

Circuit Court for Montgomery County
Case No. 160915FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 815

September Term, 2020

IN THE MATTER OF SYLVIA SHEATH

Nazarian,
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: January 31, 2022

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On November 9, 2020, after a four-day trial, the Circuit Court for Montgomery County appointed the Montgomery County Department of Health and Human Services (the “Department”) as guardian of Sylvia Sheath’s person and Randi Bocanegra as guardian of Ms. Sheath’s property, over the objection of Ms. Sheath’s only surviving child, Toney Schloss. Mr. Schloss appealed, asserting a variety of legal, factual, and procedural errors. We affirm.

I. BACKGROUND

A. Department Investigation And Pre-Trial Proceedings.

Ms. Sheath is elderly and suffers from dementia. In the past, she twice had been investigated by Adult Protective Services (“APS”), first in 2017 after she fell behind on rent payments and neighbors reported concern for her welfare based on her appearance and requests for food. Ms. Sheath reported having one estranged son, but presented a plan for her care and refused the Department’s services. The Department conducted a second investigation in October 2018, when a neighbor reported seeing Ms. Sheath wandering her neighborhood and alleged that Ms. Sheath suffered from “[s]ignificant memory deficits” and confusion. Ms. Sheath reported that she had reestablished contact with her son, Mr. Schloss, but she communicated concerns about her finances. As a result, the APS social worker accompanied Ms. Sheath to her bank, where they discovered unauthorized debits in “alarming patterns atypical of an elderly woman.”

On April 18, 2019, the Department obtained court orders for capacity evaluations and requested guardianship over Ms. Sheath’s property. Two experts, a licensed psychologist and a medical doctor, agreed that Ms. Sheath was not competent to make or

communicate responsible decisions regarding her person or property. Dr. Carole Giunta in particular reported that she was “very concerned about the quality of care and oversight Ms. Sheath is receiving from her son, Toney Schloss.” Dr. Giunta interviewed Mr. Schloss and found that he “presents with paranoid thoughts, believing that he and his mother are the targets of a conspiracy. The quality of Mr. Schloss’s care and oversight of his mother’s needs and finances are of concern” She recommended both the appointment of a care manager and institutional care.

Mr. Schloss did not dispute the Department’s competency findings, but insisted on remaining Ms. Sheath’s guardian. Mr. Schloss denied any “unauthorized activity” in Ms. Sheath’s finances or any “alarming living conditions,” and he contended that a less restrictive form of intervention would be for Mr. Schloss to continue to act as his mother’s attorney-in-fact under her general power of attorney. Mr. Schloss also pointed to a service contract under which Ms. Sheath paid him \$500 per week to provide routine care to her.

At that point, the Department elected not to proceed on its request for temporary guardian of the person and allowed in-home services in an attempt to maintain Ms. Sheath in her home.

B. Mr. Schloss’s Competency Called Into Question.

There came a point in October 2019, though, when Mr. Schloss’s conduct during the investigation and proceedings prompted the Department to pursue guardianship of Ms. Sheath’s person after all. Mr. Schloss sent “very disturbing emails” to Department employees assigned to Ms. Sheath’s case. These emails spanned several pages and alleged

broad conspiracies of government corruption, and they included a pornographic image sent to the temporary guardian of Ms. Sheath's property. The Department requested a mental health examination of Mr. Schloss in addition to temporary guardianship over Ms. Sheath's person, and argued that his conduct was evidence that he was mentally ill and incapable of making competent decisions on behalf of Ms. Sheath.

At an evidentiary hearing on January 15, 2020, Mr. Schloss reviewed and authenticated each email and objected only on relevance grounds, arguing they did not relate to the care he gave to his mother. The circuit court overruled those objections and found that the representations in the emails were "not indicative of someone who has good judgment." The court cited Mr. Schloss's decision to send a pornographic image to a female attorney and Dr. Giunta's evaluation and found good cause to order a mental evaluation. The court found Mr. Schloss's mental capacity material to the issues in the guardianship case, specifically to his ability to care for his mother, and ordered him to submit to a comprehensive mental health evaluation.

Dr. Katherine Martin completed Mr. Schloss's mental health evaluation over the course of February and March 2020. The evaluation consisted of two interviews lasting about five hours, two-and-a-half hours of testing, multiple phone calls, and review of 112 emails and records. In her report, Dr. Martin found that "Mr. Schloss'[s] thinking was marked by pronounced grandiose and persecutory delusions, and his thinking was highly strained and illogical and characterized by significant paranoia." She found specifically

that he was unable to make decisions for Ms. Sheath:

Based on the test results, and the information in this report, the following recommendations are offered:

[] Mr. Schloss has Delusional Disorder, a psychotic disorder that significantly impacts his perceptions, reasoning, and decision making. He exhibits complex delusions involving his mother, her care, her finances, and those people attempting to help her. Mr. Schloss does not have the ability to make appropriate decisions regarding Ms. Sheath's person or property.

