

Circuit Court for Montgomery County
Case No. 92109FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 380

September Term, 2019

IN THE MATTER OF MARY JOYCE

Meredith,
Arthur,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: May 4, 2020

*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.

In 2011, the Circuit Court for Montgomery County appointed Susan Boyce as guardian of the person and property of her sister, Mary Joyce. Since that time, Ms. Joyce has made a series of unsuccessful efforts to terminate the guardianship.

This appeal arises from proceedings that occurred in 2019. Ms. Joyce, representing herself, made a motion asking the court to appoint counsel to represent her for the purpose of pursuing termination of the guardianship. The court denied the motion. Ms. Joyce noted an appeal on her own behalf.

A few months later, attorneys who had agreed to represent Ms. Joyce requested that the court either accept their appearance as counsel or appoint them as counsel. The attorneys, on behalf of Ms. Joyce, also petitioned for an order requiring Ms. Boyce to show cause why the guardianship should not be terminated. The court declined to appoint counsel and denied the petition to terminate the guardianship. The attorneys filed a second notice of appeal on behalf of Ms. Joyce.

Upon our review of the current record, we conclude that justice will be served by permitting further proceedings in the circuit court. Under Md. Rule 8-604(d)(1), we shall remand this case, without affirmance, reversal, or modification, for the purpose of allowing the court to explain the bases for the orders from which these appeals were taken.

FACTUAL AND PROCEDURAL BACKGROUND

A. Guardianship of the Person and Property of Mary Joyce

Mary Joyce was born in 1955. She earned a nursing degree, a Master of Business Administration degree, and Master of Science in Nursing degree. She worked as a nurse

earlier in her career and later worked as a clinical trials specialist for the National Institutes of Health. She married Patrick Joyce in 1994, and together they had one son, born in 1995.

In 2009, Ms. Joyce separated from her husband and initiated divorce proceedings. In the spring of 2010, Ms. Joyce was hospitalized for two weeks at the psychiatric ward of Yale New Haven Hospital. In December 2010, Ms. Joyce lost custody of her son, then 15 years old, after representing herself at a custody-modification hearing. A few weeks later, Ms. Joyce admitted herself for psychiatric treatment at Georgetown University Hospital with assistance from her sister, Susan Boyce, an attorney.

In February 2011, Ms. Boyce petitioned the Circuit Court for Montgomery County to appoint a guardian of the person and property of Ms. Joyce. The petition asserted that, as a result of a mental disability, Ms. Joyce lacked sufficient understanding or capacity to make or communicate responsible decisions concerning her person and property. The petition was supported by certificates from two physicians who had examined Ms. Joyce at Georgetown University Hospital. Both physicians opined that Ms. Joyce was suffering from significant “behavioral and cognitive symptoms” that were not the result of a “primary psychiatric disorder.” Ms. Joyce’s treating physician opined that the symptoms were “most likely attributable to Frontotemporal Dementia (FTD).” A neurologist opined that the symptoms were “mostly likely” the result of “a progressive organic dementia” and that the observed changes “suggest[ed] a frontotemporal dementia.”

In the guardianship proceedings, Ms. Boyce requested that the court appoint counsel to represent Ms. Joyce, asserting that Ms. Joyce was “unable to retain counsel for

herself.” The court granted the motion. Through her appointed counsel, Ms. Joyce opposed the petition for appointment of a guardian, claiming that she had no disability and that she was capable of making all of her own decisions.

In June 2011, the circuit court held a trial on the petition to appoint a guardian. Among other evidence, the court received an evaluation report written by a psychiatrist from Johns Hopkins Medicine. Based on his examination, the psychiatrist concluded that Ms. Joyce’s symptoms supported the diagnosis of “[f]rontotemporal dementia, behavioral and language subtype.”

The court determined, by clear and convincing evidence, that Ms. Joyce was unable to provide for her daily needs and unable to manage her property, and therefore required a guardian. On July 6, 2011, the court entered an order appointing Ms. Boyce to serve as the guardian of the person and property of Ms. Joyce. The order expressly granted Ms. Boyce all rights, powers, and duties of guardians of the person and property set forth in the Estates and Trusts Article of the Maryland Code.

