

Circuit Court for Carroll County
Case No. 06-C-17-074048

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2278

September Term, 2017

IN THE MATTER OF
L.S.H.

Wright,
Kehoe,
Friedman,

JJ.

Opinion by Wright, J.

Filed: April 15, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises out of a guardianship action in the Circuit Court for Carroll County. On November 16, 2017, Judge Dana Levitz signed an order appointing D. H.,¹ appellee, as Guardian of the Property of his wife, L.S.H., appellant. L.S.H. now challenges Judge Levitz's order and presents the following question for our review, which we have edited for clarity:²

1. Did Judge Levitz err in appointing D.H. as Guardian of the Property of L.S.H.?

FACTUAL AND PROCEDURAL BACKGROUND

In 2007, while employed as a Maryland Assistant Attorney General, L.S.H. suffered her first psychotic episode.³ As a result, she was involuntarily hospitalized at Sheppard Pratt, where she was diagnosed with Major Depression with Psychotic Features. She was subsequently prescribed Zoloft, Risperdal, and lithium.⁴ The State of

¹ To protect the identity of the minor children, only the initials of the parties will be used throughout the opinion.

² L.S.H. presented her question to the Court as follows:

- I. Did the Court commit an error of law which requires reversal of the order of guardianship of the property?

³ L.S.H.'s first psychotic episode was characterized by severe depression, paranoia, and anxiety.

⁴ Zoloft is an anti-depressant drug, Risperdal is an anti-psychotic drug, and lithium is a mood-stabilizing drug. After her hospitalization, L.S.H. was prescribed Invega, an anti-psychotic drug, to replace her Risperdal prescription.

Maryland began providing L.S.H. with a disability pension in 2008.⁵ She has not been employed since that time, and she began receiving Social Security disability payments in 2013. L.S.H. has refused all medication and mental health treatment since March 2014.

In addition to receiving a disability pension and Social Security disability payments, L.S.H. is responsible for managing several other assets. She is jointly responsible with D.H. for their home and a Merrill Lynch account.⁶ In addition, she has an inherited IRA through T. Rowe Price, a Nationwide Mutual Insurance Company 401K, and an additional T. Rowe Price account.⁷ Based on her belief that she is not disabled, L.S.H. has made multiple attempts to return her disability pension.⁸ On numerous occasions, L.S.H. also refrained from depositing distributions from her inherited IRA because she believed that her mother, who died in 2011, was still alive.

On August 16, 2017, D.H. filed: (1) a “Petition for Guardianship of Person and Property;” (2) an “Emergency Motion to Preserve and Apply Property,” wherein D.H. requested appointment as L.S.H.’s Temporary Guardian of Property; and (3) a “Petition for a Mental Health Examination/Evaluation.” In addition to expressing his concerns

⁵ L.S.H. receives \$3,692.00 each month.

⁶ The Merrill Lynch account contains approximately \$280,000.00.

⁷ The inherited IRA contains approximately \$950,000.00, with distributions of approximately \$21,000.00 each year in June. The Nationwide 401K contains approximately \$330,000.00. The additional T. Rowe Price account contains approximately \$35,000.00.

⁸ During trial, counsel for D.H. asked L.S.D., “[d]o you have a mental disorder?” L.S.D. replied, “[i]n my opinion, I do not.”

about L.S.H.'s ability to manage finances, D.H. cited several other incidents to demonstrate her need for a guardian. One such incident was when L.S.H. insisted that the family's veterinarian give her the body of the family's deceased dog. She believed that the dog was not deceased, but that it was in a "state of suspended animation." L.S.H. kept the dog's body in her car overnight. Another incident involved L.S.H. "erratically and frantically" painting the attic of the family home the color white out of concern that one of her sons was possessed by demons. She did not use a drop cloth and therefore ruined various carpeting in the home.

To support his "Petition for Guardianship of Person and Property," D.H. submitted a physician's certificate from Samson Vimalananda, M.D. ("Dr. Vimalananda"). In his certificate, Dr. Vimalananda, who served as L.S.H.'s psychiatrist from 2007 to 2014, diagnosed L.S.H. with bipolar disorder.⁹ On August 4, 2017, D.H. attempted to obtain an additional certificate from Carole T. Giunta, Ph.D. ("Dr. Giunta"). According to Dr. Giunta, L.S.H. was reportedly "suspicious" of her and refused to be examined "since [L.S.H.] had not been served with guardianship papers."

Judge Levitz appointed D.H. as L.S.H.'s Temporary Guardian of Property on August 23, 2017. On September 6, 2017, Judge Levitz granted D.H.'s "Petition for a Mental Health Examination/Evaluation" and ordered that L.S.H. be examined by Dr.

⁹ According to Dr. Vimalananda, L.S.H.'s bipolar disorder is characterized by recurring cycles of depression and mania. Dr. Vimalananda also found that L.S.H.'s disability "prevents or interferes with her ability to make or communicate any responsible decisions regarding . . . administration of property." Dr. Vimalananda was L.S.H.'s treating physician from 2007 until 2014.

Giunta within 26 days. On September 22, 2017, L.S.H. filed a “Motion for Reconsideration and Request for a Hearing.” In her motion, L.S.H. averred that D.H.’s “Petition for Guardianship of Person and Property” was not filed with the two physicians’ certificates required by Md. Rule 10-202(a).¹⁰ She emphasized that Dr. Vimalananda’s certificate was based on an examination that occurred three years prior, and a second certificate was not included with the petition. The circuit court denied L.S.H.’s motion without a hearing. L.S.H. then filed a “Motion to Stay and an Interlocutory Appeal” of the ordered mental health examination, both of which were denied.

L.S.H. failed to comply with the ordered mental health examination and was subsequently found to have committed indirect civil contempt. On October 10, 2017, during the hearing on L.S.H.’s “Motion to Stay” and “Motion of Contempt,” Judge Levitz ordered that L.S.H. comply with a mental health examination on October 18, 2017. In compliance with the circuit court’s finding of contempt, L.S.H. submitted to the

¹⁰ Md. Rule 10-202(a) **Certificates.**

(1) **Generally Required.** If guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of (A) two physicians licensed to practice medicine in the United States who have examined the disabled person, or (B) one licensed physician who has examined the disabled person and one licensed psychologist or licensed certified social worker-clinical who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals shall have been within 21 days before the filing of the petition.

mental health examination. Upon completing the examination, Dr. Giunta determined that L.S.H. suffered from schizoaffective disorder.¹¹

Before the trial for the outstanding “Petition for Guardianship of Person and Property,” D.H. withdrew his request to be appointed as L.S.H.’s Guardian of Person. During trial on November 15 and November 16, 2017, D.H. testified about the incidents that led him to believe that L.S.H. needed guardianship. Brooke Delmar (“Ms. Delmar”), L.S.H.’s younger sister, testified primarily about L.S.H.’s inadequate financial management skills, and Dr. Giunta testified about her evaluation of L.S.H. In opposition, L.S.H. testified as to her disagreement with Dr. Giunta’s diagnosis.

At trial, L.S.H. moved to dismiss the remaining “Petition for Guardianship of Property.”¹² Her motion was denied, and the circuit court ultimately appointed D.H. as L.S.H.’s Guardian of Property. On November 27, 2017, L.S.H. filed a “Motion to Alter or Amend Judgment.” After her motion was denied, she filed this appeal.

Additional facts will be included as they become relevant to our discussion below.

STANDARD OF REVIEW

¹¹ Just before stating her diagnosis, Dr. Giunta explained that L.S.H. “evidences a significant thought disorder along with dysregulation of her mood.” Additionally, Dr. Giunta determined that L.S.H. is “unable to manage her property and affairs effectively and needs a guardian of the property.”

¹² L.S.H. also filed a motion *in limine* concerning her health records and moved for judgment. Her motion *in limine* was granted in part, and her motion for judgment was denied.

Maryland Rule 8-131(c) governs the scope of appellate review for non-jury trials.

Specifically, the Rule states:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

This Court has further explained the standard of review for non-jury trials as follows:

A trial court's factual findings are not clearly erroneous as long as they are supported by any competent material evidence in the record. However, the clearly erroneous standard for appellate review in Md. Rule 8-131(c) does not apply to a trial court's determinations of legal questions or conclusions of law based on findings of fact. Rather, where the order involves an interpretation and application of Maryland statutory and case law, appellate courts must determine whether the lower court's conclusions are legally correct under a de novo standard of review.

Saxon Mortg. Services, Inc. v. Harrison, 186 Md. App. 228, 262-63 (2009) (cleaned up).¹³

Although we afford great deference to the trial court, abuse of discretion arises “when no reasonable person would take the view adopted by the [trial court] or when the court acts without reference to any guiding rules or principles.” *Santo v. Santo*, 448 Md. 620, 626 (2016) (citation and quotation omitted). Appointment to the position of a

¹³ The Court of Appeals recently explained the recent increase in use of “cleaned up” as a parenthetical. The parenthetical “signals that the current author has sought to improve readability by removing extraneous, non-substantive clutter (such as brackets, quotation marks, ellipses, footnote signals, internal citations or made unbracketed changes to capitalization) without altering the substance of the quotation.” *Lopez v. State*, 458 Md. 164, 195 n.13 (2018).

guardian rests solely in the discretion of the equity court. *Kicherer v. Kicherer*, 285 Md. 114, 119 (1979).

DISCUSSION

Medical Certificates

As stated in *Kicherer*, 285 Md. at 118:

Lest sight be lost of the fact, we remind all concerned that a court of equity assumes jurisdiction in guardianship matters to protect those who, because of illness or other disability, are unable to care for themselves. In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility. *See, e.g., Elliott v. Warford*, 4 Md. 80, 85 (1853); *Seattle-First Nat. Bank v. Brommers*, 89 Wash.2d 190, 200-01 (1977) (citing authorities). *See generally* 1 W. Blackstone, *Commentaries* *463.

Guardianship proceedings for disabled persons are governed by Md. Code (1974, 2011 Repl. Vol.), Estates and Trusts Article (“E&T”) § 13, and by Title 10 of the Maryland Rules. E&T § 13-101(f) defines a “disabled person” as (1) an adult who has been “judged by a court to be unable to manage his property for reasons listed in § 13-201(c)(1),” and who therefore requires a guardian of the property; or (2) a person who has been judged to be “unable to provide for his daily needs sufficiently to protect his health or safety for the reasons listed in § 13-705(b)” and who therefore requires a guardian of the person. *See also* Md. Rule 10-103(b)(1)&(2). E&T §§ 13-201(c)(1) and 13-705(b) each include “mental disability [or] disease” as a reason justifying the appointment of a guardian.

The circuit court is empowered to appoint a guardian of the property and of the person of a disabled person. E&T §§ 13-201 & 13-705. In either instance, the petition

for guardianship must include certificates of competency completed either by two physicians who have examined the allegedly disabled person, or by one physician and one psychologist or one social worker. E&T § 13-705(c); Md. Rules 10-202(a)(1) & 10-301(d). At least one of the certifying health care professionals should have examined the allegedly disabled person within 21 days prior to the filing of the petition. Md. Rule 10-202(a)(1).

D.H. filed his “Petition for Guardianship of Property” pursuant to Md. Rule 10-301(d).¹⁴ Pursuant to the Rule, at least one of four types of exhibits must be included

¹⁴ Md. Rule 10-301(d) **Required Exhibits.** The petitioner shall attach to the petition as exhibits a copy of any instrument nominating a guardian and documentation in full compliance with at least one of the following:

- (1) the certificates required by Rule 10-202;
- (2) if the alleged disability is due to detention by a foreign power or by imprisonment, affidavits or exhibits documenting (A) where and when the person is detained or imprisoned, (B) the reason the person was detained or imprisoned, (C) the expected duration of the detention or imprisonment, if known[,] and (D) reasons why detention or imprisonment renders the person unable to manage his or her property and affairs effectively;
- (3) if the alleged disability is due to disappearance, affidavits or exhibits documenting (A) when the person was first suspected of having disappeared, (B) the nature and extent of any search known to the petitioner to have been made to locate the person, (C) whether there exists any power of attorney signed by the person or effective remedy other than a guardianship, and (D) what, if any, effort was made to determine whether the person is still alive; or
- (4) if the petition is for the appointment of a guardian for a minor, all required exhibits listed in the Instructions on the form set forth in [Md.] Rule 10-111, including, if the minor is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that Department or any

with a petition. Relevant here is Md. Rule 10-301(d)(1), which requires a petitioner to submit the certificates as required by Md. Rule 10-202.

Under Md. Rule 10-202(a)(1)(A), a petitioner must submit signed and verified certificates from two licensed physicians who have examined the individual for whom guardianship is sought.¹⁵ D.H. submitted a certificate completed by Dr. Vimalananda on July 27, 2017, which was based on an examination of L.S.H. that occurred on July 10, 2014. D.H. then attempted to have L.S.H. examined by Dr. Giunta on August 4, 2017. The certificate submitted was not completed within the 21 days prior to the filing of his petition. *See* Md. Rule 10-202(a)(1) (requiring that at least one of the two required certificates be completed within 21 days prior to the filing of a petition). At this point, D.H. was not in compliance with the requirements of Md. Rule 10-202(a)(1)(A). The Maryland Rules do, however, provide for a delayed filing of the petition if the mental examination has not been completed. *See* Md. Rule 10-202(a)(3)(A).¹⁶

authorized representative of the Secretary, in accordance with [E&T § 13-802].

¹⁵ Md. Rule 10-202(a)(1)(B) allows a petitioner to submit one certificate from a licensed physician who has examined the individual, and one certificate from a licensed psychologist or licensed certified social worker-clinical who has evaluated the individual. This portion of the rule is not relevant to this discussion, as D.H. only attempted to comply with Md. Rule 10-202(a)(1)(A).

¹⁶ Md. Rule 10-202(a)(3)(A) **Refusal to Permit Examination.** If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a psychologist or licensed certified social worker-clinical, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an

As noted above, D.H. petitioned the circuit court to order L.S.H. to undergo a mental health examination.¹⁷ The circuit court held a show cause hearing on September 6, 2017.¹⁸ At the hearing, L.S.H. objected to the examination, arguing that it was not appropriate because she did not need a guardian of the person or of the property. However, L.S.H. *did not* raise any challenge to the circuit court's authority to order an examination, *nor* did she question the circuit court's use of a delayed petition under these

order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

¹⁷ Upon petition, Md. Rule 2-423 also provides for the mental or physical examination and testing of an allegedly disabled person. *See also In Re Foley*, 373 Md. 627, 630 (2003). Md. Rule 2-423 states:

When the mental or physical condition or characteristic of a party or of a person in the custody or under the legal control of a party is in controversy, the court may order the party to submit to a mental or physical examination by a suitably licensed or certified examiner or to produce for examination the person in the custody or under the legal control of the party. The order may be entered only on motion for good cause shown and upon notice to the person to be examined and to all parties. It shall specify the time and place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The order may regulate the filing and distribution of a report of findings and conclusion of the testimony at trial by the examiner, the payment of expenses, and any other relevant matters.

¹⁸ On August 17, 2017, by order of the circuit court, the four incumbent judges of the Circuit Court of Carroll County were recused. L.S.H. objects to the visiting judge hearing her case. We will take judicial notice that Judge Dana Levitz, who passed away on January 17, 2018, was a recall judge at all relevant times. *See* Md. Rule 16-108. Art. IV, § 3A.

circumstances.¹⁹ At that time, L.S.H. merely argued that it was not in her best interest for a guardian to be appointed, and she argued, only that in the “connotation[s] of guardianship,” an appointment should be made only in “a really extreme situation where someone is completely unable to handle their affairs.”

L.S.H. stated further that she declined to be evaluated because she deemed it inappropriate, as she had not received a writ of summons with respect to this case and that interested persons had not received written notice.

¹⁹ As we explained above, circuit courts may permit the delayed filing of a petition if a required examination has not been completed at the time the petition is submitted. *See* Md. Rule 10-202(a)(3)(A); *see also* Joan L. O’Sullivan, J.D., & Andrea Imredy Saah, J.D., The Maryland State Bar Association, Inc., *The Guardianship Benchbook: The Judiciary’s Guide to Adult Guardianship and Guardianship Alternatives in Maryland*, IX-9 (2001).

We recognize that delayed petitions are most frequently used when the disabled person resides with an individual who refuses to allow the disabled person to be examined. *See* Md. Rule 10-202(a)(3)(A). However, this “typical circumstance” did not preclude Judge Levitz from utilizing a delayed petition in this circumstance. Importantly, the role of the circuit court in a guardianship matter is “to protect those who, because of illness or other disability, are unable to care for themselves. In reality the court is the guardian; an individual who is given that title is merely an agent . . . of that tribunal in carrying out its sacred responsibility.” *Kicherer*, 285 Md. at 118. In service of his responsibility to L.S.D., Judge Levitz properly ordered her to be examined by Dr. Giunta, and therefore did not err in treating D.H.’s petition as a delayed petition.

After hearing from the parties, the circuit court granted D.H.'s petition and, pursuant to Md. Rule 10-202(a)(3)(B),²⁰ ordered that L.S.H. be examined by Dr. Giunta within 23 days of the hearing.²¹

²⁰ Md. Rule 10-202(a)(3)(B) states:

(B) Appointment of health care professionals by Court. If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or licensed certified social worker-clinical to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to [Md.] Rule 10-203. Otherwise, the petition shall be dismissed.

²¹ L.S.H. seeks to appeal the aforementioned order for a mental health examination/evaluation separate and apart from the appeal of the appointment of D.H. as guardian of her property. An order for a mental health examination/evaluation is not one of the specific interlocutory orders that would allow an immediate appeal, nor is it a final judgment. *See* Md. Code, (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”) § 12-303.

In her brief, L.S.H. relies on the collateral order doctrine to bring this interlocutory appeal, but the collateral order doctrine is not applicable in this matter. The collateral order doctrine has been defined as:

[A] very narrow exception to the general rule that appellate review ordinarily must await the entry of a final judgment disposing of all claims against all parties. It is applicable to a ‘small class’ of cases in which the interlocutory order sought to be reviewed (1) conclusively determines the disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, *and* (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment.

Pittsburgh Corning Corp. v. James, 353 Md. 657, 660-61 (1999) (emphasis in original).

The order for a mental health examination/evaluation fails two of the prongs of the stated test. The issue resolved by the order is not completely separate from the above

After reviewing the parties' evidence, the circuit court found that one additional examination was necessary to protect L.S.H. In issuing his ruling, Judge Levitz stated:

[L.S.H.] said that in order for the Court to appoint a guardian of the person or the property the alleged disabled has to be extremely disabled. And while I have handled a number of cases where that is true, where there is really no issue as to whether the person needs a guardian or doesn't need a guardian. It is obvious. Now, they may not agree they need it, but it is obvious from the evidence that is presented.

That is not always the case. If, in fact, someone is not totally incapacitated, someone cannot care for themselves at all, they may still be in a position where they really need to have a guardian.

Now, as I said at the beginning, in order for that to happen – in order for the Court to determine [whether] the person needs a guardian, the Court has to be clearly convinced that there is the need for the guardian. It is not as it is today where the Court just has to be convinced by a preponderance of the evidence[,] clear and convincing is pretty severe. As a matter of fact, in a civil case it is the most severe burden of proof that a plaintiff has.

[L.S.H.'s] complaint about interested persons were not notified of this hearing, I know of no requirement in the Rules to notify interested persons of this request for evaluation. Now, certainly when the petition or guardianship is heard, and it seems to me that interested persons will, and can, be summoned to court to appear and testify.

The purpose of the guardianship is as you say – it is for the disabled. That is the purpose. It is to help the disabled person. It is to help them in managing their finances, and it is really to help them – if it is a guardian of a person – of the person – in managing their daily living.

Quite frankly, at this point, I have no way of knowing whether you need a guardian. I don't assume that you do. It could very well be that you do not. But the evaluation as someone personally who has had a lot of experience

merits of the action, nor is it unreviewable on appeal after the final judgment. *See In re Foley*, 373 Md. 627, 634 (2003). The denial of L.S.H.'s interlocutory appeal did not preclude her from seeking appellate review in this matter. A final judgment was entered, and D.H. was appointed as Guardian of the Property of L.S.H. Thus, an appeal from a final judgment is the proper avenue for L.S.H. to seek appellate review.

with various mental incapacities – I have worked for a number of years in that area. It is not always the obvious, the raving, you know, lunatic, who has a problem.

But I don't assume that because the allegation is made that it is true. And that is why we have evaluations. It could be they are not true. It could be that this is a domestic dispute that is influencing the petition. I don't know. I mean, I have no idea at this point.

But it seems to me that the intrusion into a person's life, while certainly important, is not outweighed by the need to have the evaluation to determine from a professional psychological determination whether the person would need a guardian of the person or property. It is a relatively easy thing to do.

In regard to the lack of summons to be here today, well, I know that the show cause order that I signed for this hearing was served along with all the other papers that are involved in this case; the petition and the request for a temporary guardian.

I really think that it is certainly as likely or even more likely that the evaluation is going to benefit [L.S.H.] as much as it could benefit D.H.. And it seems to me based on the allegations that the Court should sign an order requiring the evaluation.

I find by a preponderance of the evidence that there is a basis to sign the order requiring the evaluation. And I am going to order that it be done – today is the 26th – in the next 23 days, by the 29th of September.

L.S.H. did not comply with this required examination. As a result of a subsequent show cause hearing on October 10, 2017, the circuit court ordered that L.S.H. be examined by Dr. Giunta on October 18, 2017.

As to the ordering of an examination by Dr. Giunta, L.S.H. cannot point to any violation of Maryland statute or Maryland Rule. Nor can she establish that the circuit court erred in ordering the examination by Dr. Giunta. Judge Levitz complied with the

applicable Estate & Trust provisions and Maryland Rules as to the appointment of Dr. Guinta to conduct an examination of L.S.H., and we discern no error of law or abuse of discretion here.

Appointment of the Guardian of the Property

Next, L.S.H. contends that the circuit court erred in appointing D.H. as her Guardian of the Property. In order for the court to appoint a guardian of the property, the court must find that “(1) [t]he person is unable to manage his [or her] property and affairs effectively because of physical or mental disability, [or] disease . . . ; and (2) the person has or may be entitled to property or benefits which require proper management.” E&T § 13-201(c).

At the hearing on the merits of the “Petition for Guardianship of Property,” Ms. Delmar testified that L.S.H. had been managing their father’s finances in 2016 and had stopped paying the water bill because she believed there were issues with the water quality. L.S.H. held this belief despite everyone else drinking the water. Ms. Delmar also testified that L.S.H. did not deposit her father’s annuity checks, and that she failed to follow through on changing the annuity to a lump sum. Finally, Ms. Delmar testified that L.S.H.’s “behavior had become more erratic.”

D.H. testified that L.S.H. received a disability pension due to her “psychological breakdown and her schizoaffective disorder” and that “it was a mental health disability.” Despite receiving this disability pension, L.S.H. tried to return the check to the State, as she believed that she was not disabled. D.H. further testified that L.S.H. was making

large cash withdrawals of over \$2,000.00 from their joint account every month, but that she could not account for the whereabouts of the cash or what it was spent upon.

As an example of her manic state, D.H. testified that L.S.H. attempted to terminate the dental insurance because she believed that the dentist was conducting too many x-rays and thereby jeopardizing their son's health. In addition, D.H. testified that L.S.H. believed that there was a dark force in the attic and that white paint would somehow relieve that. Under that belief, "she painted rails, she painted fixtures, she painted the doorbells and left disarray." She further believed that the air conditioning was spewing toxic fumes, and that she had to take the bathroom air conditioner vent out of the ceiling. L.S.H. also crawled into the eaves on more than one occasion to cut off the fuses because she believed the air conditioner was poisoning the family. In line with this behavior, L.S.H. taped her bedroom air conditioner vents with duck-tape and taped the light fixtures.

D.H. also testified that L.S.H. would not let her car be serviced out of fear that her husband may put a tracking device on the car. D.H. stated that the tires were in need of replacement that they "[were] going to blow," which created "a risk to her and to other people." D.H. posited that there was excessive unexplained driving by L.S. H.

Additionally, D.H. testified that L.S.H. would show up unannounced at her children's school, walk the halls, and try to find the children because she did not believe they were attending class. This behavior caused disruptions in the school. According to D.H., L.S.H. wanted to pull one of the children out of school to be home schooled, even

though the child had been going to the school since pre-first grade. D.H. testified that he believed this to be ludicrous.

In addition, D.H. also testified that in 2014, L.S.H. attempted to take their middle school child to West Virginia to protect him from evil people and demons. The child got to get out of the car in Baltimore City and seek assistance at the headquarters of the Baltimore City Police Department. L.S.H. left the car running on the street and was found walking the streets of Harbor East with her dog in search of the child. She was taken to Johns Hopkins Hospital for evaluation. L.S.H. also attempted to take one of the other children out of the International Baccalaureate Exam which would have caused him to fail.

Finally, D.H. testified that L.S.H.'s days often consisted of her leaving the house at 8 a.m. and not returning until around 7 p.m. She then goes to her room and writes in loose leaf binders.

As to medical testimony, Dr. Giunta testified that L.S.H. has schizoaffective disorder. Dr. Giunta made this conclusion after reviewing medical records, interviewing D.H., and evaluating L.S.H..²² Dr. Giunta, in her testimony, concluded that L.S.H.

²² Specifically, Dr. Giunta testified at the hearing that there were instances where L.S.H. did not perceive reality the way that other people did. According to Dr. Giunta, L.S.H. indicated that at times she felt as though she was getting a shot in her rear end when that was not occurring; she was not getting any injection. There were also occasions when she was under the impression that there was either anesthesia or some sort of relaxant in a beverage that she was consuming although the beverage was previously sealed. In addition, when drinking Gatorade, L.S.H. felt that there was cortisone that was moving up and down her spinal cord.

required a guardian of her property. She specifically testified that L.S.H. is “at risk for not paying bills, not managing her property and that could open her up to other potential problems as well; potentially being victimized in some way as a result of not using good judgment or potentially squandering money or not being able to account for funds as well.”²³

As to the appointment of D.H. as the Guardian of the Property, Judge Levitz ruled as follows:

Often when the Court is called upon to make a decision, it does not have the benefit of a long-term exposure to the issues or the parties. This case is, in my view, somewhat different, at least for me, because I have had the benefit of approximately four months of seeing the parties and being familiar with the issues involved.

My decision in this case has certainly been based on the testimony that I have heard the last two days, and it has helped me get a better sense of what is really involved here. I don't think anybody could view this case and not think it is sad. It is sad because of the effect that it has had on the parties, and it is sad because of the effect that it has had to have on the parties' children.

This is really the first chance that I have had to really hear from D.H. In the hearings we have had previously, he spoke very little, if at all, and certainly

²³ Dr. Giunta relied on the report of Dr. Vimalananda and found it helpful because he had treated L.S.H. over a period of six or seven years and was her primary treating physician.

Based on his testing and examination, Dr. Vimalananda opined that L.S.H. suffers from bipolar disorder with recurring depression followed by mania. Dr. Vimalananda opined that L.S.H. had a mental or physical disability that prevented or interfered with her ability to make responsible decisions regarding the administration of property. Judge Levitz, therefore, had medical opinions spanning years that came to the same basic conclusion. Dr. Vimalananda's report was introduced as evidence, but the court was not requested to make a finding as to the report.

not about the issues that are involved here. I found that his testimony was very helpful to me in making a decision in this case.

Certainly, Dr. Giunta's five-hour plus discussion with L.S.H. was very helpful in what she said, and as importantly, what she didn't say. I thought it was interesting that Ms. Delmar was able to add some facts that specifically related to finances and the history of L.S.H.

The case is sad because [. . .] I am convinced certainly more than a preponderance of the evidence. As a matter of fact, if there were a standard of proof [sic], I would say it is by clear and convincing evidence that L.S.H. has a serious mental illness.

It is unfortunate that she doesn't recognize that and she doesn't admit that, so that she could get the help that she obviously needs. The help that may lessen the effects of the mental illness.

I thought it was interesting that L.S.H. said, at the beginning of this case, I don't have a mental disorder. I thought it was interesting that because of her feeling she refuses to take medication that may help her.

Certainly, I understand Dr. Giunta's opinion in regard to the finding that she does not need a guardian of her person because she doesn't have the facts that would be necessary to support that opinion. Certainly, one listened to the testimony and one could not help but think there is some serious concerns about doesn't she need a guardian of the person.

But I understand how, because of her lack of information that Dr. Giunta had, primarily because L.S.H. wouldn't give it to her and wouldn't supply it, that she couldn't come to the conclusion. But I don't think there is any question in this case that L.S.H. needs a guardian for her property.

I think that while she may be able to, on a day-to-day basis, provide for her basic needs – although we are not even really sure of that, but we don't have information that she isn't able to do that. She certainly has made decisions that indicate clearly that she cannot make decisions in regard to her finances; that she needs somebody to make those decisions in her interest and for her benefit that are not clouded by schizoaffective disorder.

We are talking about a lot of money here. We are not talking about some small amount. And, quite frankly, when one is dealing with the amounts of money we are dealing with here, everybody would need some help. L.S.H. needs more than the average person needs as far as help.

There is no question in my mind that L.S.H. needs a guardian for her property to be appointed, and I intend to appoint a guardian of her property. Who should that be is the next question.

I can tell you that my thinking in regard to that matter has changed since I have heard the testimony in this case. Quite frankly, I can't conceive of a better person to be the guardian of her property than D.H. Here are a couple that have lived together and still live together in the same house.

He has done nothing throughout this time period, certainly in the last four months, that would indicate that he has anything other than the interest of his wife as his primary concern. I am convinced that to have some third party become involved in this case would be counterproductive to L.S.H. and to her property. I am convinced that the most appropriate person to be appointed is D.H.

Now certainly, as everyone and counsel knows, and I am sure the parties know, there are reporting requirements that D.H. will have to comply with. He will have to account to the Court for what he spent and what he spent for L.S.H.; how the money has been managed, how the assets have been managed.

And I believe that with that protection in place that should give L.S.H. a feeling of security. I'm prepared to sign an order appointing D.H. as guardian of the property of L.S.H.

L.S.H. argues that the disability alleged in D.H.'s petition was not sufficiently proven.²⁴ She also avers that the petition alleged a condition but contained no certificate

²⁴ In recounting the burden of proving a case by a preponderance of evidence, we have said “[i]n any case, civil or criminal, to meet the test of legal sufficiency, evidence (if believed) must show directly or support a rational inference of, the fact to be proved. In a civil case, the fact must be shown, or the inference supported by a preponderance of probability[.]” *Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2009) (quoting *Wills v. State*, 329 Md. 370, 374 n.1 (1993)).

We have further stated that:

To prove by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of

that made a present confirmation of that condition. Further, she asserts that one certificate had no diagnosis, while the other certificate's diagnosis was based on alleged information that was three or more years old. Finally, L.S.H. contends that the testimony from only one of the examining doctors was not adequate for the purposes of E&T § 13-201 and Md. Rule 10-202, and that the past status medical records should not substitute for a present status diagnosis.

The procedural and evidentiary issues raised by L.S.H. have no merit. The Petition for Guardianship filed by D.H., as supplemented by the examination, report, and testimony of Dr. Giunta, were more than sufficient for the circuit court to consider the case on its merits.

L.S.H. cites numerous cases that stand for the proposition that past medical records do not substitute for a present status diagnosis, and that courts look to the mental status of the person at the time of trial. In addition, L.S.H. cites cases establishing that courts must scrutinize whether a person needs a guardian. None of the cases cited by L.S.H. are dispositive of the issues that are before this Court, but only relevant to our assessment as to whether the circuit court's factual findings were supported by substantial evidence in the record.

the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your mind[] a belief that it is more likely true than not true.

Coleman v. Anne Arundel County Police Dept., 369 Md. 108, 125 n.16 (2002) (quoting MPIJ 1:7 (3d ed. 2000)).

As to L.S.H.'s present medical condition, Judge Levitz's factual findings that L.S.H. has a serious mental illness and needed a guardian of the property are supported by substantial evidence in the record. There was testimony that L.S.H. acted in ways that indicated clearly that she could not make decisions in regard to her finances, and that she needed someone not clouded by schizoaffective disorder to make those decisions in her interest and for her benefit.

In a guardian case such as this, the circuit court's role is not "merely that of a fact-finder and adjudicator;" rather, the court "has a much deeper involvement [-] a much more significant function[.]" *Law v. John Hanson Sav. and Loan, Inc.*, 42 Md. App. 505, 512 (1979). Informed by the above, there is no question that the court's factual findings as to L.S.H.'s diagnosis and prior behavior amply support the appointment of D.H. as Guardian of the Property. Taking into account the lay witnesses' testimony as to L.S.H.'s erratic tendencies, as well as Dr. Giunta's conclusion that L.S.H. had schizoaffective disorder and that she was therefore "at risk" for mismanaging her finances, we conclude the determination of Judge Levitz's factual findings were supported by the record.

Further, considering the mandate of the circuit court's responsibility in guardianship cases, it is clear to this Court that Judge Levitz's appointment of D.H. to be the Guardian of the Property of L.S.H. was "reasonable" and not "clearly untenable." Therefore, Judge Levitz did not abuse his discretion here.

Priorities

During trial, L.S.H. also challenged D.H.'s appointment as Guardian of the Property because they were involved in domestic conflict, and therefore, he should have been passed over for "good cause."

E&T § 13-207(a) provides:

(a) Persons are entitled to appointment as guardian for a minor or disabled person according to the following priorities:

(1) A conservator, committee, guardian of property, or other like fiduciary appointed by any appropriate court of any foreign jurisdiction in which the minor or disabled person resides;

(2) A person or corporation nominated by the minor or disabled person if the designation was signed by the minor disabled person after his 16th birthday, and, in the opinion of the court, he had sufficient mental capacity to make an intelligent choice at the time he executed the designation;

(3) His spouse;

(4) His parents;

(5) A person or corporation nominated by the will of a deceased parent;

(6) His children;

(7) The person who would be his heirs if he were dead;

(8) A person or corporation nominated by a person who, or institution, organization, or public agency which, is caring for him;

(9) A person or corporation nominated by a governmental agency which is paying benefits to him; and

(10) Any other person considered appropriate by the court.

According to E&T § 13-207(c), "[a]mong persons with equal priority, the court is required to select the one best qualified of those willing to serve. For good cause, the court may pass over a person with priority and appoint a person with less priority or no

priority.” We disagree with L.S.H. that the hypothetical actions of a “hostile” spouse would be sufficient to create “good cause.”

Judge Levitz did not err when he made the following finding based on the evidence presented:

D.H. had done nothing throughout this time period, certainly in the last four months, that would indicate that he has anything other than the interest of his wife as his primary concern. The court was convinced that to have some third party become involved in this case would be counter-productive to L.S.H. and to her property.

Equal Protection

Finally, L.S.H., for the first time on appeal, asserts that E&T § 13-201(c) violates the Equal Protection Clause of the Fourteenth Amendment to the extent that it arbitrarily discriminates on the basis of health, gender, age, and race. Thus, she argues that it is in conflict with Federal legislation which was designed to enforce equal protection, as well as other related constitutional provisions. In addition, she argues that the statute further conflicts with the rights established for women under the Married Women’s Act. *See* Md. Code (1984, 2012 Repl. Vol.), Family Law Article (“FL”) § 4-203 and § 4-204.

This issue was not raised below, therefore L.S.H.’s contention is not preserved for this Court’s review. *See* Md. Rule 8-131(a) (an appellate court ordinarily will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court[.]”).

**JUDGMENT OF THE CIRCUIT COURT
FOR CARROLL COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**