

Circuit Court for Montgomery County  
Case No. C-15-FM-21-000122

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND\*\*

No. 734

September Term, 2022

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IN THE MATTER OF  
CHASE A. BERNETICH

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Friedman,  
Zic,  
Zarnoch, Robert A.,  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Zic, J.

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Filed: April 7, 2023

\* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

\*\* This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Montgomery County, William Bernetich (“William”),<sup>1</sup> appellant, filed a combined petition for guardianship of the person and property of his 32-year-old son, Chase Bernetich (“Chase”), appellee,<sup>2</sup> who he alleged is disabled due to mental illness. William did not include medical certificates with the petition, explaining that Chase would not submit to an evaluation. Following a show cause hearing, William was appointed temporary guardian of the person of Chase, and he later filed a petition for an emergency evaluation of Chase that was granted.<sup>3</sup> Five months later, the circuit court, acting on its own initiative, vacated the temporary guardianship order and dismissed the combined guardianship petition for failure to comply with the medical certificate requirement. William’s motion for reconsideration of that order was denied. He appeals, presenting one question,<sup>4</sup> which we have rephrased as follows: Did the circuit court err

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<sup>1</sup> We shall refer to Mr. William Bernetich and Mr. Chase Bernetich by their first names because they have the same surname. We do so for clarity and intend no familiarity or disrespect.

<sup>2</sup> Chase did not file a brief in this Court. Chase’s appointed counsel appeared, by video, as did William and a court case manager.

<sup>3</sup> Health General § 10-622 permits any interested person to request an emergency evaluation of a person based upon a reasonable belief that the person “has a mental disorder” and “[p]resents a danger to the life or safety of the individual or of others.”

<sup>4</sup> The question as posed by William is:

Was the Trial Court’s order vacating the Temporary Guardianship Order by Judge Ronald Rubin in error where Chase refused to submit to medical mental evaluation; Chase through his attorney filed an answer agreeing to my appointment as Guardian, Chase’s Attorney waived his appearance at the Show Cause Hearing and J. Salant Failed to

by dismissing the combined guardianship petition and vacating the temporary guardianship order?

For the following reasons, we affirm the vacation of the temporary guardianship order, vacate the dismissal of the combined guardianship petition, and remand for further proceedings.

### **BACKGROUND**

On October 29, 2021, William filed his combined petition for guardianship, alleging the following facts. Chase, then age 32, lived with his mother, Linda Bernetich in Olney, Maryland. Over the prior five years, Chase had lived with Ms. Bernetich in Olney, with William in Rockville, and had been homeless. Chase is disabled because he suffers from schizophrenia, bipolar disorder, and/or obsessive-compulsive disorder, but William did not have access to Chase’s medical records confirming any specific diagnoses. Chase “dissociate[d] from reality, [went] on rants and le[ft] the homes of each of his parents to live homeless.” When Chase was not living with one of his parents, he did not “make rational decisions about his care,” refused to take prescribed medications, was arrested, and had been institutionalized in New York and Maryland. He lost or forfeited his possessions and survived by eating out of garbage cans. William and Ms. Bernetich each had offered to care for Chase and to act as his health care power of

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(...continued)

follow the law in terminating the Guardianship and failed to hold a hearing on the matter.

attorney, but Chase refused. William attached to his petition a document stating that Chase refused to submit to a psychiatric evaluation, and he asked the court to “mandate such psychiatric evaluation as may be necessary to prove or disprove the allegations” in his petition.

On November 1, 2021, an attorney was appointed to represent Chase, and the court issued a show cause order. The order directed Chase, “a person who has refused to permit Examination by a physician or evaluation by a psychologist of an alleged disabled person,” to show cause why he should not be “examined or evaluated” by appearing at a hearing on December 2, 2021.

Chase did not appear for the show cause hearing, and it was postponed until December 23, 2021.<sup>5</sup> On December 15, 2021, William filed a pre-hearing statement and affidavit, detailing Chase’s mental health history and stating that Chase had disappeared since the petition was filed.

On December 23, 2021, William appeared for the show cause hearing without counsel, and Chase’s attorney appeared, waiving Chase’s appearance. William testified at the hearing that Chase disappeared in early December. On December 7, 2021, he was arrested in Clark County, New Jersey for disorderly conduct and then released. His whereabouts between December 7 and December 23 were unknown.

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<sup>5</sup> Chase’s appointed counsel appeared, by video, as did William and a court case manager.

The court asked William if he had petitioned for an emergency evaluation of Chase under §§ 10-620 to 10-630 of the Health General Article of the Maryland Code so that, if he was located, Chase could be transported to an emergency facility for an evaluation. William replied that he had not but would do so after the hearing. William argued that the court was empowered to appoint a guardian of the property for Chase under § 13-201(c) of the Estates and Trusts Article of the Maryland Code because he had disappeared.<sup>6</sup> William also moved for emergency protective services under Estates and Trusts § 13-709,<sup>7</sup> noting that it was very cold outside, and Chase was at risk and not behaving rationally.

The court stated that it intended to appoint William as Chase’s guardian and asked if there were objections. Chase’s counsel objected, explaining that she had not had an opportunity to meet with her client and did not “know his position.” The supervising case manager for the circuit court interjected to advise the court that “there were never medical evaluations completed in this case” and that the show cause hearing was scheduled to determine if Chase should be evaluated. The court replied that it would

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<sup>6</sup> Estates and Trusts § 13-201(c) states, in pertinent part, that a guardian of the property “shall be appointed” if the court determines that the alleged disabled person cannot manage their property and affairs because of “disappearance” and they “ha[ve] or may be entitled to property or benefits which require proper management.”

<sup>7</sup> Estates and Trusts § 13-709(b) empowers the court to authorize emergency protective services, including the appointment of a temporary guardian of the person, upon clear and convincing evidence that the person lacks capacity, an emergency exists, and there is no person authorized to consent to emergency services.

appoint William as temporary guardian of Chase’s person until he could be located and evaluated.

The following day, William filed a petition for an emergency evaluation of Chase under Health General § 10-623.<sup>8</sup> On January 6, 2022, the circuit court entered an order granting that petition.

Meanwhile, on December 27, 2021, the court issued a “Non-Compliance Notice” that stated that the petition for guardianship did not include the required medical certificates. The following day, the court entered an order appointing William as Chase’s temporary guardian of the person “pending the appointment of a permanent guardian” and making him “responsible for the welfare of [Chase] and for protective services.” The record reflects that, on January 9, 2022, William completed his guardianship orientation and training.

There was no further activity in the case until March 9, 2022, when the court issued a second, identical “Non-Compliance Notice,” stating that the petition did not include the required medical certificates.

By order dated April 28, 2022 and entered May 18, 2022, the court *sua sponte* dismissed the guardianship petition. The order stated that because the parties had “been given an opportunity to correct a defective Petition for Guardianship of a [sic] Alleged

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<sup>8</sup> An emergency evaluation petition filed by a “lay petitioner[,]” like William, must be “endorse[d]” by the court. Health Gen. § 10-623(a)-(b). If endorsed, it is valid for five days. Health Gen. § 10-624(a)(1).

Disabled Person,” but had failed to do so, the order appointing William as temporary guardian was vacated, and the petition was dismissed.

William moved to alter or amend the order the same day. He argued that the order appointing him temporary guardian of the person was granted pursuant to Estates and Trusts § 13-201(c) because Chase had disappeared, and that the court’s order dismissing the petition failed to recognize that Chase did not make himself available for an evaluation under Rule 10-203 or that he was represented by counsel at the show cause hearing.

On June 17, 2022, the court entered an order denying the motion to alter or amend. This timely appeal followed.

### **DISCUSSION**

As a threshold matter, we explain the issues that are properly before us in this appeal. William moved to alter or amend the order dismissing the guardianship petition within ten days. He noted this appeal on June 26, 2022, within 30 days after the denial of his motion to alter or amend. Consequently, the notice of appeal conferred appellate jurisdiction over the denial of the post-judgment motion and the earlier judgment.

*Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 68 n.11 (2013); Md. Rule. 8-202(c).

Four days after William noted this appeal, Chase’s attorney filed an answer to the guardianship petition, admitting all the allegations, and waiving Chase’s right to a jury trial on the issue of his disability. Thereafter, in August 2022, William filed an amended emergency petition for guardianship, alleging that Chase was incarcerated in Virginia

and, under Estates and Trusts § 13-201(c), the court was mandated to appoint a guardian of his property. By order entered August 23, 2022, the court denied the amended emergency petition. William’s motion for reconsideration of that order was denied. William did not note an appeal after the rulings denying his amended petition or his motion for reconsideration of that order. The June 26, 2022 notice of appeal does not confer appellate jurisdiction over these subsequent orders. *See* Md. Rule 8-202(a) (“Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days *after entry of the judgment or order from which the appeal is taken.*”) (emphasis added).<sup>9</sup>

We now turn to the propriety of the orders before us on appeal. William’s contentions turn upon the court’s application of the statutes and procedural rules governing guardianship proceedings to the facts adduced at the show cause hearing. We review the circuit court’s interpretation of the guardianship statutes and rules *de novo*. *See Matter of Meddings*, 244 Md. App. 204, 219 (2019) (“[A] trial court’s legal rulings are accorded no deference and we exercise our independent review to determine whether the trial court was legally correct.”) (citation omitted). We review its factual findings for clear error. *Id.*

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<sup>9</sup> William also includes in an appendix to his brief copies of Chase’s medical records that were not before the circuit court at the time it dismissed the petition for guardianship. Our review is limited to the record before the circuit court, and we thus decline to consider those records.

A “[d]isabled person” is “a person other than a minor who” (1) has been judged by the court “unable to manage the person’s property for reasons” set forth in Estates and Trusts § 13-201(c)(1), requiring a guardian of the property, or (2) is “unable to provide for the person’s daily needs sufficiently to protect the person’s health or safety” for reasons set forth in Estates and Trusts § 13-705(b), requiring a guardian of the person. Ests. and Trs. § 13-101(f). Here, on the ground that the petition was deficient for failure to comply with the medical certificate requirement, the circuit court dismissed William’s combined petition and vacated the order appointing William temporary guardian of the person. Because the law differs with respect to the two varieties of guardianship, we shall address each in turn.

**I. GUARDIAN OF THE PERSON**

**A. Petition for Guardianship of the Person of Chase**

The court may appoint a guardian of the person upon a showing by clear and convincing evidence that the alleged disabled 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 that there is “[n]o less restrictive form of intervention . . . available that is consistent with the person’s welfare and safety.” Ests. and Trs. § 13-705(b). A petition for guardianship of a person ordinarily must be supported by two medical certificates. Ests. and Trs. § 13-705(c)(2); Md. R. 10-202. At least one certificate must be completed by a licensed physician, but the second may be

completed by a licensed psychologist, a licensed certified social worker, or a nurse practitioner. Ests. and Trs. § 13-705(c)(2); Md. R. 10-202(a)(1). One of the certificates must be based upon an examination or evaluation of the alleged disabled person that occurred within 21 days before the petition was filed. Ests. and Trs. § 13-705(c)(3); Md. R. 10-202(a)(1).

An exception to this requirement appears in Rule 10-202(a)(3). It provides that if a petition for guardianship of the person is filed without medical certificates and “alleges that the disabled person is residing with or under the control of a person who has refused to permit examination or evaluation,” and that the alleged disabled person “may be at risk unless a guardian is appointed,” the court “shall” delay issuance of a show cause order and instead issue an order directing the person who has refused to allow the alleged disabled person to be examined to appear for a hearing. Md. R. 10-202(a)(3)(A); *see also Matter of Jacobson*, 256 Md. App. 369, 388 n.4 (2022) (explaining the procedure to be followed if an alleged disabled person cannot be evaluated in advance of filing the petition). If, after that hearing, the court finds “that examinations are necessary, it shall appoint (i) two physicians or (ii) one physician and one [of the approved health care providers] to conduct the examinations or the examination and evaluation and file their reports with the court.” Md. Rule 10-202(a)(3)(B). If the two healthcare providers certify that the person is disabled, the petition proceeds as if the certificates had been filed with it. *Id.* “Otherwise, the petition shall be dismissed.” *Id.*

