

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1959

September Term, 2016

IN THE MATTER OF ASELEFECH BAYOU
TEKLEWOLD FOR THE APPOINTMENT
OF A GUARDIAN OF THE PERSON

Berger,
Reed,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: January 23, 2018

*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 August 20, 2015, the Circuit Court for Montgomery County appointed Tilahun Befikadu (“Tilahun”), appellant, and his brother Seife Kassa (“Seife”) as co-guardians of the person of Aselefech Bayou Teklewold, their mother (“Ms. Teklewold”). The court also ordered that Ms. Teklewold would primarily reside with Seife. On May 23, 2016, Tilahun filed a motion to modify the guardianship court order to change Ms. Teklewold’s current abode to that of their sister Meseret Kassa (“Meseret”).¹ Seife, with whom Ms. Teklewold resides, filed an opposition to the motion. Following a hearing on August 4, 2016, the motion was denied.² In this appeal, Tilahun presents the following questions for our review, which we have revised slightly:

1. Did the trial court improperly shift the burden of proof to appellant?
2. Did the trial court abuse its discretion in denying the motion to change the ward’s abode?

For the reasons that follow, we affirm.

FACTS AND PROCEEDINGS

On April 1, 2015, Tilahun and Meseret filed a petition for the appointment of a guardian of the person for Ms. Teklewold, their 80 year old mother, asserting that she was disabled as a result of diabetes, Alzheimer’s disease, and dementia. At the time of the filing, Ms. Teklewold lived with their brother Seife, and the petition alleged that he would not “share the responsibility of caring for [their] mother,” “completely refused to let her leave his house,” and denied Ms. Teklewold visits from her other grandchildren.

¹ For clarity, we refer to the siblings by their first names.

² Hearing, August 4, 2016.

Tilahun and Meseret asked the court to appoint them as guardians of Ms. Teklewold, and asked that their mother reside primarily with Meseret. On April 16, 2015, the court entered an order appointing Ria Rochvarg, Esquire, counsel for Ms. Teklewold in the guardianship proceedings.

On June 15, 2015, Seife was appointed temporary guardian of the person of Ms. Teklewold, and on August 20, 2015, after having found by clear and convincing evidence that Ms. Teklewold was disabled due to Alzheimer’s dementia, the circuit court appointed Tilahun and Seife as co-guardians of the person of their mother. At that time, Ms. Teklewold was residing with Seife. The court ordered that Ms. Teklewold continue to reside with Seife but established a weekly visitation schedule for family members, with monthly overnight visits at Meseret’s house. Because of the evidence of sibling acrimony, to lessen its effect on Ms. Teklewold, the court also ordered that “no family members shall make disparaging remarks regarding any members of the disabled person’s family in front of the disabled person.”

On May 23, 2016, Tilahun filed a motion requesting that the co-guardianship court order be modified to change Ms. Teklewold’s abode to Meseret’s house. Tilahun alleged that Seife confined Ms. Teklewold and her visitors to the family room, which was confusing to her because she wished to sit in the living room with her visitors. He asserted that when Seife encountered guests in the living room, he “screams and intimidates” them, threatened physical violence, attempted to kick Meseret, and pushed another sister, in separate incidents. Tilahun maintained that a change of abode was in Ms. Teklewold’s best interest based on Ethiopian cultural and religious norms that

encourage a mother to live with her daughter, as well as her history of living with Meseret before the onset of her disability. He also claimed that Seife refused to confer with him concerning their mother’s medical appointments, or to otherwise consult with the family about medical decisions made on her behalf. Attached to the motion was an affidavit signed by Theresa Boring, LGSW, a privately contracted social worker who assessed Ms. Teklewold during a visit at Meseret’s house and found that their mother’s “body language and tone of voice suggested that she was comfortable” in Meseret’s house. Ms. Boring’s affidavit also explained that “[i]t is important that the ward is able to visit with all of her children in a peaceful environment.” Ms. Boring noted that she contacted Seife, but “[h]e refused to allow me to visit, and also declined my request for his input and participation in the eldercare assessment.”

Seife opposed the request to move his mother’s abode, responding that “some of [his] siblings disagree with the multiple Orders of this Court . . . and attempt to be as unpleasant and disrespectful as possible . . . in an attempt to make the visits uncomfortable.” He also disagreed with the allegations regarding his conduct toward his mother’s guests, but noted that the guardianship court order permitted guests to take Ms. Teklewold outside of his home and visit with her elsewhere. Seife asserted that the motion to change Ms. Teklewold’s abode should be denied as *res judicata*, as the circuit court had decided these issues previously on three separate occasions. He also maintained that his mother had been living with him for three years and was thriving.

