UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1881

September Term, 2015

JOYCE ALLEN

v.

JOHNS HOPKINS HOSPITAL

Meredith,
Beachley,
Davis, Arrie W.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Beachley, J.

Filed: January 13, 2017

On October 1, 2015, the Circuit Court for Baltimore City held a hearing to consider appointing a guardian for Lana Taylor ("Ms. Taylor"). The trial court determined that Ms. Taylor required a guardian for her person and property, but declined to appoint appellant, Joyce Allen, Ms. Taylor's sister. Appellant, whose legal rights were impacted by the trial court's decision, presents four issues for our review which we have slightly reworded as follows:

1. Did the trial court abuse its discretion in appointing a Guardian of the Person and Guardian of the Property for Ms. Taylor when, pursuant to Maryland law, a less restrictive form of intervention was available through the valid Power of Attorney that was in effect?

2. Did Ms. Taylor's court-appointed attorney fail to provide sufficient representation in violation of Ms. Taylor's due process rights?

3. Did the trial court err in denying the Motion for Postponement filed by Ms. Taylor's court-appointed attorney, so that appellant could be present for the hearing held on October 1, 2015?

4. Did the trial court abuse its discretion by appointing a Montgomery County representative as guardian of the person, and an unknown attorney as guardian of the property when, pursuant to Maryland law, appellant was ready, able, and willing to serve as guardian of Ms. Taylor's person and property?

We affirm.

FACTS AND PROCEEDINGS

On September 17, 2015, Johns Hopkins Hospital ("Hopkins"), appellee, filed a Petition for Appointment of a Guardian of the Person and Property (the "Petition") for Ms.

Taylor.[1] The Petition alleged that Ms. Taylor, a widow with no known children, suffers from dementia. The Petition also alleged that Ms. Taylor "lacks sufficient understanding and capacity to make or communicate responsible decisions concerning the management of her property and affairs because of physical or mental disabilities and disease."

Through court-appointed counsel, Ms. Taylor answered the Petition, requesting that it be denied. Ms. Taylor waived her right to a jury trial, as well as her right to be present at the hearing. The trial court issued a Show Cause Order on September 17, 2015 and scheduled a hearing for October 1, 2015. On September 22, 2015, appellant received service of the Show Cause Order.

Ms. Taylor's counsel filed the Report of Counsel on September 27, 2015. The report explains how on July 15, 2015, Ms. Taylor fell down thirteen steps at her home and suffered injuries to her arm and eyes. She received treatment at Washington Adventist Hospital in Montgomery County, and visited an ophthalmologist in Montgomery County twice thereafter. After the second visit, the ophthalmologist recommended treatment at Johns Hopkins Hospital because Ms. Taylor had not received the prescribed eye drops. Appellant took Ms. Taylor to Hopkins' emergency room to receive treatment.

[1] Maryland Rule 8-501(c) requires the record extract to contain the docket entries from the trial court, as well as all parts of the record reasonably necessary for the determination of the questions presented. Appellant's record extract only consists of the transcript of the hearing on the Petition; it fails to provide what the Rule requires.

While at Hopkins, a staff member called Montgomery County Adult Protection Services ("APS") because of allegedly disturbing behavior and statements made by both Ms. Taylor and appellant. Shortly thereafter, Hopkins filed the Petition in this case.

The Circuit Court for Baltimore City held a hearing on October 1, 2015. At the outset, Ms. Taylor's counsel requested a postponement because appellant was unable to attend the hearing. Ms. Taylor's counsel told the court that appellant is a paraplegic. Hopkins, through two social workers who were present in the courtroom as witnesses for the hearing, informed the judge that appellant is, in fact, not a paraplegic. In denying the motion for postponement, the court stated, "[appellant] hasn't contacted the Court, and she hasn't made a Motion for Postponement, so . . . I'm not inclined to postpone the matter."

Ms. Taylor's counsel then argued that a valid power of attorney was in effect for Ms. Taylor. Hopkins responded that it simply wanted to establish a safe discharge plan for Ms. Taylor, but it was concerned that appellant had allegedly struck Ms. Taylor. The court stated that it would hear testimony from Hopkins' witnesses and make an informed decision. The court proceeded with the hearing.