In this case, William filed his petition for guardianship without the required medical certificates and alleged that Chase refused to be evaluated. Consistent with Rule 10-202(a)(3)(B), the court issued an order directing Chase to appear and show cause why he should not be examined or evaluated.<sup>10</sup> At the show cause hearing, the court credited William’s testimony that Chase exhibited symptoms of schizophrenia and was living on the street in the cold, putting him at risk. The court directed William to file a petition for emergency evaluation of Chase under Health General § 10-623,<sup>11</sup> which later was granted. By so ruling, the court implicitly found that “that examinations [were] necessary” under Rule 10-202(a)(3)(B). The court did not appoint two health care providers to conduct examinations and/or evaluations of Chase, however. This was legal error.

The Rule mandates appointment of two physicians or one physician and another qualified health care provider to evaluate an alleged disabled person upon a predicate

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<sup>10</sup> William did not allege in his petition that Chase was residing with a person who refused to allow him to be examined or evaluated, which is the typical situation in which a delayed petition is allowed. Nevertheless, because Chase was himself refusing to be examined or evaluated, we conclude that this was a circumstance in which the court was empowered to utilize the delayed petition. Importantly, the role of the circuit court in a guardianship matter is “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 . . . of that tribunal in carrying out its sacred responsibility.” *Kicherer v. Kicherer*, 285 Md. 114, 118 (1979).

<sup>11</sup> This section provides that “the court shall endorse the petition if the court finds probable cause to believe that the emergency evaluatee has shown the symptoms of a mental disorder and that the individual presents a danger to the life or safety of the individual or of others.” Health Gen. § 10-623(b). If the court does not find probable cause, it may take no further action. Health Gen. § 10-623(c).

finding that examinations are necessary. *See, e.g., Dunham v. Univ. of Md. Med. Ctr.*, 237 Md. App. 628, 655 (2018) (reasoning that “the word ‘shall’ denotes mandatory action”). Had the court entered an order appointing two health care providers to conduct the necessary evaluations, the petition would not have been deficient. It instead would have qualified as a delayed petition under Rule 10-202(a)(3).<sup>12</sup> The emergency evaluation petition filed by William was not an adequate substitute because, by operation of law, it expired in five days and because it did not bring the deficient petition for guardianship into compliance. Because the court erred by not ordering the evaluations, we shall vacate the subsequent order dismissing the petition for guardianship of the person for failure to include the required medical certificates. We remand for the circuit court to conduct additional proceedings as necessary based upon subsequent events and to order that Chase be evaluated if he has not yet submitted to an evaluation.

**B. Order Appointing William as Temporary Guardian of the Person of Chase**

We now turn to the court’s vacation of the order appointing William as temporary guardian of the person of Chase. The court was authorized to enter that order by Estates and Trusts § 13-709(b). That section provides that upon the filing of a petition by an interested person, the court is empowered to “issue an order authorizing the provision of

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<sup>12</sup> Though Chase did not attend the show cause hearing and his location was then unknown to his counsel and William, he had been served with the show cause order before he disappeared. If Chase did not appear for the court ordered evaluations, he could have been subject to contempt proceedings.

protective services on an emergency basis to an adult” based upon a finding, by clear and convincing evidence, (1) that the subject of the petition lacks capacity, (2) that an emergency exists, and (3) that there is no person authorized by law to give consent for the provision of the emergency services.