Ms. Rochvarg, their mother’s court-appointed attorney, submitted a response to the motion, in which she reported that her colleague had met with Ms. Teklewold at

Seife’s house and she “did not communicate meaningfully with counsel in regards to modification of her abode.” She informed the court that, in her opinion, both Seife’s and Meseret’s homes were suitable for her client.

A hearing was held on August 4, 2016, during which Ms. Boring testified that she was contracted by Tilahun to assess Seife and Meseret’s houses to determine their mother’s preference as to where she might want to live, what quality of life she had at both homes, and her safety at both homes. Ms. Boring visited Meseret’s house. According to Ms. Boring, Ms. Teklewold appeared to be well physically, she was well-dressed, and although she walked very slowly, she appeared to be comfortable and happy. Ms. Boring described the atmosphere at Meseret’s house as that of a “happy family gathering” with family members “popping in and out . . . giving her hugs and saying hello,” and that Ms. Teklewold “enjoyed the people who were there.” When asked what effect being limited to a particular room would have on Ms. Teklewold’s health, Ms. Boring testified that “if she were in a position where she’s being told to stay in one room versus another, I do not feel that would be best for her quality of life.” Ms. Boring noted that Seife declined her request to conduct an assessment of his home, and did not respond to her request for information. On cross-examination, she acknowledged that Tilahun served as interpreter during the assessment at Meseret’s house and that an independent translator would have provided more validity to her assessment. She also agreed that she did not have “an objective and clear understanding of the case” because she never interviewed Seife.

Meseret testified that she visited her mother at Seife’s house three days a week, in addition to bringing her mother to her house for an overnight visit once a month. According to Meseret, their mother asked to go into the living room every day, however, Seife and his wife “have so many rules” about which rooms Ms. Teklewold and her visitors may enter. Meseret testified that she once allowed their mother to sleep on the sofa in the living room at Seife’s house during a visit. When Seife returned home, he shouted at her and told her to leave immediately. During another visit, their mother asked Seife if she could stay in the living room and he gave her permission, however, when his wife returned home, she began screaming at Meseret. Meseret testified that after every incident where Seife or his wife screamed at her, Ms. Teklewold was “shocked,” “shaking,” and needed to be calmed down. She said that when their mother visits her house, no one fights in front of her and “[e]verybody is happy.” On cross-examination, Meseret stated that although the court order permits her to take Ms. Teklewold out of the house for visits, she did not do so because their mother was too weak. She also asserted that Ms. Teklewold had lived with her for more than twenty years and acknowledged that the family had agreed that their mother would live with Seife on a temporary basis. After she was released from the hospital, however, “[a]fter I finished everything and ready a room for her, he started to say no, she’s not going to come to your house.”

Tilahun testified that he no longer visited his mother at Seife’s house after Seife “screamed” at him for parking his car in the driveway. He alleged that “since the beginning,” Seife had been trying to alienate their mother from her children for “petty

benefits” like childcare, maid service, and tax benefits. He alleged that Seife made “smear remarks” about him in front of their mother, “tried to smack” him, and accused him of “harassing, intimidating, and abusing” Ms. Teklewold’s caregiver. Tilahun also stated that Seife refused to share information concerning Ms. Teklewold’s health and medical appointments with him, even though he was entitled to this information as co-guardian.³

At the conclusion of the hearing, the court ruled from the bench as follows. The court credited the testimony of the social worker Ms. Boring, and noted that, according to her observations, Ms. Teklewold appeared fine physically. The court concluded that the siblings’ inability to get along, rather than issues related to their mother’s health or safety, was at the root of the motion to move her from one house to another. The court observed that “[a]ll of this testimony this afternoon for the most part has not been about Ms. Teklewold. It’s been about the brothers and one sister.” The court explained that, despite the language of the guardianship order prohibiting disparaging remarks about family members in front of Ms. Teklewold, disparaging remarks can be made wherever she lives, and that moving her would not stop this from occurring. The court also emphasized the need for the siblings to reach a common goal of ensuring that Ms. Teklewold is as comfortable as possible. The court denied the petition, ruling that “I have heard not one scintilla, not one little teeny bit of evidence that causes this Court to

³ Although present at the hearing, Seife did not testify. Also, we note that Ms. Teklewold’s attorney was present at the hearing and waived her appearance.

move toward moving a person that is of ill health and in her eighties from one location to another, other than the siblings need to get along.” This timely appeal followed.

