

Circuit Court for Harford County  
Case No. C-12-FM-18-000731

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2948

September Term, 2018

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WILLIAM J. VENDETTI, SR.

v.

UNIVERSITY OF MARYLAND UPPER  
CHESAPEAKE MEDICAL CENTER, INC.,  
ET AL

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Wright,  
Graeff,  
Kehoe,

JJ.

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Opinion by Wright, J.

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Filed: October 16, 2019

\*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.

This appeal arises from guardianship proceedings for Jean Maryann Vendetti. After a series of falls, Mrs. Vendetti was admitted to the University of Maryland Upper Chesapeake Medical Center, Inc. (“UCMC”), appellee.<sup>1</sup> UCMC petitioned the Circuit Court for Harford County to appoint a temporary guardian of the person and property for Mrs. Vendetti.

The circuit court appointed Mrs. Vendetti’s husband, William Vendetti, appellant, as the temporary guardian of her person and property. After receiving a “Report of Counsel” from Mrs. Vendetti’s attorney related to Mr. Vendetti’s fitness to serve as guardian, the court convened an emergency hearing. After the hearing, the circuit court appointed the Harford County Office on Aging (“Office on Aging”), as permanent guardian of the person. Mr. Vendetti challenges this appointment and presents the following questions for our review, which we have condensed and edited for clarity:<sup>2</sup>

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<sup>1</sup> Mrs. Vendetti and the Department on Aging are also appellees.

<sup>2</sup> Mr. Vendetti presented his original questions as follows:

1. Did the Trial Court err in preventing [Mr. Vendetti] from engaging in discovery regarding the ultimate issue of the appointment of a permanent guardian of the person?
2. Did the Trial Court err in accepting experts where [Mr. Vendetti] requested an opportunity to engage in discovery?
3. Did the Trial Court abuse its discretion in accepting evidence prior to the August 24, 2018 Order appointing [Mr. Vendetti] as [t]emporary [g]uardian of [p]erson and [p]roperty?

1. Did the circuit court violate Mr. Vendetti’s due process rights when it decided the issue of permanent guardianship at the “emergency” guardianship hearing?
2. Did the circuit court err in preventing Mr. Vendetti from engaging in discovery?
3. Did the circuit court abuse its discretion in accepting evidence prior to August 24, 2018?
4. Did the circuit court have good cause to pass over Mr. Vendetti as permanent guardian of the person for Mrs. Vendetti?

We address the first issue and answer the question in the affirmative and hold that the circuit court failed to give Mr. Vendetti proper notice. We, therefore, reverse the judgment of the circuit court and remand for proceedings consistent with this opinion. We answer questions two and three in the negative. Because of our holding as to question one, there is no need to answer question four.

### **BACKGROUND**

Mrs. Vendetti, who is the subject of the guardianship proceeding, was born in 1940 and was 79 years old at the time of these proceedings. Since 2001, Mrs. Vendetti has lived at home with her husband of over forty years, Mr. Vendetti.

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4. Did the Petitioner, [UCMC], have standing to continue in the case nearly three months after Mrs. Vendetti’s discharge from the hospital?
  5. Did the Trial Court lack “good cause” in passing over [Mr. Vendetti] as permanent guardian of the person for Mrs. Vendetti?
  6. Did the Trial Court err in deciding the issue of appointing permanent guardian of person at an “emergency” hearing on the Temporary Order in violation of [Mr. Vendetti’s] Due Process rights?

Mrs. Vendetti suffers medically from orthostatic hypotension, hypothyroidism, hydrocephalous, hyperlipidemia, dementia, and Parkinson’s disease. Due to these conditions, her time at home was marked by dizzy spells and repeated falls. During one of these falls, Mrs. Vendetti fractured her hip and femur, leading to a hip replacement. A skull injury required a shunt. Mrs. Vendetti demonstrated “poor cognitive function and executive control” and required “round-the-clock” care. In 2018, Mrs. Vendetti was admitted to UCMC ten times; she was in-patient for six of those visits. During those visits, Mrs. Vendetti sought and received treatment for dizziness, fainting, dehydration, pneumonia, altered mental status, head injury, and the hip fracture.

