Circuit Court for Howard County
Case No. C-13-FM-19-002020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1144

September Term, 2020

WALTER HEWICK

v.

JANICE KIM

Fader, C.J.,
Kehoe,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: August 20, 2021

By order entered November 13, 2020, the Circuit Court for Howard County appointed Janice Kim, as guardian of her mother, Jai Seong Cho Hewick,[1] for the limited purpose of authorizing Ms. Kim to relocate Dr. Hewick to Toronto, Canada, where Ms. Kim lives. The court also granted Ms. Kim's request that some of her attorneys' fees incurred in the guardianship matter be paid from Dr. Hewick's funds.

Appellant Walter Hewick, Dr. Hewick's spouse, timely appealed the judgment of the circuit court and presents three issues, which we have reworded:

> 1. Did the trial court err by admitting hearsay testimony of Dr. Hewick's court-appointed counsel and unsupported factual assertions by Ms. Kim, while not allowing relevant argument and admission of proper evidence by Mr. Hewick?
>
> 2. Did the trial court err by granting guardianship to Ms. Kim for the limited purpose of authorizing the potential removal of Dr. Hewick from a continuing care facility in Howard County?
>
> 3. Did the trial court err by granting attorneys' fees to Ms. Kim?[2]

[1] Jai Seong Cho Hewick is a retired physician. We will refer to her as "Dr. Hewick." For the sake of clarity we will refer to appellant as "Mr. Hewick."

[2] Mr. Hewick articulates the issues as follows:

> A. Did the Circuit Court err by considering hearsay testimony of Ms. Meyers and unsupported facts of Janice Kim, while not allowing relevant argument and admission of proper evidence of Mr. Hewick?
>
> B. Did the Circuit Court err by granting guardianship to Janice Kim for the limited purpose of authorizing the potential removal of Dr. Hewick from Ellicott City Health Center relocation to Janice Kim's home in Canada without considering applicable estate law?
>
> C. Did the Circuit Court err by granting attorneys' fees to Janice Kim without meeting the substantial justification standard?

For the reasons set forth below, we will affirm the court's judgment orders.

BACKGROUND

In June 2019, Dr. Hewick, an 80-year-old retired physician, suffered a stroke that left her physically and cognitively impaired. One of the effects of the stroke is that Dr. Hewick lost much of her ability to communicate in English although she can still do so in her first language, Korean. Ms. Kim is Dr. Hewick's daughter and speaks Korean. Mr. Hewick does not. Since the stroke, Dr. Hewick has resided in nursing care facilities, most recently the Ellicott City Health Center in Howard County. Prior to her stroke, Dr. Hewick executed durable powers of attorney for financial purposes and for health care, designating Ms. Kim as her agent for both.[3]

On October 29, 2019, Ms. Kim filed a petition in the circuit court asking to be appointed as guardian of Dr. Hewick's person and property. Ms. Kim asserted that Dr. Hewick was unable to make or communicate responsible decisions concerning her property, affairs, and personal matters.[4] According to Ms. Kim, Dr. Hewick was "dependent on others for all activities of daily living. She needs 24-hour care."

In her petition, Ms. Kim asserted that Mr. Hewick had not provided the Ellicott City Health Center with Dr. Hewick's health insurance or social security cards and refused to pay for the rehabilitation required after her stroke, causing Ms. Kim to worry that Dr.

[3] Mr. Hewick does not contest the validity of the powers of attorney.

[4] Mr. Hewick did not seek to be appointed as Dr. Hewick's guardian.

Hewick's insurance would be cancelled and she would be discharged involuntarily from the nursing care facility. Ms. Kim alleged that she had been paying Dr. Hewick's medical costs out of her own pocket and that she was the appropriate person to serve as Dr. Hewick's guardian of the person and property. Ms. Kim asserted that no less restrictive alternative to guardianship of Dr. Hewick's person was available.

Mr. Hewick opposed Ms. Kim's appointment as Dr. Hewick's guardian. He alleged that Ms. Kim had inappropriately withdrawn funds from Dr. Hewick's bank accounts.[5]

Dianna Myers, Esquire, Dr. Hewick's court-appointed attorney, asked the court to exercise its authority pursuant to Maryland Rule 10-106.2,[6] and appoint an independent investigator to assess the substance of the mutual allegations of financial chicanery. The court did so. The investigator's report to the court stated that she found no evidence that Ms. Kim had "engaged in self-dealing" in her handling of Dr. Hewick's financial transactions or that Mr. Hewick had exploited Dr. Hewick's accounts for his own benefit.

