberry*, 2015 IL 116916, ¶ 15.

Mark argues Kathryn's failure to give notice of the amendment to her petition to have her appointed guardian of both James' person and estate constituted a jurisdictional defect because the trial court lacked the inherent authority to render its order. However, this argument lies at odds with our supreme court's decisions in *Belleville Toyota, Inc.*, and *Castleberry* where the court explicitly rejected such a line of argumentation.

> "Characterizing the requirements of a statutory cause of action as nonwaivable

> conditions precedent to a court's exercise of jurisdiction is merely another way of saying that the circuit court may only exercise that jurisdiction which the legislature allows. We reiterate, however, that the jurisdiction of the circuit court is conferred by the constitution, not the legislature. Only in the area of administrative review is the court's power to adjudicate controlled by the legislature." *Belleville Toyota, Inc.*, 199 Ill. 2d at 336.

The *Castleberry* court concluded a judgment could not be collaterally attacked based on the court lacking inherent authority to issue its ruling unless the court was conducting administrative review. " '[O]nly the most fundamental defects, *i.e.*, a lack of personal jurisdiction or lack of subject matter jurisdiction as defined in *Belleville Toyota* warrant declaring a judgment void.' " *Castleberry*, 2015 IL 116916, ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38). As noted above, the trial court here had personal jurisdiction over James and both parents, and subject matter jurisdiction over the appointment of James' guardian. "As the court had proper jurisdiction for the minor's adjudication, the failure of statutory notice for the disposition did not terminate the court's continuing jurisdiction prior to the dispositional proceedings." *In Interest of G.L.*, 133 Ill. App. 3d 1048, 1052 (1985). Therefore, the trial court had jurisdiction to enter the order adjudging James a disabled person and appointing Kathryn the guardian of his person and estate.

¶ 26 II. Mark's Standing to Challenge the Appointment of James' Guardian

¶ 27 Mark argues the trial court abused its discretion by finding as a matter of law that he had limited standing. Based on this finding, the court limited Mark to testify and present evidence only on Kathryn's ability to satisfy statutory qualifications to serve as James' guardian, and prevented Mark from introducing other evidence of Kathryn's fitness to serve as James' guardian

other than statutory disqualifications. Mark argues an abuse of discretion occurred because the trial court based its decision on an incorrect view of the law.

¶ 28 We first consider the question of Mark's standing. Under the Act, a petition for adjudication of disability and appointment of a guardian requires the petitioner to list "the name and post office addresses of the nearest relatives of the respondent in the following order: (1) the spouse and adult children, parents and adult brothers and sisters, if any; if none, (2) nearest adult kindred known to the petitioner." 755 ILCS 5/11a-8(e) (West 2016). The Act further provides that those individuals shall be given "[n]otice of the time and place of the hearing." 755 ILCS 5/11a-10(f) (West 2016). "Section 11a–20 also explains that such a request for termination of the adjudication of disability, revocation of letters, or modification may be made 'by the ward or any other person on the ward's behalf.' " *Struck v. Cook County Public Guardian*, 387 Ill. App. 3d 867, 875 (2008). Our supreme court made clear the Act allows for relatives of an alleged disabled adult "to contest the original disability and guardianship order and to appeal from the denial of that motion." *In re Estate of Steinfeld*, 158 Ill. 2d 1, 9-10 (1994). The *Steinfeld* court therefore concluded that persons required to be given notice under the Probate Act have standing to file a motion contesting the order adjudging a person disabled and appointing a guardian. *Id*. The *Steinfeld* court made clear that persons required to be notified under the Act have standing to file a motion to contest a guardianship by virtue of their relationship to the alleged disabled person; the act of filing a motion contesting the guardianship is not what gave them standing.

¶ 29 We conclude Mark is an interested party and has standing under the Act because he is James' father. See 755 ILCS 5/11a-8(e) (West 2016). RUMC and Kathryn argue Mark only had "limited standing" because he was disqualified from serving as James' guardian due to his felony conviction, without citing any authority for this position. We find this argument unpersuasive.

They cite no authority for their position that a parent must have a pending petition or cross-petition to be appointed guardian before they have standing to challenge the qualifications of the proposed guardian for the child, or that a parent with a felony conviction loses such standing. Although Mark may have been personally disqualified from serving as James' guardian, he remained one of the parties entitled to receive notice of hearings concerning appointment of James' guardian. 755 ILCS 5/11a-10 (West 2016). Mark had sufficient interest to be concerned if an unfit guardian was appointed his son's guardian. We find as a matter of law that Mark had standing as an interested party to challenge Kathryn's appointment as James' guardian. *In re Estate of Steinfeld*, 158 Ill. 2d at 9-10; *Struck*, 387 Ill. App. 3d at 876.

