

Circuit Court for Prince George's County  
Case No. CAE1406208

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 432

September Term, 2020

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IN THE MATTER OF MARY BOONE

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Berger,  
Gould,  
Wilner, Alan M.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: May 13, 2021

\*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 this appeal, Sherry Feggins, appellant, challenges an order by the Circuit Court for Prince George’s County denying her emergency motion to temporarily change her mother’s abode from an assisted living center to Ms. Feggins’ house. On appeal, Ms. Feggins raises two questions, which we have slightly rephrased for clarity:

- I. Did the circuit court abuse its discretion in denying Ms. Feggins’ motion to temporarily change the abode of her mother?
- II. Did the circuit court abuse its discretion in continuing to bypass Ms. Feggins as a guardian for her mother?

For the reasons that follow, we shall affirm.

### **FACTS AND PROCEEDINGS**

In May 2014, following a bench trial in the Circuit Court for Prince George’s County, the court found Mary Boone, who was born in 1941 and suffers from dementia, to be disabled and unable to care for her person and property. Finding “good cause,” the court passed over Ms. Boone’s two adult daughters, Ms. Feggins and Essie Hopkins, notwithstanding their higher priority under Maryland Code Ann., Estates and Trusts (“E.T.”) § 13-707, and appointed Theresa M. Grant, the Director for the Area Agency on Aging within the Prince George’s County Department of Family Services, as the guardian of Ms. Boone’s person.<sup>1</sup> The circuit court’s decision was primarily based on the sisters’

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<sup>1</sup> Another third-party was appointed guardian of Ms. Boone’s property.

lack of credibility and the acrimony between them. Ms. Feggins appealed, and we affirmed.<sup>2</sup> See *Feggins v. Grant*, No. 745 (filed April 20, 2015) (September Term, 2014).

On April 16, 2020, Ms. Feggins filed an emergency motion to temporarily change her mother’s current abode at Independence Court, an assisted living facility in Hyattsville, to her house in Virginia.<sup>3</sup> Ms. Feggins’ motion was prompted by “safety reasons during the coronavirus emergency[.]” She alleged that residents in long-term care facilities were especially vulnerable to COVID-19; that Prince George’s County currently had the highest number of cases and deaths due to COVID-19 in Maryland; that 373 COVID-19 cases were reported within a five-mile radius of the facility; and that because the facility was small, it would be “impossible” to maintain the 6-foot distance recommended without patients being confined to their room at least 60% of the day.

Ms. Grant filed an opposition motion. She alleged that the facility had 75 residents and no reported cases of COVID-19. She stated that although Maryland Governor Larry Hogan had declared a state of emergency due to the unfolding pandemic, he had ordered people to shelter in place and had not recommended any resident changes to those living in assisted living facilities. Ms. Grant also noted the paucity of information in Ms. Feggins’ motion, specifically she failed to include: any care plan for Ms. Boone while at Ms. Feggins’ house; any plan for non-emergency medical care and treatment for Ms. Boone;

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<sup>2</sup> In her brief, Ms. Feggins argued that the circuit court had erred in appointing Ms. Grant to serve as Ms. Boone’s personal guardian instead of herself. She did not contend that the circuit court had erred in determining that her mother was in need of a guardian.

<sup>3</sup> It is unclear how long Ms. Boone has been a resident at Independence Court, although the record suggests that she has resided at the facility since at least 2016.

information about or on the health of Ms. Feggins or those in her household; arrangements, if any, for visits by Ms. Boone’s other daughter, Ms. Hopkins; a date or plan for when the temporary change of abode would end; a resident agent for service of process since Ms. Feggins resides out of state; and any plan should the change of abode fail. Ms. Grant further stated that Ms. Feggins’ motion did not include a plan for preserving Ms. Boone’s residence at Independence Court or whether Ms. Boone could be re-admitted during the COVID-19 pandemic should there be a need for her to return.

Ms. Grant also included a statement from Dr. Bindu Joseph, Ms. Boone’s attending physician at Independence Court, in which he stated that it was not “medically advisable” for Ms. Boone to change abodes. He wrote that because Ms. Boone suffers from dementia with psychosis, she needs to be seen by a physician and skilled staff on a regular basis as she needs help with her ADL (activities of daily living), and review and administration of her medications. Additionally, Dr. Joseph stated that due to the COVID-19 pandemic, moving residents in and out of the facility would place both the resident and other residents in the facility at risk.

