Circuit Court for Baltimore City
Case No. 24T23000072

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 427

September Term, 2023

IN THE MATTER OF TANYA BRADSHAW

Graeff,
Arthur,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: March 4, 2024

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

This appeal arises from an order by the Circuit Court for Baltimore City appointing a guardian for the person and property of appellant, Tanya Bradshaw, a woman who suffers from moderate cognitive dysfunction, among other things. Appellee, Johns Hopkins Bayview Medical Center (the "Hospital"), filed a petition for guardianship after Ms. Bradshaw was admitted to the hospital, and the doctors determined that she was not capable of living in an independent environment or effectively managing her affairs. The court appointed Ms. Bradshaw's sister, Nicole Bradshaw,[1] as guardian of the person, and attorney Adam Zimmerman as guardian of Ms. Bradshaw's property.

On appeal, Ms. Bradshaw presents the following questions for this Court's review:

1. Did the circuit court err in finding that no less restrictive alternative was available that was consistent with Ms. Bradshaw's welfare and safety when Ms. Bradshaw could receive support from and live with her daughter, who was a certified nurse's aide, and receive support from her sister, whom the court appointed as her guardian?

2. Did the circuit court err in appointing a guardian of the property when there was no evidence that she failed to manage her assets and, in fact, no evidence that she has assets that require proper management?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Bradshaw was born on July 11, 1972. She was 50 years old at the time of the proceedings below. Ms. Bradshaw suffers from a seizure disorder, end-stage renal disease, diabetes, hypertension, heart disease, left-side weakness as a result of a prior stroke, visual

[1] To avoid confusion, we will refer to Ms. Bradshaw's sister, Nicole Bradshaw, by her full name.

impairment, and moderate cognitive dysfunction. She takes multiple prescription medications, and she needs dialysis three times a week.

Ms. Bradshaw resided with her adult daughter, Tanisha Brown, minor son, and granddaughter until February 3, 2023. Ms. Brown testified that she had taken care of her mother, and her mother's son, since Ms. Bradshaw had a stroke 13 years earlier. Ms. Brown managed Ms. Bradshaw's medical conditions from home.

A.

Issues that Led the Hospital to File for Guardianship

In December 2022, Ms. Bradshaw was admitted to a Johns Hopkins health system hospital "with seizures and missed dialysis." Prior to that, she had been admitted to a MedStar hospital "for failure to thrive."

On February 3, 2023, a week after she was discharged from a skilled nursing facility, Ms. Bradshaw was admitted to the Hospital after "three witnessed seizure[s]."[2] While Ms. Bradshaw was hospitalized, at the Hospital, two internal medicine physicians, Dr. Amy Yu and Dr. Venkat Gundareddy, evaluated her. Both physicians opined, to a reasonable degree of medical certainty, that Ms. Bradshaw had "a disability that prevents [her] from making or communicating any responsible decisions concerning [her] person" and her property.

The Baltimore City Department of Social Services ("BCDSS") attempted to reach Ms. Brown to discuss Ms. Bradshaw's medical condition, but it was not able to reach her

[2] The Hospital alleged in its petition that a blood test revealed that Ms. Bradshaw had not been taking her seizure medication.

"on a consistent basis." Nicole Bradshaw was the person that the Hospital could rely on to have a conversation when needed.

On February 24, 2023, the Hospital filed a Petition for Guardianship of Ms. Bradshaw, an alleged disabled person, in the Circuit Court for Baltimore City.[3] The Hospital alleged that Ms. Bradshaw had been admitted as a patient on February 3, 2023. The Hospital attempted to call Ms. Brown several times, without success. After the Baltimore City Police performed a wellness check on Ms. Brown, and they found her at her home, the Hospital spoke to her about being "cooperative with them in making medical decisions for [Ms.] Bradshaw." The petition alleged that Ms. Bradshaw's aunt and cousin advised that Ms. Brown "was physically neglecting [Ms.] Bradshaw as well as financially exploiting her." Both family members agreed that Ms. Bradshaw needed a guardian.

The petition further alleged that Ms. Bradshaw

> suffers from moderate cognitive dysfunction causing a loss of higher intellectual functioning, as well as the inability to take charge of and manage her property and affairs. . . . [B]ecause of the aforementioned conditions, [Ms. Bradshaw] does not appear capable of living in an independent environment or effectively managing her affairs; consequently, she requires

[3] *See* Md. Code Ann., Estates & Trusts Art. ("E&T") §§ 13-201(a) and 13-705(a) (2017 Repl. Vol.); Md. Rules 10-201 and 10-103(b)(2).

E&T § 13-705(a) states: "On petition and after any notice or hearing prescribed by law or the Maryland Rules, a court may appoint a guardian of the person of a disabled person." Md. Rule 10-201 governs petitions for guardianship of the person of an allegedly disabled person.