No appeal was taken from the order appointing Ms. Boyce as guardian. After the time for noting an appeal expired, the appointment of counsel for Ms. Joyce terminated automatically by operation of Md. Rule 10-106(d)(1).

As guardian of the person, Ms. Boyce established a residence for Ms. Joyce at Arden Courts of Kensington, Maryland, a “memory care” assisted living facility that provides specialized care to persons with dementia. At the end of 2013, Ms. Boyce transferred Ms. Joyce to an Arden Courts facility located in Hamden, Connecticut (later renamed Meadow Mills Assisted Living and Memory Care).

B. Ms. Joyce’s Initial Challenge to the Guardianship

During 2013, Ms. Joyce initiated the first of several challenges to the continuation of the guardianship. Ms. Joyce engaged an attorney, Thomas Schetelich, who agreed to undertake to represent her. Mr. Schetelich wrote to Ms. Boyce, asserting that he and his firm were representing Ms. Joyce. In that capacity, Mr. Schetelich requested copies of Ms. Joyce’s medical records for the purpose of having Ms. Joyce evaluated by a psychiatrist selected by Mr. Schetelich. In her response, Ms. Boyce declined to consent to a medical examination or to release any medical records.

Mr. Schetelich filed a petition in the circuit court seeking authorization for a medical examination. The petition asked the court to issue orders “confirming the appointment” of Mr. Schetelich and his firm as attorneys for Ms. Joyce, requiring Ms. Boyce to show cause why the requested medical examination should not be conducted, scheduling an examination of Ms. Joyce by the psychiatrist selected by Mr. Schetelich, and requiring Ms. Boyce to produce copies of Ms. Joyce’s medical records.

Ms. Boyce opposed the petition and asked the court to “deny[] the appointment” of Mr. Schetelich as counsel. Among other things, Ms. Boyce contended that Mr. Schetelich lacked authority to act on behalf of Ms. Joyce unless Ms. Boyce, as the guardian, consented to the representation.

At the court’s direction, Ms. Boyce submitted an updated evaluation report by a neurologist at Yale New Haven Hospital. In that report, the neurologist opined that Ms. Joyce’s symptoms were “probably due to frontal temporal lobar degeneration.” In addition, Ms. Boyce submitted a letter from a psychiatrist at Johns Hopkins Medicine,

who opined that the updated test results continued to support the earlier diagnosis.

At a hearing in April 2014, the court remarked that, “if the new evaluations suggested in any way that we ought to revisit the original granting of the guardianship, then [the court] would set the matter in for a hearing.” “Otherwise,” the court said, it was “inclined to dismiss the order to show cause.” The court then denied the request to authorize a medical examination of Ms. Joyce and denied the request to appoint Mr. Schetelich and his firm as counsel for Ms. Joyce. No appeal was taken at that time.¹

Several months later, Ms. Joyce sent a handwritten letter to the judge who had denied the petition. She asked the judge to “re-open the case” to provide her with “another hearing” and the opportunity to prove that she had “no mental or physical deficits” and that she did “not require a locked facility.” The court docketed the letter and allowed Ms. Boyce to submit a response. Ms. Boyce responded with letters from herself and other persons who supported the continuation of the guardianship. The court took no other action regarding Ms. Joyce’s handwritten letter.

In February 2015, Ms. Boyce moved to seal the record for Ms. Joyce’s case, asserting that an acquaintance of Ms. Joyce had obtained a copy of a transcript of hearings from early 2014. The court granted the motion. The court ordered that no person would be permitted to examine the court file or to obtain a transcript of any

¹ The record includes only a partial transcript of that hearing. The transcript indicates that Mr. Schetelich expected Ms. Joyce to travel from Connecticut to attend the hearing but, for reasons that are not entirely clear, she was not present. In a subsequent filing, Ms. Boyce stated that she had “advised the [c]ourt that [she] did not think it was in [Ms. Joyce’s] best interests to transport her from Connecticut to attend that hearing.”

hearing in the case, except for Ms. Boyce, an attorney retained by Ms. Boyce, persons defined as interested persons under the guardianship statute, or an “attorney appointed by the court to represent” Ms. Joyce.

