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STATE OF MICHIGAN

COURT OF APPEALS

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In re OLH, Minor.

No. 380109
Oceana Probate Court
LC No. 2025-000133-GM

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

After caring for minor OLH for several years, petitioner—a nonrelative and OLH's former temporary guardian—sought appointment as OLH's guardian. OLH's parents opposed the appointment, and the probate court ultimately denied the petition. We affirm.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

Respondents are OLH's biological parents. Petitioner has known respondent-father and his family for a long time; she often cared for respondent-father and his siblings when he was young and has actively helped respondents. Case in point—for two years leading up to the events at issue, respondents and their children lived on petitioner's property. They first lived in her home before transitioning to a mobile home and a camper. When respondents moved, OLH remained with petitioner. During that time, they even executed documents giving petitioner authority to make certain decisions about OLH.

Petitioner and respondents eventually had a falling out. Respondents moved from petitioner's property and then filed a police report seeking petitioner's return of OLH. Shortly after, petitioner filed a guardianship petition. Through counsel she alleged that respondents permitted OLH to live with her without providing legal authority for OLH's care and maintenance, and claimed that she cared for OLH "after parental abandonment." She specifically asserted that respondents asked her if she wanted OLH, petitioner agreed, respondents delivered OLH to her home, and respondents "never resumed care, custody, or control of the child." She additionally claimed that respondents "continued to avoid all parental responsibility and [had] not reclaimed" OLH, and thus that it was in OLH's best interests to remain in petitioner's care under a full guardianship.

The probate court held a hearing on the petition for guardianship at which respondent-mother and petitioner testified. Testifying first, petitioner asserted that respondents gave OLH to her when OLH was six or eight weeks old and that she was OLH's mother in every way that mattered. She claimed, for example, that she and her husband provided 90% of OLH's clothing during the past three years and used OLH's food stamps as provided by respondents. Other examples cited by petitioner included her claims that she took OLH to every well-child visit and twice took OLH to the hospital because of illness, and that OLH called her "mom" or "mommy" and called petitioner's husband "dad" or "daddy." Petitioner also testified that she told respondent-mother on many occasions that she intended to adopt OLH or to otherwise obtain a guardianship or custody of her.

Respondent-mother presented a different factual narrative. She testified that she and respondent-father were taking care of three children, were not financially stable, and asked petitioner for help. She sought to qualify that admission, testifying that they never intended to give OLH to petitioner. She also denied telling petitioner that she could have OLH if petitioner wanted her and that she planned to sign over custody of OLH to petitioner. Rather, respondent-mother testified that as soon as the family was financially stable, they took steps to get OLH back.

With this divergent testimony, the probate court determined that it needed more information before it could rule on whether there existed statutory grounds to establish a guardianship. So it ordered the Department of Health and Human Services (DHHS) to investigate the grounds for guardianship and OLH's best interests as permitted under MCL 700.5204(1), after which the hearing on the petition would be continued. Meanwhile, the probate court granted petitioner temporary guardianship and set an essentially week-on/week-off parenting-time schedule.

At a continued guardianship review hearing, the probate court established that all parties had received a copy of the DHHS Investigation Summary and that no one objected to the probate court's consideration of the document. In addition, petitioner admitted into evidence text messages between her and respondent-father before their falling out that purportedly demonstrated that respondents gave OLH to her. In one exchange, for example, respondent-father asked petitioner if she "still wanted" OLH and stated, "I want you to have" OLH. During his testimony, respondent-father explained that his messages were not serious offers, that he instead sent them to make petitioner feel better and calm her down, and that he did not want to part ways with OLH. After the hearing, the probate court renewed the temporary guardianship and parenting-time arrangement for two months; the court later extended the temporary guardianship.

Following another evidentiary hearing in which the parties again provided differing factual accounts, the probate court ultimately denied the petition for guardianship. It found that the parties' relationship was collaborative and that respondents did not intend to permit OLH to reside with petitioner after respondents vacated petitioner's property. The court additionally observed that after petitioner and respondents had a falling out, petitioner tried to "recast the relationship as one where she was always the sole caregiver and the Respondents played no role in the child's upbringing," a recasting unsupported by the evidence. For these and other reasons, the probate court held that "the statutory basis for granting a guardianship, specifically, that the parents permitted the child to live with another person without providing legal authority for care and maintenance, ha[d] not been established by a preponderance of the evidence." And alternatively,

the probate court found—adopting the reasoning set forth in the DHHS investigation—that even if the statutory basis for establishing a guardianship existed, the evidence was not clear and convincing that a guardianship was in OLH's best interests. After the probate court denied petitioner's motion for reconsideration, petitioner timely filed her claim of appeal.

II. ANALYSIS

Petitioner's pro per appellant brief identifies seven questions presented, several of which lack the required developed argument and citation to authority that usually leads to this Court finding abandonment. See, e.g., *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 403; 651 NW2d 756 (2002). However, we recognize that the arguments of parties proceeding in propria persona generally "are entitled to more generous and lenient construction than they would be if [they] had been prepared by a lawyer." *Hein v Hein*, 337 Mich App 109, 115; 972 NW2d 337 (2021). So we nonetheless give liberal construction to petitioner's arguments and issues presented (grouping them in a logical format), and elect here to briefly detail why—after a thorough review of the record—we find that reversal is not warranted in lieu of resolving this appeal on abandonment grounds.

A. GUARDIANSHIP PETITION

We turn first to the probate court's denial of the petition for guardianship under MCL 700.5204. It found that the evidence did not establish that respondents intended to permit OLH to permanently reside with petitioner as contemplated by MCL 700.5204(2)(b). We review that finding of fact for clear error, *In re Redd Guardianship*, 321 Mich App 398, 403; 909 NW2d 289 (2017), and its dispositional ruling concerning guardianship for an abuse of discretion, *In re Bazakis Guardianship*, 342 Mich App 144, 161; 992 NW2d 673 (2022). The probate court's finding rests largely on its assessment of the witnesses' credibility. This Court "defers to the probate court on matters of credibility and gives broad deference to findings of fact made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily ascertainable to the reviewing court." *In re Velasquez*, 344 Mich App 118, 127; 998 NW2d 898 (2022).

MCL 700.5204(2)(b) states that a "court may appoint a guardian for an unmarried minor if . . . [t]he parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed." The critical question here is whether respondents permitted OLH to reside with petitioner when the guardianship issue arose. *Deschane v St Germain*, 256 Mich App 665, 670; 671 NW2d 79 (2003) ("[T]he permission to reside referred to in the statute must be currently occurring—which would be shown by the child's actual presence in the care of another—when the guardianship issue arises."). Viewing the record through the deferential lens of clear-error review of the probate court's fact finding on permission, we discern no error mandating reversal.

After they moved from petitioner's property, respondent-mother filed a police report seeking to have petitioner return OLH. That is powerful evidence that, at the time the petition was filed, permission for OLH to reside with petitioner was not "currently occurring." See *id*. Indeed, the petition's timing indicates that the guardianship issue arose *because* respondents no longer

acquiesced in OLH's living with petitioner. For these reasons, respondents' "past permission"—that OLH lived with petitioner after respondents moved out of petitioner's house and onto her property—"is irrelevant." *In re Versalle Guardianship*, 334 Mich App 181, 186; 963 NW2d 701 (2022).

Moreover, the probate court reasonably found the parties' discussions about possible future adoption did not reflect an intent to permit OLH to permanently reside with petitioner. Respondent-mother, for example, repeatedly insisted that she viewed OLH's living with petitioner as a temporary measure that would allow respondents to get on their feet financially; petitioner adopting OLH was a last resort that had proven to be unnecessary. She further testified that petitioner and respondents collaboratively cared for OLH while respondents lived in petitioner's house and that respondents continued to provide for OLH by giving OLH's food stamps to petitioner. Respondents' testimonies—like respondent-father's explanation of his text messages—also indicated that they never expressed a desire to cease contact with OLH. The trial court permissibly credited respondents' factual narrative over petitioners'.

Given this Court's deference to the probate court's credibility assessment, and petitioner's failure to point to evidence on appeal demonstrating error in that assessment, we cannot say the probate court clearly erred by finding that respondents lacked intent to allow OLH to reside with petitioner after respondents left her property.

Petitioner additionally faults the probate court's consideration of best interests. But the probate court based its denial of the guardianship petition on the fact that the requirements for appointing a guardian under MCL 700.5204(2) were not satisfied. MCL 700.5204(2)(b) "implicitly affords a parent the constitutional presumption that he or she is a fit parent, while also providing a potential guardian the opportunity to rebut that presumption." *Versalle*, 334 Mich App at 186-187. When the statute's requirements are not satisfied, as here, the statute "does not allow a presiding court to make its own determination of the child's best interests." *Id*. at 185.

Finally, petitioner asserts that she is entitled to relief because respondents' attorney filed an appearance in the wrong case. The record does not support petitioner's assertion—respondents' attorney filed his appearance in File No. 2025-133-GM, the case number assigned to petitioner's guardianship petition, the case number that appeared on documents generated by petitioner's attorney, and the case number that appeared on documents generated by petitioner. To the extent petitioner argues that the probate court relied on incorrect statements made by respondents' attorney, as already indicated, record testimony supports the probate court's decision to deny the guardianship petition on the basis that the requirements of MCL 700.5204(2)(b) were not met.

B. ALLEGED DUE-PROCESS VIOLATIONS

Petitioner next asserts two violations of her right to due process.