E&T § 13-201(a) states: "On petition, and after any notice or hearing prescribed by law or the Maryland Rules, the court may appoint a guardian of the property of a minor or disabled person." Md. Rule 10-103(b)(2) governs petitions for guardianship of the property of an allegedly disabled person.

> the appointment of a Guardian of her Person to consent to necessary protective services which would include consenting to her placement in an appropriate supervised care setting or nursing care facility and consenting to necessary medical care. There is no less restrictive form of intervention available that is consistent with her welfare and safety other than the appointment of the Guardian of the Person. . . . [A]s a result of the aforementioned condition, [Ms. Bradshaw] is a disabled person within the meaning of the Annotated Code of Maryland, Estates and Trusts Article, Sections 13-201(c) and 13-705(b), as she lacks sufficient understanding and capacity to make or communicate responsible decisions concerning the management of her property and personal affairs because of physical or mental disability and disease.

The petition requested that the court appoint a Guardian of the Person of Tanya Bradshaw and a Guardian of the Property of Tanya Bradshaw.

The Hospital attached physician's certificates from Dr. Amy Yu and Dr. Venkat Gundareddy.[4] Dr. Yu certified that Ms. Bradshaw had the following physical diagnoses: "ESRD [end-stage renal disease], DM [diabetes], prior CVA [stroke] with residual left sided weakness, depression, HTN [hypertension], CAD s/p PCI (2010) [coronary artery disease with percutaneous coronary intervention], moderate cognitive dysfunction and seizure disorders." Dr. Gundareddy certified that Ms. Bradshaw had the following physical diagnoses: "[p]rior stroke leading to left sided weakness, high blood pressure, coronary heart disease, seizures, [and] end stage renal disease on dialysis." Both doctors further

[4] Md. Rule 10-202(a) states, in part:

> (1) *Generally Required.* If guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of the following persons who have examined or evaluated the alleged disabled person: (A) two physicians licensed to practice medicine in the United States, or (B) one such licensed physician and one licensed psychologist, licensed certified social worker-clinical, or nurse practitioner.

certified that Ms. Bradshaw "does have a disability that prevents [her] from making or communicating any responsible decisions concerning [her] person" and her property, and she "has a demonstrated inability to manage [her] property and affairs effectively because of a physical or mental disability."

On March 3, 2023, the court appointed counsel from Maryland Legal Aid for Ms. Bradshaw. That same day, the court issued an order requiring Ms. Bradshaw and the interested persons named therein to "show cause . . . why the relief prayed in the foregoing Petition should not be granted."

On March 15, 2023, Ms. Bradshaw, through counsel, answered the Hospital's petition for guardianship and the show cause order, asking the court to deny the petition. In her Pre-Hearing Statement, counsel checked the box stating that Ms. Bradshaw had not expressed a position that counsel could share regarding the need for guardianship or the availability of a reasonable alternative to guardianship.

BCDSS also answered the Hospital's petition, stating that Nicole Bradshaw was "willing and able to act as Guardian of the Person for [Ms.] Bradshaw" and that she had completed and passed the required guardianship training. BCDSS further asserted that "[t]he Court would need to find 'good cause' to pass over a family member before authorizing an agency of the State to make decisions for [Ms. Bradshaw]," and in this case, "such good cause does not exist."

B.

Guardianship Proceeding

On March 23, 2023, the circuit court held a virtual guardianship hearing. Counsel for Ms. Bradshaw waived her right to a jury trial. The court accepted both Dr. Yu and Dr. Gundareddy as expert witnesses.

Dr. Yu testified that she evaluated Ms. Bradshaw on February 22, 2023, three weeks after Ms. Bradshaw was admitted to the hospital. Dr. Yu was concerned about Ms. Bradshaw's medical condition. She assessed Ms. Bradshaw's cognitive function by administering the "Montreal Cognitive Assessment" test, on which Ms. Bradshaw scored a 10 out of 30, indicating moderate cognitive dysfunction. Dr. Yu testified that Ms. Bradshaw could not take care of her "critical medical conditions by herself," such as attending dialysis appointments or taking her seizure medication. Ms. Bradshaw did not have a "full understanding about her medical condition[s]" and could not make her own decisions on whether she needed dialysis or other medical treatments.

Dr. Gundareddy testified that he evaluated Ms. Bradshaw on February 23, 2023, the day after Dr. Yu's evaluation. He testified that Ms. Bradshaw had "multiple medical conditions," including "history of stroke" and weakness, an "issue with her memory," "seizure history," and "kidney failure." Dr. Gundareddy evaluated Ms. Bradshaw's cognitive function using a test called the "Mini Mental State Examination," on which she scored a 16 out of 30. During the test, Ms. Bradshaw had "significant issues with retaining memory," and she was unable to recall three objects that he had shown her earlier after

only "five to ten minutes." Dr. Gundareddy testified that, "without adequate supervision with her memory issues, she would be someone who would not be able to thrive normally in the community."