[5] Although married since 1995, Dr. Hewick and Mr. Hewick had mostly kept their finances separate, and the majority of Dr. Hewick's bank and investment accounts were solely in her name. Prior to her stroke, Dr. Hewick had provided Mr. Hewick with money from her accounts as gifts and for payment of joint household expenses.

[6] Rule 10-106.2(a) provides:

> (a) The court may appoint an independent investigator in connection with a petition to establish a guardianship of the person, the property, or both of an alleged disabled person or a minor to (1) investigate specific matters relevant to whether a guardianship should be established and, if so, the suitability of one or more proposed guardians and (2) report written findings to the court.

In April 2020, the circuit court ordered that all expense payments issued from Dr. Hewick's accounts—including attorneys' fees related to the guardianship matter—were to be approved by the court. In accordance with the court's order, Ms. Kim filed a petition for payment of her attorneys' fees, in the approximate amount of $28,000, from Dr. Hewick's funds. Mr. Hewick opposed the use of Dr. Hewick's funds for Ms. Kim's legal fees, asserting that the fees were excessive and unreasonable and that Ms. Kim had already paid her attorneys approximately $20,000 from Dr. Hewick's funds without approval from the court. The court granted Ms. Kim's petition for attorneys' fees on June 25, 2020.

On August 18, 2020, Ms. Kim filed an amended guardianship petition. She explained that it was her intention to move Dr. Hewick closer to Ms. Kim's home in Canada. Therefore, "in lieu of appointment of guardian of the person," Ms. Kim asked the court to consider "as a least restrictive alternative, that an order be issued providing that [Ms. Kim] is the health care decision maker for" Dr. Hewick, with the authority to relocate Dr. Hewick away from the Ellicott City Health Center.

On November 13, 2020, the court conducted a contested guardianship hearing, confined to the issue of limited guardianship for the purpose of authorizing Dr. Hewick's relocation.[7] Ms. Myers, Dr. Hewick's attorney, advised the court that her client had expressed a desire to move to Canada to be closer to her daughter.

[7] Due to COVID-19 restrictions, the hearing was conducted via teleconference. Mr. Hewick did not log in to participate in the hearing.

Ms. Kim contended that it was in Dr. Hewick's best interest to be moved to a family home setting rather than remain in an institution where she was deteriorating rapidly, partially due to COVID-19 lockdowns, and vulnerable to contracting the virus. Ms. Kim explained that she had retrofitted her basement into an handicapped accessible apartment for her mother and was then searching for an appropriate full-time caregiver. Ms. Kim estimated that Dr. Hewick's resources would be sufficient to provide for her care, but if Dr. Hewick's funds were depleted before her death, Ms. Kim said she would use her own money to care for her mother.

Mr. Hewick's attorney argued that because the Ellicott City Health Center was an appropriate residence for Dr. Hewick, the court should continue her placement there as a less restrictive form of intervention than guardianship. Counsel asserted that there was no statutory authority, nor demonstrated need, for the court to grant Ms. Kim's request to remove Dr. Hewick from her placement.

After an evidentiary hearing, the court made factual findings and ruled as follows:

> I think under the circumstances . . . we have the opportunity to remove a person from an institutional setting during [the] COVID crisis and place her with family who has demonstrated, as Ms. Kim has demonstrated, the ability to make good healthcare decisions, the willingness to make good healthcare decisions, including spending significant amounts of her own money to assure that her mother is receiving the proper healthcare, I do find a demonstrated need. Her life is in danger in that facility just as every person who is in a nursing home facility life is in danger under [the] current circumstances. And the opportunity for her to spend her remaining years with family, particularly since she's no longer speaking English, and to be with a Korean-speaking family member, which unfortunately Mr. Hewick is not able to offer her. He hasn't come forward with a plan for bringing her home

> and it doesn't seem like, in light of all of the circumstances, that that would even be a practical plan if he did.
>
> Ms. Kim has what she needs to make the other decisions. She needs an order of this Court to have the ability to make the decision of whether to relocate. She certainly has the ability to change the level of care as the healthcare surrogate. And she's demonstrated to this Court that she has already taken steps and already spent her own money outfitting her house and investigating the details that she will need to do.
>
> So . . ., I am convinced that Ms. Kim is a proper person to make this decision and that it indeed would be in the respondent's best interest for her to be able to make that decision. The Court doesn't make that decision for Ms. Kim. The Court gives her the authority to make that decision because as circumstances change, it may become impractical. Circumstances may change but you have the ability to make that decision, Ms. Kim. I will pass the order with the guardianship for the limited purpose of relocating the ward to your home, if and when that's ever possible.

The circuit court then entered an order appointing Ms. Kim as Dr. Hewick's guardian "for the limited purpose of authorizing the potential relocation of [Dr. Hewick]." Mr. Hewick timely filed a notice of appeal.

THE STANDARD OF REVIEW

> In 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 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.

In the Matter of Meddings, 244 Md. App. 204, 220 (2019) (cleaned up).

ANALYSIS

1. The evidentiary issues

Mr. Hewick first contends that the circuit court erred in: (1) permitting Dr. Hewick's attorney to inform the court at the guardianship hearing that Dr. Hewick had expressed her desire to move to Canada to be closer to her daughter because the statement was inadmissible hearsay; (2) accepting Ms. Kim's testimony that "provided a vague run down of renovations" she had made to support her argument that Dr. Hewick would have a safe place to live in Canada and that offered "unsupported statements regarding mortality rates of nursing home residents and [Ms. Kim's] 'academic friends' who advocate for care givers wages;" and (3) refusing to permit him to present "any proper evidence to support his arguments as to whether any demonstrated need existed for removing Dr. Hewick from the Ellicott City Health Center" as well as evidence that a less restrictive alternative to guardianship exists. We will address each contention in turn.

(1) *Hearsay*

After Ms. Kim's attorney made his opening statement in the guardianship hearing, the following occurred (emphasis added):

> THE COURT: Okay. All right. Ms. Myers, I believe you had filed a third amended answer or a third answer to the petition indicating that based on your conversations with [Dr. Hewick], that it's her desire to be transferred closer to her daughter.
>
> MS. MYERS: Yes, that is correct, Your Honor. *I asked her several different ways and she . . . . responded each time that she did want to move closer to her daughter even if that meant moving to Canada and away from her husband. And I'm—Your Honor, she actually seemed excited about the idea*

> *as well.* . . . I think it would be in my client's best interest [that the court issue an order] to make it clear to all parties that Janice Kim does have authority to relocate her mother assuming it's a safe and appropriate discharge from the Ellicott City Health Center.
>
> THE COURT: Okay. And Mr. Staiti [Mr. Hewick's attorney], what's your position today?
>
> MR. STAITI: Your Honor, I guess I'm going to be a little longer than the others so forgive me. We have attached, as one of the pre-trial exhibits, statements that the alleged disabled person made at the time of her admission saying that she was happily living at home, that she'd like to be discharged and returned to the home.
>
> THE COURT: She made written statements?
>
> MR. STAITI: That was an interview with Charles Kline of Social Services which I don't know what weight Your Honor can give to his statements. I'd acknowledge that they're hearsay much like the testimony we just heard from Ms. Myers would be.
>
> THE COURT: Well, I think the difference is Ms. Myers is her counsel and officer of the Court. So, it's—
>
> MR. STAITI: *Right and I've had zero opportunity for both cross-examination or [to] see that conversation occur.* And for all practical purposes, there's a reason we're here for a guardianship proceeding. It's because we've already had physicians state that we can't take the decisions of the alleged disabled person. If we were to, we don't need these proceedings at all. She could just make her own decisions to be discharged. But clearly, that's not something that the facility is willing to accept.

To this Court, Mr. Hewick asserts that Ms. Myers's statement about Dr. Hewick's desire to move to Canada to be closer to her daughter was inadmissible hearsay evidence. This argument is unpersuasive for at least two reasons. First—as the trial court was apparently in the process of attempting to explain before it was interrupted by counsel—a lawyer's statement to the court of her client's preference as to the outcome of the litigation

is neither testimony nor evidence.[8] And lawyers are officers of the court and therefore have an ethical duty to be candid in such statements. *See* Md. Rule 19-303.3.[9] We do not accept the proposition that a lawyer has either the right to cross-examine opposing counsel about the latter's communications with her client, or the right to be present when counsel meets with her client.