Subsection (c) imposes limitations on an emergency order, including that the court may only order protective services “necessary to remove the conditions creating the emergency”; the protective services may be provided for no longer than six days unless the order is renewed; a temporary guardian shall be appointed to take responsibility for the person’s welfare “until the expiration of the emergency order”; and the court “may extend the terms of [an] emergency order and the appointment of a temporary guardian (or other designated persons) until appointment of a guardian of the person pursuant to [Estates and Trusts] § 13-705” if the conditions creating an emergency continue to exist. Ests. and Trs. § 13-709(c)(1)-(5). In order to extend an emergency order, however, the temporary guardian must file a petition to extend the order within the six-day period and must attach a petition for guardianship of the person in compliance with Estates and Trusts § 13-705. Ests. and Trs. § 13-709(c)(5)(i).

William moved for emergency protective services for Chase during the show cause hearing. The court found that Estates and Trusts § 13-709(b) was satisfied and appointed William temporary guardian of the person on December 28, 2021. That order expired six days later because William did not move to renew it. Ests. and Trs. § 13-

709(c)(3). Given that the temporary guardianship order had expired, the court did not err by vacating it.

## II. GUARDIAN OF THE PROPERTY

A petition for guardianship of the property must be supported by one of four types of documentation, including, as pertinent, medical certificates in compliance with Rule 10-202 or,

if the alleged disability is due to disappearance, affidavits or exhibits documenting (A) when the person was first suspected of having disappeared, (B) the nature and extent of any search known to the petitioner to have been made to locate the person, (C) whether there exists any power of attorney signed by the person or effective remedy other than a guardianship, and (D) what, if any, effort was made to determine whether the person is still alive[.]

Md. R. 10-301(d)(1), (3). The court “shall” adjudge a person disabled and appoint a guardian of the property if it “determines,” after a hearing, that 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 “has or may be entitled to property or benefits which require proper management.” Ests. and Trs. § 13-201(c)(1) (emphasis added).

When William filed his petition for guardianship, he alleged that Chase was residing with his mother in Olney, Maryland. By the time of the show cause hearing, however, Chase had disappeared. William filed an affidavit and testified under oath at the hearing that Chase disappeared shortly before December 2, 2021; that his family

could not locate him despite searching; that Chase had recently been arrested in New Jersey but had since been released; and that William and Ms. Bernetich both had offered to serve as Chase's power of attorney prior to his disappearance, but Chase refused. This evidence could have supported a determination that Chase was "unable to manage effectively [his] property and affairs because of . . . disappearance," under Estates and Trusts § 13-201(c)(1), thus empowering the court to grant William's petition for guardianship of the property of Chase. The court did not grant or deny that petition, however, instead granting William temporary guardianship *of the person* of Chase. Because it is not clear from this record whether the court made any determination on William's petition for guardianship of the property, we shall vacate the order dismissing the petition for guardianship of the property and remand for further proceedings. On remand, the court may hold additional proceedings or permit William to file an amended petition addressing developments since the show cause hearing.

### CONCLUSION

In summary, first, we shall vacate the order dismissing the petition for guardianship of the person and remand for the circuit court to conduct additional proceedings as necessary, and consistent with this opinion, based upon subsequent events and to order that Chase be evaluated if he has not yet submitted to an evaluation. Next, we shall affirm the circuit court's judgment that vacated the order appointing William as temporary guardian of the person of Chase. Finally, we shall vacate the order dismissing the petition for guardianship of the property and remand for further proceedings; on

remand, consistent with this opinion, the court may hold additional proceedings or permit William to file an amended petition addressing developments since the show cause hearing.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED IN PART AND VACATED IN  
PART.**

**JUDGMENT DISMISSING THE  
PETITION FOR GUARDIANSHIP OF THE  
PERSON VACATED AND CASE  
REMANDED FOR PROCEEDINGS  
CONSISTENT WITH THIS OPINION.**

**JUDGMENT VACATING THE  
TEMPORARY GUARDIANSHIP OF THE  
PERSON AFFIRMED.**

**JUDGMENT DISMISSING THE  
PETITION FOR GUARDIANSHIP OF THE  
PROPERTY VACATED AND CASE  
REMANDED FOR PROCEEDINGS  
CONSISTENT WITH THIS OPINION.**

**COSTS TO BE PAID BY APPELLANT.**