

Circuit Court for Baltimore County
Case No. 03-T-18-000274

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 341

September Term, 2023

IN THE MATTER OF
MARTHA ANN KRAMER

Berger,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 4, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The Circuit Court for Baltimore County awarded guardianship of Martha Ann Kramer’s person to the Baltimore County Department of Aging (“BCDA”) and temporary guardianship of Ms. Kramer’s property to Robert M. McCarthy (an attorney appointed by the court). The court also granted Mr. McCarthy’s petition to relocate Ms. Kramer to a memory care facility. The appellant, Emmanuel Digman (“Appellant”), is Ms. Kramer’s son. Appellant, representing himself, presents the following “[i]ssues” for our review:¹

- I. Whether the court erred in appointing Mr. McCarthy as the temporary guardian of Ms. Kramer’s property.
- II. Whether the court erred or abused its discretion in granting Mr. McCarthy’s petition to relocate Ms. Kramer to a memory care facility.
- III. Whether the court erred in appointing the BCDA as guardian of Ms. Kramer’s person.

For the reasons to follow, we shall affirm the judgment of the circuit court.

¹ The issues, as framed in Appellant’s brief, are as follows:

Issue 1.
Court below erred in appointing the current Guardian of Property.

Issue 2.
The Court erred in acquiescing in the capricious decision of the Guardian of Property to change Ward’s Abode.

Issue 3.
Appointment of Guardian of Person.

BACKGROUND

On November 2, 2018, Appellant filed a petition for the appointment of guardians of Ms. Kramer’s person and property. Ms. Kramer was 83 years old at that time and suffering from dementia. Ms. Kramer had three children: Appellant, Mr. Glenn Digman (“Glenn”),² and Ms. Lorrie Galvez. After a show cause hearing in February 2019, the circuit court appointed Appellant, Glenn, and Ms. Galvez as Ms. Kramer’s joint personal guardians, and the court appointed Mr. McCarthy as the guardian of Ms. Kramer’s property. In November 2019, the court — “with the consent of the parties” — removed Mr. McCarthy as the guardian of property and appointed Glenn as the substitute guardian of property.

After a hearing in March 2021, the court approved the establishment of an irrevocable trust for Ms. Kramer in April 2021. The trust provides as follows:

“Trustee” refers to my son, GLENN W. DIGMAN while he is serving as Trustee, and to such other persons or corporations as may succeed him from time to time as Trustee In the event that GLENN W. DIGMAN is unable or unwilling to serve or to continue to serve as Trustee, a Successor Trustee shall be appointed by the supervising Guardianship Judge[.]

In October 2022, Glenn died. Appellant then filed a motion for “emergency replacement for guardian of property[,]” in which he sought “immediate appointment of Guardian of Property to keep Martha Ann Kramer’s care uninterrupted.” However, on

² For clarity, we refer to Glenn by his first name because he shares the same last name as his brother, Appellant. We mean no disrespect by referring to Glenn Digman by his first name.

October 14, 2022, the court re-appointed Mr. McCarthy as the temporary property guardian.

In November 2022, Mr. McCarthy petitioned to remove Appellant from his position as co-personal guardian. In that motion, Mr. McCarthy alleged that Ms. Kramer’s health had deteriorated, and that Appellant was interfering with Ms. Kramer’s care:

In summary, a few days before [Glenn’s] death, Martha Kramer suffered a fall and a fractured shoulder, requiring hospitalization. Upon returning home, Martha Kramer’s health further deteriorated until she was hospitalized at Johns Hopkins Bayview on October 10, 2022, the same day her son passed away

It was recommended by the medical professionals that Martha Kramer enter a rehabilitation facility until she recovered to the point that she could return home. The medical professionals at Johns Hopkins Bayview stated that Martha Kramer required 24-hour skilled nursing care at this time to manage her rehabilitation and medication needs. Martha Kramer was moved to Autumn Lake — Riverview Skilled Nursing and Rehab Center on October 22, 2022. . . .