Out of concern for her safety, UCMC petitioned the circuit court to appoint a temporary guardian of the person and property for Mrs. Vendetti. In its petition, UCMC stated that Mrs. Vendetti was “significantly confused, [wa]s unable to process daily information, and to make or communicate responsible decisions.” UCMC sought a temporary guardian for Mrs. Vendetti because the facility could not adequately meet her long-term needs.

On August 24, 2018, the circuit court found that Mrs. Vendetti needed a temporary guardian of person and property and appointed Mr. Vendetti to fill the role. The court order required Mrs. Vendetti’s transfer to Lorien Health Services (“Lorien”) for rehabilitative services. Per the order, Mrs. Vendetti could not be removed, discharged, or returned home absent court order. The court set November 30, 2018, as the final guardianship proceeding date.

Mrs. Vendetti's counsel filed a Report of Counsel on October 23, 2018. Staff from Lorien and the Harford County Department of Social Services ("DSS") had contacted counsel about Mr. Vendetti's behavior. They relayed concerns about Mr. Vendetti's disruptive behavior when he visited and phoned Mrs. Vendetti. They also told counsel that Mr. Vendetti was verbally abusive toward Mrs. Vendetti and Lorien's staff. On that basis, counsel requested an emergency hearing prior to the November 30, 2018 hearing date to address Mr. Vendetti's conduct.

On November 20, 2018, the parties appeared before the court for an "emergency hearing." In its case-in-chief, UCMC called Kelly McCord, Tamarah Siedlecki, Jill Nelson, Maggie Hurt, Mr. Vendetti, and Karen Danforth.

Ms. McCord, a social work case manager at UCMC, was certified as an expert witness in social work case management. Ms. McCord discussed Mrs. Vendetti's medical records and testified that Mrs. Vendetti had a home healthcare nurse through Amedisys Home Health ("Amedisys"). After several falls, Amedisys contacted Adult Protective Services.

The circuit court admitted Ms. Siedlecki, a clinical manager with Amedisys, as an expert in nursing and home healthcare services. She testified that in February 2018, Mrs. Vendetti fell within a day of returning home from the hospital. She also testified that Mrs. Vendetti routinely walked unassisted, although Mr. Vendetti should have provided her with mobility assistance. When Mrs. Vendetti was dizzy and could not breathe, Mr. Vendetti did not call 911 or take her to the hospital. Mr. Vendetti refused to gain an

understanding of Mrs. Vendetti's medications and did not make installations in the home to maintain her safety. As a result, Mrs. Vendetti continued to suffer multiple falls through June and July 2018.

Ms. Nelson, a representative from DSS's Adult Protection Unit, testified that Mr. Vendetti was often loud, but wanted Mrs. Vendetti to get better. Ms. Hurt, a caseworker with DSS, was accepted as an expert in social work and community-related services, including Adult Protective Services. She testified that she received the case referral about Mrs. Vendetti from the Harford County Sheriff's Department. Ms. Hurt testified that Mr. Vendetti refused home health services and equipment assistance. However, Ms. Hurt acknowledged that Mr. Vendetti later agreed to equipment assistance, and he eventually purchased a bedside commode and bed rail for Mrs. Vendetti. Ms. Hurt also testified that, based on a totality of the circumstances, DSS determined that Mr. Vendetti neglected to get medical assistance for his wife.

Mr. Vendetti also testified. When questioned about his wife's medical conditions, he stated that Parkinson's Disease was "the only thing she has that's real critical." When asked about whether he understood what guardianship entailed, Mr. Vendetti replied "[n]ot a whole lot, but I'm hearing bits and pieces of it which I don't care for."

Ms. Danforth, the Director of Social Work for Lorien, was accepted as an expert in clinical social work in a geriatric care facility setting. Ms. Danforth testified that while at Lorien, Mrs. Vendetti was often yelling "get the babies, get the dishes done" and exhibited increased anxiety. She also testified that Mr. Vendetti called Lorien and said he

was going to make the court let him take Mrs. Vendetti home. While she believed that Mr. Vendetti understood a guardian's role "[f]or the most part," he did not understand his wife's conditions.