Hopkins first called Dr. Berkenblit, whom the court recognized as an expert in internal medicine. Dr. Berkenblit testified that she saw Ms. Taylor as recently as a week prior to the hearing, and that Ms. Taylor suffered from uveitis, an inflammation of the eye, as a result of an eye lens dislocation from a "traumatic fall." In addition to her eye diagnosis, Dr. Berkenblit testified that Ms. Taylor had been diagnosed with a hand fracture and dementia. With regard to the dementia diagnosis, Dr. Berkenblit explained that Ms.

Taylor underwent a "battery of neuropsychiatric testing by [Hopkins'] Psychiatric Department." The tests revealed that Ms. Taylor's dementia impairs both her memory and judgment abilities. With regard to Ms. Taylor's eye condition, Dr. Berkenblit explained that Ms. Taylor requires a complex regimen of daily eye drops—five different drops, some to be administered every four hours.

Dr. Berkenblit also testified about her interactions with appellant. Appellant told Dr. Berkenbilt that Ms. Taylor's vision was better than the doctors at Hopkins believed. Appellant also told Dr. Berkenblit that Ms. Taylor would be safe at appellant's home. Dr. Berkenblit explained her concerns for appellant as guardian of Ms. Taylor, stating that the circumstances of the fall were still unclear, that Ms. Taylor's hand fracture appeared to be from a more recent incident, and that no one could explain Ms. Taylor's swollen lip upon her arrival at Hopkins. Furthermore, Dr. Berkenblit noted that as Ms. Taylor's vision deteriorated, appellant did not timely seek medical care and that Ms. Taylor had not been receiving her prescribed eye drops, causing further eye deterioration. In fact, Dr. Berkenblit explained that the reason the Montgomery County doctor emergently sent Ms. Taylor to Hopkins was because she had not received the eye drops he had prescribed. Lastly, Dr. Berkenblit testified that although Ms. Taylor preferred to live with appellant, Dr. Berkenblit believed that the court should appoint a guardian for Ms. Taylor.

Hopkins next called Dr. Sharp, another expert in internal medicine. Dr. Sharp testified that she had examined Ms. Taylor, reviewed her chart, and discussed Ms. Taylor's care, treatment, and mental status with the treatment team. Dr. Sharp explained that Ms.

Taylor claimed to have fallen down the stairs, causing her injury. This claim, however, contradicted her statements to hospital staff. Ms. Taylor's patient file indicates that, upon her admission to Hopkins, she stated that she had been involved in physical altercations with appellant. Ms. Taylor could not explain her hand fracture, and Dr. Sharp testified that appellant provided several different and inconsistent explanations for that injury. These explanations included mimicking a "Michael Jackson" dance move and falling from a kitchen cabinet. Dr. Sharp then read from the Montgomery County ophthalmologist's notes, including that Ms. Taylor "state[d] that the left eye is sore from sister hitting her eye."

Dr. Sharp testified that she believed Ms. Taylor required the appointment of a guardian, and expressed concerns about appellant serving as power of attorney and guardian of Ms. Taylor. Dr. Sharp explained her concern for abuse which Ms. Taylor and the Montgomery County ophthalmologist had reported. Dr. Sharp then stated her concern for neglect, pointing to the fact that appellant did not feel that Ms. Taylor's vision warranted medical attention. Dr. Sharp also testified that there were several incidents between appellant and Hopkins' hospital staff. During one such incident, Dr. Sharp asked security to remove appellant from Ms. Taylor's room because the hospital staff caring for Ms. Taylor felt unsafe with appellant in the room. Due to Ms. Taylor's dementia, Dr. Sharp concluded that Ms. Taylor requires twenty-four hour supervision in addition to her medical care, and that the appointment of a guardian would be the least restrictive form of intervention.