[Appellant] is interfering with his mother’s care by threatening to remove Martha Kramer from the facility and take her home against medical advice, preventing his mother from receiving vaccines and medication against medical advice and interfering with Martha Kramer’s relationship with her doctors.

At a hearing held later that month, Ms. Galvez testified and confirmed that she and Appellant were “at constant loggerheads or impasses” regarding their mother’s care. Ms. Galvez testified as follows about her disagreements with Appellant:

We could not decide on treatment of my mother’s coagulation therapy in the hospital because he refused it. He

didn't even want her to go to rehab. He was trying to have her released early from there when she wasn't ready. So just -- when the doctor tells you what is best for the patient, you tend to believe him. He is the expert and knows what is best and weighing out you know, the benefits and the risks of treatment. And right now she could perish at any moment.

* * *

[Appellant] accuses me constantly of elder abuse because I don't agree with him. He filed several reports with the Court because I have her vaccinated for influenza and COVID because that is what is recommended for that age group because it is dangerous if they were to become ill with those diseases. It would be detrimental. So I can't even give her a vaccine without backlash.

By contrast, Appellant testified that there was “not -- a big enough disagreement between [Ms. Galvez] and I to cause the removal of me.”

After the hearing, the court removed Appellant as co-personal guardian and left Ms. Galvez as the sole personal guardian:

What is sort of factually before the Court is the care of one's mother. It is hard to imagine a more important thing than that, the care of our loved ones, in particular our mother. But I have a very discrete and narrow legal question before me. And that is I have before me the emergency petition to alter the current guardianship arrangement, and that does not affect necessarily the relationships that one has to one's mother and even necessarily the care that is provided. But it is about the ability for providers to have an efficient and timely decision making voice and a legal decision making entity that is functioning. And this Court and, frankly, the file is replete with care for [Ms.] Kramer and the testimony that I heard is that she is very well loved and cared for. But the question is now that there has been an altered circumstance in the third person who is no longer co-guardian being with us, I'm able to essentially in a case of an impasse be a decision maker; we have two persons who appear to be at loggerheads or an impasse, and that makes decision making very, very

difficult when decisions need to be made. And frankly, in cases of medical decisions and an aging loved one, there are times when those decisions have to be made in a timely fashion to ensure that the Ward is cared for properly.

* * *

I am going to grant the request to remove [Appellant] as co-guardian not because he doesn't love and care for his mother. That is very clear that he does. But because right now he and the co-guardian, [Ms. Galvez], the sister, are at repeated loggerheads and a decision needs to be made.

The court then emphasized that any request to change Ms. Kramer's living arrangement "would have to be taken before the Court and then all parties would be heard from again[.]"

Ms. Kramer suffered a stroke in December 2022. The next month, Mr. McCarthy petitioned the court to relocate Ms. Kramer to a memory care facility. In that motion, Mr. McCarthy wrote as follows:

In December 2022, [Ms. Kramer] suffered a stroke which left her with neurological deficits, visual impairment, and impairment to her ability to provide her own care consistently. Consequently, she requires more hands on care for bathing, dressing, and even feeding on occasion. Even with 24/7 aides in the home, this is inadequate to provide her with the necessary care that could be provided in a memory care facility.

At a hearing in February 2023, Mr. McCarthy stated that Appellant had moved into Ms. Kramer's residence without Ms. Galvez's permission:

[Appellant] having been removed as guardian of the person, has now moved himself back in and was directing the aids that [Ms. Galvez] had in the house to not stay in the bedroom and the living room which caused them to quit the process here. And he was taking over care of his mother without the

permission of [Ms. Galvez], who is a person who was the one who is supposed to be directing this action.

Mr. McCarthy stated that, because of Appellant’s actions, Ms. Galvez “determined, as sole guardian of the person, . . . that [Ms. Kramer] was in immediate peril and needed to be moved.”