At the conclusion of the trial, the circuit court made the following brief ruling from the bench:

The hearing evidence in this case does not show by a preponderance of the evidence that Mr. Vendetti has intentionally physically abused his wife. So I resolve that issue in his favor.

Looking at the big picture, however, I really don't believe that he understands what it means to be a guardian. And I think he is either unwilling or unable to fit that role to the best interest of his wife.

For those reasons, I believe it to be in the best interest of Mrs. Vendetti to have the Office on Aging appointed as the guardian of person and to leave Mr. Vendetti as the guardian of the property.

This timely appeal followed.

### **STANDARD OF REVIEW**

Maryland Rule 8-131(c) governs the scope of appellate review for non-jury trials.

Specifically, the Rule states:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It 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.

This Court has further explained the standard of review for non-jury trials as follows:

A trial court's factual findings are not clearly erroneous as long as they are supported by any competent material evidence in the record. However, the clearly erroneous standard for appellate review in Md. Rule 8-131(c) does

not apply to a trial court’s determinations of legal questions or conclusions of law based on findings of fact. Rather, where the order involves an interpretation and application of Maryland statutory and case law, appellate courts must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.

*Saxon Mortg. Services, Inc. v. Harrison*, 186 Md. App. 228, 262-63 (2009) (cleaned up).<sup>3</sup>

We review the trial court’s appointment of a guardian of the person and property under an abuse of discretion standard. *Mack v. Mack*, 329 Md. 188, 230 (1993) (citing *Kicherer v. Kicherer*, 285 Md. 114, 119 (1979) (“[A]ppointment to [the role of guardian] rests solely in the discretion of the equity court.”)). The Court of Appeals has explained that, “[u]nder the abuse of discretion standard of review, we 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.’” *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 87 (2013) (quoting *King v. State*, 407 Md. 682, 697 (2009)).

### **Guardianship**

Pursuant to 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).<sup>4</sup>

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<sup>3</sup> The Court of Appeals recently explained the recent increase in use of “cleaned up” as a parenthetical. The parenthetical “signals that the current author has sought to improve readability by removing extraneous, non-substantive clutter (such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-bracketed changes to capitalization) without altering the substance of the quotation.” *Lopez v. State*, 458 Md. 164, 195 n.13 (2018).

<sup>4</sup> Md. Rule 10-103(i) **Temporary guardian.** “Temporary guardian” means (1) a person appointed under Rule 10-210 in a proceeding for emergency protective services, (2) a person who has been authorized to preserve and apply the property of a minor or



Unless the allegedly disabled person has hired private counsel, the court shall appoint an attorney to represent his or her interests. Md. Code (1974, 2011 Repl. Vol.), Estates & Trust Article (“ET”) § 13-705(d)(1); Md. Rule 10-106(2). “The person alleged to be disabled is entitled to be present at the hearing unless he has knowingly and voluntarily waived the right to be present or cannot be present because of physical or mental incapacity.” *Id.* at (e).

Guardianship proceedings for disabled persons are governed by ET and by Title 10 of the Rules. As pertinent, ET § 13-101(f) defines a “disabled person” as an adult who has been “judged by a court to be unable to manage his property for reasons listed in § 13-21(c)(1)” or a person judged to be “unable to provide for his daily needs sufficiently to protect his health or safety for the reasons listed in § 13-705(b).” See also Md. Rule 10-103(b)(1)&(2). ET §§ 13-201(c)(1) and 13-705(b) each include “mental disability [or] disease” as a reason a person may be adjudged to be disabled.

The circuit court is empowered to appoint a guardian of the property and of the person of a disabled person. ET §§ 13-201 & 13-705. In either instance, the petition for guardianship must attach certificates of competency completed either by two physicians

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alleged disabled person pending a hearing on a petition for guardianship, and (3) a guardian of the person or property appointed by the court pending the appointment of a substituted or successor guardian.