On March 13, 2020, Ms. Sheath suffered a stroke and went to the hospital, and then was transferred to Brooke Grove Retirement Village's rehabilitation center. The Department sought to transfer Ms. Sheath to the Brooke Grove assisted living center in late April 2020. After a hearing on June 16, 2020, the circuit court permitted the sale of Ms. Sheath's home and allowed her to remain at Brooke Grove long-term.

C. Evidence At Trial.

The case went to trial on the issues of permanent guardianship of Ms. Sheath's person and property in November 2020. Mr. Schloss appeared *pro se* and court-appointed counsel appeared on behalf of Ms. Sheath. The Department entered Ms. Sheath's two competency evaluations and called Dr. Martin as an expert witness. Dr. Martin's psychological report of Mr. Schloss was admitted without objection. During a lengthy cross-examination, Mr. Schloss tried to attack the veracity of Dr. Martin's findings with evidence that, he contended, corroborated his conspiracy theories, including emails from family and family friends supporting Mr. Schloss's views of his and his family's persecution. Dr. Martin stated that she reviewed 112 emails from Mr. Schloss for her report

and found no evidence to corroborate his allegations, and noted that APS and the government have no personal motive to lie but his family members might.

Emma DeCesare, a licensed social worker and Ms. Sheath’s APS case manager, testified as an expert “in the area of geriatric social work, clinical, and adult guardianship.” Ms. DeCesare was assigned to the case in May 2019 and began visiting Ms. Sheath in June 2019, finding signs of neglect:

[S]he was lacking a lot of basic household necessities. . . . [S]he did not change her clothing; she wore the same outfit for the entire month. Her clothing was dirty, old. Her shoes had holes in them. Her condo was very hot. There was no air-conditioning. She would leave the door open. There were flies. There was no food in her house except for—sometimes there would be food left on the table, I believe what Mr. Schloss had maybe brought her, but there’s no refrigeration in the house; so food sitting out on the table is covered in—covered in flies. Her toilets were backed up in feces. Her showers were clearly not being used; there was clothes hanging in them.

Ms. DeCesare described her first interactions with Mr. Schloss during which he was “upset with the guardianship, that there was a lot of kind of conspiracy and criminal acts going on.”

Ms. DeCesare described the services Ms. Sheath receives at Brooke Grove and that she is happy there:

Ms. Sheath receives 24/7 care and supervision, including a week overnight staff, medical intervention whenever needed, which has really proven to be a benefit to her because her blood pressure has run really high, which I suspect was a precursor to her stroke; so they’ve been able to control that and manage her medication. So she receives personal care as well as recreational therapy. She’s able to socialize, walk around, participate in activities. She has all of her meals met. So it’s

quite, quite comprehensive services that she receives at the assisted living.

* * *

She's doing really well. She says that she's happy, she enjoys the food. She told me about a cat that's there that she likes. She said that she made a friend that she eats with and goes on walks with. She mentioned she's able to walk outside. It's kind of a secured area. So she can walk outside, look at the [koi] pond. She's been participating in chair aerobics that she enjoys, and she volunteered that herself. She helps out with bingo. They do reading discussions. She, she's, she's happy. She's doing really well. . . . She said that the care staff is very kind.

In Ms. DeCesare's expert opinion, Ms. Sheath lacked the capacity to make reasonable decisions for her own care, the assisted living facility was "the least restrictive setting," and "the Department should serve as her guardian of person because there is no other appropriate or willing person to serve in that capacity."

Randi Bocanegra, a lawyer and the temporary guardian of Ms. Sheath's property, testified about her review of Ms. Sheath's financial records and evidence of financial exploitation. Around the time Mr. Schloss gained control over Ms. Sheath's finances, in January 2018, suspicious transfers were made from Ms. Sheath's Australian bank account into her Bank of America account:

[I]f the explanation said that this would—the charges—or the money appeared to be explained as being transferred for taxes or for carpet or for car repairs, then I would look for associated charges with those things, and I almost never found the charges that were made matched up to that explanation. The charges that were made were, you know, other things, a lot of eating out, a lot of online purchases, and things like that.

In addition, I noted that Ms. Sheath's spending was very different beginning in, really—at one point in the end of 2017 and then again in February of 2018, her, her spending pattern

was very different. Prior to that time, she, she shopped at Trader Joe's, she shopped at Whole Foods, she occasionally paid for a tax; or, you know, something at Walgreens but her spending was very modest. . . . She spent her income, but she did not go over that. Beginning in late 2017/early 2018, where she—these wires were coming in, her spending increased significantly.

In addition to these bank accounts, Ms. Sheath had social security income and rental property income from a property in Australia. Mr. Schloss had full access to the rental income, so Ms. Bocanegra requested an accounting from Mr. Schloss regarding his purported service contract with Ms. Sheath, and she sought to assess his expenditures and income while he was managing his mother's affairs. But Mr. Schloss didn't provide this accounting, so no payments were made to him under Ms. Bocanegra's temporary guardianship.

Ms. Bocanegra also testified about the feasibility of keeping Ms. Sheath in her home in light of her need for around-the-clock care. She stated that the home care agency charges \$23 an hour, but even at \$20 an hour "it would be \$175,000 a year for 24 hour care," whereas the cost of care at Brooke Grove is "approximately \$10,000 a month."

Mr. Schloss introduced his own witnesses and evidence during the trial. Many witnesses had no personal knowledge of the case or, worse, substantiated the Department's position that Mr. Schloss had mental health issues. He did, however, offer some favorable testimony. The receptionist from Ms. Sheath's chiropractor's office testified that Ms. Sheath appeared to be in better condition under Mr. Schloss's care. A neurologist, appearing as a fact witness, testified that he treated Mr. Schloss for his neurologic issues

(corroborating the physical complaints he made to Dr. Martin) and that his medical condition did not impact cognition.

Many of Mr. Schloss's witnesses were excluded. He attempted to read into the record the testimony of a psychologist and that request was denied as hearsay. A psychiatrist who assessed Mr. Schloss in 2016 was not allowed to testify because Mr. Schloss did not identify him as an expert before trial and his assessment was too remote to be relevant. Mr. Schloss also failed to subpoena many witnesses properly. Scott Johnson, Ms. Sheath's neighbor, testified at length as someone who observed Ms. Sheath often, and he observed the inside of her home approximately five to seven times during the APS involvement. Mr. Johnson stated that he "felt Sylvia's wishes were being ignored," that she was happy with the service contract between her and Mr. Schloss, and that Mr. Schloss was diligent about seeing his mother and caring for her.

D. Ruling.

After a four-day hearing, the circuit court appointed the Department and Ms. Bocanegra as guardians of Ms. Sheath's person and property, respectively. *First*, the court found by "clear and convincing evidence that Ms. Sheath lack[ed] sufficient understanding or capacity to make or communicate responsible personal decisions" *Second*, the court found by clear and convincing evidence that there was no "less restrictive form of intervention consistent with her welfare and safety other than an assisted living facility" due to the virtually uncontested evidence that she requires around-the-clock care, which is most suitable to her financial ability to pay for such care. The court noted the

“overwhelming evidence” that Ms. Sheath enjoys Brooke Grove:

[S]he’s obtaining the nutrition and care that she needs and she’s having an opportunity to intermingle with other residents at the facility that she would not have at home. So aside from financial considerations it is in her best interest in her remaining at Brook[e] Grove at this point in time.

Third, the court found that Ms. Sheath lacked capacity and needed a guardian of the person. It concluded that although Mr. Schloss had guardianship preference by statute, good cause existed to pass over Mr. Schloss and appoint the Department as the guardian of Ms. Sheath’s person:

The Court finds that it is in Ms. Sheath’s best interest for her to remain under the guardianship of the Department. That is the appropriate guardian for her and the Court does not lightly come to that conclusion just like the Department itself does not lightly seek such appointment as a general matter. Mr. Schloss clearly loves his mother. He clearly is an intelligent, articulate person and not being her guardian does not diminish his ability to maintain a good loving relationship with his mother.

The Court was convinced . . . by clear and convincing evidence, by the evidence in particular . . . from Dr. Martin who is a professional who testified to her assessment that Mr. Schloss has a disorder of [de]lusions. The record is clear, it’s come from Mr. Schloss himself that he sees a conspiracy virtually everywhere. He overall despite his love and care for his mother which is, as I said which is genuine, Mr. Schloss in the Court’s opinion does not possess the judgement that would serve in the best interest of his mother.

. . . He would be distrustful of anybody in the healthcare system working on behalf of his mother. And in fact, there’s no doubt in my mind that Mr. Schloss would remove his mother from Brook[e] Grove where she is thriving, where she likes being and which is a safe, very healthy environment for her as opposed to living at home

It’s of concern secondarily but does not carry the day alone by any means that Mr. Schloss has made it clear that he believes

that his mother sexually abused a child or children of his. That is a strongly held belief that comes with it the understandable ill will that a parent would have toward another person that parent believed abused his or her child.

I also consider that Mr. Schloss has a significant financial motive in seeking guardianship of his mother. . . .

The court considered the service contract Mr. Schloss had with his mother as a financial motive to keep Ms. Sheath in her home, but determined that “[t]he condition of the home [under the service contract] was not favorable for Ms. Sheath” The court found the home lacked food, basic toiletries, and “there is substantial reason to conclude that Ms. Sheath would be not safe within her own home.”

Fourth, the court ruled by a preponderance of the evidence that Ms. Sheath required a guardian of her property. The court found, “Under Mr. Schloss’[s] supervision her finances change[d] substantially going from something like \$2,000 of expenses to 8,000 and as high as 12 or 13,000 per month and reflecting expenses that are not the normal kind of expenses that you would expect an elderly person to be incurring.” The court kept the temporary guardian, Ms. Bocanegra, as the guardian of the property, stating “[s]he has done a wonderful job . . . [a]nd it would not make a lot of sense in the Court’s estimation to appoint somebody fresh as the guardian of property because of Ms. Bocanegra’s familiarity of Ms. Sheath’s financial situation and her willingness to serve as guardian of the property.”

Additional facts will be discussed as needed below.

II. DISCUSSION

There is no dispute that Sylvia Sheath is a “disabled person” under Maryland Code

(1974, 2017 Repl. Vol., 2021 Supp.), § 13-101(f) of the Estates & Trusts Article (“E & T”), or that she requires around-the-clock care. The only contested issue was who would assume (or, more precisely, continue) guardianship responsibility of Ms. Sheath’s person and property going forward. Mr. Schloss alleges many injustices at the trial level and beyond,¹ but his appeal boils down to whether the circuit court abused its discretion when it passed him over as Ms. Sheath’s permanent guardian. We hold that the trial court did not violate Mr. Schloss’s due process rights or abuse its discretion in any evidentiary matters, and that the court’s factual findings are supported fully by competent evidence.

We use 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.” *In the Matter of Meddings*, 244 Md. App. 204, 220 (2019). We find an abuse of discretion “where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles.” *In re Yve S.*, 373 Md. 551, 583 (2003) (cleaned up). We may also find an abuse of discretion if the trial court’s ruling clashes with “the logic and effect of facts and inferences before the court.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312

¹ Mr. Schloss framed his Questions Presented as follows:

1. The evidence didn’t support the verdict:
2. The trial was unfair:
3. There were legal, factual and procedural errors[.]

(1997) (citations omitted). But we “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c).

A. The Trial Court Did Not Violate Mr. Schloss’s Due Process Rights Nor Did It Abuse Its Discretion By Continuing The Department As Guardian Of Ms. Sheath’s Person And Property.

Mr. Schloss contends that he was deprived of due process in three ways: *first*, that he was deprived of counsel unfairly, *second*, citing Maryland Rule 9-205.3, that the trial court abused its discretion in allowing the Department to withhold Dr. Martin’s report from him and not allowing him additional time to rebut it, and *third*, that the trial court abused its discretion in ordering Mr. Schloss’s mental examination.

First, Mr. Schloss was not deprived of counsel, not least because he didn’t have the right to one. There is no right to counsel as an interested party in an adult guardianship proceeding, only a statutory right to counsel for the disabled person. *See* E & T § 13-705(d) (disabled person’s right to counsel); *In re Lee*, 132 Md. App. 696, 720 (2000) (discussing a disabled person’s right to counsel by both rule and statute). Ms. Sheath did have counsel during the trial court proceedings, and her counsel even advocated for Mr. Schloss at closing—counsel acknowledged that “[h]aving her son involved as her decision maker is [Ms. Sheath’s] preference.” Ms. Sheath’s best interests were at stake, not Mr. Schloss’s, and there was no evidence that Ms. Sheath’s counsel acted in self-interest or of any collusion between Ms. Sheath’s court-appointed counsel and the Department. *Cf. In re Lee*, 132 Md. App. at 718 (where court appointed counsel “flatly contradicted” their disabled

client’s wishes).

Second, there was no violation of Maryland Rule 9-205.3, nor any violation of discovery rules in the timing and manner of how Dr. Martin’s report was disclosed. At the outset, Rule 9-205.3 applies to family law custody cases,² and Mr. Schloss’s mental examination was ordered under Maryland Rule 2-423. A trial court has the inherent authority to control its own docket, including the scheduling of discovery, *Wynn v. State*, 388 Md. 428, 437 (2005), and the Department complied with the court’s prior order to turn over the report ten days prior to trial. Mr. Schloss argues that he needed time to obtain an expert rejoinder, but the court already had postponed the trial, at a hearing in September 2020, specifically so that Mr. Schloss could retain an expert. Mr. Schloss had approximately two months to retain his own expert and seek a second opinion or request another postponement, but he didn’t.³ We see no abuse of discretion under these circumstances.

Third, the trial court also did not abuse its discretion in ordering Mr. Schloss’s mental evaluation in the first place. Mr. Schloss argues the emails Dr. Martin reviewed “were privileged and did not contain unprotected speech” But Mr. Schloss reviewed

² Rule 9-205.3(i)(3) states that a mental health evaluation report “shall be made available as soon as practicable after completion of the evaluation” but pursuant to subsection (a) applies only in actions “under this Chapter in which child custody or visitation is at issue.”

³ Mr. Schloss did, in fact, request another postponement halfway through trial based on an ongoing medical condition causing him “pain all over [his] body” The court refused to postpone in the middle of the proceedings and Mr. Schloss does not raise any issue relating to that postponement request on appeal.

and authenticated each email himself, and failed to raise these grounds at the hearing on the Department’s motion. In fact, Mr. Schloss repeatedly relies on the same emails in an effort to show that he is *not* mentally ill. As such, there was no basis to exclude them, and no abuse of discretion in allowing Dr. Martin to review them or in the court relying on them.

B. The Circuit Court Did Not Abuse Its Discretion When It Excluded Mr. Schloss’s Evidence At Trial.

Next, Mr. Schloss argues that the trial court erred when it excluded certain documents and evidence, that “[s]ubpoenaed witnesses never being compelled to appear hampered my ability to rebut the Dr. Martin report and to document the abuses of rights and process which were taking place.” We review evidentiary rulings for abuse of discretion. *See CSX Transp., Inc. v. Continental Ins. Co.*, 343 Md. 216 (1996) (admission or exclusion of evidence is within the discretion of the trial court). And on this record, it appears that Mr. Schloss did not subpoena his witnesses properly. He subpoenaed sixty-three witnesses, none of whom he identified as experts, and all of whom he failed to serve. The court explained it would not compel these witnesses to appear under the circumstances:

I’m not going to go through and try to divine how you served each particular witness. All I’m observing is that everyone that I’ve heard specifics about in that regard was not properly served. And I’m not going to go and try and guess on who might have—unlike what I’ve heard so far, might have complied with the proper service of process or service of subpoena. So you’re going to either get them or not get them today.

Mr. Schloss does not refute this finding in his brief, and we can discern no error in the court’s handling of these witnesses. Assuming for the moment that the witnesses would

have offered relevant testimony that otherwise would have been admitted, the witnesses weren't subpoenaed and didn't appear voluntarily at trial, and the court didn't err in proceeding without them.

C. The Circuit Court's Factual Findings Are Amply Supported By Competent Evidence.

Although we address it last, Mr. Schloss devotes most of his briefs to challenging the trial court's factual findings. He articulates his view of the situation and the evidence at length and argues the Department didn't offer any corroboration, that his witnesses and evidence were "ignored," and "all leeway and benefit of the doubt went to the other side" But the trial court's findings of fact were not clearly erroneous. 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. Sheath. *Meek v. Linton*, 245 Md. App. 689, 723 (2020). And throughout this case, the trial court had more than sufficient evidence to support its ultimate finding that there was good cause to pass over Mr. Schloss's higher statutory priority and appoint the Department and Ms. Bocanega to serve as Ms. Sheath's guardians.

The court relied heavily on Dr. Martin's expert testimony that Mr. Schloss was not able to make appropriate medical and financial decision for his mother. On cross-examination, Mr. Schloss tried to attack the veracity of Dr. Martin's findings by offering evidence corroborating his conspiracy theories, including emails from family and family friends supporting Mr. Schloss's views of being persecuted. Dr. Martin stated that she

found no evidence to corroborate his conspiracy as APS and the government had no personal motive to lie, but his family members did. The trial court agreed and so do we.

The trial court also reasoned that “Mr. Schloss would remove his mother from Brook[e] Grove where she is thriving,” that he has a conflict of interest with his mother’s best interest based on evidence that “he believes that his mother sexually abused a child or children of his,” and that the financial conflict of interest arising from his service contract to provide care for her in her home. These justifications readily meet the burden of “good cause.” *Meek*, 245 Md. App. at 723. When reviewing a matter tried without a jury, we “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). The trial court’s findings here were grounded in its assessment of the relative credibility of the witnesses who testified and the factual record developed at trial, and its conclusions well-supported.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**