C. Ms. Joyce’s Second Challenge to the Guardianship

In May 2017, Ms. Boyce transported Ms. Joyce from the assisted living facility in Connecticut to Pennsylvania, so that she could attend her son’s graduation ceremony. While staying overnight in a hotel, Ms. Joyce left her room and managed to travel to Maryland using money that she had saved.

Since then, Ms. Joyce has not returned to an assisted living facility. Ms. Joyce secured an apartment for herself in Glen Burnie. She found part-time employment as a cashier and supplemented her income with donations from friends.

In an annual report to the court filed in April 2018, Ms. Boyce stated that Ms. Joyce “refused to remain in the assisted living facility.” Ms. Boyce stated that she planned to “continue to supervise” Ms. Joyce and to use funds from the guardianship estate to pay some of Ms. Joyce’s living expenses. Ms. Boyce expressed her opinion that Ms. Joyce’s condition had not improved and that the guardianship should continue. The court approved the report and continued the guardianship.

On June 4, 2018, Ms. Joyce initiated a second challenge to the guardianship. Ms. Joyce, acting through her “proposed counsel,” Patrick Kearney and his firm, petitioned the court to appoint Mr. Kearney and his firm as her counsel in the guardianship case. Through the same “proposed counsel,” Ms. Joyce filed a separate petition seeking termination of the guardianship of her person and property.

Both petitions were styled as “Verified Petition[s]” and included a statement signed by Ms. Joyce, affirming that the statements in her petitions were true and correct. Ms. Joyce asserted that she had been living independently throughout the previous year, that she desired to terminate the guardianship, and that she desired to be represented by counsel in seeking to terminate the guardianship.

Ms. Joyce further asserted that she had no disability that would preclude her from managing her own life. Ms. Joyce stated that she had been “examined by Harjit S. Bajaj, M.D., Diplomate of Neurology and Psychiatry,” as recently as May 14, 2018, and that Dr. Bajaj observed “no signs of dementia” and found her to be “completely competent for making her own decisions[.]” Ms. Joyce further stated that she had been evaluated by a non-physician, “C. Rick Ellis, Ed.D, BCN, Licensed Clinical and Forensic Psychologist, Neuropathist,” who was “prepared to testify” that she had no disability.

Under the Maryland Rules, a petition to terminate a guardianship on the ground of “cessation of the disability,” must be accompanied by “a certificate, signed by a physician who has examined the person within 21 days of the filing of the petition, attesting to the cessation of the disability.” Md. Rule 10-209(c)(5)(A); Md. Rule 10-710(e)(3). The circuit court’s guardianship case-manager notified Mr. Kearney that the petition to terminate the guardianship was “incomplete” because it lacked a supporting medical certificate.

Ms. Boyce opposed the petitions filed by Mr. Kearney. She contended that the petition to terminate the guardianship should be dismissed because it lacked a physician’s certificate. Ms. Boyce also requested dismissal based on “lack of standing,” contending

that Mr. Kearney could not be appointed to represent Ms. Joyce unless her guardian, Ms. Boyce, authorized that representation. In addition, Ms. Boyce moved for an award of attorneys' fees under Md. Rule 1-341, arguing that Mr. Kearney was proceeding in bad faith and without substantial justification.

Mr. Kearney belatedly filed a medical certificate signed by Dr. Bajaj. On the certificate, Dr. Bajaj noted that his most recent examination of Ms. Joyce had occurred on May 14, 2018, exactly 21 days before the filing of the petition. Dr. Bajaj expressed his opinion that Ms. Joyce “no longer has a disability which interferes with the ability to make or communicate responsible decisions regarding health care, food, clothing, shelter, or administration of property.”

In August 2018, the court held a hearing regarding the verified petitions for appointment of counsel for termination of the guardianship. The record does not include a transcript of that hearing. At the conclusion of the hearing, the court issued an order denying all relief requested in the petitions, “upon consideration of the entire matter and arguments made, for reasons stated on the record.” The court further required Mr. Kearney to pay attorneys' fees to Ms. Boyce in the amount of \$500.²

Several months later, Ms. Boyce moved to compel psychologist C. Rick Ellis to disclose his “complete medical records” relating to Ms. Joyce. He wrote a letter asking the court to deny the motion to compel the disclosure of medical records. Without

² In a letter sent on the day after the hearing, Ms. Boyce stated that the court had determined “that Mr. Kearney has no standing to represent Ms. Joyce and therefore, he is not her attorney.”

discussing any details of his evaluation, he expressed his opinion that Ms. Joyce had been subjected to an “unjust guardianship.” The court granted the motion and ordered him “to produce a complete to copy of his file” to Ms. Boyce.

D. Present Challenge to the Guardianship as Self-Represented Person

On January 9, 2019, Ms. Joyce sent a handwritten letter to the circuit court, asking the court to “appoint an attorney to contest the guardianship.” On March 4, 2019, Ms. Joyce, representing herself, filed a motion styled “Amended Motion for Appointment of Counsel.”

In her motion, Ms. Joyce asked the court to appoint an attorney “to determine whether [her] disability ha[d] ended and assist [her] in filing a petition to terminate the guardianship.” Ms. Joyce asserted that Ms. Boyce “ha[d] prevented [her] from seeking counsel or obtaining a medical certificate indicating the cessation of [her] disability necessary to file for termination of the guardianship.” Ms. Joyce stated that the court previously “determined that [she] did not have the legal capacity to hire an attorney.” Ms. Joyce further asserted that she had spoken with an attorney, Ria Rochvarg, who “indicated that she would be willing to accept” an appointment by the court. Ms. Joyce asked the court to appoint Ms. Rochvarg and her firm as counsel.

Ms. Boyce opposed the Amended Motion for Appointment of Counsel. Ms. Boyce asserted that the motion addressed the “same issues” that had been raised “on multiple prior occasions,” including when the court denied petitions for appointment of counsel and for termination of the guardianship after the hearing in August 2018. Ms. Boyce argued that the motion to appoint counsel required a medical certificate certifying

a cessation of disability, as well as “certification that the matter was first presented to the [g]uardian who,” according to Ms. Boyce, “has exclusive jurisdiction for 45 days after grounds for termination exist to determine whether to file a petition for termination” of a guardianship. Ms. Boyce also argued that Ms. Joyce, as a person under guardianship, was not “authorized” to request a termination of the guardianship. Based on those arguments, Ms. Boyce concluded that “there [was] no ‘proceeding’ pending in which the [c]ourt ha[d] authority to appoint an attorney” for Ms. Joyce.

On April 2, 2019, the circuit court entered an order stating: “Upon [c]onsideration of the Amended Motion for Appointment of Counsel, and the Opposition thereto, . . . the Amended Motion for Appointment of Counsel is hereby DENIED.” The court provided no oral or written statement of the reasons for its decision.

Within 30 days of the entry of that order, Ms. Joyce, representing herself, filed a notice of appeal. That matter is currently before this Court.

In connection with her appeal, Ms. Joyce filed a motion in the Court of Special Appeals “by and through counsel Ria Rochvarg, Steven Reckard, and Ria P. Rochvarg, P.A.” The motion asked this Court either to appoint those attorneys as her counsel or to accept their entry of appearance as her counsel. Ms. Boyce opposed the motion, arguing that it was “procedurally defective” and “premature,” because it was not supported by an affidavit and the record on appeal had not yet been filed. This Court denied the motion to appoint counsel “without prejudice” to Ms. Joyce’s ability to renew the motion at a later date.

E. Present Challenge to the Guardianship Through Counsel

On July 23, 2019, Ms. Joyce, “by and through counsel, Ria P. Rochvarg, Steven Reckard, and Ria P. Rochvarg P.A.,” filed a document in the circuit court with the title: Entry of Appearance, or in the Alternative, Motion for Appointment of Counsel, Petition to Terminate Guardianship, and Motion for Appointment of an Investigator and Request for a Hearing. That document included a series of requests for relief.

The document requested that the circuit court either accept the entry of appearance by those attorneys as counsel for Ms. Joyce or, alternatively, appoint those attorneys as her counsel. The document included an assertion that Ms. Joyce had chosen those attorneys to represent her, as well as a statement signed by Ms. Joyce, verifying the assertions made in her motion.

The motion argued that Ms. Joyce was entitled to representation by counsel of her own choice after the appointment of a guardian. In the alternative, the motion argued that Ms. Joyce was entitled to appointment of counsel for “good cause.” That request relied on Md. Rule 10-106(d)(4), which permits the court to appoint, reappoint, or continue the appointment of an attorney for a disabled person “after a guardianship has been established if the court finds that such appointment or continuation is in the best interest of the . . . disabled person.”

The same document included a petition for termination of the guardianship of the person and property, based on the claim that Ms. Joyce’s “disability, if it ever existed, ha[d] ceased.” The petition asserted that Ms. Joyce “ha[d] been residing alone since 2017” and was “maintain[ing] a job independently of any support from her guardian.”

As an exhibit, the petition included a copy of the same medical certificate, signed by Dr. Bajaj, that had been filed a year earlier in support of the previous petition to terminate the guardianship. As another exhibit, the petition included a copy of a “Guardianship Assessment” by C. Rick Ellis, in which he expressed his opinion that Ms. Joyce “has the capacity to make and communicate decisions necessary to meet the essential requirements of her life independently[,]” and that “[s]he, therefore, does not require a guardian . . . to make decisions for her.”³ Based on those submissions, the petition requested that the court issue an order requiring Ms. Boyce to show cause why the guardianship should not be terminated and set a hearing regarding termination of the guardianship.

In addition, the document included a motion for the court to appoint a psychologist to “perform a mental competency evaluation[.]” That motion invoked the court’s authority to “appoint an independent investigator . . . to investigate specific issues or concerns regarding the manner in which the guardianship is being administered and to report written findings to the court.” Md. Rule 10-106.2(b) (2020); Md. Rule 10-106.1(b) (2019). The motion claimed that Ms. Boyce “ha[d] prevented access to medical records and medical professionals in an effort to prevent Ms. Joyce from even being able to file a petition.” The motion acknowledged that, if a “medical expert” appointed by the court “determine[d] that Ms. Joyce does require a guardian[,]” then she would have “no

³ That report was undated, but it stated that Dr. Ellis’s most recent examination of Ms. Joyce had occurred over one year before the filing of the petition.

grounds for termination” of the guardianship.⁴

In opposition, Ms. Boyce asked the court to deny all relief sought by Ms. Joyce. First, Ms. Boyce contended that the doctrines of res judicata or collateral estoppel precluded any consideration of the matters raised in her new filing. Ms. Boyce asserted that Ms. Joyce’s latest filing made “no allegations of any change in circumstances since the latest denial of her request to terminate the [g]uardianship less than 12 months” previously.

Next, Ms. Boyce contended that the petition was “fatally flawed,” because it lacked a certificate attesting to the cessation of disability, signed by a physician who had examined Ms. Joyce within 21 days of the filing of her petition. Ms. Boyce observed that Dr. Bajaj’s most recent examination of Ms. Joyce had occurred more than one year before the filing of the petition. Ms. Boyce argued that the new filing was “[i]n substance . . . the same [p]etition” that court had rejected a year earlier.

Ms. Boyce further opposed the request for the court to appoint a physician to evaluate Ms. Joyce. Ms. Boyce argued that the rules authorize the court to appoint an investigator “to investigate specific issues or concerns regarding the manner in which the guardianship is being administered” (Md. Rule 10-106.2(b) (2020); Md. Rule 10-106.1(b) (2019)), but do not authorize the appointment of an expert to perform a mental competency evaluation.

⁴ The motion also included a request for the appointment of a forensic accountant to review the administration of the guardianship estate. The court denied that request, and it appears that the court’s decision has not been challenged in this appeal.

More generally, Ms. Boyce contended that neither Ms. Joyce nor the attorneys who had undertaken to represent her could properly file a petition on her behalf. Ms. Boyce argued that Ms. Joyce, as a person under guardianship, was not “not legally competent” to verify any statements made in her petition and that a person under guardianship “lacks capacity to enter into . . . a contract with an attorney for legal representation.” Ms. Boyce also argued that she, as the guardian, had the exclusive authority to retain a lawyer for Ms. Joyce and that Ms. Joyce could “proceed only through her guardian” if she wished to terminate the guardianship. Ms. Boyce argued further that, before petitioning to terminate a guardianship, a petitioner is “first obligated” to present to the guardian the grounds for termination of the guardianship.

Finally, Ms. Boyce contended that the court could not appoint an attorney for Ms. Joyce under Md. Rule 10-106(d)(4) unless the court found that the appointment was in the “best interest” of Ms. Joyce. Ms. Boyce asserted that there was “no basis for making such a finding,” because, in her view, the petition to terminate the guardianship lacked merit and, therefore, the appointment of counsel would result in “unnecessary and unjustified legal fees” that might be paid from assets of the guardianship estate.⁵

The circuit court made its ruling solely upon consideration of the written submissions. On August 20, 2019, the court entered an order denying the motion for appointment of counsel, the petition for termination of the guardianship, and the motion

⁵ In addition, Ms. Boyce asserted that, if the court did appoint counsel, it should not appoint Ms. Rochvarg or Mr. Reckard because neither attorney was listed on the court’s roster of attorneys eligible for appointment in guardianship proceedings.

for appointment of an investigator. The court issued no oral or written statement of the reasons for its decision.

Within 30 days after the entry of that order, a notice of appeal was filed on Ms. Joyce’s behalf “by and through counsel Ria P. Rochvarg, Steven Reckard, and Ria P. Rochvarg, P.A.” That appeal is now before this Court, under the same case number resulting from the earlier notice of appeal filed by Ms. Joyce on her own behalf.

F. Additional Developments During Pendency of Appeals

During the pendency of the appeals, Ms. Rochvarg and Mr. Reckard made a motion asking the circuit court to permit them to examine the sealed record of the guardianship case. Over Ms. Boyce’s opposition, the court granted the motion in part, by allowing Ms. Rochvarg to review the case file in chambers and to submit a list of documents that she would like to review.⁶

In the circuit court, Ms. Boyce moved to strike the notice of appeal filed by Ms. Rochvarg and Mr. Reckard, arguing that Ms. Boyce, as the guardian, had the exclusive authority to select counsel to represent Ms. Joyce for the purpose of her appeal. The record reflects that the circuit court has not yet ruled on that motion.

Before the filing of appellate briefs, Ms. Boyce moved for this Court to dismiss the appeal, arguing that the appeal could not proceed because neither the circuit court nor this Court had appointed those attorneys as counsel for Ms. Joyce. In opposition, the

⁶ Afterwards, counsel for Ms. Boyce wrote to the court expressing “confus[ion]” that the court would permit Ms. Rochvarg to examine the sealed court file after denying the motion for appointment of counsel.

attorneys argued that the motion to dismiss was an “attempt[] to eliminate appellate review” of the circuit court’s decision denying appointment of counsel, which was “[o]ne of the major issues” presented in the appeal. This Court denied the motion to dismiss.

Three advocacy organizations (Disability Rights Maryland, the Public Justice Center, and the National Coalition for a Civil Right to Counsel) jointly moved for leave to file an amicus curiae brief. The purpose of their motion was to argue that Ms. Joyce had a continuing right to be represented by counsel, but they took no position on whether the guardianship should be terminated. Ms. Boyce did not affirmatively consent to the filing of an amicus curiae brief, but she filed no response in opposition to their motion. This Court granted the motion.

Before oral argument in this case, counsel for Ms. Boyce made a “preliminary” objection, arguing that Ms. Rochvarg should not be permitted to argue on behalf of Ms. Joyce because neither the circuit court nor this Court had appointed Ms. Rochvarg as counsel. In response, Ms. Rochvarg argued that granting that request would require this Court to prejudge the merits of the appeal from the denial of the request for appointment of counsel. This Court elected to take the matter under consideration along with its consideration of the arguments on the merits.

ARGUMENTS ON APPEAL

Ms. Joyce submitted an appellate brief through attorneys Ria Rochvarg and Steven Reckard. The arguments fall into two main categories: arguments regarding her requests to be represented by counsel; and arguments regarding her petition to terminate the

guardianship.⁷

First, Ms. Joyce contends that the circuit court should have accepted the entry of appearance of Ms. Rochvarg and Mr. Reckard as counsel. Ms. Joyce argues that the governing statutes and rules should be construed so that a person under guardianship continues to enjoy the right to counsel of the person's own choosing during the guardianship. Alternatively, Ms. Joyce contends that the court abused its discretion by refusing to appoint counsel to represent her. Ms. Joyce further argues that, if the governing provisions do not “guarantee” her the right to counsel during the guardianship, “then the statutory scheme violates [Ms. Joyce’s] civil rights by failing to provide her equal protection under the law.”

Next, Ms. Joyce presents an array of challenges to the denial of her petition to terminate the guardianship. Ms. Joyce argues that it became necessary for her to “assert her own rights,” because Ms. Boyce “failed to even consider” pursuing a termination of the guardianship after receiving information that Dr. Bajaj and C. Rick Ellis believed that

⁷ Ms. Joyce’s appellate brief presents the following four questions:

- I. Does Mary Joyce have an inalienable right to counsel?
- II. Did the Circuit Court for Montgomery County err when it failed to allow Mary Joyce to hire her own counsel?
- III. Did the Circuit Court for Montgomery County err when it failed to appoint counsel for Mary Joyce?
- IV. Did the Circuit Court for Montgomery County err when it failed to issue a show cause order for termination of the Guardianship of Mary Joyce?

Ms. Joyce was not disabled. Ms. Joyce argues that, under her interpretation of *In re Rosenberg*, 211 Md. App. 305 (2013), a physician’s certificate is not strictly required for the court to consider a petition to terminate a guardianship on the ground of cessation of disability. Ms. Joyce further asserts that, in this case, her guardian “actively prevent[ed]” her from obtaining medical examinations, thereby preventing her from obtaining a physician’s certificate. Ms. Joyce concludes that, under the circumstances of this case, denying her petition based on the lack of a physician’s certificate impermissibly blocks her access to the courts and deprives her of liberty without due process of law.

In her appellate brief, Ms. Boyce asks this Court to uphold the orders of the circuit court. Ms. Boyce asserts that the “sole issue” in this appeal is whether the circuit court abused its discretion in denying the motion to appoint counsel, the petition to terminate the guardianship, and the motion to appoint an investigator. Ms. Boyce contends that the court was required to deny those requests, based on what she calls the “failure to comply with clear and required procedures.”

Ms. Boyce observes that a petition to terminate a guardianship on the ground of “cessation of the disability” must be accompanied by “a certificate, signed by a physician who has examined the person within 21 days of the filing of the petition, attesting to the cessation of the disability.” Md. Rule 10-209(c)(5)(A); Md. Rule 10-710(e)(3). Ms. Boyce argues that, because the physician’s certificate stated that Dr. Bajaj’s most recent examination occurred more than a year before the filing of the petition, the petition was “fatally flawed” and “could not be considered” by the court. Ms. Boyce also argues that Ms. Joyce was “first obligated” to present any grounds for termination to the guardian

before pursuing a petition to terminate the guardianship. In addition, Ms. Boyce argues that Ms. Joyce, as a person under guardianship, “was not legally competent to file a ‘Verified Petition’” and could “proceed only through her guardian.”

Ms. Boyce further argues that, “[a]s a person judicially determined to be disabled and under guardianship, [Ms. Joyce] lacked the capacity to enter into . . . a contract with an attorney for legal representation.”⁸ According to Ms. Boyce, “the authority to give consent or approval to retain professional services” for Ms. Joyce “belongs exclusively” to Ms. Boyce, as the guardian. Ms. Boyce contends that, before the court may appoint an attorney for a disabled person under a guardianship the court must “find[] that such appointment . . . is in the best interest of the . . . disabled person.” Md. Rule 10-106(d)(4). Ms. Boyce argues that the court could not find that appointment of counsel was in Ms. Joyce’s best interest because, Ms. Boyce argues, “there was no legal basis to proceed” on the petition to terminate the guardianship.

During oral argument, this Court asked counsel for Ms. Boyce to clarify a statement from her appellate brief, to the effect that she, as the guardian, is “the only person that could lawfully authorize” a medical examination of Ms. Joyce. Counsel for Ms. Boyce said that this statement was not intended to suggest that Ms. Boyce would or

⁸ Ms. Boyce cites *James B. Nutter & Co. v. Black*, 225 Md. App. 1, 14 (2015), for the proposition that a person under guardianship of the property lacks capacity to enter into a contract and is unable to convey an interest in real property. Some courts have held, however, that “an adjudication of incapacity in [a] guardianship proceeding does not automatically result in the conclusion that the individual presently lacks the capacity necessary to hire counsel” in seeking to terminate the guardianship. Jenica Cassidy, *Restoration of Rights in the Termination of Adult Guardianship*, 23 ELDER L.J. 83, 101 (2015) (citing *In re Guardianship of Zaltman*, 65 Mass. App. Ct. 678, 687 (2006)).

could preclude Ms. Joyce from seeking a medical examination. Counsel for Ms. Boyce argued, however, that any person seeking to obtain a medical examination of the person under guardianship must first request authorization from the guardian. Counsel for Ms. Boyce acknowledged that the guardian has at least an obligation to “cooperate” with such a request and that, if the guardian refused the request for no reason or without sufficient reason, the court could authorize the requested medical examination.⁹

DISCUSSION

After considering the record and the arguments made on appeal, we conclude that the interests of justice will be served by remanding this case for further proceedings in the circuit court. The purpose of this limited remand is to allow that court to supplement the record with an explanation of the reasons for issuing the orders of April 2, 2019, and August 20, 2019.

Both orders state that the circuit court made its rulings upon consideration of the parties’ written submissions. If we assume that the court adopted some or all of the reasons offered in Ms. Boyce’s opposition papers, then we confront a multitude of possibilities.

The court may have denied relief based on Ms. Boyce’s assertions that identical issues had already been decided by the court at the hearing in August 2018. The court may have been persuaded by Ms. Boyce’s argument that the court lacked authority to

⁹ It is beyond dispute that the administration of a guardianship remains “subject to judicial control.” *Kicherer v. Kicherer*, 285 Md. 114, 119 (1979). “In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility.” *Id.* at 118.

grant any relief unless it received a certificate from a physician who had examined Ms. Joyce within 21 days of the filing of the petition. The court may have been persuaded by the arguments that Ms. Joyce, as a person under guardianship, lacked capacity to request relief by herself or to engage an attorney to make a request on her behalf and, consequently, treated the filings as legal nullities.

Of particular importance, the record leaves room for interpretation regarding whether the court accepted or rejected the appearance of Ms. Rochvarg, Mr. Reckard, and their firm. The document filed on July 23, 2019, included alternative requests for relief: either to accept the document as an entry of appearance of those attorneys as counsel for Ms. Joyce or to appoint those attorneys as her counsel. In the order entered on August 20, 2019, the court expressly denied the “Motion for Appointment of Counsel,” but it did not expressly deny the request that the court accept their entry of appearance as counsel.

An inference that the court declined to recognize Ms. Rochvarg and Mr. Reckard as counsel for Ms. Joyce might be mistaken. Conceivably, the court may have concluded that the attorneys were entitled to represent Ms. Joyce as counsel of her own choice. In that event, the court might have thought it unnecessary to appoint counsel to represent Ms. Joyce after counsel had already entered their appearance on her behalf. In fact, the court’s subsequent decision to grant their motion to examine portions of the sealed court file might indicate that the court believed that Ms. Rochvarg was entitled to act as counsel for Ms. Joyce.

It would make little sense for this Court to address the statutory and constitutional arguments regarding Ms. Joyce’s right to be represented by counsel in the guardianship

proceeding, if the court, in fact, afforded her the right to counsel of her choosing. The current record makes it unfair for this Court to attempt to review these decisions without a clear understanding of what the circuit court actually decided. Appellate review based on the current record would require this Court either to speculate about the reasons why the court issued its orders or to pass upon all possible reasons. The result might be a binding appellate decision that upholds or overturns a ruling that the circuit court never actually made, and effectively makes that decision in the first instance.

Under Md. Rule 8-604(d)(1), we remand this case to the circuit court, without affirming, reversing, or modifying any of the court's orders, for the purpose of allowing the court to explain any and all reasons that the court issued the orders of April 2, 2019, and August 20, 2019.

**CASE REMANDED WITHOUT
AFFIRMANCE OR REVERSAL TO THE
CIRCUIT COURT FOR MONTGOMERY
COUNTY FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO ABIDE THE RESULT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0380s19cn.pdf>