Circuit Court for Anne Arundel County
Case No. C-02-FM-18-03860

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2437

September Term, 2019

DAVID CHARLES MAYNE

v.

STACEY ANN REED

Berger,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: October 6, 2020

*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.

Appellee Stacey Ann Reed filed, in the Circuit Court for Anne Arundel County, a petition to appoint a guardian of the person and property of David Charles Mayne, Ph.D., appellant. Following a bench trial, the court granted Ms. Reed's petition and appointed her as Dr. Mayne's guardian. In this appeal, Dr. Mayne presents five questions, which we have rephrased and consolidated into two questions.[1] They are:

1. Did the trial court err in appointing Ms. Reed guardian of the person and property of Dr. Mayne?

2. Did the trial court err in admitting into evidence surveillance footage taken from cameras placed in Dr. Mayne's home without his consent?

For reasons to follow, we answer both questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

[1] Dr. Mayne presented the questions as:

1. Did the circuit court err or abuse its discretion when it found that appellant David Charles Mayne required a guardian of his person?

2. Did the circuit court err or abuse its discretion when it found that appellant David Charles Mayne required a guardian of his property?

3. Did the circuit court err or abuse its discretion in appointing appellee Stacey Ann Reed as both the guardian of the person and the guardian of the property for appellant David Charles Mayne?

4. Did the circuit court err or abuse its discretion when it found that no less restrictive alternatives were available?

5. Did the circuit court err or abuse its discretion when it found admissible as evidence footage from cameras surreptitiously placed inside appellant's home without his consent by appellee?

Dr. Mayne was born in 1942. He has two living siblings: Richard Mayne and Linda Markee. In 1971, Dr. Mayne was employed as a mathematics professor at Anne Arundel Community College, where he worked until his retirement in 1996. At some point in the 1970s, Dr. Mayne married Nancy Dickey, who had two children from a previous marriage: Helen Brendt and William Dickey. No children were born as a result of the marriage between Dr. Mayne and Ms. Dickey, and the two divorced after only a few years of marriage. Around the time of his divorce, Dr. Mayne began dating Janice Reed, who had two daughters, Stacey Ann Reed and Jill Tatham, from a previous marriage. Dr. Mayne and Janice remained "long-term companions" until Janice's death in November of 2015. Except for a period of time between 1984 and 1986, Janice and Dr. Mayne lived apart for the entirety of their relationship. Throughout the years, Janice's daughter, Ms. Reed, had frequent contact with Dr. Mayne.

In 2015, Dr. Mayne had back surgery requiring hospitalization and extended care. Shortly thereafter, Ms. Reed hired a company, A Homemade Plan, to assist Dr. Mayne with various activities, including light housekeeping and food preparation. One of the caregivers provided by A Homemade Plan was Sheila Simms. Later that same year, Dr. Mayne fell while in his home and was thereafter hospitalized. He was later transferred to a rehabilitation facility, where he stayed for several months. In November of 2015, Dr. Mayne executed a power of attorney and advanced medical directive, naming Ms. Reed as his agent and health care contact.

At the beginning of 2016, Dr. Mayne returned to his home, and Ms. Simms continued providing in-home care on behalf of A Homemade Plan. The company terminated Ms. Simms' employment in June of 2016, allegedly because she had accepted gifts from Dr. Mayne. Dr. Mayne nevertheless continued to employ Ms. Simms as his in-home caregiver.

In December of 2017, Dr. Mayne fell again, injuring his arm and shoulder, and was hospitalized. He went to a rehabilitation facility and eventually an assisted living facility, where he remained until June of 2018, at which point he moved back to his home. Ms. Simms was again retained to provide in-home care. Around the same time, Ms. Simms' sister, Doris Watkins, was hired to provide in-home care for Dr. Mayne.

In October of 2018, Ms. Reed filed a Petition for Appointment of Permanent Guardian of the Person and Property of Dr. Mayne.[2] In the petition, Ms. Reed alleged that Dr. Mayne was suffering from Alzheimer's disease, a permanent disability, and that this disability was affecting his ability to make responsible decisions concerning his person and property. Ms. Reed also alleged that Dr. Mayne's caregiver, Ms. Simms, had been mistreating him and exploiting him financially. Ms. Reed asked that she be named guardian of the person and property of Dr. Mayne.

[2] Around the time that Ms. Reed filed the instant guardianship petition, Dr. Mayne purportedly revoked the 2015 power of attorney and advanced medical directive and executed new documents naming William Dickey as agent and health care contact. Dr. Mayne thereafter filed a motion asking the circuit court to recognize the new documents. The court ultimately declined to take action on Dr. Mayne's motion, finding that the issues raised in the motion should be raised in a separate proceeding.

After Dr. Mayne filed an answer opposing Ms. Reed's petition, a bench trial was held. At that trial, Ms. Reed testified that, during her teenage and adult years, she thought of her mother and Dr. Mayne as "a couple" and considered Dr. Mayne to be "a part of [her] family." Ms. Reed testified that she and Dr. Mayne "spent lots of time together," including "every holiday, . . . every children's birthday, every wedding, every baptism." According to Ms. Reed, Dr. Mayne even referred to her as his "step-daughter."

Ms. Reed testified that she continued spending time with Dr. Mayne even after her mother died in 2015, visiting him at his home "every week, every other week." Ms. Reed testified that, in the months leading up to her filing of the guardianship petition, she visited Dr. Mayne at his home "at least once a week." She also made appointments for Dr. Mayne, took him to these various appointments, and helped him fill out paperwork at the appointments. Ms. Reed testified that her visits ended in February of 2019 after Dr. Mayne's attorney sent her a letter stating that she could no longer visit him.

Ms. Reed testified to the following observations while visiting Dr. Mayne at his home in the months leading up to the filing of her petition:

> [T]hat the kitchen floor was almost always dirty; that the sink was dirty; that there was little to no food in the refrigerator; that the bathroom toilet had feces stains; that there was a feces-covered rag sitting next to Dr. Mayne's toothbrush; that there were brown handprints on the doorframes; that there were feces stains in the carpet; that Dr. Mayne's bedsheets were urine stained; that Dr. Mayne would urinate in a coffee cup and then dump the contents down the kitchen sink; and that there were soiled clothes in a laundry basket.

Ms. Reed also testified to the following observations regarding Dr. Mayne's physical condition and demeanor during that same time frame: that he was confined to a

wheelchair; that he had trouble getting in and out of the wheelchair; that he had difficulty with his memory; that he would become belligerent and very agitated when she asked him questions; and that he was "in total denial that there was a problem." Regarding the care provided by Ms. Simms and Ms. Watkins, Ms. Reed stated that they both were oftentimes absent from the home at times when they were expected to be there and that Ms. Simms would sometimes sleep in the home during her shift.

Jill Rosner, a registered nurse, testified that, in May of 2018, while Dr. Mayne was at the assisted living facility following his last fall, his attorney, Michael Lehr, contacted her to inquire about doing a "needs assessment" to see if Dr. Mayne "could return safely home." In July of 2018, Ms. Rosner visited with Dr. Mayne at his home following his move from the assisted living facility. During that visit, Ms. Rosner noted that Dr. Mayne's home was "dirty," that the refrigerator was "practically bare," and that there was "stool around the house." Ms. Rosner also noted that the home had no smoke detectors, that there was lighter fluid on a table where Dr. Mayne was smoking a cigarette, and that there were "scatter rugs" around the home that had not been "pinned down." Ms. Rosner further reported that Ms. Simms, who was present during the visit, had a "threatening" demeanor. As a result of her visit, Ms. Rosner made a referral to Adult Protective Services, citing her concern for Dr. Mayne's safety and the poor living conditions.

Dr. Carrington Wendell, a clinical neuropsychologist, testified that, in September of 2018, she personally evaluated Dr. Mayne, at Ms. Reed's request, to determine whether guardianship would be appropriate. Dr. Wendell also prepared a report, which

was admitted into evidence, that summarized her evaluation of Dr. Mayne and her subsequent findings. According to Dr. Wendell, Dr. Mayne suffered from "dementia, probably due to Alzheimer's disease." Dr. Wendell opined further that Dr. Mayne did not have the capacity to manage his finances; he was "highly susceptible to fraud;" he required 24-hour supervision; and decisions concerning his person and property should rest solely with an appointed guardian.