The provisions for Emergency Protective Services and the provisions of that portion of the Md. Code (1974, 2011 Repl. Vol.), Estates & Trust Article (“ET”) are not pertinent to the appointment of a temporary guardian under the circumstances of this case. *See* ET §13-709.

who have examined the allegedly disabled person; or by one physician and one psychologist or social worker, ET § 13-705(c); Md. Rule 10-202(a)(1) & 10-301(d). At least one of the certifying health care professionals shall have examined the allegedly disabled person within 21 days prior to the filing of the petition. Md Rule 10-202(a)(1).

Notice must be given to all “interested persons,” including any heirs of the allegedly disabled person, *see* Md. Rule 10-103(f), and to the allegedly disabled person. *See* Md. Rule 10-204. Unless waived by the allegedly disabled person or his or her attorney, the court shall set the matter in for a jury trial. Md. Rule 10-205(b). A guardian of the person may be appointed for a disabled person upon proof by clear and convincing evidence that the person “lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person[.]” ET § 13-705(b).

ET § 13-707 establishes certain priorities for the appointment of a guardian of the person. As pertinent, “[t]he disabled person’s spouse.” ET § 13-707(a)(3). “[A]ny other person, agency, or corporation considered appropriate by the court.” ET § 13-707(a)(9). “For good cause, the court may pass over a person with priority and appoint a person with a lower priority.” *Id.* at (c).

Section 13-705(b) (cleaned up) provided:

A guardian of the person shall be appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible decision concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and no less restrictive form of intervention is available which is consistent with the person’s welfare and safety.

In other words, a guardianship will only be imposed when a court finds, based on clear and convincing evidence, that: (a) the alleged disabled person lacks sufficient capacity to make or communicate responsible decisions about his basic needs; and (2) “no less restrictive form of intervention is available.”

The administering of the office of guardian, as it pertains to both the person and property, is subject to judicial control. *Kicherer*, 285 Md. at 114. In reality, the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal to carry out its sacred responsibilities. *Id.* The appointment to the position of guardian rests solely with the equity court. *Id.* Consanguinity is a factor of consideration by the chancellor in the appointment of a guardian because nearest kin are more likely to treat a ward with kindness and affection. *Id.*

## DISCUSSION

### I. Due Process

Due process is a flexible concept that calls for such procedural protection as a particular situation may demand. *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996). At a minimum due process generally “requires that a party to a proceeding is entitled to both notice and an opportunity to be heard on the issues to be decided in the case.” *In re Katherine C.*, 390 Md. 554, 572 (2006) (quoting *Blue Cross of Maryland, Inc. v. Franklin Square Hosp.*, 277 Md. 93, 101 (1976)). We review alleged due process violations *de novo*. *Regan v. Bd. of Chiropractic Exam’rs*, 10 Md. App. 494, 509 (1998), *aff’d sub nom.*, *Regan v. State of Chiropractic Exam’rs*, 355 Md. 397 (1999).

Mr. Vendetti maintains that he was not properly notified or advised that the circuit court was to consider the issue of permanent guardianship prior to the hearing, and therefore he was denied due process. We agree. At the November 26, 2018 hearing, the court was under the impression that the hearing was to address “a temporary answer” and not the “final answer.” Counsel for MCMC indicated that they were looking for a “final” at this point, because everyone had been served and the show cause had passed. In response to this request, counsel for Mr. Vendetti stated that if the court was inclined to name another temporary guardian of the person, he would want full discovery. There was no ruling by the circuit court as to whether the circuit court was now going to move forward to hold a hearing as to permanent guardianship.

In addition, there is nothing in the record, prior to the hearing, indicating that the court intended to go beyond the issue of temporary guardianship. As well as the circuit court, in its brief ruling, did not explain why it was moving on to consider permanent guardianship and the finality of its ruling was not fully apparent until the court order filed on November 27, 2018. On these facts there was a lack of due process procedural protection as there was a failure to give proper notice, and Mr. Vendetti did not have an opportunity to be heard on the issue of permanent guardianship.

