STATE OF MICHIGAN

COURT OF APPEALS

In re Conservatorship of AS.

AS, a legally incapacitated person,

Appellant,

v

MATTHEW M. MARTIN, and JULIE WILLIAMSON, Conservator,

Appellees.

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No. 374179
Genesee Probate Court
LC No. 2024-225980-CA

In re Guardianship of AS.

AS, a legally incapacitated person,

Appellant,

v

MATTHEW M. MARTIN, and JULIE WILLIAMSON, Guardian,

Appellees.

No. 374181
Genesee Probate Court
LC No. 2024-225979-GA

Before: WALLACE, P.J., and RIORDAN and REDFORD, JJ.

PER CURIAM.

The legally incapacitated adult ward, AS, was 86 years old when she was hospitalized after running out of her house in a state of undress. She was discharged to a skilled nursing facility that petitioned for the appointment of a guardian and a conservator for AS, both of which were granted by the probate court.

During the proceedings, AS requested to obtain her own independent medical evaluation to contest the medical evaluations that were presented by petitioner. The probate court granted several adjournments so that AS could obtain an independent medical evaluation, but she ultimately failed to obtain one before the hearing, and the probate court did not grant any further adjournments. Consistent with the observations of the doctor who examined AS almost seven months before the hearing, witnesses at the hearing described AS's paranoia, inability to focus, refusal to cooperate or to make decisions, and refusal to listen to doctors. The probate court found AS in need of, and appointed, a conservator and a guardian.

AS now appeals as of right. We affirm.

I. RIGHT TO INDEPENDENT MEDICAL EVALUATION

AS first argues that she had a right to secure an independent medical evaluation and that the probate court deprived her of that right by refusing to grant an adjournment on the day of the hearing on the petitions. We agree that she has a right to secure an independent medical evaluation, but we disagree that the probate court deprived her of that right.

This Court reviews a lower court's decision whether to grant an adjournment for an abuse of discretion. *Charter Twp of Ypsilanti v Dahabra*, 338 Mich App 287, 292; 979 NW2d 725 (2021). "An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes." *In re Conservatorship of Shirley Bittner*, 312 Mich App 227, 235; 879 NW2d 269 (2015). This Court reviews questions of law de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). Because a court "necessarily abuses its discretion when it makes an error of law," appellate review of a trial court's discretionary decision that was based on a legal determination is "effectively" de novo. *Milne v Robinson*, 513 Mich 1, 7-8; 6 NW3d 40 (2024) (cleaned up).

In a conservatorship proceeding, under MCL 700.5406(2), "[t]he individual alleged to need protection has the right to secure an independent evaluation at his or her own expense." Similarly, in a guardianship proceeding, under MCL 700.5304(2), "[t]he alleged incapacitated individual has the right to secure an independent evaluation, at the individual's own expense or, if indigent, at the expense of the state." We agree with the holding by a panel of this Court that the above language only requires the probate court to ensure that the individual has an opportunity to secure an independent evaluation and is not responsible for the individual's failure to successfully avail herself of that right. *Gamble-Wilson v Community Mental Health*, unpublished per curiam opinion of the Court of Appeals, issued September 11, 1998 (Docket No. 196647), pp 3-4.[1] Here, the probate court granted an adjournment so that AS could obtain an evaluation, then granted another adjournment for unrelated reasons, and finally granted a third adjournment of 56 days, which was longer than the 45 days that AS requested, so that AS could obtain another evaluation from a different evaluator. By the time of the hearing, AS had just begun the intake process, which was delayed by her own paranoia and inability to focus on her issues—both of which were reasons why petitioner sought the guardianship and conservatorship. With these repeated

[1] "Although unpublished opinions are not precedentially binding, in the absence of published authority 'on point,' unpublished opinions may be considered as persuasive." *Johnson v Mich Assigned Claims Plan*, ___ Mich App ___, ___ n 3; ___ NW3d ___ (2024) (Docket No. 368048); slip op at 5 n 3.

accommodations, the probate court protected AS's right to secure an independent evaluation, and it was not responsible for AS's inability to avail herself of that right.[2]

II. ALLEGED EVIDENTIARY ERROR

AS next argues that the probate court erroneously admitted hearsay evidence from a doctor who examined her almost seven months before the hearing without permitting her to cross-examine the doctor. We disagree.

"This Court reviews the probate court's evidentiary decision[s] for an abuse of discretion." *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998). Because AS never raised any hearsay objection to the doctor's report,[3] nor did she raise an objection to her inability to cross-examine the doctor, those arguments are unpreserved. *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). Unpreserved issues in guardianship appeals are reviewed for plain error affecting substantial rights. *In re Guardianship of AMMB*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 368915); slip op at 2-3.

A medical professional's report regarding an allegedly incapacitated person "may be used as provided in the Michigan rules of evidence." MCL 700.5304(1). The rules of evidence apply in all actions and proceedings unless, in relevant part, "a rule prescribed by the Supreme Court" provides otherwise. MRE 1101(a). Under MCR 5.405(A)(1), in a guardianship proceeding:

> The court may receive into evidence without testimony a written report of a physician or mental health professional who examined an individual alleged to be incapacitated, provided that a copy of the report is filed with the court five days before the hearing and that the report is on the form required by the state court administrator. . . .

Therefore, if a report comports with the requirements in MCR 5.405(A)(1), the rules of evidence provide that it may be admitted without testimony. In this case, the doctor's report was prepared on a "PC 630" form, which is required by the State Court Administrative Office (SCAO), and it was filed more than five days before the hearing, so it satisfied the requirements of MCR 5.405(A)(1). The probate court properly admitted it into evidence without testimony under MRE 1101(a) and did not thereby violate MCL 700.5304(1). The doctor also submitted a letter, which was not on a SCAO form, and the letter was

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[2] We note that nothing in the transcript of the hearing reflects an express request for a fourth adjournment, although from context, it appears that all parties believed AS had impliedly made such a request. AS contends that the parties stipulated to an adjournment, but AS does not identify anywhere in the record where such a stipulation occurred, nor can we find any such stipulation. We finally note that AS never provided the probate court with any reason—such as an offer of proof—to believe that the outcome of a second independent evaluation would have been more favorable to her than the outcome of the first evaluation that she rejected. She therefore fails to show the prejudice necessary to overturn a denial of an adjournment. See *People v Hoag*, 460 Mich 1, 8; 594 NW2d 57 (1999); *People v Coy*, 258 Mich App 1, 18-19; 669 NW2d 831 (2003).

[3] She did object to admission of a report prepared by the first doctor who performed an independent evaluation, but the record does not suggest that the probate court admitted or relied on that report. She raised other hearsay objections, but only to matters not at issue on appeal.

mostly duplicative of the report and of testimony provided by witnesses at the hearing. Given AS's failure to preserve a hearsay objection and the minimal novel information in the letter, any possible error in its admission was harmless. See *People v Gursky*, 486 Mich 596, 619; 786 NW2d 579 (2010).

The doctor's report also satisfies the requirements of MCL 700.5304(3). MCL 700.5304(3)(a) requires "[a] detailed description of the individual's physical or psychological infirmities," which the report satisfied to the extent that could be expected from the minimal space provided by the PC 630 form by stating that AS suffered from poor insight, paranoia, and delusions. MCL 700.5304(3)(b) requires "[a]n explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions," which the report satisfied by stating that AS's paranoid delusions interfere with her ability to make informed decisions and could prove detrimental to herself or others. MCL 700.5304(3)(c) requires a list of medications received by the individual, their dosages, and the effects they have on the individual's behavior, which the report satisfied by attaching AS's medication list. MCL 700.5304(3)(d) requires "[a] prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan," which the report satisfied because it stated that AS's prognosis was "guarded" and attached a list of directives that appear to be for the general goal of rehabilitation. Finally, MCL 700.5304(3)(e) requires "[t]he signatures of all individuals who performed the evaluations on which the report is based," which the report satisfied because the doctor signed it and AS identifies no other individuals whose signatures are absent.

AS also argues that the doctor practiced internal medicine rather than neuropsychology, psychiatry, or some other related specialty. Because the probate court sua sponte recognized the doctor, clearly rendering any objection AS might have made futile, we regard AS's challenge to the doctor's qualifications as preserved. See *People v Stevens*, 498 Mich 162, 180 n 6; 869 NW2d 233 (2015). AS also argues that the doctor's report was stale. Because the probate court cut off that entire line of cross-examination, we will resolve doubt about whether AS preserved her challenge to the age of the report in her favor. See *Mueller v Brannigan Bros Restaurants and Taverns LLC*, 323 Mich App 566, 585-586; 918 NW2d 545 (2018). However, AS does not offer any meaningful argument on appeal explaining why the doctor's credentials are supposedly inadequate, waiving this argument on appeal. *Batton-Jajuga v Farm Bureau Gen Ins Co of Mich*, 322 Mich App 422, 437; 913 NW2d 351 (2017). AS similarly offers no meaningful argument regarding the significance of the age of the report, but we further note that the witnesses' testimony generally supported the doctor's observations, strongly undermining any possible staleness argument.

AS also argues that she was not permitted to cross-examine the doctor. However, the doctor was not presented as a witness, and AS identifies no authority that required the doctor to be called as a witness. AS could have presented the doctor herself, because MCL 700.5304(5) and MCL 700.5406(5) each provide the right to "present evidence" and to "cross-examine witnesses," including cross-examining a court-appointed physician. This includes the right to present a witness because incapacitated individuals in guardianship and conservatorship proceedings are entitled to many of the rights held by criminal defendants, *In re Guardianship of Malloy*, 513 Mich 148, 157 & 157 n 8; 15 NW3d 142 (2024). AS, however, did not present the doctor as a witness. "[I]n general, an appellant may not benefit from an alleged error that the appellant contributed to by plan or negligence." *People v Witherspoon*, 257 Mich App 329, 333; 670 NW2d 434 (2003).

In summary, we find no evidentiary error that would warrant reversal on this issue.

III. SUFFICIENCY OF THE EVIDENCE

AS next argues that the probate court erred by finding sufficient evidence that she needed a guardian and a conservator. We disagree.

The probate court may appoint a guardian for an "incapacitated individual" as defined in MCL 700.1105(a) if "the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record," MCL 700.5306(1). *Guardianship of Malloy*, 513 Mich at 155-158. " 'Incapacitated individual' means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, . . . or other cause not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions." MCL 700.1105(a). The probate court may appoint a conservator if the "individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability," MCL 700.5401(3)(a), and the individual "has property that will be wasted or dissipated unless proper management is provided," MCL 700.5401(3)(b). *In re Conservatorship of Brody*, 321 Mich App 332, 337; 909 NW2d 849 (2017).

The probate court may only appoint a guardian or conservator if it "concludes by clear and convincing evidence—the most demanding standard applied in civil cases" that the appointment is necessary. *In re Guardianship of Malloy*, 513 Mich at 158 (quotation marks and citation omitted). This Court reviews a probate court's appointment of a fiduciary for an abuse of discretion. *In re Conservatorship of Bittner*, 312 Mich App at 235. This Court reviews a probate court's findings of fact for clear error, which occurs "when this Court is left with a definite and firm conviction that a mistake has been made." *In re Guardianship of Redd*, 321 Mich App 398, 403; 909 NW2d 289 (2017) (quotation marks and citation omitted).

AS first relies on taking portions of an opinion of this Court out of context. In *In re Estate of Schroeder*, 335 Mich App 107, 118; 966 NW2d 209 (2020), this Court addressed a case in which an allegedly incapacitated individual suffered an injury that the petitioner asserted left the individual unable to care for himself or to manage his property and business affairs. The individual's guardian ad litem (GAL) agreed that the individual's injury would likely keep him from returning home and that the individual was unable to make informed decisions, but the GAL also "offered somewhat conflicting evidence" that the individual understood his assets and did not object to entry of a protective order. *Id*. at 118. The probate court considered various medical records that were never entered into the record, so this Court was unable to review the probate court's findings. *Id*. at 118-119. This Court noted that "the assertions of the GAL, who is not a medical professional, would not appear to constitute clear and convincing evidence," commenting on the conflicting nature of the GAL's testimony. *Id*. at 119.

Thus, this Court did not hold that medical testimony is always necessary and that lay testimony is necessarily insufficient, but, rather, that appellate review was precluded in that case by the probate court's failure to ensure that critical evidence was in the record and that the GAL's testimony was insufficient under the circumstances. In contrast, there is no indication in this record that the probate court considered any evidence outside of the record, the probate court properly admitted medical evidence, and the lay witness testimony was consistent and amply supported the doctor's findings. While evidence is not necessarily clear and convincing merely because it is undisputed, *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), the evidence here was both strong and undisputed that AS suffered from debilitating paranoia and intransigence, an inability to appreciate the nature of her situation or to focus on her actual

problems, and an inability or unwillingness to communicate or cooperate effectively with others. AS dismisses the evidence as merely suggesting a propensity for clutter and the kind of orneriness that might be expected of advanced age, but AS in fact hoarded rotten food, which goes beyond mere clutter, and accused various people of conspiring against her, which goes beyond mere orneriness. Therefore, the probate court did not clearly err by finding clear and convincing evidence that AS was an "incapacitated individual" under MCL 700.1105(a), or by finding that appointment of a guardian was "necessary as a means of providing continuing care and supervision" of AS under MCL 700.5306(1).

With regard to the appointment of a conservator, the evidence also shows that AS was " 'unable' to perform the tasks necessary to 'effectively' care for her assets." *In re Conservatorship of Bittner*, 312 Mich App at 238, quoting MCL 700.5401(3)(a). The "irksome attendants to the aging process" like difficulties with memory and arithmetic will not suffice, but an inability to make rational decisions regarding one's assets, especially if the individual does not recognize his or her limitations, may establish the necessary degree of disability. *Id*. at 239-240. AS displayed paranoia, irrational beliefs, and a lack of recognition of her cognitive deficits. Although there was no specific evidence that she had actually failed to manage her assets, there was evidence that she was unable to make rational decisions or communicate effectively in general, which would intuitively pose a challenge to handling any kind of responsibility, and there was evidence that she had attempted to withdraw large sums of money. The evidence went beyond merely some difficulties, especially because AS was unwilling or unable to recognize that she had any difficulties. Accordingly, the probate court did not clearly err by finding clear and convincing evidence that AS was unable to manage her property and business affairs effectively because of a mental illness or a mental deficiency under MCL 700.5401(3), and that appointment of a conservator was warranted under that statute to provide proper management of her assets.

IV. LESSER REMEDY THAN FULL GUARDIAN OR CONSERVATOR

AS argues that the witnesses agreed that she merely needed some assistance, there was no evidence that her life would be endangered by failing to take any of her medications, and there was no evidence that she would waste or dissipate her assets. She argues that, at the most, the probate court should have appointed a limited guardian under MCL 700.5306(3) or a limited protective order under MCL 700.5407(1). AS ignores, however, the serious nature of her deficits as established by the evidence.

The evidence established that AS was capable of "most of her activities of daily living," and she was not taking medication for any immediately life-threatening conditions. But she refused to listen to doctors, refused to make important decisions, refused to work or communicate effectively with people who were trying to help her, and did not understand her need to find a different place to live. In other words, AS could perform the basic, mundane tasks of daily living, but she could not effectively manage her life or responsibilities. The evidence showed that she needed someone to manage medical and habitation decisions for her because she could not, or would not, make those decisions herself, or at least not in a competent manner given her paranoia and failure to understand the nature of her limitations. There was some confusing testimony about a lien on AS's home that might "fall off" without intervention, but, more importantly, there was evidence that AS tried to make withdrawals of funds on the order of $10,000 or $20,000, and her financial advisor was glad that the then-temporary conservator was now managing AS's funds. While there was no evidence that AS would deplete the entirety of her assets all at once, the evidence indicated a high probability that she would waste and deplete her assets, and she needed someone to make both financial and other decisions for her because she could or would not make them herself.

To the extent AS contends that the probate court failed to consider a lesser remedy than a full conservator or a full guardian, the record shows otherwise. At the conclusion of the hearing, the probate court explained that it considered the possibility of "levels of supervision," but it rejected that possibility in part because AS had no family and was unable to make decisions, and in part because it expected the guardian and conservator to give "great deference" to any wishes AS might have about where to live as communicated through her attorney. The probate court also explained that it was "giving the authority to [the guardian and conservator] until you [addressing AS's counsel] come up with something better." The probate court clearly explained that it did consider less restrictive alternatives to a full guardian or a full conservator.

V. CONCLUSION

The probate court did not err by admitting the doctor's report into evidence, did not deprive AS of the right to secure an independent medical evaluation, and was not responsible for AS's failure to avail herself of the right to secure an independent medical evaluation or to call the doctor as a witness. The probate court also did not clearly err by finding clear and convincing evidence that AS suffered from serious cognitive and behavioral limitations that necessitated appointment of a guardian and a conservator. The probate court appropriately considered and rejected the possibility of lesser remedies. We therefore need not consider AS's argument that the probate court erred by denying her motion for reconsideration.

Affirmed.

/s/ Randy J. Wallace
/s/ Michael J. Riordan
/s/ James Robert Redford