Dr. Maya Carter, a neurologist, testified that she also evaluated Dr. Mayne and found that he suffered from "Alzheimer's dementia, which is a progressive cognitive decline." Dr. Carter opined that Dr. Mayne needed "oversight in his decision making." She concluded that Dr. Mayne had a demonstrated inability to manage his affairs effectively because of his disability. She recommended that a guardian of the person and property be appointed.

Dr. Carole Giunta, a clinical forensic psychologist, testified that, in May of 2019, she personally evaluated Dr. Mayne "in light of pending guardianship proceedings." Dr. Giunta also prepared a report, which was admitted into evidence, that summarized her evaluation and findings. According to Dr. Giunta, Dr. Mayne suffered from "mild neurocognitive disorder," which meant that he had "modest impairment in his cognitive function," as opposed to a "major neurocognitive disorder" such as dementia. Dr. Giunta opined further that Dr. Mayne was capable of managing his own affairs. Dr. Giunta concluded that, although Dr. Mayne required assistance with "accessing medical care and

recall of specific information," he had the capacity to make decisions regarding his property and person.

Dr. Jeffrey Janofsky, a physician who specializes in psychiatry, testified that he evaluated Dr. Mayne and found that Dr. Mayne suffered from a "mild neurocognitive disorder." Dr. Janofsky believed that Dr. Mayne was "not unable" to manage his affairs, "provided certain accommodations are made." Dr. Janofsky also prepared a report, which was admitted into evidence, that summarized his findings. Dr. Janofsky concluded that Dr. Mayne's disability did not prevent him from making responsible decisions concerning his person or property.

Dr. Robert Reif, an expert in neurology, testified that he evaluated Dr. Mayne and concluded that Dr. Mayne most likely suffered from a mild cognitive impairment. Dr. Reif believed that Dr. Mayne had the capacity to make decisions, "but would probably need some assistance."

Linda Markee, Dr. Mayne's sister, testified that she and Dr. Mayne grew up together and lived in the same house until she left for college in 1959. She testified that there was a period of approximately 30 years during which she and Dr. Mayne did not see each other. In 2018, Ms. Markee visited Dr. Mayne at the assisted living facility where he was staying. After that visit, Ms. Markee started calling Dr. Mayne more frequently. Ms. Markee, who lived in Washington State, testified that she had never met Ms. Reed prior to the trial. Ms. Markee testified that she did not believe that Dr. Mayne needed a guardian but that he may need help with "the physical part of his life." She

added that she was "available" to "support" Dr. Mayne in advising him about medical decisions.

Ellen Bredt, the daughter of Dr. Mayne's first wife, testified that, after her mother and Dr. Mayne divorced in 1979, she and Dr. Mayne stayed in touch "up to a point." She explained that the two were "out of touch for a while" but reconnected in 2003. They stayed in touch until 2006, at which point they again fell out of touch until 2016, when Ms. Bredt visited Dr. Mayne in the hospital. Since that time, Ms. Bredt has visited with Dr. Mayne more frequently. Ms. Bredt, who lived in Maryland, objected to the guardianship petition and stated that she would be willing to assist and support Dr. Mayne in making decisions regarding his affairs.

Dr. Mayne testified that he could manage his own healthcare, and that he did not have any psychological impairments. He insisted that he made his own doctor's appointments, although he later claimed that he was not sure who made his appointments. He recalled that he had two caregivers, one named Sheila and another named "Judy," who fixed his meals, did his shopping, cleaned his home, and assisted him with bathing. He testified that he is dependent on others to get around and that Ms. Simms had full use of his vehicle.

Dr. Mayne testified that he managed his own finances and that he did not need any assistance. Dr. Mayne testified that he had never given any cash gifts to Ms. Simms. He testified that he leaves his checkbooks out in the open and that if Ms. Simms or Ms. Watkins "go through the checkbooks they go through the checkbooks, so what."

Dr. Mayne testified that he did not want a care manager but that he would "put up with it." He testified that he was opposed to having a guardian and particularly opposed to having Ms. Reed as his guardian. He testified that he would be amenable to conceding certain financial powers to his attorney and having Ms. Bredt and Ms. Markee collaborate to make certain medical decisions.

Michael Lehr, Esquire, testified that, in 2015, Dr. Mayne executed a power of attorney and advanced medical directive. Dr. Mayne named Ms. Reed as his agent in both documents. In October of 2018, two days after Ms. Reed filed the guardianship petition, Dr. Mayne executed a new power of attorney and advanced medical directive naming his former stepson, William Dickey, as his agent.

The trial court also received into evidence a report from a court-appointed independent investigator, who was retained in March of 2019 to investigate, among other things, allegations that Dr. Mayne's caregivers, Ms. Simms and Ms. Watkins, were exploiting him financially. According to the report, Ms. Simms began working as Dr. Mayne's caregiver in 2015 and worked from 9:00 a.m. to 4:00 p.m., seven days per week. She was paid $700 per week, and her duties included doing laundry, cleaning, buying groceries, and fixing meals. She also had full use of Dr. Mayne's vehicle (he did not drive) and full use of his credit card. Ms. Watkins, who started in 2018, worked from 5:00 p.m. to 9:00 p.m., seven days per week, and was paid $600 per week. Her duties included preparing meals and helping Dr. Mayne with bathing.

Per the report, Dr. Mayne had substantial assets, including a home worth $472,400 and retirement and investments accounts worth approximately $1.2 million. Regarding the management of his finances, Dr. Mayne informed the investigator that Ms. Simms did his grocery shopping using his credit card, which he had not personally used in over a year but which he paid. According to the statements, Dr. Mayne's credit card was used to purchase over $5,000 in gas and other items over a one-year period. The investigator reported that it was "unknown what items were purchased for Dr. Mayne and what items were purchased for others as Sheila Simms did not return phone calls." The investigator reported further that "the credit card bills show escalating charges and there is no accountability for expenses as Dr. Mayne indicates he just 'pays the bills.'"

The investigator also noted that in 2017 and 2018 Dr. Mayne made approximately $35,000 in cash disbursements that "appeared to benefit the family of Sheila Simms." Those disbursements included $12,000 to Ms. Simms' son and $15,000 to Ms. Simms' son's girlfriend. When asked about the disbursements, Dr. Mayne stated that the total did not exceed $15,000. The investigator noted that Dr. Mayne's checking account showed "numerous overdrafts" and that check withdrawals from his investment account had "increased dramatically in the last 3 years."

The trial court granted Ms. Reed's petition, finding that Ms. Reed had proven by clear and convincing evidence that Dr. Mayne needed a guardian of the person. The court found that ample evidence had been presented of poor decision-making that endangered Dr. Mayne's welfare and safety, including his smoking next to a can of

lighter fluid, his urinating in a cup, and his "toileting" throughout the home. The court also found that Dr. Mayne continued to employ and pay caregivers who did not "appear to actually provide him with the necessary care or assistance." The court noted that the caregivers slept during shifts and worked partial shifts. The court also noted that the caregivers allowed clothes to remain on the floor unwashed for an undetermined amount of time and did not help Dr. Mayne in and out of his wheelchair or with toileting.

The court found that there was conflicting testimony as to whether Dr. Mayne had a major or minor neurocognitive disorder and whether that disorder prevented him from making or communicating responsible decisions regarding his person. The court ultimately concluded that Dr. Mayne's disability was "more in line with a major neurocognitive disorder." In so doing, the court found it "concerning" that "the disease impacted Dr. Mayne's ability to count currency and change, remember the cause of death of a significant other, . . . and remember giving people, multiple people cash both in small dollar amounts and significant amounts."

The court also found that a less-restrictive alternative to guardianship "would not be appropriate and would not address the concerns raised throughout the trial." The court noted that "Dr. Mayne believes he is capable of responsibly making his decisions including to continue to employ his current health care providers," and that he "even stated that he doesn't understand why Ms. Reed has a problem with their performance because he's happy with their performance." The court also noted a willingness by Dr. Mayne to "make changes to preserve his autonomy" that may be to his detriment,

including attempting to revoke Ms. Reed's power of attorney and give it to other family members "who don't appear to have a particularly close relationship with him or even awareness of his actual living conditions."

The court named Ms. Reed as guardian of the person, stating that she was "fit and proper" and that there was "no one of higher priority available." The court noted that, although Dr. Mayne had a sister, Ms. Markee, she "lived on the other side of the country" and was, consequently, unable to "carry out the necessary responsibilities given that [Dr. Mayne is] supposed to have 24-hour seven days a week care."

Moving on, the court found that Ms. Reed had proven by a preponderance of the evidence that Dr. Mayne needed a guardian of the property. The court noted that, although Dr. Mayne exhibited an "intimate awareness of his overall assets and a general grasp of monthly obligations," the court was concerned with "his financial management of the gifts." The court explained that its concern went beyond "Dr. Mayne being simply a generous person who has the financial resources to give money [to people] who are financially disadvantaged." Rather, the court stated, its concern stemmed from Dr. Mayne's "failure to remember giving cash to multiple people," his "gross underestimation of the tens of thousands of dollars that he's given his caregivers and their family and friends," and his lack of awareness as to "how much those caregivers use his credit cards on a monthly basis to pay hundreds of dollars for personal items for themselves."

The court concluded that, given Dr. Mayne's "major neurocognitive disorder" and the fact that he had substantial financial assets requiring proper management, a guardian of the property was necessary. The court named Ms. Reed as that guardian, finding that she was "fit and proper."

STANDARD OF REVIEW

"[I]n reviewing whether a circuit court properly decided to appoint a guardian for an adult, we adopt a tri-partite and interrelated standard of review." *Matter of Meddings*, 244 Md. App. 204, 220 (2019). First, we review the court's factual findings for clear error. *Id.* Second, we review *de novo* the court's legal determinations. *Id.* Finally, "[a]s to the ultimate conclusion of whether an adult guardianship is appropriate, the circuit court's decision will not be disturbed unless there has been a clear abuse of discretion." *Id.*

DISCUSSION

I.

A.

Dr. Mayne argues that the trial court erred in finding that he needed a guardian of the person and property. He contends that Ms. Reed failed to carry her burden in showing that a guardian of the person and property was required. He also asserts that the court's finding that he suffered from a major neurocognitive disorder was clearly erroneous. He claims, rather, that the "collective weight of the testimony" established

that he had "full control of his decisions" and "a complete understanding of his financial affairs."

Section 13-705(a) of the Estates and Trusts Article ("E&T") of the Md. Code Ann. states that, "[o]n petition and after any notice or hearing prescribed by law or the Maryland Rules, a court may appoint a guardian of the person of a disabled person." The statute defines "disabled person," in pertinent part, as a person who "has been judged by a court to be unable to provide for the person's daily needs sufficiently to protect the person's health or safety for reasons listed in § 13-705(b) of this title[.]" E&T § 13-101(f)(2)(i). E&T § 13-705(b) provides that:

> (b) A guardian of the person shall be appointed if the court determines from clear and convincing evidence that:
>
> > (1) a person lacks sufficient understanding or capacity to make or communicate responsible personal decisions, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs; and
> >
> > (2) no less restrictive form of intervention is available that is consistent with the person's welfare and safety.

Proceedings regarding guardianship of the property of a disabled person are governed by E&T § 13-201, which states that "[o]n petition, and after any notice or hearing prescribed by law or the Maryland Rules, the court may appoint a guardian of the property of a minor or disabled person." E&T § 13-201(a). The statute defines "disabled person," in pertinent part, as a person who "has been judged by a court to be unable to manage the person's property for reasons listed in § 13-201(c)(1) of this title[.]" E&T § 13-101(f)(1)(i). E&T § 13-201(c)(1) provides that a guardian "shall be appointed if the

court determines that . . . the person is unable to manage effectively the person's property and affairs because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance[.]" E&T § 13-201(c)(1). The burden of proving the need for a guardian of the property is by a preponderance of the evidence. *See generally In re Rosenberg*, 211 Md. App. 305, 316-17 (2013).

We hold that the trial court did not err in appointing a guardian of the person and property for Dr. Mayne. To begin with, we disagree with Dr. Mayne's contention that the court clearly erred in finding that he suffered from a major neurocognitive disorder. Two expert witnesses, Dr. Wendell and Dr. Carter, testified that Dr. Mayne suffered from dementia related to Alzheimer's, and another expert witness, Dr. Guinta, classified dementia as a major neurocognitive disorder. Thus, there was competent evidence to support the court's finding. *See Spaw, LLC v. City of Annapolis*, 452 Md. 314, 339 (2017) ("If there is *any* competent evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.") (citations and quotations omitted) (emphasis added).

We are likewise persuaded that the trial court had ample evidence to find, by clear and convincing evidence, that Dr. Mayne lacked sufficient understanding or capacity to make or communicate responsible personal decisions as a result of his mental disability. At trial, Dr. Mayne insisted that he did not have any psychological impairments, that he did not need or want any additional assistance in his daily life, and that the assistance he

was receiving, namely that provided by his caregivers Ms. Simms and Ms. Watkins, was perfectly adequate. But, aside from Dr. Mayne's own testimony, the force of the evidence adduced at trial went the other way. All of the expert witnesses, including those called by Dr. Mayne, agreed that he suffered from some form of neurocognitive disorder that was affecting his ability to make decisions without assistance. And, as noted, two of those witnesses, Dr. Wendall and Dr. Carter, diagnosed Dr. Mayne with dementia, a major neurocognitive disorder, and concluded that his disability was seriously affecting his ability to manage his affairs. The court in the end agreed with those witnesses and found that Dr. Mayne's neurocognitive disorder was "major" and that it was significantly impacting his daily life.

Ample evidence was also presented to establish that Dr. Mayne required considerable care and that the care that he had been receiving from Ms. Simms and Ms. Watkins was woefully inadequate. Dr. Mayne, who was confined to a wheelchair, needed assistance getting in and out of his wheelchair, including to use the bathroom. Likely because of that lack of mobility, he was known to urinate in a coffee cup and then dump the contents down the sink. His home had no smoke detectors, even though he smoked cigarettes in the house. On at least one occasion, he was found smoking next to a can of lighter fluid. Although he had multiple caregivers who supposedly cared for him 12 hours a day, seven days a week, his home was poorly maintained, and, on multiple occasions, he had no food in his refrigerator. There were feces stains in the carpet and on the walls, urine stains on his bedsheets, and soiled clothes piled in a laundry basket. A

feces-covered rag was found next to his toothbrush. That those circumstances endangered Dr. Mayne's safety and welfare is beyond cavil.

Lastly, substantial evidence was presented to show that Dr. Mayne was unable to effectively manage his property and affairs because of his disability. Although Dr. Mayne successfully had managed his finances for much of his life, certain events occurred around the time of the filing of the petition that suggested strongly that Dr. Mayne was no longer able to effectively manage his property. In 2017 and 2018, Dr. Mayne gave a total of $35,000 to Ms. Simms and her family, including $12,000 to Ms. Simms' son and $15,000 to Ms. Simms' son's girlfriend. When asked about those gifts, Dr. Mayne insisted that the total did not exceed $15,000 and that he had never given any cash gifts to Ms. Simms. In addition, Dr. Mayne admitted leaving his checkbooks out in the open, and he did not seem to care if Ms. Simms or Ms. Watkins had access to them. Dr. Mayne permitted Ms. Simms to have full use of his credit card with little to no oversight, which resulted in purchases totaling $5,000 in gas and other items over a ten-month period, with some indication that the card was being used for the benefit of some person or persons other than Dr. Mayne. When asked about those purchases, Dr. Mayne stated that "he just pays the bills."

From those facts, the trial court found that Dr. Mayne needed a guardian of the property. The court stated that its decision was about "more than Dr. Mayne being simply a generous person;" it was about his "failure to remember giving cash to multiple people," his "gross underestimation of the tens of thousands of dollars that he's given his

caregivers and their family and friends," and his lack of awareness as to "how much those caregivers use his credit cards on a monthly basis to pay hundreds of dollars for personal items for themselves." We perceive no error in the court's findings or in its decision to appoint a guardian of the property for Dr. Mayne.

B.

Dr. Mayne next argues that the trial court erred in appointing Ms. Reed as his guardian. Dr. Mayne asserts that he and Ms. Reed have a hostile relationship and that he does not trust her. He also asserts that there were individuals, such as his sister, Ms. Markee, whom the court could have appointed and who had a "higher priority" than Ms. Reed.

Priorities for the appointment of a guardian of the person are set forth in E&T § 13-707(a), which states:

> (a) Persons are entitled to appointment as guardian of the person according to the following priorities:
>
> (1) A person, agency, or corporation nominated by the disabled person if the disabled person was 16 years old or older when the disabled person signed the designation and, in the opinion of the court, the disabled person had sufficient mental capacity to make an intelligent choice at the time the disabled person executed the designation;
>
> (2) A health care agent appointed by the disabled person in accordance with Title 5, Subtitle 6 of the Health-General Article;
>
> (3) The disabled person's spouse;
>
> (4) The disabled person's parents;
>
> (5) A person, agency, or corporation nominated by the will of a deceased parent;

(6) The disabled person's children;

(7) Adult persons who would be the disabled person's heirs if the disabled person were dead;

(8) A person, agency, or corporation nominated by a person caring for the disabled person; [and]

(9) Any other person, agency, or corporation considered appropriated by the court[.][3]

Priorities for the appointment of a guardian of the property are set forth in E&T § 13-207(a), which states:

(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 disable person if:

(i) The designation was signed by the minor or disabled person when the minor or disabled person was at least 16 years old; and

(ii) In the opinion of the court, the minor or disabled person had sufficient mental capacity to make an intelligent choice at the time the designation was executed;

(3) The minor or disabled person's spouse;

(4) The minor or disabled person's parents;

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

(6) The minor or disabled person's children;

[3] E&T § 13-707 lists a tenth priority that is not relevant here. E&T § 13-707(a)(10).

> (7) The persons who would be the minor or disabled person's heirs if the minor or disabled person were dead;
>
> (8) A person or corporation nominated by a person, institution, organization, or public agency that is caring for the minor or disabled person;
>
> (9) A person or corporation nominated by a governmental agency that is paying benefits to the minor or disabled person; and
>
> (10) Any other person considered appropriate by the court.

E&T § 13-707 also states that, "[f]or good cause, the court may pass over a person with priority and appoint a person with a lower priority." E&T § 13-707(c)(1)(ii). Likewise, E&T § 13-207 states that "[f]or good cause the court may pass over a person with priority and appoint a person with less priority or no priority." E&T § 13-207(c)(2). "Good cause" means "a substantial reason to find that a person with lower priority . . . is a better choice than a person with higher priority to act in the best interest of the ward." *Meek v. Linton*, 245 Md. App. 689, 723 (2020). "This definition is a flexible one, and its application will vary with the facts and circumstances of the individual case." *Id.* "A statutory preference in the appointment of a guardian, although seemingly mandatory and absolute, is always subject to the overriding concern of the best interest of the ward." *Mack v. Mack*, 329 Md. 188, 203-04 (1993).

In reviewing whether "good cause" exists, we examine the reasons articulated by the trial court in selecting a guardian with a lower priority in lieu of someone with a higher priority. *Meek*, 245 Md. App. at 723. We then determine "whether the reasons and any factual findings underlying those reasons are supported by competent evidence

and then determine whether the reasons support the [court's] conclusion[.]" *Id.* "If our answer is in the affirmative, we next review whether the trial court's reasons, either individually or as a whole, can be classified as substantial, and thus constitute 'good cause.'" *Id.* "Such review is made under the abuse of discretion standard." *Id.*

Cognitive of the controlling law, we hold that the trial court did not err in selecting Ms. Reed as the guardian of Dr. Mayne's person and property. In making that decision, the court found that Ms. Reed was a "fit and proper" guardian. The court also found that there was "no one of higher priority available," explaining that Ms. Markee, Dr. Mayne's sister, "lived on the other side of the country" and was, consequently, unable to "carry out the necessary responsibilities given that [Dr. Mayne is] supposed to have 24-hour seven days a week care." None of those findings by the court were clearly erroneous.

Moreover, Ms. Reed maintained a close relationship with Dr. Mayne for nearly four decades, and she was intimately involved in his care in the years leading up to the filing of the petition. None of the other individuals who testified, including Ms. Markee, were even remotely close to matching the level of concern and care exhibited by Ms. Reed. In fact, Ms. Markee testified that, prior to her visit at the assisted living facility where Dr. Mayne was staying in 2018, she had not seen him in approximately 30 years. Therefore, the court had real and material reasons to find that Ms. Reed was the best choice to act in Dr. Mayne's best interests, and the court did not abuse its discretion in naming Ms. Reed guardian.

C.

Dr. Mayne next contends that the court erred in finding that there were no less-restrictive alternatives to a guardianship of his person. He asserts that Ms. Reed failed to carry her burden of showing that there were no less-restrictive alternatives that were consistent with his welfare and safety. He asserts, in fact, that his welfare and safety were "never in doubt." He also notes that he consented to several less-restrictive alternatives, including "a 24-hour care manager, or an oversight of his decisions concerning his financial affairs, or members of his family serving as agents."

As discussed, E&T § 13-705 states, in relevant part, that "[a] guardian of the person shall be appointed if the court determines from clear and convincing evidence that . . . no less restrictive form of intervention is available that is consistent with the person's welfare and safety." E&T § 13-705(b)(2). The statute's plain language requires a two-fold inquiry: whether a less-restrictive form of intervention is available and, if so, whether that intervention is consistent with the person's welfare and safety. "In other words, the availability of a form of intervention less restrictive than a guardianship is insufficient alone to defeat a petition for guardianship. The form of intervention also must be consistent with the person's welfare and safety." *Meek*, 245 Md. App. at 714 (citations and quotations omitted).

Here, the trial court considered less-restrictive alternatives to guardianship and found, by clear and convincing evidence, that those alternatives "would not be appropriate and would not address the concerns raised throughout the trial." The court noted that Dr. Mayne, in arranging for his own care, had continued to employ care

providers who slept during shifts, worked partial shifts, allowed soiled clothes to remain on the floor for an undetermined amount of time, and failed to assist him in and out of his wheelchair to use the toilet. The court also noted that Dr. Mayne, in managing his own finances, had grossly underestimated the "tens of thousands of dollars" that he had given his caregivers and had exhibited a lack of awareness as to how much those caregivers used his credit cards "to pay hundreds of dollars for personal items for themselves." Finally, the court noted that Dr. Mayne exhibited a willingness to make drastic changes to preserve his autonomy. The court explained, by way of example, that Dr. Mayne tried to revoke Ms. Reed's power of attorney and give it to other individuals who did not "appear to have a particularly close relationship with him or even awareness of his actual living conditions."

In sum, the court had before it clear and convincing evidence that, of the less-restrictive forms of intervention that were available, none were consistent with Dr. Mayne's welfare and safety. Accordingly, the court did not err.

II.

Dr. Mayne's final argument concerns a video that was admitted into evidence at trial. The video was approximately 12 minutes long, had no audio, and consisted of various "clips" depicting certain events that occurred in Dr. Mayne's home over a five-day period in February of 2019. The video had been captured by a camera that Ms. Reed had placed inside of Dr. Mayne's home without his knowledge. The court admitted the video over objection.

Dr. Mayne now claims that the court erred in admitting the video. He asserts that the video was inadmissible because it violated the Maryland Wiretap Act, § 3-903 of the Criminal Law Article ("CL") of the Md. Code Ann.[4] and his right to privacy.

We hold that the trial court did not err in admitting the video. First, the video contained no audio or oral communication; therefore, it was not prohibited by the Maryland Wiretap statute. *Holmes v. State*, 236 Md. App. 636, 654 (2018). Second, although CL § 3-903 does prohibit a person from placing a camera in a private residence to conduct deliberate surreptitious observation of someone in the residence, there is nothing in the statute that states that a video derived from such a surreptitious recording by a non-state actor is *per se* inadmissible. CL § 3-903. Indeed, Dr. Mayne offers no relevant authority to suggest that such a recording by a non-state actor would be inadmissible simply because it violated a person's "right to privacy." In short, Dr. Mayne has offered no compelling argument to suggest that the trial court's admission of the video was erroneous.

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

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[4] CL 9-903.