Futhermore, the ruling from the bench failed to find by clear and convincing evidence that a person lacked sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease habitual

drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person’s welfare and safety. ET § 13-705(b).<sup>5</sup>

Considering all of these infirmities, at best, the hearing was conducted as an emergency hearing to determine if Mr. Vendetti was to remain as guardian of the person pursuant to the court’s responsibility to superintend and direct the case of a disabled person until the scheduled permanent hearing set for November 30, 2018. ET § 13-704(a)(1).<sup>6</sup> The circuit court in conducting an emergency hearing for temporary guardianship was complying with its responsibility to pass orders and decrees respecting the person as it seems reasonable. ET § 13-704(a)(3).<sup>7</sup> The circuit court was the guardian and Mr. Vendeti was merely the “temporary agent” of the court and, therefore, subject to be replaced. *See Kicherer*, 285 Md. at 114.

## II. Discovery

Mr. Vendetti next avers that the circuit court erred in denying his request for discovery.<sup>8</sup> UCMC argues that the issue is not preserved. We disagree as to the issue of preservation but otherwise conclude that the argument lacks merit.

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<sup>5</sup> In fact, one finding of the court was made by the preponderance of the evidence. There is no mention of what burden of proof was used to determine the other findings.

<sup>6</sup> ET § 13-704(a) *In general*. – The court may:

(1) Superintend and direct the care of a disabled person[.]

<sup>7</sup> ET § 13-704(a)(3) Pass orders and decrees respecting the person as seems proper, including an order directing the disabled person to be sent to a hospital.

<sup>8</sup> Mr. Vendetti contends that the circuit court erred in accepting expert witnesses where he requested an opportunity to engage in discovery. Mr. Vendetti also avers that

The circuit court has the inherent power to control and supervise discovery as it sees fit. *Bacon v. Arey*, 203 Md. App. 606, 672 (2012) (quoting *Gallagher Eveliris and Jones, LLP v. Joppa Drive Thru, Inc.*, 195 Md. App. 583, 596 (2003)). We review the denial of discovery under the abuse of discretion standard and will only conclude that the trial court abused its discretion “where no reasonable person would take the view adopted by the [trial] court[ ]’ . . . or when the court acts ‘without reference to any guiding principles,’ and the ruling under consideration is ‘clearly against the logic and effect of facts and inferences before the court[ ]’ . . . or when the ruling is ‘violative of fact and logic.’” *Wilson v. Crane*, 385 Md. 185, 198 (2005), (citations omitted) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312-13 (1997)).

In this case, at the hearing, Mr. Vendetti suggested that he was entitled to have some discovery review of documents that he received the morning of the hearing. In response, counsel for Mrs. Vendetti indicated that the medical records were based on her experiences with Mr. Vendetti and her conversations and review of medical records kept by Lorien. Counsel also noted that there had only been limited contact with Kelly Vendetti, the daughter, and the expected testimony would not be predicated or based on any testimony or accounts expected from the daughter other than a limited mention of her. The circuit court asked if there was any objection to receiving the medical records,

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UCMC lacks standing. UCMC responds that Mr. Vendetti’s claims are unpreserved. We agree that Mr. Vendetti did not raise or preserve his claims related to standing or the admission of expert witnesses below. Md. Rule 8-131.

and Mr. Vendetti responded in the negative. After this brief exchange, the only objection was made to the extent that the report included a handful of statements made by third parties. The circuit court sustained the objection as to any inquiries from Kelly Vendetti.

There being no further discussion as to how any lack of discovery was pertinent to the proceedings, we cannot find that the circuit court's decision in the present case is beyond the decision a reasonable person would make in light of the fact that the circuit court inquired to the extent any proposed discovery would be related to any testimony or records to be considered. *Beyond v. Realtime*, 388 Md. 1, 28 (2005).

### **III. Past Conduct**

Mr. Vendetti next contends that the circuit court in its findings erroneously relied on evidence of his past conduct that occurred before the entry of the temporary order of August 24, 2018. He argues that this evidence was highly prejudicial to his case. UCMC responds that Mr. Vendetti's conduct was relevant because the circuit court had to investigate whether good cause existed to compel the court to appoint a different guardian for Mrs. Vendetti.

Under Md. Rule 5-401, “[r]elevant’ evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” “[Relevant] evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues.” Md. Rule 5-403.