Hopkins' third witness at the hearing was Ms. Bruskin-Gambrell, the acting supervisor for investigations with Montgomery County APS. The court admitted Ms. Bruskin-Gambrell as an expert in social work. Ms. Bruskin-Gambrell testified that she had been involved with two investigations of abuse of Ms. Taylor, and one for self-neglect. In the first investigation for abuse, APS could not substantiate the allegations. In the second investigation for abuse, however, APS was able to establish self-neglect.

Ms. Bruskin-Gambrell testified that she believed Ms. Taylor was incapable of self-administering her eye drops and that appellant was similarly incapable of administering the eye drops for Ms. Taylor. Finally, Ms. Bruskin-Gambrell stated that she believed that the appointment of a guardian of the person would be the least restrictive form of intervention for Ms. Taylor, and that her office was willing to accept the guardianship of Ms. Taylor's person.

The fourth witness called by Hopkins was Ms. Goldman, a social worker investigator with Montgomery County APS. The court accepted Ms. Goldman as an expert in social work. Ms. Goldman testified about her familiarity with Ms. Taylor and appellant. She explained that she believes Ms. Taylor has dementia and is unable to care for herself. She further testified that appellant's home is not a safe place for Ms. Taylor. Ms. Goldman provided several reasons why appellant should not serve as guardian of Ms. Taylor, including that appellant did not follow through with the advice of Ms. Taylor's ophthalmologist. More troubling, though, was her testimony that, "[Ms. Taylor] told [Ms. Goldman] that [appellant] did not believe that [Ms. Taylor] had vision problems. And

[appellant] slapped [Ms. Taylor], because [appellant] didn't believe that that was going on."

Ms. Goldman also testified that appellant refused to acknowledge several of Ms. Taylor's disturbing behaviors as proof of her dementia. These behaviors included, "putting a rat trap in [appellant's] pureed bananas that [appellant] used to take medication. . . . [P]utting used toilet paper in the refrigerator. Throwing out some new electric skillet that [appellant] had bought, and dumping yogurt into [appellant's] utensil drawer."

Ms. Goldman, who visited appellant's home, reported it as being "very, very cluttered. Like, you can't walk through without stepping on things. And if [Ms. Taylor] has to use a walker, or has to have somebody beside her to assist her to the bathroom, there's just no room. It's very, very cluttered." When Ms. Goldman arrived at Hopkins to see Ms. Taylor, appellant explained that Ms. Taylor had hit her hand on a cupboard in the living room while performing a "Michael Jackson" dance move. Ms. Goldman also testified that on a previous occasion appellant admitted to hitting Ms. Taylor in frustration, but that appellant had promised not to hit Ms. Taylor anymore. Ms. Goldman stated that she believed Ms. Taylor required a facility to care for her and administer her eye drops, and that neither Ms. Taylor herself nor appellant could manage that responsibility. When asked whether she approved of appellant serving as Ms. Taylor's guardian, Ms. Goldman replied, "Not at all."

Hopkins' fifth and final witness was Ms. Waite, a supervising social worker employed by Hopkins. Ms. Waite, who was admitted as an expert in social work, testified

that repeated incidents had occurred at Hopkins which made her doubt appellant's fitness to serve as Ms. Taylor's guardian. Ms. Waite explained that on numerous occasions appellant spoke in a derogatory fashion to Ms. Taylor, and that appellant's judgment seemed unsound. Ms. Waite testified that appellant often coached Ms. Taylor to answer questions and that Ms. Taylor appeared unable to make her own decisions or take care of herself. Ms. Waite concluded that Ms. Taylor likely needed to enter a nursing facility upon discharge from Hopkins, but that returning to appellant's home seemed inappropriate.

At the conclusion of the evidence, the trial court stated, "I find that there has been abuse and neglect, and that [appellant] has committed it." The court continued,

> [T]here are a number of troubling things that I heard today. The neglect, to me, is clear in that, Ms. Taylor had medical needs. And [appellant] refused to accept that she needed them. Refused to follow doctor's recommendations or doctor's instructions.
>
> And that ultimately led to the emergency that brought her to [Hopkins]. It was her conduct that led to that result, or her failure to act. Testimony regarding [appellant] -- and for [appellant], too, making admissions that she admitted to Ms. Goldman that she had in fact slapped her.
>
> She admitted that she had hit her in frustration in the past, wouldn't do it anymore. I mean, that is clearly abuse. The fact that she also gave conflicting and strange stories as to the cause of the broken hand, I have no doubt that there has been abuse and neglect of Ms. Taylor by [appellant].
>
> I find that she would be completely inappropriate to provide care for Ms. Taylor. If I was to either deny the Petition or have [appellant] appointed, I believe I'd be putting Ms. Taylor in great peril.
>
> So, I do find by clear and convincing evidence that Petitioner has demonstrated that Ms. Taylor lacks sufficient understanding or capacity to make or communicate responsible decisions regarding her person.
>
> And that the lack of capacity is caused by the dementia that has been testified to. I understand there's also an eye physical disability and problem, but really the need is not the eye problem. The need is the dementia that she's unable to care for herself appropriately, and address the other health issues that she has.

> I do find by clear and convincing evidence that there's no less-restrictive form of intervention available consistent with her welfare and safety. And I do find that the proposed guardian, as proposed by [Hopkins] the . . . Department of Health and Human Services . . . [t]o be the appropriate guardian to be appointed, and capable of carrying out those responsibilities of guardian.
>
> As to the guardian of property, I do find by clear and convincing evidence that for the same reasons, that the responsibility [sic], Ms. Taylor, is unable to manage her property and affairs effectively caused by the dementia.

In an amended order, the trial court appointed Odile Brunetto, the director of the Montgomery County Department of Health and Human Services, as guardian of the person, and Robert McCarthy, a Montgomery County attorney, as guardian of the property. Appellant timely appealed.

DISCUSSION

I. Appointment for Guardian of the Person and Property for Ms. Taylor

Appellant[2] first argues that the trial court abused its discretion by disregarding the least restrictive form of intervention available—the extant Power of Attorney— and instead appointing other guardians of Ms. Taylor's person and property. We review the trial court's appointment of a guardian of the person and property under an abuse of discretion standard. *Mack v. Mack*, 329 Md. 188, 203 (1993) (quoting *Kicherer v. Kicherer*, 285 Md. 114, 119 (1979) ("appointment to that position [guardian] rests solely in the discretion of the equity court."). The Court of Appeals has explained that, "Under the abuse of discretion

[2] Although neither party addresses the issue, we note that appellant has standing pursuant to *In re Lee*, 132 Md. App. 696 (2000).

standard of review, we will only disturb a court's ruling if it 'does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.'" *In re Adoption/Guardianship of Jayden G.*, 433 Md. 50, 87 (2013) (quoting *King v. State*, 407 Md. 682, 697 (2009)). With this standard in mind, we turn to appellant's arguments.

A. Guardian of the Person

Appellant argues that the trial court abused its discretion in not following the statutory mandate that requires the court to consider less restrictive means in appointing a guardian of the person. Md. Code (1974, 2011 Repl. Vol., 2016 Supp.), § 13-705 of the Estates and Trusts Article ("ET") provides that,

> A guardian of the person shall be appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

Appellant argues that, because Ms. Taylor possessed a valid power of attorney, the Estates and Trusts article required appellant to be considered as Ms. Taylor's guardian. By disregarding Ms. Taylor's own wishes which were demonstrated by the power of attorney she executed, appellant argues that the trial court abused its discretion.

We disagree. The trial court stated, "I do find by clear and convincing evidence that [Hopkins] has demonstrated that Ms. Taylor lacks sufficient understanding or capacity to make or communicate responsible decisions regarding her person." The trial court

explained, "the lack of capacity is caused by the dementia that has been testified to. . . . The need is the dementia that she's unable to care for herself appropriately, and address the other health issues that she has." Finally, the trial court stated that, "I do find by clear and convincing evidence that there's no less-restrictive form of intervention available consistent with her welfare and safety." After establishing that Ms. Taylor requires a guardian, the trial court considered and rejected the option of appointing appellant. The trial court found that appellant "clearly abuse[d]" Ms. Taylor, and that appellant "would be completely inappropriate to provide for Ms. Taylor." The trial court's decision logically follows from its findings, which we decline to disturb on appeal. *In re Adoption/Guardianship of Jayden G.*, 433 Md. at 87.

B. Guardian of the Property

Appellant next argues that the trial court abused its discretion in not appointing her as the guardian of Ms. Taylor's property. Appellant correctly notes that ET § 13-201(c) provides the basis for appointing a guardian of the property. That section provides,

> (c) A guardian shall be appointed if the court determines that:
>
> (1) The person is unable to manage his property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance; and
>
> (2) The person has or may be entitled to property or benefits which require proper management.

Unlike the appointment of a guardian of the person, "there is no statutory requirement that a circuit court consider any less restrictive alternatives to a guardianship of the property." *In re Rosenberg*, 211 Md. App. 305, 321 (2013).

In appointing a guardian of the property, the trial court here stated, "As to the guardianship of property, I do find by clear and convincing evidence that for the same reasons [that the court appointed a guardian of the person], that the responsibility [sic], Ms. Taylor, is unable to manage her property and affairs effectively caused by the dementia."

That the trial court found by clear and convincing evidence that Ms. Taylor requires a guardian of her property is nearly unassailable on appellate review. In *In re Rosenberg*, we stated that the evidentiary standard for terminating a guardianship of the property is a preponderance of the evidence. 211 Md. App. at 317. We noted that, "on occasion, and some would suggest even more often than that, a guardianship of the property amounts to a guardianship of the person." *Id.* We need not decide whether that be the case here because the trial court found by clear and convincing evidence—the highest evidentiary standard available in a civil case—that Ms. Taylor requires a guardian of her property. Like its decision to appoint a guardian of the person, the trial court's decision to appoint a guardian of the property logically follows from its findings, and does not constitute an abuse of discretion. *In re Adoption/Guardianship of Jayden G.*, 433 Md. at 87.

II. Ineffective Assistance of Counsel

Appellant next argues that the court-appointed counsel for Ms. Taylor provided ineffective assistance by failing to object to hearsay evidence during the hearing. In their

briefs, both appellant and Hopkins argue why an analysis under *Strickland v. Washington*[3] would weigh in their favor regarding ineffective assistance of counsel. No Maryland appellate case on this issue, however, employs an analysis pursuant to *Strickland* in the context of an adult guardianship.

The only Maryland case to address the efficacy of trial counsel in an adult guardianship is *In re Lee*, 132 Md. App. 696 (2000). There, Lee's son contended that, "at the hearing below, [Lee] was not afforded the legal representation required by Maryland law and the Rules of Professional Conduct." *Id*. at 718. We agreed, noting that, rather than argue on Lee's behalf, Lee's trial counsel acted contrary to Lee's wishes. *Id*. at 721. For example, Lee's counsel waived Lee's right to be present at the trial despite Lee's statutory right and desire to attend. *Id*. at 718. Furthermore, Lee's trial counsel filed a report recommending he be found disabled and requesting that Lee's daughter be appointed guardian, despite Lee not wanting his daughter to serve as guardian. *Id*. at 721.

After noting the importance of having trial counsel appointed in such a proceeding, we held that, "at no time, from the inception of [the] proceedings to their conclusion, was [Lee] provided with the legal representation contemplated by Maryland law or the Rules of Professional Conduct." *Id*. at 723. In fact, we held that Lee "was without representation in even basic matters, such as the right to attend a proceeding where [Lee's] fundamental rights and liberties were at stake." *Id*. at 722. We vacated and remanded the case so that

[3] 466 U.S. 668 (1984).

the circuit court could determine whether Lee required a guardian when applying the law and procedural safeguards available in such proceedings. *Id*. at 723.

Here, appellant's complaints about Ms. Taylor's attorney do not rise to the level of deficient representation which we discussed in *In re Lee*. Rather, appellant alleges that on five separate occasions, Ms. Taylor's trial counsel failed to object to hearsay testimony. These five instances are as follows:

1. Dr. Berkenblit's testimony that, "the patient stated to me that she fell down the stairs. On admission to the hospital, I was not the admitting attending, but she stated to the admitting intern that there had been physical altercations with her sister."
2. Dr. Berkenblit's testimony that, "Specifically, that the patient's sister stated to me that she did not feel the patient's vision was bad. And therefore, did not seek medical attention that was required, or ensured that the patient received the medical care that she needed to improve."
3. Ms. Goldman's testimony that, "The first time I met [Ms. Taylor], she told me that [appellant] did not believe that she had vision problems. And [appellant] slapped her, because [appellant] didn't believe that that was going on."
4. Ms. Goldman's testimony that, "The other thing is, that [appellant] had said to me that she wanted [Ms. Taylor] out of the apartment. And she asked me how she could go about that to get her out."
5. Ms. Waite's testimony that, "[Ms. Taylor] would say things like, you know, I wasn't responsible when taking -- I was not responsible in taking my medicines. And then [appellant] would say, tell the woman why you act out and misbehave."

While we note that several hearsay exceptions would have likely permitted such testimony,[4] we need not review those issues. Appellant's allegation that trial counsel provided ineffective assistance does not rise to the level that it did in *Lee*, where appointed counsel did not attempt to represent the client's interests. Consistent with Ms. Taylor's

[4] Such exceptions include, but are not limited to: statement by a party-opponent, statements for purposes of medical diagnosis or treatment, and records of regularly conducted business activity. See Maryland Rule 5-803(a),(b)(4),(b)(6).

wishes that appellant serve as her guardian, Ms. Taylor's counsel argued to the court that due to the existing power of attorney, appellant should have been named guardian. Throughout the proceedings, Ms. Taylor's counsel cross-examined Hopkins' witnesses in an attempt to challenge their testimony. Unlike trial counsel in *In re Lee*, Ms. Taylor's counsel clearly advocated for her client's wishes at the hearing.

Furthermore, the abundance of evidence—including evidence of injuries that neither appellant nor Ms. Taylor could explain—permitted the trial court to find by clear and convincing evidence that appellant should not serve as Ms. Taylor's guardian. Therefore, we reject appellant's contention that Ms. Taylor's trial counsel provided ineffective assistance.

III. Denying the Motion for a Postponement

In her brief, appellant argues that she "was not given an opportunity, as required by law, to participate in the guardianship proceeding because the court failed to grant a reasonable postponement request."[5] The Court of Appeals has stated that the "decision to grant a continuance lies within the sound discretion of the trial judge." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). The trial court abuses its discretion when it "exercises discretion in an arbitrary or capricious manner." *Id*.

[5] We disagree with this contention because the record demonstrates that appellant received service of the Show Cause Order, and therefore was given an opportunity to participate. The fact that appellant sat on her rights does not negate the fact that she could have participated in the guardianship.

Here, the basis for the postponement was that appellant told Ms. Taylor's trial counsel fifteen minutes before the hearing that she could not attend. As stated above, the court issued a show cause order to appellant, which appellant received on September 22, 2015. Appellant had more than a week to request a postponement, call the court, or make preparations to attend the hearing. In denying the postponement, the court stated, "[appellant] hasn't contacted the court, and she hasn't made a Motion for Postponement, so . . . I'm not inclined to postpone the matter." We hold that the trial court did not abuse its discretion.

IV. Appointing a Guardian with Lower Statutory Priority than Appellant

Appellant's final argument is that the trial court abused its discretion in disregarding her statutory priority for appointment of a guardian of the person and property. Although ET § 13-207 provides the statutory priority for the appointment of a guardian, we again note that the decision to appoint a guardian rests "solely in the discretion of the equity court." *Mack v. Mack*, 329 Md. 188, 203 (1993) (quoting *Kicherer v. Kicherer*, 285 Md. 114, 119 (1979).

Here, the trial court found that appointing appellant as guardian of Ms. Taylor would "[put] Ms. Taylor in great peril." Therefore, the trial court properly exercised its discretion by appointing parties with lower statutory priority who would not endanger Ms. Taylor's safety.

For the reasons stated herein, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT