Circuit Court for Prince George's County
Case No. CAE21-03100

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1416

September Term, 2021

IN RE: JOHN ANDERSON

Wells, C.J.,
Nazarian,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: November 21, 2022

Renee Farrar filed a petition in the Circuit Court for Prince George's County seeking appointment as guardian of the person and property for her uncle, John F. Anderson. At the first guardianship hearing, the circuit court learned that Mr. Anderson and Irene Anderson, Mr. Anderson's late wife, had recently sold a home, but the court was unable to locate the sale proceeds. During later hearings, the court determined that Latoya Davenport, Mr. Anderson's stepdaughter and Ms. Anderson's biological daughter, had withdrawn the sale proceeds from a joint bank account. After making these findings, the court ordered Ms. Davenport to transfer $74,503.04 from her personal account to the guardian of Mr. Anderson's property and ordered a judgment against Ms. Davenport for $119,554.85 in favor of Mr. Anderson. Ms. Davenport appeals the judgment and we affirm.

I. BACKGROUND

This case stems from a guardianship proceeding starting on March 11, 2021, when Ms. Farrar filed a petition seeking to be appointed as guardian of the person and property of Mr. Anderson. Her petition alleged that he suffered from Alzheimer's disease and was unable to manage his personal and financial affairs. The petition indicated as well that Ms. Davenport, Mr. Anderson's stepdaughter, was an "interested person" in the guardianship and had control over Mr. Anderson or his property.

On March 29, 2021, Ms. Farrar amended her guardianship petition and requested an emergency hearing to expedite her appointment as guardian. During the emergency hearing on May 7, 2021, the court learned that Mr. Anderson's wife had sold a home they owned jointly shortly before she died. When the court questioned Ms. Davenport about the

whereabouts of the sale proceeds, she replied that she didn't know what happened to them. At the end of the hearing, Ms. Farrar was appointed temporary guardian over Mr. Anderson's person and Bryan Bishop was appointed temporary guardian over Mr. Anderson's property.

Before the emergency hearing, the court had set a trial date of August 6, 2021 to determine permanent guardianship, and the court issued a Show Cause Order to all interested parties ordering them to explain in writing any objections to Ms. Farrar's appointment as guardian. Ms. Davenport was not present for the August 6th proceeding. The court learned through Mr. Bishop that the sale proceeds from the Andersons' home had been deposited in an M&T Bank account owned jointly by Ms. Davenport, Mr. Anderson, and Ms. Anderson (the "M&T Account"). Mr. Bishop also noted that Ms. Davenport had made several large withdrawals from the M&T Account.

Although the Show Cause Order stated that "[e]xcept for the petitioner and the attorneys in this matter, personal attendance in Court on the day named is not mandatory," the court took issue with Ms. Davenport's absence from the August 6th proceeding. Ms. Davenport was listed as an "interested person" on the order; she was neither the petitioner nor an attorney. Nevertheless, when Ms. Davenport did not attend the August 6th proceeding, the judge ruled that she had violated a court order, issued a writ of body attachment, and brought her before the court on September 17, 2021. Ms. Davenport was released on personal recognizance and instructed to appear on October 1st for a hearing to determine the whereabouts of the sale proceeds from the Andersons' house.

At the October 1st hearing, the court made a finding that all of the funds in the M&T Account belonged to the Andersons and that Ms. Davenport had never deposited money into that account. Relying on bank statements for the M&T Account, the court found that Ms. Davenport withdrew funds belonging to the Andersons. The court reset the matter for October 12, 2021 so that Ms. Davenport would have time to gather additional bank statements tracing the funds she withdrew from the M&T Account. On October 12, 2021, after hearing arguments from both parties, the court found that Ms. Davenport had taken $194,057.89 of Mr. Anderson's money from the M&T Account. The court ordered Ms. Davenport to transfer $74,503.04 from her account to Mr. Bishop, as guardian of Mr. Anderson's property, and entered judgment against Ms. Davenport for $119,554.85 in favor of Mr. Anderson. Ms. Davenport filed a timely notice of appeal.

II. DISCUSSION

Ms. Davenport has raised a single question on appeal: whether the circuit court violated her due process rights in ordering her to transfer funds and entering judgment against her.[1] She argues that she was denied due process for two reasons: *first*, because she did not receive adequate notice that a judgment could be ordered against her and *second*, because the court did not act impartially during the guardianship proceeding. We review

[1] Ms. Davenport phrased the Question Presented in her brief as follows:

> 1. Was that part of the proceeding below which terminated in a judgment against appellant in violation of her fundamental right to due process?

In his brief, the guardian of Mr. Anderson's property restates Ms. Davenport's Question Presented.

alleged due process violations *de novo*. *Regan v. Bd. of Chiropractic Exam'rs*, 120 Md. App. 494, 509 (1998).

A. The Issues Raised By Ms. Davenport Have Not Been Preserved.

Before discussing the merits of this appeal, though, we must consider whether Ms. Davenport preserved these issues for appellate review. Generally, we "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." Md. Rule 8-131(a). If there is an opportunity to object, a party must raise their issues "at the time the ruling or order is made or sought. . . ." Md. Rule 2-517(c). In this case, the judge ruled on the record and "entered[ed] a judgment against Ms. Davenport in the amount of $119,554.85 in favor of and benefit of the Ward, John Anderson." After the judge ruled, there was an opportunity to preserve issues for appeal—we know this because Ms. Davenport's attorney noted an objection to the court's decision to preclude Ms. Davenport from testifying:

> [COUNSEL FOR MS. DAVENPORT]: Just note my objections for the record.
>
> THE COURT: Noted.
>
> [COUNSEL FOR MS. DAVENPORT]: Objections as to the hearing in the not allowing her to testify. . . .

Here, Ms. Davenport's counsel had an opportunity to object and his sole objection was to his client not testifying. He made no objections to any alleged due process violations by the court for lack of notice or an impartial tribunal, so the due process violations that Ms. Davenport argues in her brief have not been preserved for our review. *See Hall v. State*, 22 Md. App. 240, 245 (1974) ("On matters of such import and significance as constitutional

questions, we cannot overstress the necessity of fully preserving the issue below.").

B. Ms. Davenport's Objection In The Circuit Court Is Incompatible With The Issues Raised On Appeal.

Even if we were to construe Ms. Davenport's objection as a general due process objection concerning her opportunity to be heard on the issues decided by the court, we still find that the issue raised in this appeal hasn't been preserved because it is incompatible with the objection made on the record. In the circuit court, counsel objected solely to the fact that Ms. Davenport didn't testify, claiming that the court did not allow her to. However, in her appeal, Ms. Davenport argues that she was deprived of due process because she had no notice that a judgment could be ordered against her or that she "was expected to defend herself" in this proceeding. In other words, Ms. Davenport objected in the circuit court on the ground that she wasn't allowed to defend herself, and now argues instead that she didn't know she *had* to defend herself. Because the due process argument Ms. Davenport presents in her appeal is "radically different from" the argument her counsel made in the circuit court, her due process argument is not preserved for our review. *Krause Marine Towing Corp. v. Ass'n of Md. Pilots*, 205 Md. App. 194, 223 (2012).

C. Even If The Issue Was Preserved For Our Review, The Court Did Not Violate Ms. Davenport's Right To Receive Adequate Notice Of The Issues Determined By The Court.

And even if we were to put the preservation problem aside, Ms. Davenport's argument that she lacked notice of a possible judgment against her lacks merit. Ms. Davenport asserts that "[s]he received no complaint requesting a judgment or explaining the averments against her," and "[t]he pronouncement of the judgment was the first

intimation in the entire cause that judgment was being contemplated against [her]." She explains further that because there was no witness testimony offered and no evidence entered formally on the record, Ms. Davenport didn't have adequate notice that a judgment could be ordered against her. In addition to Mr. Bishop's preservation argument, he argues that Ms. Davenport's due process rights weren't violated because she lied to the court about her knowledge of the house sale proceeds and because she transferred some of the proceeds from the sale to an account for her minor daughter. Although Mr. Bishop's response misapprehends Ms. Davenport's due process argument, we agree that the issue wasn't preserved and, preservation aside, that the court didn't violate Ms. Davenport's due process right to receive adequate notice.

Due process is not characterized by any fixed requirements; it "is a flexible concept that calls for such procedural protection as a particular situation may demand." *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996) (citations omitted). But "due process [generally] requires that a party to a proceeding is entitled to both notice and an opportunity to be heard on the issues to be decided in a case." *In re Katherine C.*, 390 Md. 554, 572 (2006) (*quoting Blue Cross of Md., Inc. v. Franklin Square Hosp.*, 277 Md. 93, 101 (1976)).

Here, Ms. Davenport had ample notice of the issues that the court planned to decide, including the possibility that the court might enter judgment to recover any funds that belonged to the Andersons. She was questioned by the court on May 7, 2021 about the whereabouts of the sale proceeds from the house and responded, "I don't know what my mother did with the proceeds. [Ms. Anderson] paid bills." The court informed her that

"[Mr. Anderson] would have been entitled to a portion . . . at least of [Ms. Anderson's] funds from the sale of that house" and that the court needed to determine how much the house sold for and what the profits were.

During the October 1st hearing, at which Ms. Davenport was present, there was extensive discussion between her counsel and the court about who deposited money in the M&T Account because it was material to Ms. Davenport's authority to withdraw funds from the account. Although she was an owner of the account, the presumption that she owned the funds within the account could be rebutted by clear and convincing evidence that funds within the account belonged to others. *See Morgan Stanley & Co. v. Andrews*, 225 Md. App. 181, 188–96 (2015). At that hearing, the court found that the funds in the M&T Account derived from the sale of the house did not belong to Ms. Davenport and prohibited her from withdrawing or using them. The court issued an order on October 5th requiring Ms. Davenport to appear on October 12th and to bring complete bank statements for any accounts that contained funds traceable to the sale proceeds of the house. During the October 12th hearing, the court heard arguments from both parties about the funds Ms. Davenport had withdrawn and whether she was authorized to use them. Ultimately, the court found that Ms. Davenport was not authorized to use the funds from the M&T Account and ordered the immediate transfer of her existing funds to Mr. Anderson and a judgment against Ms. Davenport for the rest of the funds withdrawn from the account.

At every hearing at which Ms. Davenport was present, she was given notice that the court intended to determine which funds belonged to Mr. Anderson and to ensure that Mr.

Anderson received the funds that were rightfully his. The court explained the purpose of the court's inquiry to Ms. Davenport repeatedly. As such, she was on notice that the court could enter a judgment against her for the funds belonging to Mr. Anderson, and there was no due process violation.

D. We Decline To Review Ms. Davenport's Argument That She Was Denied An Impartial Tribunal.

Finally, Ms. Davenport argues that the court failed to act impartially during the guardianship proceedings. She asserts that the "expansion of [the court's] desire [to protect the ward's assets] into a claim, prosecuted, and decided by the trial judge left the court in an untenable position to prompt, 'try' and decide a case against Ms. Davenport." Mr. Bishop argues, in addition to his argument that the issue was not preserved for appeal, that the judge acted impartially throughout the hearings, and "[a]ny additional proceedings would have produced the same result."

As discussed above, these arguments were not preserved. Ms. Davenport's failure to object to the partiality of a judge "will only be countenanced when a trial judge 'exhibits repeated and egregious behavior of partiality, reflective of bias.'" *State v. Payton*, 461 Md. 540, 555 (2018) (*quoting Diggs v. State*, 409 Md. 260, 294 (2009)). Moreover, Maryland courts are even less likely to intervene in cases where counsel "[f]ail[s] to object in less pervasive situations. . . ." *Diggs*, 409 Md. at 294.

It's clear from this record that counsel for Ms. Davenport never objected on the basis of judicial partiality. Nor does the record reflect any "egregious behavior of partiality" by the court that would warrant our review where counsel failed to object. *Id.* Ms. Davenport

argues in essence that the court "tr[ied]" this case against her and made a ruling. But this was not an adversarial proceeding in which a case was presented against Ms. Davenport that she had to defend; this was a guardianship proceeding. The court's goal in a guardianship proceeding is to "protect those who, because of illness or other disability, are unable to care for themselves." *Kicherer v. Kicherer*, 285 Md. 114, 118 (1979). While the court has the power to appoint a guardian for a disabled individual, we have "emphasized that the true guardian of every guardianship estate is the court itself . . . ." *Seaboard Sur. Co. v. Boney*, 135 Md. App. 99, 113 (2000). Accordingly, "[t]he administration of guardianship affairs remains subject to judicial control by the equity court that appointed the guardian." *Mack v. Mack*, 329 Md. 188, 201 (1993) (citation omitted); *see also Law v. John Hanson Sav. & Loan, Inc.*, 42 Md. App. 505, 512 (1979) (finding that the court is significantly more involved in a guardianship proceeding than it would be in an ordinary lawsuit). The court understood and fulfilled its role in protecting Mr. Anderson, a ward of the court, and his assets; it held hearings and collected documents to locate funds that the court determined belonged to Mr. Anderson. The court also considered Ms. Davenport's argument that she was entitled to withdraw funds from an account she owned jointly with the Andersons. But the court explained, relying on case law, that it must give primary consideration to the source of the funds to determine who is entitled to use them. We agree that as Mr. Anderson's "true guardian," the court made an appropriate ruling to protect Mr. Anderson's assets after it learned through bank statements, representations by Ms. Davenport, and her attorney's arguments that the money from the sale of the house had

been withdrawn by Ms. Davenport and either spent or transferred to a different account. *Boney*, 135 Md. App. at 113. Because this appeal is the first time Ms. Davenport has alleged, and failed to show, any judicial partiality by the court, we decline to review this contention further.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.