As such, relevant evidence must be material and have probative value. *See Williams v. State*, 342 Md. 724, 736 (1996) (quoting *State v. Joynes*, 314 Md. 113, 119 (1988)). Evidence is material if it relates to a fact of consequence at issue in a case. *Id.* at 736-37 (quoting *Joynes*, 314 Md. at 119). Evidence is probative if it “establishes the proposition it is offered to prove.” *Id.*

Under Md. Rule 5-403, the circuit court may exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice.” “Evidence is prejudicial when it has an adverse effect . . . beyond tending to prove the fact or issue that justified its admission.” *Hannah v. State*, 420 Md. 339, 347 (2011) (quoting *King*, 407 Md. at 704).

Mr. Vendetti’s interaction with the health providers for his wife were considered by the circuit court to be material and probative to the determination of whether he was fit to serve as Mrs. Vendetti’s guardian. Under ET § 13-707(c)(1), the court is required to “select the one best qualified of those willing to serve.” The only basis by which the court could determine Mr. Vendetti’s qualifications or willingness to serve was his past conduct.

Here, the evidence of Mr. Vendetti’s prior conduct was directly related to whether Mr. Vendetti was willing or able to be Mrs. Vendetti’s permanent guardian of the person. Although the circuit court found that “[t]he hearing evidence . . . does not show . . . that Mr. Vendetti has intentionally physically abused his wife,” it also found that “[l]ooking at the big picture, however, [he does not] understand[] what it means to be a guardian [and]



he is either unwilling or unable to fit that role to the best interest of his wife.” This was the issue before the court, and which the court had to resolve based on relevant evidence. Accordingly, we hold that the circuit court did not abuse its discretion in considering Mr. Vendetti’s actions prior to the August 24, 2018 order.

#### IV. Good Cause

The good cause requirement for skipping priority in appointment of a guardian is analogous to a best interest determination. ET § 13-707, provides the statutory priorities for appointment as guardian of the person of a disabled person. A spouse, as Mr. Vendetti is in this case, is third on the list after agents appointed by the disabled person, while county agents are tenth. ET § 13-707(a). The statutory list is not mandatory. *Mack*, 329 Md. at 203-04.

ET § 13-207(a),<sup>9</sup> conversely, establishes certain priorities for the guardian of the property. Despite this, the court may pass over one with higher priority in favor of one

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<sup>9</sup> Section 13-207 states as follows:

(a) *Priorities.* – Persons are entitled to appointment as guardian for a minor or disabled person according to the following priorities:

- (1) A conservator, committee, guardian of property, or other like fiduciary appointed by any appropriate court of any foreign jurisdiction in which the minor or disabled person resides;
- (2) A person or corporation nominated by the minor or disabled person if the designation was signed by the minor or disabled person after his 16th birthday, and, in the opinion of the court, he had sufficient mental capacity to make an intelligent choice at the time he executed the designation;

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- (3) His spouse;
  - (4) His parents;
  - (5) A person or corporation nominated by the will of a deceased parent;
  - (6) His children;
  - (7) The persons who would be his heirs if he were dead;
  - (8) A person or corporation nominated by a person who, or institution, organization, or public agency which, is caring for him;
  - (9) A person or corporation nominated by a governmental agency which is paying benefits to him; and
  - (10) Any other person considered appropriate by the court.

(b) *Waiver and substitution.* – A person specified in a priority in subsection (a)(1), (3), (4), (6) or (7) of this section may waive and nominate in writing a person or corporation to serve in his stead. A nominee of a person holding a priority has the same priority as the person making the nomination.

(c) *Selection by court.* – Among persons with equal priority, the court shall select the one best qualified of those willing to serve. For good cause the court may pass over a person with priority and appoint a person with less priority or no priority.

(d) *Nonresident not disqualified.* – Nonresidence does not disqualify any person from serving as guardian. Any nonresident who is appointed cannot qualify until he has on file with the register or clerk an irrevocable designation by him of an appropriate person who resides in the State on whom service of process may be made in the same manner and with the effect as if it were served personally in the State on the nonresident.