Service of Probate Court Order. She first takes issue with her not being served with a signed copy of the probate court's order after the hearing on her petition. Because petitioner first raised this issue in her motion for reconsideration, this issue is not preserved and our review is for plain error affecting her substantial rights. See *In re AMMB Guardianship*, ___ Mich App ___,

___; ___ NW3d ___ (2024) (Docket No. 368915); slip op at 2-3. We see no error, let alone one that is plain.

Petitioner's attorney prepared the order in question, which the probate court signed and then served by first-class mail on petitioner's attorney on October 29, 2025. That satisfied the service requirements in MCR 2.107(A)(1) and (A)(3). Nothing in the record establishes service on petitioner was required. It is true that petitioner discharged her attorney, but that occurred in December 2025, i.e., after service of the order at issue. Accordingly, petitioner fails to establish any error demonstrating a violation of her right to due process.

Reopening of case. Petitioner next alleges a due process violation and a violation of her right to access the courts predicated on the probate court's refusal to reopen her case.[1] We construe petitioner's motion to reopen the case as a motion for relief from judgment under MCR 2.612(C). *Peterson v Oakwood Healthcare, Inc*, 336 Mich App 333, 347; 970 NW2d 389 (2021). She is not so entitled for a multitude of reasons.

First, respondents' decision to prohibit petitioner's contact with OLH that followed in the wake of the probate court's denial of petitioner's guardianship petition is not an "operation of the judgment." MCR 2.612(C)(1)(f). Rather, it was the consequence of respondents' exercise of their fundamental right to make decisions concerning the care, custody, and control of OLH. See *Heltzel v Heltzel*, 248 Mich App 1, 21-24; 638 NW2d 123 (2001). Second, as a nonrelative third party, petitioner lacked standing to obtain the relief that she sought—parenting time may only be made in the context of a child-custody dispute. See *Terry v Affum*, 233 Mich App 498, 501-503; 592 NW2d 791 (1999), vacated in part on other grounds 460 Mich 8556 (1999).

Finally, we cannot say that the probate court denied petitioner's right to access the court. Michigan courts have recognized the "constitutional right of access to the courts, whereby a plaintiff with a nonfrivolous legal claim has the right to bring that claim to a court of law." *Gillette Commercial Operations North America & Subsidiaries v Dep't of Treasury*, 312 Mich App 394, 436; 878 NW2d 891 (2015) (quotation marks and citation omitted). The right of access is implicated when the ability to file suit is delayed or blocked altogether. *Id*.

Petitioner presented her guardianship petition to the probate court, was heard at a two-day evidentiary hearing, and received an order from the probate court denying the petition. Her parenting-time purpose for reopening the case was unrelated to the guardianship petition and would have had no effect on the probate court's decision to deny the petition. As already explained, however, reopening the guardianship case would not have provided petitioner an

[1] This claim of error relies on documents that are not part of the probate court record. Our review is limited to the record established by the lower court, and a party may not expand the record on appeal. See MCR 7.210(A); *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Nevertheless, we may take judicial notice of court records at any stage of the proceeding. MRE 201. Because there can be no dispute that petitioner moved to reopen the case, and because the probate court was aware of the motion, even if it declined to grant it, for purposes of this case, we take judicial notice of petitioner's postjudgment filing.

opportunity to obtain parenting time. In sum, the probate court did not deny petitioner's right to access court.

C. MOTION FOR RECONSIDERATION

Our last issue to address is petitioner's claim that evidence arising after a March 2025 hearing on her guardianship petition warrants relief, specifically, respondents' prohibition of all contact between her and OLH. Viewing this as a challenge to the probate court's denial of her motion for reconsideration without granting the parenting-time relief that petitioner requested, we detect no error.

MCR 2.119(F) governs motions for reconsideration. To obtain relief, the moving party must "demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3). We review for abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). Petitioner has not submitted any facts or arguments demonstrating relief on this issue.

First, the court's failure to consider evidence that was not before it can hardly be deemed "palpable error." Second, even if it had considered the merits of petitioner's requested relief, petitioner would not have been entitled to relief for reasons already stated—petitioner's status as temporary guardian expired; the probate court denied her petition for guardianship the next day; respondents were free to exercise their fundamental right to make decisions concerning the care, custody, and control of OLH, see *Heltzel*, 248 Mich App at 21-24; and petitioner lacked standing to independently seek parenting time, see *Terry*, 233 Mich App at 501-503. Accordingly, the probate court lacked the legal authority to grant petitioner the relief she requested by entering an order contrary to respondents' decision to prohibit contact between OLH and petitioner. See *In re ADW*, 350 Mich App 604, 616-618; 33 NW3d 674 (2024).

III. CONCLUSION

For these reasons, we affirm the probate court's judgment.

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock