UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0128

September Term, 2015

IN RE: JASON DANIEL M.-A.

Wright,
Reed,
*Hotten, Michelle D.,

JJ.

Opinion by Reed, J.

Filed: February 29, 2016

*Michele D. Hotten, J., participated in the hearing of this case while still an active member of this Court but did not participate in either the preparation or adoption of this opinion.

On April 14, 2014, Henry Melgar Serrano, appellant, petitioned for guardianship of the person of Jason Daniel M.-A. ("Jason"),[1] in the Circuit Court for Montgomery County. On January 29, 2015, the circuit court issued an order denying the appellant's guardianship petition, and by an amended order of February 6, 2015, articulated the basis for that denial; namely, that Jason had a surviving parent whose parental rights had not been terminated and was acting as his guardian, and pursuant to Md. Code (1974, 2011 Repl. Vol), Estates and Trusts Article §13-702, the court was barred from appointing appellant as a guardian. On appeal, the appellant presents one question for our review:

> Did the [t]rial [c]ourt err in denying the guardianship petition by applying the Estates and Trusts Article to the guardianship action even though the guardianship petition did not invoke the Estates and Trusts Article[?]

We answer that question in the negative, and hold that the circuit court correctly applied the Estates and Trusts Article to the appellant's petition for guardianship. Accordingly, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The appellant is Jason's brother-in-law. Jason currently lives with appellant in the appellant's townhouse in Germantown, Maryland, along with the appellant's wife and two children. Also living there is Jason's mother (the appellant's mother-in-law). For all intents and purposes, appellant has been the dominant male figure in Jason's life, as Jason has been estranged from his father, Santiago M.F., for at least 10 years.

[1] Jason was 17 years old at the time of filing.

On April 14, 2014, appellant petitioned for guardianship of Jason in the Circuit Court for Montgomery County. This, according to appellant, was a preliminary step towards qualifying for special immigrant juvenile ("SIJ")[2] status pursuant to the Immigration and Nationality Act of 1990, a federal law that "provides permanent residency for certain minors that have suffered abuse, neglect or abandonment from one or both of their parents." To be eligible for SIJ status, the federal law requires that a state court must first find that "it is in the best interest of the undocumented minor to be placed in a guardianship of a third-party or placed in the custody of a parent." A hearing on the petition was scheduled for November 6, 2014.

At the outset of the hearing, the hearing judge noted that Jason was still in the custody of his mother, and directed appellant's counsel's attention to Md. Code (1974, 2011 Repl. Vol.), Estates and Trusts Article ("ET") § 13-702, which provides, in pertinent part:

> (a)(1) *If neither parent is serving as guardian of the person* and no testamentary appointment has been made, on petition by any person interested in the welfare of the minor, and after notice and hearing, *the court may appoint a guardian of the person of an unmarried minor*.
>
> (2) If the minor has attained his 14th birthday, and if the person otherwise is qualified, the court shall appoint a person designated by the minor, unless the decision is not in the best interests of the minor.

[2] *See* Immigration and Nationality Act of 1952 § 101(a)(27)(J), *as amended*, 8 § U.S.C. 1101(a)(27)(J) (2012 & Supp. 2013).

> (3) This section may not be construed to require court appointment of a guardian of the person of a minor if there is no good reason, such as a dispute, for a court appointment.

(Emphasis added).

Counsel for the appellant replied that he was not aware the Estates and Trusts Article contained provisions pertaining to the appointment of a guardian and indicated that he was relying only on the Maryland Rules, which he interpreted as permitting the appointment of a guardian notwithstanding the fact that the minor was in the custody of a parent. Unconvinced, the hearing judge permitted the appellant to present testimony with the caveat that counsel would submit a memorandum of law supporting his position that the appointment was appropriate.

The general thrust of the testimony was that Jason viewed the appellant as a father figure, and that Jason had no relationship whatsoever with his biological father. Both Jason and appellant testified that it was their desire for the appellant to become Jason's guardian, which was apparently consented to by his mother.

