2011 IL App (2d) 110436-U
No. 2-11-0436
Order filed November 23, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ESTATE OF AUDREY A. BABER, An Alleged Disabled Person	)	Appeal from the Circuit Court of Kane County.
	)	No. 09-P-581
	)	Honorable
(Robert D. Baber, Petitioner-Appellant v. Audrey A. Baber, Respondent-Appellee).	)	James R. Murphy, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Bowman and Zenoff concurred in the judgment.

ORDER

Held: The trial court's determination that respondent did not need a guardian to manage matters concerning her person and health care was not against the manifest weight of the evidence. Similarly, the trial court's decision to appoint a limited guardian instead of a plenary guardian for financial and estate matters was not against the manifest weight of the evidence and did not constitute an abuse of discretion.

¶ 1 Petitioner, Robert D. Baber, appeals the judgment of the circuit court of Kane County, denying his motion seeking the appointment of a plenary guardian of the estate and person of respondent, Audrey A. Baber and, instead granting in part Audrey's counterpetition opposing guardianship or, in the alternative, seeking the appointment of a limited guardian. Petitioner argues that the trial court's decision to appoint only a limited guardian was against the manifest weight of

the evidence because the evidence adduced at the hearing on the motion showed that Audrey was totally incapable of managing her estate or person. In addition, petitioner challenges specific provisions of the trial court's order, arguing that the trial court abused its discretion in appointing a limited guardian along with the rights specifically reserved to Audrey. Petitioner further contends that the trial court's decision to disregard the report of Dr. Samuel Kelly regarding Audrey's competency was an abuse of discretion. We affirm.

¶ 2 Before embarking on a summarization of the evidence adduced at the hearing on the parties' petitions, we are first compelled to direct some remarks at petitioner's statement of facts. Regarding the statement of facts, Illinois Supreme Court Rule 341(e)(6) (eff. July 1, 2008), provides that the appellant shall furnish a "Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment." This means that a party is to include *all* of the relevant facts, even those adverse to its position on appeal. Here, petitioner emphasized only those facts supporting his argument and ignored or gave intolerably short shrift to those facts supporting the trial court's judgment. As we have stated previously, "[i]n a case like this one, where the trial court heard conflicting testimony, a statement of facts that recites only the evidence favorable to the appellant is a flagrant and inexcusable violation of this rule." *People v. Bavone*, 394 Ill. App. 3d 374, 377 n.1 (2009). While we have the duty to review the record, we note that such an unbalanced statement of facts as that given here by petitioner is of little utility either to the court or to his own cause. While our review of the record has given us a sufficient understanding of the issues raised on appeal so that we need not strike petitioner's brief, we admonish petitioner in future to strictly adhere to the supreme court's command to *accurately and fairly* provide those facts necessary to aid the court in understanding the circumstances of the case and the issues on appeal.

¶ 3 Audrey was born in 1924 and is 87 years of age at the time of this appeal. In 2006, she was diagnosed with dementia. The issue to be resolved in the parties' petitions is the severity of Audrey's dementia and its effect on her competency to manage her person and her financial affairs.

¶ 4 Audrey was married to Roy, who died several years ago. Together, they lived in North Carolina for over 30 years. During their marriage, they had three children, Robert, Steve, and Jan (Hartman), who are now adults. Toward the end of Roy's life, Audrey and Roy lived at River Landing, an assisted living facility located in North Carolina. They were attended there by Laura Stroud, a caregiver who worked five to six days a week for eight or nine hours a day. Stroud provided help with household chores as well as giving reminders to Audrey for medications, appointments, and the like. Stroud testified that, in most areas of Audrey's day-to-day functioning, she observed only the normal indicators of advancing age, such as forgetfulness about medications or appointments and the like. Stroud also testified that she was present in September 2009, when Dr. Kelly examined Audrey, at which Audrey was unable to tell Kelly the year or the name of the state in which she resided. At the time of trial, however, she had not seen Audrey since October 2009, and had no knowledge of Audrey's living arrangements or her abilities in conducting her day-to-day life.

¶ 5 After Roy died, Audrey moved to the Chicago area. Eventually, she settled in the Alden in Aurora, another assisted living facility. According to petitioner, Audrey's move to the Chicago area was under "questionable circumstances." Indeed, during the hearing on the petitions, petitioner portrayed the move as little more than a kidnaping by her son Steve in order to financially exploit Audrey.

¶ 6 In the fall of 2009, petitioner instituted these proceedings, seeking the appointment of a plenary guardian for the estate and person of Audrey, alleging that she was no longer able to manage

her affairs. Audrey initially filed a counterpetition seeking the appointment of a plenary guardian, or, alternatively, a limited guardian for her estate and person. Later, Audrey amended the petition to seek only a limited guardian. At the hearing, Audrey's counsel explained that the counterpetition was more in the nature of a settlement offer, hoping that Robert would agree to the limited guardian and drop his petition for a plenary guardian.

¶ 7 At the end of September 2009, Audrey was examined by Samuel Kelly, a doctor in North Carolina. Based on his examination, he authored a November 16, 2009, report, which was attached to the petition in this matter. Kelly diagnosed Audrey with Alzheimer's-type dementia and opined that she was unable to make financial or legal decisions. Kelly did not offer an opinion about Audrey's capacity to manage or care for her person. Kelly had been called in by petitioner based on his concern about Audrey's mental capacity as well as her ability to drive. Audrey surrendered her driver's license (and during her testimony, gave voice to her resentment of petitioner for taking it). Kelly, however, did not testify at trial, and his report was admitted into evidence as part of the records of another doctor. (Respondent repeatedly objected to Kelly's report coming in as substantive evidence at trial because Kelly was not available to cross-examine, and the trial court was generally receptive to this objection.)

¶ 8 After Kelly had examined Audrey, Steve and Jan arranged for her to visit Jan in her Pennsylvania home, and then to visit Steve in Illinois. Steve and Jan provided no notice to petitioner. Petitioner noted repeatedly at trial that Audrey left on these visits with only an overnight bag. Shortly thereafter, in October 2009, Audrey or Steve notified petitioner that Audrey was now going to reside at the Alden Gardens of Waterford in Aurora.

¶ 9 On November 17, 2009, petitioner filed a petition for guardianship over Audrey in North Carolina. The North Carolina proceeding was almost simultaneous with the Illinois proceeding.

Petitioner initially sought to be named Audrey's guardian. Some time thereafter, petitioner amended his petition, no longer seeking to be named guardian, but urging that an independent third party be named guardian.

¶ 10 At the hearing, Audrey gave lengthy testimony. She testified that she could not recall her age, but she was able to state that she had been born in 1924. Initially, she was unable to recall where she had lived before her current address, but, with prompting, Audrey testified that she had lived at River Landing with Roy for two or three years. Audrey noted that River Landing was a lovely place with good food, she had made many friends there, and she would not mind going back to it. Audrey testified that she had also made friends at Alden, and her apartment there was very nice. Audrey testified that she currently lived in a two-bedroom, two-bath apartment. The food at Alden was also very good.

¶ 11 Audrey testified that she was in court because of petitioner. According to Audrey, petitioner had caused "big time trouble" of a financial nature. Audrey indicated both that she was estranged from petitioner, and she did not trust him. When asked what bad things that petitioner had done to her, Audrey was unable to recall anything specific; she said only that it was "bad." Audrey testified that she was still upset that petitioner had taken her car away. Audrey opined it was because petitioner just wanted control over her, and she reiterated that petitioner was a "bad guy."