STANDARD OF REVIEW

This Court reviews the trial court’s appointment of a guardian of the person for an abuse of discretion. *Mack v. Mack*, 329 Md. 188, 203 (1993) (quoting *Kicherer v. Kicherer*, 285 Md. 114, 119 (1979) (“appointment to that position [guardian] rests solely in the discretion of the equity court.”)). “The exercise of a judge’s discretion is presumed to be correct, he is presumed to know the law, and is presumed to have performed his duties properly.” *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 87 (2013) (emphasis removed) (citation omitted). An appellate court reviewing for an abuse of discretion “will only disturb a court’s ruling if it ‘does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.’” *Id.* (quoting *King v. State*, 407 Md. 682, (2009)). We review the trial court’s conclusions of law *de novo*. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708 (2011).

DISCUSSION

I. Burden of Proof

Appellant argues that the burden of proof in this matter rested with his brother Seife, the guardian seeking to maintain Ms. Teklewold’s current abode under the guardianship court order.⁴ He asserts that the trial court erred when it shifted the burden

⁴ We note that Seife did not file a brief in this appeal.

of proof and required him to prove that his mother should be moved. Appellant relies upon Section 13-708(b)(7) of the Estates and Trusts Article (“ET”), which establishes a duty on the part of a guardian “to file an annual or biannual report with the court indicating the present place of residence and health status of the ward, the guardian’s plan for preserving and maintaining the future well-being of the ward, and the need for continuance or cessation of the guardianship or for any alteration in the powers of the guardian.” He points out that ET § 13-708(b)(7) requires that “[w]hen the question of whether a guardian is fulfilling his duties to the disabled person is presented, the guardian bears the burden of establishing that he should be allowed to continue as guardian.” We conclude that Appellant’s reliance on ET § 13-708(b)(7) is misplaced, and that the burden of proof he cites is not relevant to our inquiry.

ET § 13-708 enumerates a non-exclusive list of rights, duties, and powers which a court may grant to a guardian to provide for the needs of a disabled person. A court-appointed guardian has “[t]he right to custody of the disabled person and to establish his place of abode within and without the State, provided there is court authorization for any change in the classification of abode.” ET § 13-708(b)(2). 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 General Hosp., Inc.* 293 Md. 685, 702 (1982).

The record reflects that at the time the guardianship petition was filed in 2015, Ms. Teklewold lived with Seife, and at the conclusion of the August 2015 guardianship proceedings, the court ordered that she continue to live in Seife’s home as her primary

residence. The August 4, 2016 hearing was scheduled in response to a motion filed by appellant to change Ms. Teklewold’s abode, rather than in response to information included in the guardianship report that was required pursuant to ET § 13-708(b)(7).⁵ We conclude that the court correctly required that appellant, the movant in this case, present evidence that the guardianship court order be modified to change Ms. Teklewold’s abode.

II. Denial of Motion to Change Abode

Appellant also argues that the trial court abused its discretion in denying the motion to change Ms. Teklewold’s abode. He asserts that the uncontroverted evidence presented at the hearing established that “[Seife] made his home so uninviting that many of the family members refused to visit Ms. Teklewold when she was there,” and that Seife, by refusing to participate in the eldercare assessment or present evidence at the hearing, had failed to prove that he could ensure her personal comfort and welfare. He requests that this Court vacate the August 2016 order and remand this matter to the circuit court with instructions to move Ms. Teklewold to Meseret’s home as soon as practicable.

In making its ruling, the court reviewed the testimony presented by Tilahun, Meseret, and the social worker, Ms. Boring, and noted that no evidence had been presented alleging abuse or that Ms. Teklewold was in physical danger. The court found that Ms. Boring’s testimony was credible, and that based on her observations, Ms. Teklewold’s physical condition was fine. The court also had before it Ms. Teklewold’s

⁵ The record reflects that Seife filed an annual report on September 12, 2016, and appellant filed a separate annual report on October 5, 2016.

counsel’s response to the motion to change her abode that either home was suitable and that Ms. Teklewold was unable to communicate a preference concerning where she lived. The court explained that the reason for the hearing was that the siblings do not get along with each other, and that moving their mother from one house to another would not change the underlying conflict. The court denied the motion, ruling that there was not sufficient evidence to “move this lady because the family members are not getting along.” We find no abuse of discretion on the part of the court in so ruling.

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