On December 8, 2014, the appellant filed a memorandum of law in support of his position. In the memorandum, the appellant suggested that, while our Court's holding in *In re Zealand* would indeed control an action brought pursuant to the Estates & Trusts Article, the circuit court "may grant guardianship of the person of a minor despite the fact that one or both of the minor child's parents are 'acting as guardians,' as long as [it] is in the best interests of the minor child," pursuant to the court's "common law *parens patriae* jurisdiction." On January 29, 2015, the circuit court issued an order summarily denying the

appellant's petition. On March 20, 2015, the circuit court issued an amended order, at appellant's request, explaining the basis for the January 29, 2015 denial as "having found that both of the subject minor child's parents are alive, that there has been no termination of parental rights and that one of the child's parents is acting as the child's guardian."

DISCUSSION

A. Appellant's Contentions

Appellant's sole contention on appeal is that the lower court erred by applying ET § 13-207 to his guardianship petition despite the fact that he had not invoked the Estates & Trusts Article. It is appellant's position that, "guardianship in the Maryland courts of equity is governed by the common law by default, not the Estates and Trusts Article." Specifically, appellant believes the default jurisdictional and legal authority over guardianship is found in the common law doctrine of *parens patriae*. Appellant believes that doctrine gives the court plenary power in guardianship proceedings, provided that the court is acting in the best interest of the minor. Accordingly, appellant maintains the circuit court erred in not applying the common law, and should thus be reversed.

B. Standard of Review

> [W]hile the circuit court "is granted broad discretion in granting or denying equitable relief, where an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's conclusions are 'legally correct' under a *de novo* standard of review.'"

Simbaina v. Bunay, 221 Md. App. 440, 448 (2015) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)).

C. Discussion

The sole issue raised by appellant is that the trial court erred in applying the Estates & Trusts Article to his petition for guardianship because he did not invoke that, or any other, statutory framework.

The appellant concedes that the substantive decision of the circuit court to deny his petition for guardianship by application of the Estates & Trusts Article was not in error, in light of this Court's recent holding in *In re Guardianship of Zealand W.*, 220 Md. App. 66 (2014), where we concluded that the circuit court did not have the authority under ET § 13-702 to "appoint a third party as a . . . guardian of the person . . . when (1) the children's mother is alive; (2) mother's parental rights have never been terminated; and (3) no testamentary appointment has been made." *In re Zealand*, 220 Md. App. at 85-86. Instead, he contends that the circuit court erred precisely *because* it applied the Estates & Trusts Article, rather than what he describes as the "default" common law:

> [T]he Petitioner/Appellant asserts that the common law applies to guardianship actions in the [c]ircuit [c]ourt by default, unless overridden by an invocation of a particular statutory framework that was specifically referenced in the guardianship pleading.

Consequently, the cornerstone of appellant's argument is that, because he did not invoke the Estates & Trusts Article in his guardianship petition, the circuit court should have granted him his desired relief pursuant to its "plenary authority" under the common law doctrine of *parens patriae*. Appellant seems to suggest that, where an application of the relevant statute in a heavily-regulated area of State law would produce an unfavorable result, a litigant may simply decline to invoke the statute, thereby simultaneously rendering

the legislative enactment and related case law a nullity and forcing the court to proceed in accordance with whatever common law principles might otherwise govern the issue. Appellant has directed this Court to no authority that would support this startling foundational premise, and merely states his position as fact. Suffice it to say, we are not persuaded.

Appellant misunderstands the inherent relationship between statutory law and the common law in this State. As a general rule, the common law prevails in the absence of a relevant statutory provision, otherwise the latter controls to the extent that it is constitutional. *See Shaw v. Glickman*, 45 Md. App. 718, 727 (1980). The case law in our State also very plainly establishes that "[w]hen the common law and a statute collide, the statute, if constitutional, prevails." *State ex rel. Sonner v. Shearin*, 272 Md. 502, 510 (1974). Furthermore, where the general assembly, in the exercise of its legislative prerogative has seen fit to broadly regulate a particular field (as with guardianship), there is a presumption that preexisting common law principles in the field are superseded to the same extent. *See Suter v. Stuckey*, 402 Md. 211, 232 (2007) ("If the common law and the statute are in conflict, however, the common law yields to the statute to the extent of the inconsistency, and a statute which deals with an entire subject-matter is generally construed as abrogating the common law as to that subject.") (internal citations and quotations omitted); *see also Robinson v. State,* 353 Md. 683, 693 (1999) (citing *Lutz v. State*, 167 Md. 12, 15 (1934)).

As it is our General Assembly's complete prerogative to ordain its own version of the law, here, rather than completely abrogating every common law principle with respect to guardianships as a whole, they chose to deal with the subject in piecemeal fashion, thereby repealing the common law principles to that limited extent. *See Owens v. State*, 399 Md. 388, 413 n.34 (2007). Consequently, we believe that they have created a statutory scheme for guardianships, and as such, that is the "default" law to be applied. It is only situations where there is no specific statutory scheme, when the common law is left to "fill in the gaps."

To be sure, "the common law of England en masse, as it existed in England on 4 July 1776, and as it prevailed in Maryland . . . prevails today, unless changed by legislative enactment or judicial decision." *State v. Brown*, 21 Md. App. 91, 92 (1974) (citations omitted). Therefore, although courts may defer to principles of common law as a "default" when resolving legal issues or questions for which there is no controlling statutory provision, litigants cannot artificially create such necessity by simply declining to acknowledge controlling statutory authority where it does exist. To accept the appellant's perspective would, quite simply, render the entire legislative enterprise defeasible at the option of the party initiating the action.

In the instant case, appellant asserts that, because he did not invoke any specific statutory section regarding guardianship, the "default common law doctrine of *parens patriae*" should have been applied. In *Wentzel v. Montgomery General Hospital, Inc.*, 293 Md. 685, 702 (1982), the Court of Appeals discussed the nature of that doctrine:

> The *parens patriae* jurisdiction of circuit courts in this State is well established. The words "*parens patriae*," meaning "father of the country," refer to the State's sovereign power of guardianship over minors and other persons under disability. See 67A C.J.S. *Parens Patriae*, at 159 (1978); BLACK'S LAW DICTIONARY 1003 (5th ed. 1979). It is a fundamental common law concept that the jurisdiction of courts of equity over such persons is plenary so as to afford whatever relief may be necessary to protect the individual's best interests. See 27 Am.Jur.2d *Equity* § 69 (1966); 39 Am.Jur.2d *Guardian and Ward* §§ 9, 61 (1968); 59 Am.Jur.2d *Parent and Child* § 9 (1971). Maryland cases are generally in accord. See *Taylor v. Taylor*, 246 Md. 616, 229 A.2d 131 (1967); *Thistlewood v. Ocean City*, 236 Md. 548, 204 A.2d 688 (1964); *Stirn v. Stirn*, 183 Md. 59, 36 A.2d 695 (1944); *Barnard v. Godfrey*, 157 Md. 264, 145 A. 614 (1929); *Jenkins v. Whyte*, 62 Md. 427 (1884); *Ellis v. Ellis*, 19 Md. App. 361, 311 A.2d 428 (1973).

The appellant relies on *Wentzel* for the proposition that "the [c]ircuit [c]ourt's jurisdiction and legal authority over guardianship of the person of a minor is deeply ingrained in the common law and plenary, as long as the guardianship is in the best interest of the minor."

The appellant's understanding of the term "plenary" as meaning that the circuit court's authority to appoint a guardian is limited *only* by the best interests of the minor, fails to acknowledge how the doctrine of *parens patriae* has consistently been applied by the courts of this state. As the Court of Appeals has observed, the doctrine is generally used in only two situations: Child In Need of Assistance ("CINA")[3] proceedings,[4] and juvenile

[3] *See* Section 3–801(f) of the Courts and Judicial Proceedings Article, Maryland Code (1974, 2013 Repl.Vol.*)* (defining a CINA as a "child who requires court intervention because ... [t]he child's parents ... are unable or unwilling to give proper care and attention to the child and the child's needs").

[4] *See, e.g.,* In re Najasha B., 409 Md. 20, 33-34 (2009) (explaining how the court's role is "necessarily more pro-active" in CINA cases, pursuant to the State's *parens patriae* interest) (citations omitted).

delinquency proceedings.[5] *See BJ's Wholesale Club, Inc. v. Rosen*, 435 Md. 714, 741-42 (2013). Appellant does not argue that his guardianship is analogous to either of those proceedings, but relies on the use of the doctrine in *Wentzel* as similarly supporting its use here.

In *Wentzel*, the Court of Appeals granted certiorari to address "whether a trial court of general jurisdiction is empowered to grant a guardian's petition to sterilize an incompetent minor through performance of a subtotal hysterectomy." *Wentzel*, 293 Md. At 687. There, the guardian was also a third party relative of the minor who began to care for the minor after the mother was unable to cope with the effect of a car crash that left the minor's "mental development . . . severely retarded." *Id.*

The Court noted that "[t]here is no Maryland statute explicitly authorizing courts to approve petitions for the sterilization of any person." *Id*. at 699. The Court concluded "that as to incompetent minors[,] circuit courts, acting in pursuance of their inherent *parens patriae* authority, have subject matter jurisdiction to consider a petition for an order authorizing a guardian to consent to the sterilization of an incompetent minor." *Id.* at 702 (emphasis added).