Second, assuming for the purposes of analysis that Ms. Myers's statement to the court should be treated as the legal equivalent of hearsay testimony, counsel's statement would have been admissible pursuant to Md. Rule 5-803(b)(3),[10] which provides that evidence of

[8] The trial court did not refer to Ms. Myers's statement or Dr. Hewick's desires when explaining its reasoning in granting the petition for limited guardianship. Even so, in his brief, Mr. Hewick asserts that the court "seemingly [took] into high consideration" Ms. Myers's representations to the court in reaching its decision. But he points to nothing in the record to support this assertion.

[9] Md. Rule 19-303.3 states in pertinent part:

> (a) An attorney shall not knowingly:
>
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney;

[10] Md. Rule 5-803 states in pertinent part:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> * * *
>
> (b) Other Exceptions.
>
> * * *
>
> (3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and

the declarant's state of mind is admissible as an exception to the general rule against admission of hearsay evidence. *See, e.g., Edery v. Edery*, 193 Md. App. 215, 234 (2010) ("When the declarant's state of mind is relevant, . . . the declarant's assertion as to his or her state of mind is admissible to prove that the declarant had that particular state of mind (emotion, feeling, etc.) and therefore also had it at the time relevant to the case. . . . Direct assertions by the declarant as to the declarant's state of mind are admissible under this hearsay exception." *Id.* at 234 ((quoting 6A Lynn McLain, MARYLAND EVIDENCE § 803(3):1 at 198-99 (2001)).

Were Ms. Myers testifying (which she wasn't) her statement would have been admissible because it described Dr. Hewick's state of mind, namely, the degree of her emotional attachment to her daughter and her desire to reside in her daughter's home.

(2) *Ms. Kim's testimony*

Mr. Hewick also claims error in the circuit court's acceptance of Ms. Kim's "ill-founded statistics and plans" as sufficient evidence that her home would be a safe place for Dr. Hewick to live and her "completely unsupported statements regarding mortality rates of nursing home residents."

When Ms. Kim was asked, during direct examination, what plans she had made to facilitate her mother's transfer to Canada, she explained that she had renovated her

> bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

basement apartment so it was handicapped accessible, intended to install a chair lift to the upper floors of her house, installed a wheelchair accessible bathroom, and planned to hire a suitable full-time caregiver. Later, in stating that Dr. Hewick had "deteriorated quite a lot over the last year," Ms. Kim explained that her research from a medical journal indicated that the cumulative mortality rate for nursing home residents was "something like sixty-six percent . . . versus thirty-two to twenty-six percent in home care." She added that five of 20 deaths in Dr. Hewick's nursing home unit since March 2020 had been from COVID-19.

Mr. Hewick's counsel did not object to any of this testimony. Therefore, he has not preserved for appellate review his contention that the testimony was inadmissible. *See Halloran v. Montgomery Cty. Dep't of Pub. Works*, 185 Md. App. 171, 201–02 (2009) (quoting *Caviness v. State*, 244 Md. 575, 578 (1966)) (Pursuant to Md. Rule 2-517, "'unless a [party] makes timely objections in the lower court or makes his feelings known to that court, he will be considered to have waived them and he can not now raise such objections on appeal.'"). Because there was no objection, we will not address Mr. Hewick's assertion that the court erred in accepting it.

(3) *Mr. Hewick's Evidence*

Finally, Mr. Hewick claims that the circuit court erred when it "did not allow" him to present evidence in support of his arguments that there was no demonstrated need to remove Dr. Hewick from the Ellicott City Health Center and that there were less restrictive alternatives to guardianship available.

At the start of the hearing, the circuit court asked Mr. Hewick's counsel about his client's position regarding guardianship, and he made the following opening statement:

> MR. STAITI: With regards to the Maryland guardianship process, I think what we here is [sic], if you look at 13-704 of the Estates and Trusts Article—forgive me, I jumped ahead, — 705. What we're looking for is clear and convincing evidence to make such a decision under the cause for appointment and that there is no less restrictive form of intervention—and this where [sic] the statute is crystal clear—available that is consistent with the person's welfare and safety.
>
> Ellicott City Healthcare Facility is consistent with Doctor Hewick's welfare and safety. And, in fact, the reason we included a full, complete [transcript] of Janice Kim's deposition is that she repeatedly made those averments. I can give you some pinpoint references if the Court chooses. But all of the evidence that we have that's clear and convincing is everyone is happy with Ellicott City Healthcare Facility. Mr. Hewitt [sic] was happy with it. There's been no allegation that she's not being treated well there. She has alternative caregivers. So, the only clear and convincing evidence that this Court has is that Ellicott City Healthcare Facility is consistent with Doctor Hewick's personal welfare and safety.
>
> I've heard nothing else credible that would [amount] to clear and convincing to say that we should move her up to Canada. In fact, Your Honor, during the deposition of Ms. Kim, starting on pages ninety-four and ninety-five, we asked a lot of questions. There wasn't really a lot of thought put into this it seems like because a lot of the testimony is going along the lines of, well, we don't know if her healthcare agent would be accepted in Canada. We don't have insurance lined up. Walter's insurance, again, it's Walter, her husband, whose Blue Cross Blue Shield covers her for a lot of the costs here in Maryland.
>
> THE COURT: I don't think—I don't think we can get into the merits. We have to take testimony. This is a hearing. I know they're saying that, but I don't have any evidence of that. I think we have to take testimony.
>
> MR. STAITI: We have testimony in the forms of deposition, Your Honor. Well, regardless then, then you have nothing before you that says that Canada would be a clear and convincing place to relocate Doctor Hewitt [sic].

> THE COURT: Okay. But that's why we're having a hearing. We're having a hearing right now.
>
> MR. STAITI: Right.
>
> THE COURT: I mean, that's where we are. As far as I'm concerned, today is a merits hearing on the guardianship as—
>
> MR. STAITI: Oh. These were the opening remarks, Your Honor. I'll stop.

Following opening statements, Ms. Kim's attorney offered testimony and evidence. Mr. Hewick's attorney offered none. (The transcript of Ms. Kim's deposition was admitted as an exhibit, although it's not clear from the material in the extract as to who moved it into evidence.)

Mr. Hewick's appellate claim that the circuit court "did not allow" him "to present any proper evidence to support his arguments" is baseless. His lawyer had every opportunity to present a case at the hearing, but counsel elected to offer no evidence.[11] There was no error on the part of the circuit court.

[11] The only witness who testified at the hearing was Ms. Kim. When her testimony had concluded, the following occurred:

> THE COURT: Okay. Any other witnesses, Mr. Roa [Ms. Kim's counsel]?
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> MR. ROA: No, Your Honor.
>
> THE COURT: Any witnesses, Ms. Myers?
>
> MS. MYERS: No, Your Honor.
>
> THE COURT: Okay. Mr. Staiti, any witnesses?
>
> MR. STAITI: No, Your Honor.
>
> THE COURT: All righty. Let's hear . . . closing then.

2. The grant of the guardianship petition

Mr. Hewick next asserts that the circuit court erred in granting the guardianship petition to permit Ms. Kim to relocate Dr. Hewick to Canada. His claim of error rests on his assertion that the court did not determine by clear and convincing evidence whether any facts supported a demonstrated need for Dr. Hewick's removal from her nursing home and whether there was a less restrictive form of intervention than guardianship available.

Md. Code, § 13-705(a) of the Estates and Trusts Article provides that, "[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."[12] Est. & Trusts § 13-705(b) provides that:

> (b) 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.

If there is a demonstrated need, 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

[12] The statute defines "disabled person," in pertinent part, as a person who "[h]as 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 § 13-705(b) of this title[.]" Est. & Trusts § 13-101(f)(2)(i).

without the State, provided there is court authorization for any change in the classification of abode[.]" Est. & Trusts § 13-708(b)(2). Decisions related to a disabled person's proposed place of residence are within the court's plenary jurisdiction to protect the best interest of the individual. *Wentzel v. Montgomery General Hosp., Inc*., 293 Md. 685, 702 (1982). Therefore, if the welfare of the disabled person requires it, and there is no less restrictive form of intervention available consistent with the person's welfare and safety, the circuit court clearly has the authority to order the potential for a change in the person's location.

In the present case, there was no dispute that Dr. Hewick is a disabled person as a result of her 2019 stroke. Nor does Mr. Hewick take issue with Ms. Kim's assertion that Dr. Hewick requires considerable, round-the-clock, care.

Mr. Hewick contends, however, that the appointment of a guardian of the person, even for the limited purpose of authorizing Dr. Hewick's relocation to Canada, was not the least restrictive means available because there was no demonstrated need to relocate her. In his view, the least restrictive option would be maintaining Dr. Hewick's residence at the Ellicott City Health Center, where she was receiving good care. We disagree.

The circuit court specifically found a demonstrated need, consistent with Dr. Hewick's welfare and safety, to move her from "an institutional setting during a COVID crisis" because "[h]er life is in danger in that facility just as every person who is in a nursing home facility. . . is in danger under [these] current circumstances." The court also pointed out that Ms. Kim had valid concerns about Dr. Hewick remaining in the nursing home while

COVID-19 was "coming into . . . a crisis situation," [because] institutions were on "semi-locked down status," and five out of 20 residents in Dr. Hewick's unit at the nursing home had recently died from the virus.

The court also found that Ms. Kim had made appropriate renovations to her home for a disabled person to live there and was investigating caregivers. Further, the court found that moving to Ms. Kim's home would provide Dr. Hewick with access to similarly-aged neighbors from her home country of Korea, as well as an opportunity for a family member to monitor her healthcare in a family home, rather than in an institutional setting. Ms. Kim also offered to host Mr. Hewick in her home for visits and to pay out of pocket for Dr. Hewick's care if Dr. Hewick's funds were depleted. The court was therefore "convinced that Ms. Kim is a proper person to make this decision [about Dr. Hewick's residence] and that it indeed would be in the respondent's best interest for her to be able to make that decision." All of these findings were supported by Ms. Kim's testimony and Mr. Hewick introduced no evidence to the contrary.

"To be clear and convincing, evidence should be 'clear' in the sense that it is certain, plain to the understanding, and unambiguous and 'convincing' in the sense that it is so reasonable and persuasive as to cause one to believe it." *Mathis v. Hargrove*, 166 Md. App. 286, 311–12 (2005) (cleaned up) (quoting *Wills v. State*, 329 Md. 370, 374 n.1 (1993)). The undisputed evidence presented to the court satisfies these standards.

At the core of Mr. Hewick's argument is his belief that Dr. Hewick's continued residence in the nursing home is a less restrictive form of intervention than a limited

guardianship. However, as we noted in *Meek v. Linton*, 245 Md. App. 689, 714 (2020), any less restrictive form of intervention must also be "consistent with the person's welfare and safety. In other words, the availability of a form of intervention less restrictive than a guardianship is insufficient alone to defeat a petition for guardianship." (Cleaned up.)

In granting Ms. Kim guardianship for the limited purpose of relocation for the reasons set forth above, the court implicitly found that solution to be the least restrictive form of intervention consistent with Dr. Hewick's welfare and safety. It did not commit clear error in so finding. Accordingly, we conclude that the circuit court did not abuse its discretion in appointing Ms. Kim as Dr. Hewick's guardian for the limited purpose of potentially relocating Dr. Hewick.

3. Attorneys' Fees

Finally, Mr. Hewick argues that the circuit court abused its discretion in granting Ms. Kim's request that her attorneys' fees and expenses, in the approximate amount of $28,000, be paid from Dr. Hewick's funds. He claims that the amount is excessive in light of the nature of the case and the fact that Ms. Kim had already paid her attorneys approximately $20,000 from Dr. Hewick's funds, without court approval.[13]

[13] In her brief, Ms. Kim's only argument is that we should not consider this issue because Mr. Hewick did not file his notice of appeal within 30 days of the court's June 25, 2020 order, rendering it untimely as to the court's judgment awarding attorneys' fees. Ms. Kim is not correct. A succinct summary of the current state of Maryland law regarding interlocutory appeals can be found in *In re D.M.*, 250 Md. App. 541, 252 A.3d 1, 8–9 (2021), and we refer counsel to it.

As we stated in *Ibru v. Ibru*, "'[w]e review a trial court's decision to award attorneys' fees and costs for abuse of discretion.'" 239 Md. App. 17, 47 (2018) (quoting *Pinnacle Group, LLC v. Kelly*, 235 Md. App. 436, 476 (2018)), *cert. denied*, 462 Md. 570 (2019).

"Maryland generally adheres to the common law, or American rule, that each party to a case is responsible for the fees of its own attorneys, regardless of the outcome." *Friolo v. Frankel*, 403 Md. 443, 456 (2008). There are several exceptions to this general rule, and the one that is relevant to this appeal is that a court may shift responsibility for paying attorneys' fees when authorized to do so by statute.

Md. Code, Est. & Trusts § 13-704(c) provides, in pertinent part:

> (c)(1) On the filing of a petition for attorney's fees made in reasonable detail by an interested person or an attorney employed by the interested person, the court may order reasonable and necessary attorney's fees incurred in bringing a petition for appointment of a guardian of the person of a disabled person to be paid from the estate of the disabled person.
>
> (2) Before ordering the payment of attorney's fees under paragraph (1) of this subsection, the court shall consider:
>
> (i) The financial resources and needs of the disabled person; and
>
> (ii) Whether there was substantial justification for the filing of the petition for guardianship.
>
> (3) On a finding by the court of an absence of substantial justification for bringing the petition for guardianship, the court shall deny a petition for attorney's fees filed under paragraph (1) of this subsection.

* * *

On April 20, 2020, the circuit court ordered that expenses to be paid from Dr. Hewick's funds be approved by the court; the order included payment of attorneys' fees. Pursuant to the court's order, Ms. Kim's attorney filed a petition for attorneys' fees on June 3, 2020.

He attached to the petition invoices providing detailed descriptions of the work performed related to the guardianship proceeding. The invoices totaled $37,501, but counsel reduced his fees by 30%, resulting in claimed fees in the amount of $25,935.70. He also attached invoices for $1,792.25 in expenses.

Mr. Hewick responded that the fees were excessive. He asserted that the matter was relatively simple and there had not been very many court appearances. In his view, the court should authorize no more than $5,861.90 in fees and $1,317.36 in expenses.

On June 25, 2020, the circuit court awarded Ms. Kim attorneys' fees in the amount of $24,681.13 and expenses in the amount of $1,792.25.[14]

To this Court, Mr. Hewick argues that the trial court abused its discretion in doing so. He states (emphasis added):

> After protest by Mr. Hewick through proceedings thereafter, and the Circuit Court's request of documentation by Janice to show where Dr. Hewick's funds had been spent, on September 21, 2020, the Circuit Court *entered an Order attempting to close the attorneys' fees issue*, stating "[i]t appears to this Court that Petitioner has complied with the order to produce documents. It is neither the role nor the function of the Court to determine the accuracy of these documents." Thus, in making its decision, the Circuit Court neglected to find a "substantial justification" for the award of attorneys' fees by failing to consider the financial resources and needs of the disabled person as well as whether there was substantial justification for the filing of the guardianship Petition as required under Md. Code Ann., Est. & Trusts § 13-704.

[14] The court did not explain why it reduced the fees from the $25,935.70 sought by Ms. Kim's counsel.

This argument is disingenuous. The sequence of events was that the trial court approved the petition for attorneys' fees on **June 25, 2020**. The basis of Mr. Hewick's appellate contentions is an order entered by the trial court on **September 21, 2020**. That order had nothing whatsoever to do with the (by then resolved) attorneys' fee dispute. (The September 21, 2020 order was a follow-up to an earlier order directing Ms. Kim to provide documents to the court and the parties regarding some of Dr. Hewick's medical and long-term care expenses.)

Mr. Hewick is correct that the court did not provide the specific rationale for its ruling. This, by itself, is not a basis to reverse a court's judgment:

> A trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision. Unless it is clear that he or she did not, *we presume the trial judge knows and follows the law*. The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal . . . . Furthermore, [i]n reviewing a judgment of a trial court, the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court.

Davidson v. Seneca Crossing Section II Homeowner's Ass'n, 187 Md. App. 601, 628 (2009) (emphasis in original); *see also State v. Chaney*, 375 Md. 168, 179 (2003) (Trial courts "are presumed to know the law and apply it properly." (citation omitted)).

Even though the trial court did not provide the specific rationale for its ruling on the request for an award of attorneys' fees, we presume that it considered the arguments and supporting documentation provided by both parties and determined that those fees represented reasonable and necessary fees in light of the nature of the case and Dr.

Hewick's financial resources, as required by E&T § 13-704(c). We perceive no abuse of its discretion in its ruling.

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. COSTS ASSESSED TO APPELLANT.