Ms. Feggins responded to the opposition motion by providing more detail about herself, her living situation, and her intentions as to her mother. She stated that she lives alone and gave her resident agent’s name and address. Ms. Feggins attached pictures of her residence in Virginia, including pictures of what would be her mother’s bedroom and bathroom. Ms. Feggins stated that she did not intend to preserve her mother’s residence at Independence Court because her mother had allegedly been subject to elder abuse at the facility for the past two years. To support her elder abuse contention, she alleged that her

mother was hospitalized overnight on two occasions, once each in 2018 and 2019, because she had been overmedicated by Dr. Joseph; she attached pictures, which were of poor resolution and contained no date, of alleged unsanitary conditions at the facility; she listed various State and County agencies that allegedly had records of elder abuse at the facility, which she did not provide to support her claim; and she stated that during a video conference call with her mother in April 2020, she believed that her mother was fearful talking about her living conditions at the facility.

Ms. Feggins subsequently requested a hearing on her motion. The circuit court denied her motion without a hearing and entered the order on June 16, 2020. Ms. Feggins appeals from the court’s denial of her motion to temporarily change her mother’s abode.

## **DISCUSSION**

### **I.**

Ms. Feggins argues on appeal that the circuit court erred in denying her emergency motion to temporarily change her mother’s abode from her mother’s current residence at an assisted living facility to Ms. Feggins’ house. The Department did not file an appellate brief.

### **Standard of Review**

We review a circuit court’s decisions regarding guardianship for an abuse of discretion. *See Kicherer v. Kicherer*, 285 Md. 114, 118-19 (1979) (citation omitted). The exercise of a circuit court’s discretion is presumed to be correct for the court is presumed to know the law and apply it correctly. *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 87 (2013) (citation omitted). An abuse of discretion occurs where the ruling “does

not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.” *Id.* (quotation marks and citations omitted).

### **Law on guardianship and change of abode**

A court-appointed guardian has “[t]he right to custody of the disabled person and to establish the disabled person’s place of abode within and without the State, provided there is court authorization for any change in the classification of abode[.]” Md. Code, E.T. § 13-708(b)(2). Decisions related to a ward’s proposed place of residence are within the court’s “plenary” jurisdiction to protect the best interest of disabled individuals. *Wentzel v. Montgomery General Hosp., Inc.*, 293 Md. 685, 702 (1982). Therefore, it is the welfare of the ward that is of chief concern -- not the wishes of the relatives nor the convenience of the guardian. As the moving party seeking a change to her mother’s residence, Ms. Feggins had the burden of demonstrating that a change of abode would be in her mother’s best interest.

Governor Hogan proclaimed a state of emergency on March 5, 2020, to control and prevent the spread of COVID-19. He issued an executive order on April 5, 2020 authorizing various actions related to nursing homes and other health care facilities. Specifically, the order recognized that COVID-19 may result in serious illness or death; that Marylanders in nursing homes are part of a vulnerable population that are particularly susceptible to COVID-19; and that COVID-19 had been detected in residents and/or staff at more than 60 nursing homes in Maryland. The order authorized the Secretary of Health for the State of Maryland to issue directives to monitor, prevent, and reduce the spread of COVID-19 by, among other things, “prohibiting individuals from congregating,

controlling and directing the movement of individuals, [and] controlling and directing the occupancy and use of buildings.”

In Ms. Feggins’ motion, she argued that it was safer for her mother to change her abode from the assisted living facility, where she appears to have been a resident for several years, to Ms. Feggins’ house during the COVID-19 pandemic. Ms. Grant responded, however, that there currently were no reported cases of COVID-19 at the facility and that Governor Hogan’s executive orders have never suggested that residents in assisted living facilities change their residence. Ms. Grant attached a statement from Ms. Boone’s personal physician that it was not medically advisable for her to change abodes as Ms. Boone is an elderly woman suffering from dementia with psychosis, who needs daily help with her living activities and medications, and doing so would place her and the other residents at the facility at risk.

For the above reasons, we find no abuse of discretion by the circuit court in determining that it was in Ms. Boone’s best interest to stay at the assisted living facility. Accordingly, we find no abuse of discretion by the circuit court in denying Ms. Feggins’ emergency motion.<sup>4</sup>

## II.

Ms. Feggins contends that the circuit court erred in continuing to not appoint her guardian of her mother’s person, and instead appointing Ms. Grant. Ms. Feggins did not

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<sup>4</sup> Ms. Feggins makes no argument and cites to no law that a hearing was required before the court issued its ruling. Notably, we are also aware of no law that would require a hearing under the circumstances.

raise this contention in her emergency motion, and therefore, it is not properly before us. *See* Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”). We note that in our decision affirming the circuit court’s original decision to appoint Ms. Grant as the guardian of Ms. Boone, we addressed the same arguments Ms. Feggins advances to support her contention here. *See Feggins v. Grant*, No. 745 (filed April 20, 2015) (September Term, 2014).

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**