The present case comes to us in a far different posture than that presented by *Wentzel*, which we observe did not concern the appointment of a guardian but rather with the guardian's petition for the sterilization of an incompetent minor. Factual distinctions

[5] *See, e.g.,* In re Victor B., 336 Md. 85, 90-91 (1994) (describing how separate court systems across the country were created "[u]nder an extension of the doctrine of *parens patriae*") (citations omitted).

aside, a paramount factor for the Court of Appeals' conclusion that the circuit court could derive the necessary authority from the doctrine of *parens patriae*, was the absence of a controlling statutory provision to guide the issue.

Here, by appellant's own admission, there are several different potentially relevant "statutory frameworks regarding guardianship of the person of a minor," including the Family Law Article ("FL"), Courts and Judicial Proceedings Article, and Estates & Trusts Article. Appellant does not argue that these statutory provisions are inapplicable or otherwise inappropriate for resolving petitions for guardianship. Therefore, the circuit court acted appropriately in deciding this case using the statutory framework, rather than the common law.

Without explicitly citing it, the language of the lower court's Amended Order closely mirrors that of ET § 13-702, stating that its denial was due to the fact "both of the subject minor child's parents are alive, that there has been no termination of parental rights and that one of the child's parents is acting as the child's guardian." The lower court's basis for denying the petition is, moreover, in complete accordance with this Court's holding in *In re Zealand*.

In *In re Zealand*, the first cousin of the minors' deceased father filed a guardianship action in the Circuit Court for Montgomery County, alleging the mother was "unfit to be the guardian of her children." *In re Zealand*, 220 Md. App. at 69. The mother, who, because of a history of "serious alcohol abuse," did not have custody of the children and was only

permitted supervised visits, challenged the petition, arguing that she was the acting guardian of the children. Our Court first pointed out that,

> Absent a specific statutory authorization which does not now exist in this State, a circuit court has no authority to terminate a parental relationship other than through a decree of adoption or guardianship under title 5, subtitle 3 of the Family Law Article.

Id. at 79 (quoting *Carroll County Dept. of Social Services v. Edelmann*, 320 Md. 150, 176 (1990)). FL § 5-203 provides, in pertinent part:

> (a) *Natural Guardianship.* -- (1) The parents are the joint natural guardians of their minor child.
> (2) A parent is the sole natural guardian of the minor child if the other parent:
> (i) dies;
> (ii) abandons the family; or
> (iii) is incapable of acting as a parent.
> (b) *Powers and duties of parents.* – The parents of a minor child, as defined in § 1-103 of the General Provisions Article:
> (1) Are jointly and severally responsible for their child's support, care, nurture, welfare, and education; and
> (2) Have the same powers and duties in relation to the child.

FL § 5-203(a)-(b) (2012 Repl. Vol., 2014 Supp.).

Therefore, as of the date the father died, the mother was "(1) responsible for her children; and (2) their natural guardian." *In re Zealand*, 220 Md. App. At 80. Accordingly, we concluded that the circuit court did not have the authority to grant the cousin guardianship over the children.

> [T]he circuit court was not authorized, under section 13-702 of the Estates and Trusts Article to appoint a third party either as a temporary or permanent guardian of the person of either [child] when (1) the children's mother is

> alive; (2) mother's parental rights have never been terminated; and (3) no testamentary appointment has been made.

Id. at 85-86.

Here, the mother of the subject minor is alive, and after Jason's father abandoned the family, she was responsible for Jason and became his sole natural guardian. Her parental rights have not been terminated. We agree with the circuit court that, because "both of the subject minor child's parents are alive, that there has been no termination of parental rights, and that one of the child's parents is acting as the child's guardian," the petition should be denied. Furthermore, as appellant (1) admitted that *In re Zealand* would control this case if the Estates & Trusts Article was applied, and (2) made no effort to distinguish that case from his own, we have no problem holding that the circuit court was legally correct in denying the petition for guardianship. Therefore, the circuit court is affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.