Ms. Jacqueline Tangires, a licensed social worker who had been caring for Ms. Kramer since 2018, testified that she supported Ms. Kramer’s move to a memory care facility:

I have always said that [Ms. Kramer] should be able to stay in her home as long as it is safe. I personally hit a place where this is no longer safe. People are weighing in saying I’m going to be there and I’m going to take care of her and then they are changing their mind like an hour later. I found that the care plan was unravelling as we speak and I wanted to make sure that [Ms. Kramer] had 24/7, that she had the socialization, that she had the engagement, that she had the medical staff that are able to deal with cognitive decline in someone that is potentially sundowning that I felt [Ms. Kramer] was no longer understanding that she was in her house anymore, whether she was in her house or whether she was someplace else.

In February 2023, the court appointed Mr. McCarthy as trustee of the trust, removed Ms. Galvez as personal guardian, and appointed the BCDA as temporary guardian of the person. The court ordered the BCDA to provide a report “regarding (1) the ability to establish a safe living plan for Martha Ann Kramer in the home she resided in prior to her removal without Court approval and (2) inform the Court as to the benefits and disadvantages of Martha Ann Kramer remaining at her current placement[.]”

Pending the completion of that report, the court held the petition to move Ms. Kramer to a memory care facility *sub curia*.

The next month, the court granted Mr. McCarthy’s petition to relocate Ms. Kramer to a memory care facility, and the court appointed the BCDA as the permanent personal guardian.

Additional facts will be included as they become relevant to the issues.

STANDARD OF REVIEW

The following standard of review applies in adult guardianship cases:

[I]n reviewing whether a circuit court properly decided to appoint a guardian for an adult, we adopt a tri-partite and interrelated standard of review. Factual findings will be reviewed for clear error, while purely legal determinations will be reviewed without deference, unless the error be harmless. As to the ultimate conclusion of whether an adult guardianship is appropriate, the circuit court’s decision will not be disturbed unless there has been a clear abuse of discretion.

Matter of Meddings, 244 Md. App. 204, 220 (2019).

A court-appointed guardian has “[t]he right to custody of the disabled person and to establish the disabled person’s place of abode within and without the State, provided there is court authorization for any change in the classification of abode[.]” Md. Code, EST. & TRUSTS (“E.T.”) § 13-708(b)(2). Moreover, decisions related to a ward’s proposed place of residence are within the court’s “plenary” jurisdiction to protect the best interest of disabled individuals. *Wentzel v. Montgomery Gen. Hosp., Inc.*, 293 Md. 685, 702 (1982).

DISCUSSION

I.

First, Appellant argues that the court erred in appointing Mr. McCarthy as the temporary guardian of property. Under Maryland Rule 8-202(a), a notice of appeal must “be filed within 30 days after entry of the judgment or order from which the appeal is taken.” On October 14, 2022, the court re-appointed Mr. McCarthy as the temporary property guardian. Appellant filed his notice of appeal on April 20, 2023. As a result, the appeal of this issue was not timely filed.

Even if this claim were timely, we would determine that the court did not err in re-appointing Mr. McCarthy as the temporary guardian of property. Under the Maryland Rules, a temporary guardian means a guardian of the person or property appointed by the court pending the appointment of a substitute or successor guardian. Md. Rule 10-103(i)(3). The circuit court is empowered to appoint a guardian of the property of a disabled person. E.T. § 13-201. Mr. McCarthy served as the temporary guardian of property before Glenn, by consent, was appointed as guardian of property. As a result, it was a logical course of action to re-appoint Mr. McCarthy as temporary guardian of property following Glenn’s death. Under these circumstances, the court did not err in re-appointing Mr. McCarthy as temporary guardian of property.

To the extent that Appellant challenges Mr. McCarthy’s appointment as trustee of the trust, that appellate challenge is also untimely under Md. Rule 8-202(a). Mr. McCarthy was appointed as trustee through an order entered on February 28, 2023. As noted above, Appellant’s notice of appeal was filed on April 20, 2023. Even if this claim

were timely, we would determine that the court did not err in appointing Mr. McCarthy as trustee of the trust. Indeed, the trust did not name Appellant as the successor trustee. Instead, Section 1.01 of the trust gave the court the authority to choose the successor trustee, “[i]n the event that [Glenn] is unable or unwilling to serve or to continue to serve as Trustee[.]” Lastly, the court properly noted “that the duties and responsibility of the role of Trustee and Guardian of Property overlap[.]”

II.

Next, Appellant argues that the court erred in granting the petition to relocate Ms. Kramer to a memory care facility. According to Appellant, the court “erred in acquiescing in the capricious decision of the Guardian of Property to change Ward’s abode.”

To be sure, in November 2022, the court ordered that “the classification of [Ms. Kramer’s] abode” shall not be changed “without prior authorization of the Court[.]” Nevertheless, after Ms. Kramer suffered a stroke in December 2022 and was moved to an assisted living facility, the court requested a report from the BCDA “regarding (1) the ability to establish a safe living plan for Martha Ann Kramer in the home she resided in prior to her removal without Court approval and (2) inform the Court as to the benefits and disadvantages of Martha Ann Kramer remaining at her current placement[.]”

The record shows that the court carefully considered several factors when deciding whether Ms. Kramer should remain at the assisted living facility. The court noted that the BCDA’s report stated that “there were two significant factors that would come into play: One was financial, and the second was in-home care being complicated by family

dynamics and the ability for employed caregivers to provide care without having to navigate certain family dynamics.” The court observed that “[t]here are no concerns regarding emergencies given where [Ms. Kramer] is currently[, i.e., the assisted living facility,] as opposed to if she were in a home.” Moreover, at the assisted living facility, “the costs are known and can be planned.” In addition, the court determined that the assisted living facility provides the following: “There are activities and socializations provided for at the facility, family members are welcome to visit, take residents on outings or overnight visits.”

For all these reasons, the court properly considered Ms. Kramer’s best interest, and thus the court did not err or abuse its discretion in granting the petition to relocate Ms. Kramer to an assisted living facility.

III.

Lastly, Appellant contends that the court erred in appointing the BCDA as the guardian of the person. According to Appellant, “[i]f appointed as the Guardian of the Person[,] Appellant would be in a better position to address the Court below[.]”

“For good cause, the court may pass over a person with priority and appoint a person [as guardian of the person] with a lower priority [under E.T. § 13-707(a)].” E.T. § 13-707(c)(1)(ii). We look to the reasons articulated by the trial court and “determine whether the reasons and any factual findings underlying those reasons are supported by competent evidence and then determine whether the reasons support the conclusion” that the Department “is the better choice to act in the best interest” of Ms. Kramer. *Meek v. Linton*, 245 Md. App. 689, 723 (2020).

The court recognized a significant factor relevant here: “the ability for employed caregivers to provide care without having to navigate certain family dynamics.” Indeed, Appellant had been removed as co-guardian of the person because he was “at repeated loggerheads” with Ms. Galvez when she was co-guardian of the person.³ The court properly considered the report provided by the BCDA, which is “a neutral guardian of last resort[,]” to determine the course of action in Ms. Kramer’s best interest.

In sum, the court had more than sufficient evidence to support its decision to appoint the BCDA to serve as Ms. Kramer’s guardian.⁴

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

³ At the proceeding in March 2023, the court asked Ms. Galvez if she would like to be reappointed as personal guardian, and Ms. Galvez responded as follows:

I would love to be my mother’s guardian but the problem that exists with that is filings weekly from [Appellant]. So I think it would be in the best interests of the taxpayers and the Court for the guardian to be [the BCDA] since they will have more control.

⁴ In his reply brief, Appellant asks this Court “to find a Forensic examination is warranted, including forensic examination of [Ms. Kramer’s] total estate including the Trust.” Because this request was not raised in Appellant’s opening brief, we shall not address it. *See Jones v. State*, 379 Md. 704, 713 (2004) (“[A]n appellate court ordinarily will not consider an issue raised for the first time in a reply brief.”). As noted above, the court did not err in appointing Mr. McCarthy as trustee.