Dr. Gundareddy further opined that Ms. Bradshaw lacked an "understanding of what is needed for her medical condition," and she did not have "a full understanding of what the consequences are of missing some of her treatments." Those consequences included seizures, electrolyte imbalances, respiratory distress, and death. Missing dialysis treatments can lead to difficulty breathing, irregular heart rhythm, and "other side effects of building up toxins in the system." In his professional opinion, "Ms. Bradshaw needs a guardian to superintend her care and supervise to make sure she gets the treatment she needs." While in the hospital, Ms. Bradshaw had not "refused receiving dialysis" or "refused to take her medications."

The court admitted both physician's certificates into evidence. In both certificates, the physicians asserted that, in their professional opinions, and within a reasonable degree of medical certainty, Ms. Bradshaw has "a disability that prevents [her] from making or communicating any responsible decisions concerning [her] person" and her property. Both physicians further stated that Ms. Bradshaw's "mental diagnosis put her at high risk of not [being] compliant with her medications," which Dr. Gundareddy stated "can cause acute worsening of her symptoms." Dr. Yu noted that Ms. Bradshaw will "need 24 hours supervision and assistance with ADLs/iADLs [the activities of daily life and the instrumental activities of daily living]." Dr. Yu further wrote that Ms. Bradshaw was

"[o]nly oriented to person and place, not to time and situations." Dr. Gundareddy wrote that Ms. Bradshaw is "[o]riented to self, person, place[,] but not to time," and that "[s]he is forgetful and cannot recollect things after a short interval." Both physicians asserted that Ms. Bradshaw needed supervision and monitoring to manage her finances, transportation needs, communication, and medication.

Renita Somerville, the BCDSS social worker assigned to Ms. Bradshaw's case, testified that Ms. Bradshaw required a guardian of her person and of her property, stating that Ms. Bradshaw required "supervision in an assisted living type of facility, supervision with her activities of daily living as well as her medical treatment." Ms. Bradshaw also needed "someone to consent to the medical treatment and superintend her care." Ms. Somerville recommended Nicole Bradshaw to serve as Ms. Bradshaw's guardian of her person because she was easier to "get in touch with" than Ms. Brown.

Ms. Somerville stated that Ms. Bradshaw needed a guardian of her property "[t]o manage her finances . . . to be able to pay for an assisted living facility" and to manage and apply for "any other benefits that she may be entitled to." Ms. Sommerville noted, however, that Nicole Bradshaw did not want to be guardian of Ms. Bradshaw's property.

Ms. Brown testified that she had been Ms. Bradshaw's caregiver for 14 years. She asserted that, on Tuesdays and Thursdays, a home health aide, social worker, and nurse visited her house to care for Ms. Bradshaw. On Mondays, Wednesdays, and Fridays, Ms. Bradshaw attended dialysis appointments. Ms. Brown stated that she recently had arranged for MTA Mobility to transport Ms. Bradshaw to her dialysis appointments. Ms. Brown

testified that she was willing to assist Ms. Bradshaw with the help that she needed. She typically was home with Ms. Bradshaw, other than when Ms. Bradshaw was at her dialysis appointments. Because of Ms. Brown's difficulty with accessing the virtual hearing during her direct examination, counsel for Ms. Bradshaw proffered to the court the rest of her testimony. Counsel stated:

> Ms. Brown is willing to have Ms. Tanya Bradshaw return to her home to provide care and assistance for Ms. Bradshaw in her home. And that Ms. Bradshaw was previously residing with Ms. Brown in the past and they are a family unit, the two of them as well as Ms. Brown's daughter and Ms. Bradshaw's son.

On cross-examination, Ms. Brown stated that she did not know how many times Ms. Bradshaw had been hospitalized in the last several years.

Nicole Bradshaw testified that she was interested in being Ms. Bradshaw's guardian "because [she] would want [a] family member to continue to be in her life and have some say-so." She was an employee of the Maryland State Department of Education and worked in-person for eight hours a day. On March 6, 2023, Nicole Bradshaw completed the orientation program to receive her guardianship certification, but she did not complete the guardianship training.

Nicole Bradshaw was not aware that Ms. Bradshaw had missed her dialysis appointments until the social worker informed her. Although she had not seen Ms. Bradshaw in a couple of years, she spoke to Ms. Brown "quite often" and had assisted with paying for transportation for Ms. Bradshaw to attend her dialysis appointments. Regarding

her knowledge of Ms. Brown administering Ms. Bradshaw's medication, she stated that Ms. Bradshaw would occasionally "spit the medicine out" after Ms. Brown walked away.

In closing argument, counsel for the Hospital stated that, because it was "clearly inappropriate" for Ms. Brown to be appointed as guardian, and based on counsel's belief that Nicole Bradshaw did not want to be appointed as guardian, he asked the court to appoint "the Department of Social Services for person and Adam Zimmerman for property."[5]

Counsel for Ms. Bradshaw argued that Ms. Bradshaw did not need a guardian because there were less restrictive alternatives available, including having Nicole Bradshaw manage Ms. Bradshaw's transportation needs. Counsel asserted that Ms. Bradshaw could manage her communication, her medication, and her finances, as long as she had supervision and assistance. Ms. Bradshaw was "a good client for the Supported Decision Making act because she [could] receive the support that she" needed while still "functioning under a less restrictive option than a guardianship." Finally, counsel argued that the court should preserve Ms. Bradshaw's "family unit," which included her daughter and sister, who were "willing to support her and provide the assistance that she requires."

The court then asked about the discharge plan. Ms. Somerville stated that her office was recommending that Ms. Bradshaw move to an assisted living facility where she could "get the assistance and supervision" required to "prevent frequent hospital readmissions

[5] Nicole Bradshaw later clarified that she *was* willing to serve as Ms. Bradshaw's guardian of the person.

and missed dialysis appointments," as well as get "the proper care that she needs to maintain her health."

C.

Court Ruling

At the end of the testimony and arguments of counsel, the court ordered that Ms. Bradshaw needed a guardian. It appointed Nicole Bradshaw as Ms. Bradshaw's guardian of the person. The court stated:

> So based on the physician's certificates, the testimony that we've heard from Dr. Yu as well as both of the physicians in this matter, as well as hearing from Ms. Bradshaw and Ms. Brown, it is very clear that Ms. Brown does love her mother and that is clear from the testimony of Ms. Bradshaw as well as Ms. Brown.
>
> I don't believe that that is the point of issue at this court. I do believe that Ms. Brown is making all the efforts that she just can in her -- as best as she can and in the best of her abilities to take care of her mother. I just do not believe, based on the testimony as well as the indications of the physician's position, and I think very, what I think was very compelling to this Court and very persuasive is the missed dialysis.
>
> So of all of these things, not only the number of missed dialysis, the fact that she was treated and cared for and found herself back in the hospital, those were very, very persuasive on the Court. So it's not that I don't believe that Ms. Brown is making every effort to take care of her mother, I just don't believe that she has the full capacity to do so.
>
> I do not believe that I want to take it out of the hands of the family. I think that Ms. [Nicole] Bradshaw through her testimony has testified that she is willing to work in conjunction with Ms. Brown and it would be in fact a family member.
>
> Now understanding that the priority would go to the adult child, which would be Ms. Brown, and the sister would be under that, the Court is finding that, I believe, Ms. [Nicole] Bradshaw is best qualified of those persons to serve.

> And that the Court has considered and makes a finding that of good cause to go outside of that priority and to go into lower priority.
>
> And I believe so based on the testimony regarding the factors, the length, the nature and the length of the relationship. I know that Ms. [Nicole] Bradshaw has in fact indicated to the court that she hasn't had a lot of contact with her sister, but she's had a lot of contact with Ms. Brown.
>
> She's demonstrated through conversations with Ms. Brown regarding the medications and helping her to understand the further steps that she has to take in order to do that. So I think Ms. [Nicole] Bradshaw has shown that she would be capable of still having Ms. Brown as an important part in her consideration in making decisions.
>
> She's expressed to me why she's interested in being a guardian. She is in good health. Her children are adult children. She works hours at responsible jobs. She's [in] good health and able to make those decisions. I do not believe that she has any indications of her financial position and I think someone guarding the property would be most appropriate.
>
> I've not heard a lot of testimony about her property and how it is taken care of, but it looks like there are benefits that could be, that would probably be needed for Ms. Bradshaw and I think someone has to assist in helping that. Of course, at any point in time where the family believes that they could take over those issues once all of those things are taken in hand, taken into consideration, they can always come back to the court to ask for a reconsideration of that.
>
> So the Court finds good cause that a person of lower priority other than Ms. Brown at this point would be suitable and available, and for those reasons the Court is going to appoint Ms. Nicole Bradshaw as the guardian of the person.

The court found that Ms. Bradshaw's disability was not solely based on a physical disability. It ordered Nicole Bradshaw to complete the guardianship training within 120 days.

The court then stated:

> I do find by clear and convincing evidence that the Petitioner has in fact demonstrated that Ms. Tanya Bradshaw does lack sufficient understanding to make, communicate responsible decisions regarding her person and that that lack of capacity is caused by her mental disability and disease.
>
> I do not find that there is a less restrictive form of intervention that is available. Based on the testimony, she currently has inhouse nursing. She currently has therapists. She currently has people that are coming to Ms. Brown's home who I do believe and we find from the physician's certificates and their testimony that that is not appearing to keep her away from hospitalizations, and due to her current diagnosis and according to her current conditions that continuing on that course would result more than likely in increased hospitalizations and a decrease in her health, namely based on the fact that she does need dialysis.
>
> She does have seizures, she suffers from strokes, and as well as the fact that she has a heart issue that is seemingly not being stabilized by her constant failures to get the treatment and in the medication she has outside.
>
> So I do not believe that there is a least restrictive form of intervention that is available and consistent with her welfare and safety. I further find that the proposed guardian of Nicole Bradshaw is a fit and proper person to be appointed.
>
> I do find based on the testimony that she is capable of carrying out the responsibilities and willing as a guardian and that no one of higher priority is available to serve based on my ruling and finding of good cause of a lower priority.

The court added that Nicole Bradshaw is "authorized to consent to any medical procedure that involves a substantial risk to the life of [Ms. Bradshaw] and the withholding or withdrawing of any medical procedure that involves substantial risk" to Ms. Bradshaw's life. It stated that, pursuant to the Surrogate decision making statute, Md. Code Ann.,

Health-General Art. ("HG") § 5-605 (2018 Repl. Vol.),[6] Nicole Bradshaw "must obtain court approval for changing the classification of the abode of [Ms. Bradshaw]" and must "file an annual report with the Trust Clerk within 60 days." *See* § 5-605(a)(2).

Regarding Ms. Bradshaw's property, the court ordered an attorney, Adam Zimmerman, as the guardian of Ms. Bradshaw's property. The court explained:

> I also find by [a] preponderance of the evidence that the Petitioner has demonstrated that Ms. Bradshaw lacks the sufficient capacity to manage her property and affairs effectively and this lack of ability is caused by her physical and mental disability. She may be entitled to property or benefits that require proper management and for those reasons I'm going to find that the proposed guardian of Mr. Adam Zimmerman is a fit and proper person to be appointed. That he will be capable of carrying out those responsibilities of the guardian and no one of higher priority is available.

The court made an additional finding that Mr. Zimmerman was excused from the guardianship training and from giving bond. On March 23, 2023, the court issued a written order, memorializing its ruling from the bench.

This appeal followed.

STANDARD OF REVIEW

In *Matter of Meddings*, 244 Md. App. 204, 220 (2019), this Court set forth the appropriate standard of review in adult guardianship cases, as follows:

> [I]n reviewing whether a circuit court properly decided to appoint a guardian for an adult, we adopt a tri-partite and interrelated standard of review. Factual

[6] The Surrogate decision making statute, Md. Code Ann., Health-General Art. ("HG") § 5-605 (2018 Repl. Vol.), allows for "authorization of a surrogate" to make healthcare decisions "for a person who has been certified to be incapable of making an informed decision and who has not appointed a health care agent in accordance with this subtitle or whose health care agent is unavailable." Guardianship is listed as the first priority, under HG § 5-605(i).

> 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.

Id. "A decision will be reversed for an abuse of discretion only if it is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *In re J.J.*, 231 Md. App. 304, 345 (2016) (quoting *In re Yve S.*, 373 Md. 551, 583–84 (2003)).

DISCUSSION

Ms. Bradshaw contends that the court erred in appointing both a guardian of her person and a guardian of her property. We will address both contentions, in turn.

I.

Guardian of the Person

"[G]uardianship proceedings implicate one of the most fundamental values of our society." *James B. Nutter & Co. v. Black*, 225 Md. App. 1, 16 (2015), *cert. denied*, 446 Md. 220 (2016). As the Supreme Court of Maryland has explained:

> [A] court of equity assumes jurisdiction in guardianship matters to protect those who, because of illness or other disability, are unable to care for themselves. 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. . . . [A]ll the parties here should be reminded that appointment to that position rests solely in the discretion of the equity court and the administering of that office as it pertains to both the person and property of the ward is subject to judicial control.

Kicherer v. Kicherer, 285 Md. 114, 118–19 (1979).

Pursuant to Md. Code Ann., Estates & Trusts Art. ("E&T") § 13-705(a) (2017 Repl. Vol.), "[o]n petition and after any notice or hearing prescribed by law or the Maryland Rules, a court may appoint a guardian of the person of a disabled person." A "disabled person" is defined as an individual who "has been judged by a court to be unable to provide for the person's daily needs sufficiently to protect the person's health or safety for reasons listed in E&T § 13-705(b) of this title; and . . . as a result of this inability requires a guardian of the person." E&T § 13-101(f)(2).

E&T § 13-705(b) provides that "[a] guardian of the person shall be appointed if the court determines from clear and convincing evidence that:

> (1) A person lacks sufficient understanding or capacity to make or communicate responsible personal decisions, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs; and
> (2) No less restrictive form of intervention is available that is consistent with the person's welfare and safety.

In *Meddings*, 244 Md. App. at 225, we noted that a "circuit court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person." *See* E&T § 13-708(a)(1) (2019 Repl. Vol). The "court may appoint a guardian that has 'the same rights, powers, and duties that a parent has with respect to an unemancipated minor child;' 'the right to custody of the disabled person to establish the disabled person's place of abode within and without the State;' or 'the power to give necessary consent or approval for: medical or other professional care, counsel, treatment, or service.'" *Id.* at 226 (quoting E&T § 13-708(b)(1)–(2), (9)(i)).

Ms. Bradshaw does not dispute that the requirements of E&T § 13-705(b)(1) were satisfied, i.e., that she lacks capacity to make personal decisions. She contends, however, that the court erred in finding, pursuant to E&T § 13-705(b)(2), that there was no less restrictive form of intervention available that was consistent with her welfare and safety. Ms. Bradshaw contends that there was a less restrictive alternative to guardianship under either: (1) the Supported Decision Making Act, E&T §§ 18-101 to 18-109 (2022 Repl. Vol), or (2) the Surrogate decision making statute, HG § 5-605 (2018 Repl. Vol.). Ms. Bradshaw asserts that many of the court's findings of fact underlying the finding that no less restrictive alternative existed were clearly erroneous. Specifically, she states that the record does not support a finding that she failed to take her medication, that she missed dialysis appointments, or that she has an unstable heart condition.

A.

Supported Decision Making

The General Assembly passed the Supported Decision Making Act in March 2022.[7] 2022 Maryland Laws Ch. 631 (S.B. 559). A "supporter" is "an individual selected by an adult to provide support in making, communicating, or effectuating the adult's own life decisions." E&T § 18-101(d). The supporter may "provide support to the adult in making decisions in areas of the adult's choosing, including:

(1) Gathering information;

[7] The term, "supported decision making," "means a process by which an adult, with or without having entered a supported decision-making agreement, utilizes support from a series of relationships in order to make, communicate, or effectuate the adult's own life decisions." E&T § 18-101(b).

> (2) Understanding and interpreting information;
> (3) Weighing options and alternatives to a decision;
> (4) Understanding the consequences of making or not making a decision;
> (5) Participating in conversations with third parties with the adult's explicit authorization; and
> (6) Providing the adult with support and advocacy in implementing a decision.

E&T § 18-104(c)(1)–(6).

> The purpose of the Supported Decision Making Act is to assist adults by:
>
> (1) Obtaining support for the adult in making, communicating, or effectuating decisions that correspond to the will, preferences, and choices of the adult; and
> (2) Preventing the need for the appointment of a substitute decision maker for the adult, including a guardian of the person or property.

E&T § 18-102(a).

Adults enter into a supported decision making agreement voluntarily, and the agreement does not "[a]uthorize the supporter or supporters to act on behalf of the adult." E&T § 18-107(b)(9)(ii)(1). The adult still holds all decision making power, and the supporter may not make decisions on behalf of the adult. E&T § 18-105(c). A person under guardianship may enter into a supportive decision-making agreement with a supporter, but the agreement "does not supplant the authority of a guardian of the adult." E&T § 18-104(b)(1)(i)–(ii).

B.

Surrogate Decision Making

Pursuant to HG § 5-605, a person authorized to be a surrogate "may make decisions about health care for a person who has been certified to be incapable of making an informed

decision and who has not appointed a health care agent . . . or whose health care agent is unavailable."[8] The individuals available to serve as a surrogate, in order of priority, are as follows:

> (i) A guardian for the patient, if one has been appointed;
> (ii) The patient's spouse or domestic partner;
> (iii) An adult child of the patient;
> (iv) A parent of the patient;
> (v) An adult brother or sister of the patient; or
> (vi) A friend or other relative of the patient who meets the requirements of paragraph (3)[9] of this subsection.

HG § 5-605(a)(2)(i)–(vi). A surrogate decision maker "shall base [health care] decisions on the wishes of the patient and, if the wishes of the patient are unknown or unclear, on the patient's best interest." HG § 5-605(c)(1).

[8] "Unavailable" includes situations where a health care provider cannot determine if there is a health care agent or surrogate decision maker, or where the health care agent or surrogate decision maker is unresponsive to requests, incapacitated, or unwilling to make decisions regarding health care. *See* Surrogate decision making statute, Md. Code Ann., HG § 5-605(a)(1)(iii) (2018 Repl. Vol.).

[9] HG § 5-605(a)(3) states:

> A friend or other relative may make decisions about health care for a patient under paragraph (2) of this subsection if the person:
> (i) Is a competent individual; and
> (ii) Presents an affidavit to the attending physician stating:
> 1. That the person is a relative or close friend of the patient; and
> 2. Specific facts and circumstances demonstrating that the person has maintained regular contact with the patient sufficient to be familiar with the patient's activities, health, and personal beliefs.

C.

Analysis

Ms. Bradshaw contends that the court erred in granting a guardianship because it made clearly erroneous factual findings that led to its finding that there was no less restrictive alternative to guardianship that was consistent with Ms. Bradshaw's welfare and safety. As explained below, we disagree.

In *Meddings*, 244 Md. App. at 208–09, this Court addressed a similar issue involving a disabled patient with schizophrenia and atrial fibrillation. In that case, we concluded that the court's rejection of the proposed less restrictive alternatives was not clearly erroneous. *Id.* at 227–33. Accordingly, we held that the decision to appoint a guardian was not an abuse of discretion. *Id.* at 233.

As the appellee hospital argued in *Meddings* "the issue isn't whether a less restrictive form of intervention exists, rather, the issue is 'whether a less restrictive alternative was available and consistent with [the adult's] own welfare and safety needs.'" *Id.* at 223. That is, "the availability of a form of intervention less restrictive than a guardianship is insufficient alone to defeat a petition for guardianship" because "[t]he form of intervention also must be 'consistent with the person's welfare and safety.'" *Meek v. Linton*, 245 Md. App. 689, 714 (2020) (quoting *Meddings*, 244 Md. App. at 224).

Here, the Hospital argues that neither supported decision making or surrogate decision making is an appropriate alternative for Ms. Bradshaw because neither are consistent with her welfare and safety. With respect to a supported decision-maker, the

Hospital argues that this alternative "is designed for adults who can make responsible decisions with the appropriate support," and both Dr. Yu and Dr. Gundareddy stated in their testimony and physician's statements that Ms. Bradshaw "was *not capable* of making decisions regarding her person or property regardless of the level of support." With respect to a surrogate decision maker, the Hospital asserts that this is not an appropriate alternative for Ms. Bradshaw because it only offers a "temporary solution" for her "long-term healthcare issue[s]," and the General Assembly "did not intend" for a surrogate to replace guardianship, which is evidenced by the fact that "[a] guardian for the patient" is ranked as first priority to be chosen as a surrogate decision maker.

The circuit court agreed with the Hospital that a lesser restrictive alternative to guardianship was not consistent with Ms. Bradshaw's welfare and safety. It found that, although Ms. Brown loved her mother, she was not capable of adequately caring for her. The court noted that Ms. Bradshaw had missed dialysis treatments, which it found very persuasive in support of the argument that a guardian was needed. It also noted that Ms. Bradshaw "continues to be hospitalized," despite that she had "inhouse nursing . . . therapists[, and] people that [were] coming to Ms. Brown's home." The court stated that, due to Ms. Bradshaw's "current conditions[,] that continuing on that course would result more than likely in increased hospitalizations and a decrease in her health, namely based on the fact that she does need dialysis."

These facts were supported by the record. Dr. Yu testified that, based on Ms. Bradshaw's medical records, she was admitted to a MedStar hospital "for failure to thrive"

in December 2022. Ms. Bradshaw later was admitted to a Johns Hopkins hospital because of her seizures and missed dialysis appointments. Ms. Bradshaw's medical records also indicated that she was admitted to the Hospital on February 3, 2023, after "three witnessed seizure[s]," only one week after being discharged from a skilled nursing facility. Moreover, Dr. Gundareddy testified that Ms. Bradshaw's medical history indicated that she was admitted to a Johns Hopkins Health System hospital in 2022 because "she had missed quite a few number of dialysis sessions." The social worker also testified that Ms. Bradshaw had missed dialysis appointments.

We acknowledge, as Ms. Bradshaw contends, that there was no specific evidence to support the court's finding that she had "a heart issue that is seemingly not being stabilized by her constant failures to get the treatment and in the medication she has outside." There was evidence in the record, however, that Ms. Bradshaw has coronary heart disease, and Dr. Gundareddy testified that missed dialysis treatments can cause electrolyte imbalances that could cause Ms. Bradshaw "to go into irregular heart rhythm." More importantly, however, the court's decision made clear that the missed dialysis appointments, reoccurring hospitalizations, and seizures were the primary basis for granting guardianship.

Based on this record, we cannot conclude that the court erred or abused its discretion in determining that a guardian of the person was the least restrictive alternative that was consistent with Ms. Bradshaw's welfare and safety.

II.

Guardian of the Property

Pursuant to E&T § 13-201(a), the court, "[o]n petition, and after any notice or hearing prescribed by law or the Maryland Rules," "may appoint a guardian of the property of a minor or disabled person." The court must make two findings before appointing a guardian for a disabled person:

> (1) The person is unable to manage effectively the person's property and affairs because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance; and
> (2) The person has or may be entitled to property or benefits which require proper management.

E&T § 13-201(c). Upon appointment and qualification, a guardian is vested with "title to all property of . . . the protected person that is held at the time of appointment or acquired later." E&T § 13-206(c)(1)(i). A guardian is required to "utilize [the] powers conferred . . . to perform services, exercise discretion, and discharge the guardian's duties for the best interest of the . . . disabled person[.]" E&T § 13-206(c)(1)(iii). "[T]he fundamental duty of a guardian of property is to preserve the property in the guardianship estate for the benefit of the ward and other persons with an interest in that property." *Seaboard Sur. Co. v. Boney*, 135 Md. App. 99, 112 (2000), *cert. denied*, 363 Md. 206 (2001).

There are a couple of relevant distinctions between a guardian of a person and a guardian of property, apart from the focus of the guardian's duties. In civil cases generally, the fact to be proved must be shown by a preponderance of the evidence, and contrary to the statute addressing a guardian of the person, nothing in the statute providing for a guardian of the property suggests to the contrary. *In re Rosenberg*, 211 Md. App. 305, 316

(2013). Moreover, "there is no statutory requirement that a circuit court consider any less restrictive alternatives to a guardianship of the property." *Id.* at 321.

Ms. Bradshaw contends that the circuit court abused its discretion when it appointed a guardian of her property. She asserts that "the record is virtually devoid of evidence" regarding her capacity to manage her property, or even what property she owns. Ms. Bradshaw argues that neither Dr. Yu nor Dr. Gundareddy testified to her ability to manage her property, and the only medical evidence in the record was the physician's certificates. She further contends that the physician's certificates provide contradictory evidence because they state that Ms. Bradshaw can manage her finances with "supervision and monitoring," but both physicians also checked the box which states that Ms. Bradshaw, "does have a disability that prevents [her] from making or communicating any responsible decisions concerning [her] property and has a demonstrated inability to manage [her] property and affairs effectively because of physical or mental disability."

Ms. Bradshaw further argues that Ms. Somerville's testimony that Ms. Bradshaw needs a guardian of the property "to manage her finances" was not supported by any additional explanation, as she stated that she was "not quite sure what [Ms. Bradshaw's] income is exactly." She asserts that the only evidence regarding her finances came from Nicole Bradshaw's testimony.

The Hospital contends that "[g]ranting guardianship of Ms. Bradshaw's property was not an abuse of discretion." It asserts that, although there was more information at the guardianship proceeding regarding Ms. Bradshaw's inability to manage her medical

conditions than her property, there was "plenty of information" for the court to conclude by a preponderance of the evidence that Ms. Bradshaw requires a guardian of the property. The Hospital contends that "the evidence of Ms. Bradshaw's cognitive dysfunction and significant memory issues is relevant to her ability to manage her finances as well as her healthcare." It further asserts that the testimony from Nicole Bradshaw is sufficient for the court to have found that Ms. Bradshaw "has or may be entitled to property or benefits which require proper management." E&T § 13-201(c)(2). Moreover, the Hospital argues that, because both physicians and the social worker testified that Ms. Bradshaw required institutional care, the evidence was "sufficient for the court to infer that Ms. Bradshaw's living expenses will increase once she is residing in a facility," and "as a result, she *may be entitled to* government benefits."

Based on the record here, we cannot conclude that the circuit court abused its discretion in appointing a guardian of the property, pursuant to E&T § 13-201(a)(1), for Ms. Bradshaw. The court determined that the Hospital had demonstrated by a preponderance of the evidence "that Ms. Bradshaw lacks the sufficient capacity to manage her property and affairs effectively and this lack of ability is caused by her physical and mental disability." The court also considered Nicole Bradshaw's testimony that Ms. Bradshaw had "*life insurance and everything*," and Ms. Bradshaw told her daughter "what she want[s] done with her money because she likes to shop too." (Emphasis added.). Nicole Bradshaw further indicated that Ms. Bradshaw received "a check" for her minor son. Thus, the court found that Ms. Bradshaw "may be entitled to property or benefits that

require proper management." E&T § 13-201(a)(2). The court's decision in this regard was well within its discretion.

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

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

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0427s23cn.pdf