(e) *Certain official and employees disqualified.* – The court may not name an official or employee of a local department of social services, the State Department of Human Services, a local area agency on

with lower priority “for good cause.” ET §§ 13-207(c) and 13-707(c)(1)(ii) under recent amendment.<sup>10</sup>

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aging as defined in § 10-101 of the Human Services Article, or the Department of Aging as guardian of the estate.

<sup>10</sup> Section 13-707 states as follows:

- (a) *Priorities.* – Persons are entitled to appointment as guardian of the person according to the following priorities:
- (1) A person, agency, or corporation nominated by the disabled person if the disabled person was 16 years old or older when the disabled person signed the designation and, in the opinion of the court, the disabled person had sufficient mental capacity to make an intelligent choice at the time the disabled person executed the designation;
  - (2) A health care agent appointed by the disabled person in accordance with Title 5, Subtitle 6 of the Health-General Article;
  - (3) The disabled person’s spouse;
  - (4) The disabled person’s parents;
  - (5) A person, agency, or corporation nominated by the will of a deceased parent;
  - (6) The disabled person’s children;
  - (7) Adult persons who would be the disabled person’s heirs if the disabled person were dead;
  - (8) A person, agency, or corporation nominated by a person caring for the disabled person;
  - (9) Any other person, agency, or corporation considered appropriate by the court; and
  - (10) For adults less than 65 years old, the director of the local department of social services or, for adults 65 years old or older, the Secretary of

Mr. Vendetti argues that the circuit court did not have “good cause” to pass over him and appoint the Office on Aging as Mrs. Vendetti’s guardian. Mr. Vendetti avers that a lack of understanding does not constitute good cause. UCMC responds that the

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Aging or the director of the area agency on aging, except in those cases where the department of social services has been appointed guardian of the person prior to age 65. Upon appointment as guardian, directors of local departments of social services, directors of area agencies on aging, and the Secretary of Aging may delegate responsibilities of guardianship to staff persons whose names and positions have been registered with the court.

- (b) *Waiver and substitution.* – A person specified in a priority in subsection (a)(2), (3), (5), or (6) of this section may waive and nominate in writing a person, agency or corporation to serve in his stead. A nominee of a person holding priority has the same priority as the person making the nomination.
- (c) *Selection by court.* – (1) Among persons with equal priority the court shall select the one best qualified of those willing to serve. For good cause, the court may pass over a person with priority and appoint a person with a lower priority.
- (2) If a guardian of the estate has been appointed, the court may select him to be guardian of the person, regardless of priority.
- (d) *Nonresident not disqualified.* – Nonresidence does not disqualify any person from serving as guardian of the person. However, a nonresident who is appointed may not qualify until he has on file with the register or clerk an irrevocable designation by him of an appropriate person who resides in the State on whom service of process may be made in the same manner and with the same effect as if it were served personally in the State on the nonresident.
- (e) *Effect of residence of person in State or private residential facility.* – A local department of social services, local office on aging, or the Secretary of Aging, may be appointed as a guardian of a person regardless of whether that person resides in a State or private residential facility.

court had “good cause” for passing over Mr. Vendetti because he would or could not cooperate with Lorien and did not appreciate a guardian’s responsibilities. We need not resolve this issue at this time, as it was one not specially addressed by the circuit court, and one that should be addressed in further proceedings as to the permanent guardianship.

### **CONCLUSION**

As we have discussed above, the court of equity assumes jurisdiction in all guardianship matters to protect those who, because of illness or other disability, are unable to care for themselves. The court acted well within its powers to decide the issue of temporary guardianship but overstepped its bounds by addressing the issue of permanent guardianship without proper notice and the requisite findings. We, therefore, vacate that finding and remand for a hearing on permanent guardianship. As there was sufficient evidence of the present danger to Mrs. Vendetti by Mr. Vendetti remaining temporary guardian, we uphold the appointment of the Office of Aging as temporary guardian.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR HARFORD COUNTY VACATED  
AND CASE REMANDED FOR  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION; COSTS TO BE PAID  
ONE-HALF BY APPELLEE AND ONE-  
HALF BY APPELLANT.**