¶ 30 The trial court correctly concluded that Mark had standing as a father. However, without citing authority the court limited admission of testimony and evidence Mark wanted to submit concerning Kathryn's qualifications to serve as guardian to only evidence going to statutory disqualifications. When appointing a guardian over an adult adjudged disabled, the court must consider the "best interests and welfare of the ward." 755 ILCS 5/11a-6 (West 2016). Part of determining whether a proposed guardian is in the best interest and welfare of the ward requires consideration of evidence of that proposed guardian's fitness to serve as a guardian. Mark attempted to offer evidence on the issue of Katherine's fitness to serve as James' guardian, and the trial court restricted him from doing so on the basis that he had "limited standing." We cannot find authority, nor can we think of any good reason why a trial court, in determining the best interest of the ward, should not hear relevant evidence from the nearest relatives of an alleged disabled person concerning whether appointment of a proposed guardian is in the best interest of the alleged disabled person. We believe relevant evidence going to the best interest of the ward should be heard even if it is offered by a relative who is unable or unwilling to serve as

guardian. We find the trial court ruling restricting Mark from submitting evidence going beyond Kathryn's baseline qualifications to serve as James' guardian was error.

¶ 31 Having found the trial court erred, we must consider whether the trial court's error requires reversal.

> "Not every error committed by the trial court in a civil case leads to reversal. [Citation.] If the outcome of the case would not have been different, a judgment or decree will not be disturbed. [Citation.] The burden is on the party seeking reversal to establish prejudice. [Citation.] Further, this court may affirm the trial court's judgment, regardless of the trial court's reasoning, on any basis in the record." *Central Illinois Electrical Services, L.L.C. v. Slepian*, 358 Ill. App. 3d 545, 550 (2005).

In the trial court Mark argued that the numerous incidents of fighting between James and Kathryn culminated in the removal of James from Kathryn's home and Kathryn getting an order of protection against James. Mark also alleged he had evidence about Kathryn's financial condition which rendered her unfit to be James' guardian. Mark claims Kathryn was not qualified to serve as guardian and he was prevented from submitting this evidence. "Error in the exclusion or admission of evidence does not require reversal where there has been no prejudice or where the evidence has not materially affected the result." *Ford v. City of Chicago*, 132 Ill. App. 3d 408, 414 (1985).

¶ 32 In this case the GAL testified that James consented to Kathryn being the guardian of his person and estate and specifically objected to Mark acting as his guardian. The record shows that the most pressing purpose of the guardianship of James' person was to give consent for James to reside in a residential facility, not to reside in the home of his proposed guardian.

¶ 33 While Mark has standing as an interested party to present evidence before the court, the trial court has discretion to limit the introduction of cumulative subsequent evidence. In this case it appears that the court was aware of much of the evidence Mark wanted to submit. "The determination of the admission of evidence is discretionary with the trial court and its decision will not be reversed absent a clear abuse of discretion." *Galvin's Estate v. Galvin*, 112 Ill. App. 3d 677, 682 (1983). The record indicates the trial court considered the contentious relationship between James and Kathryn, evaluated the report of the GAL, and on multiple occasions heard Mark make claims as to Kathryn's fitness to serve as guardian recounting the fights between James and Kathryn and allegations concerning Kathryn's financial condition. The court considered this evidence before it appointed Kathryn, and the restrictions imposed on Mark preventing him from recounting the fights between James and Kathryn did not affect the outcome of this case.

¶ 34 Mark claims he was prejudiced when he was prevented from introducing evidence of Kathryn's financial inability to serve as guardian of James' estate. We disagree. The Act requires a potential guardian to make financial disclosures: "the approximate value of the personal and real estate; the amount of the anticipated annual gross income and other receipts." 755 ILCS 5/11a-8 (West 2016). In addition, the court considered Mark's motion for summary judgment, stating on the record that Mark had raised the matter numerous times and that the court was "ready to rule on it." The court noted the motion concerned the financial affairs of Kathryn and "issues of the trust that was put together for [James] *** as part of the marital settlement agreement." Mark has failed to show what additional evidence he could have presented which would not have been cumulative. Mark failed to include both the financial disclosures and the motion for summary judgment in the record on appeal. It was Mark's burden

on appeal to provide the reviewing court with

> "a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

The trial court was aware of the financial information about Kathryn contained in the statutory financial disclosure and the evidence supporting the motion for summary judgment, yet determined it was in the best interest of James that she be appointed guardian. We conclude the outcome of this case would not have been different if Mark was not restricted in presenting evidence.

¶ 35 Mark has presented nothing in the record before us showing he was prejudiced by the trial court's ruling restricting his right to present evidence on Kathryn's fitness to be James' guardian. While the trial court erred by limiting Mark's ability to present evidence, Mark's evidence was merely cumulative of information already possessed by the court. Therefore, we find the outcome of the case would not have been different absent the error. See *Slepian*, 358 Ill. App. 3d at 550.

¶ 36 III. Notice

¶ 37 Finally, Mark argues the trial court abused its discretion appointing Kathryn as guardian of James' person and estate because of a failure to provide adequate notice to James and Mark. Mark claims the court erred by allowing Kathryn to amend her cross-petition to include a request to be appointed guardian of James' estate and person (her initial cross-petition only included a

request to be appointed guardian of James' person) because she did not provide adequate notice to anyone, violating Supreme Court Rule 105 and Circuit Court of Cook County Rule 2.1. We find this argument is without merit. Ill. S. Ct. R. 105 (eff. Jan 1, 2018); Cook County Cir. Ct. R. 2.1 (Aug. 21, 2000). Kathryn contends she provided adequate notice to both James and Mark, she was not required to provide additional notice of her amendment, and Mark and James had notice she wanted to be appointed guardian of James' estate as well as his person.

¶ 38 A. Notice to James

¶ 39 The record indicates James was served with notice in the original petition that the trial court was conducting hearings to determine whether James was a disabled person and whether the appointment of a guardian for James' person and estate was required. James was also provided with a notice of rights, and the GAL spoke with James on multiple occasions concerning the appointment of a guardian for James' person and estate. Significantly James told the GAL he wanted Kathryn to be guardian of his estate and person.

¶ 40 Neither James nor the GAL nor the OSG has objected to Kathryn's appointment as guardian of James' estate. Therefore, we find no error in providing James notice because James was informed of the proceedings, and James waived the notice requirement when he informed the GAL he was aware of the proceedings to appoint a guardian over his estate and person and that he did not wish to participate in those hearings. 755 ILCS 5/11a-10(f) (West 2016).

¶ 41 B. Notice to Mark

¶ 42 Mark claims he had inadequate notice Kathryn also sought to be appointed guardian of James' person and estate. However, RUMC clearly served Mark with a petition for appointment of a guardian over James' person *and* estate. Mark argues he had inadequate notice to argue Kathryn's petition to be appointed guardian of James' estate and person at the February 9, 2017

hearing because that hearing was set only for argument on his standing and for status. However, "[c]ontinuances following the first hearing do not constitute 'resetting of the date' for hearing. Further, upon occurrence of the first, noticed hearing, all participating parties will have actual notice of continuances ordered." *In Interest of G.L.*, 133 Ill. App. 3d at 1051. Based on Mark's presence at the hearings, he was aware the purpose of the hearings was to appoint a guardian for both James' person and estate. In fact, the report of the physician indicated James was incapable of managing his financial affairs. Moreover, Mark sought to introduce evidence of Kathryn's financial inability to serve as guardian of James' estate, which is another indication that Mark knew the appointment of a guardian for James' estate was at issue. The record affirmatively refutes Mark's argument that he was not aware appointment of a guardian of James' estate was at issue. We cannot say he was prejudiced by the trial court allowing Kathryn to amend her petition. Although there may have been a technical violation of local notice rules regarding amending Kathryn's petition, Mark was not prejudiced because the outcome of this case would have been the same.

¶ 43 As noted above, the trial court has discretion to appoint a guardian for a disabled person. *Estate of Johnson*, 219 Ill. App. 3d at 965. The court "must give due consideration to the preference of the disabled person. [Citation.] The primary consideration in the selection of a guardian is the best interest and well-being of the disabled person." *Id.* "The court may consider such factors as past actions and conduct of proposed guardians, business experience, ages, and family situations." *Matter of Estate of Robertson*, 144 Ill. App. 3d 701, 712 (1986). The record indicates the trial court here evaluated the GAL's report and testimony, and considered evidence of Kathryn's fitness to serve as James' guardian. The court noted James' wishes about whether Kathryn or Mark should serve as his guardian had fluctuated, but that most recently James

wished to have his mother as his guardian. The court also indicated James had become visibly upset when the GAL spoke to James about his father serving as his guardian, and that the GAL ultimately recommended that it was in James' best interest to have Kathryn serve as guardian of his estate and person. The trial court concluded James was a disabled person unable to manage his personal or financial affairs, and that it was in his best interest to appoint Kathryn as guardian of his person and estate.

¶ 44 The trial court had subject matter jurisdiction and personal jurisdiction over the parties. Mark has not shown he was prejudiced when the court restricted the evidence he could present or by any irregularities with notice because the outcome of this case would have been the same absent error. Therefore, we affirm the judgment of the trial court.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons we affirm the judgment of the circuit court of Cook County.

¶ 47 Affirmed.