¶ 12 Audrey was asked who her lawyer was. She did not know. When asked leading questions by petitioner, Audrey agreed that the second attorney named, who was one of petitioner's attorneys, was her attorney. Audrey was also asked about any monetary gifts she had given recently. The evidence showed that she had given a total of $169,000 to 13 people (her nine grandchildren and Steven and Jan and their spouses). Testimony by Robert Nelson, an attorney helping Audrey with financial and estate planning, revealed that the gifting had been done to take advantage of the

remaining time of the gift tax exclusion before the law changed. Audrey was unable to say how much she had given in gifts to her grandchildren. She agreed that it was a lot of money, maybe $1,000 each. Audrey was also unable to recall how many grandchildren she had, stating that she had eight when she actually had nine. When asked to name her grandchildren, Audrey said she could name only two, Quinn and Emmy. In fact none of her grandchildren were named Quinn and Emmy, but the evidence showed that two of her great-grandchildren had those names.

¶ 13 Audrey testified that she takes medication, taking three types of pills. She agreed that Alden personnel check on her to make sure she is taking her medication.

¶ 14 Audrey also testified that she was aware of the sources of her income, mentioning a military pension. She had difficulty, however, in explaining what funds were placed into her trust account. Further, she could not explain what a trust account was and appeared to be unsure of whether she had one. Nevertheless, Audrey said a trust account was a place to hold her money.

¶ 15 Audrey testified that she keeps in touch with her relatives by phone. She talks often with her son Steve and believes that she relies too much on him. She also stated that Steve takes good care of her. Audrey testified that she was satisfied with her current living arrangements at Alden, noting that her medical needs are met and that Steve helps with her other needs. In addition, Audrey noted that she was getting help with financial matters, including the bank that was now acting as her trustee.

¶ 16 Dr. Gregory Malo testified that he is a neuropsychologist who examined Audrey. Based on his examination and testing of Audrey, he diagnosed her with dementia of moderate severity. Malo testified that she needed a guardian and required 24-hour supervision. According to Malo, she was no longer independently functioning and was unable to manage her own person, including meals and medications, and her own finances.

¶ 17 Testifying about the circumstances of his testing, Malo observed that he was informed that Audrey might have been suffering from a urinary tract infection at that time and had been taking antibiotics for two days. Malo testified this was significant, because urinary tract infections significantly compromise the cognition and memory of elderly women. In spite of this possibility, Malo decided to continue with the testing on a subject who was potentially in the throes of a urinary tract infection. Malo conceded that most other experts in the field would not have proceeded with the testing under similar circumstances. Petitioner notes that Malo concluded that Audrey was not experiencing a urinary tract infection based on the results of the testing. Additionally, petitioner points out that there was no indication of a urinary tract infection at the time of Malo's examination in Audrey's records from Alden.

¶ 18 The trial court held that "Dr. Malo's opinion is given less weight because of his decision to proceed with testing" in light of the expert consensus that testing regarding mental capability not proceed when the subject has a urinary tract infection. The trial court also noted that, despite the lesser weight accorded Malo's testimony, "Dr. Malo's diagnosis does not differ dramatically from Dr. Malhotra's [an adult and geriatric psychiatrist who examined Audrey at her counsel's behest], in that they both find moderate dementia. It is their respective conclusions regarding need for guardianship that differs."

¶ 19 Dr. Rajeev Malhotra examined Audrey at her counsel's request. Malhotra is board-certified in the areas of adult and geriatric psychiatry. He testified by way of evidence deposition. Malhotra examined Audrey when she arrived at Alden.

¶ 20 Based upon his examination, Malhotra diagnosed Audrey with Alzheimer's type dementia without behavioral disturbances. Malhotra ruled out depression as a possible diagnosis, which could possibly have been treated, unlike her dementia. In October and December 2009, Malhotra

administered Mini-Mental Status Examinations (MMSE) to Audrey. Malhotra testified that the result of the October test was a score of 23 out of 30, which is indicative of moderate dementia. The December MMSE resulted in a score of 17 out of 30, which, according to other witnesses' testimony, was reflective of complete incapacitation. Malhotra testified that such a result was essentially inexplicable, as a patient should not experience such a large deterioration in her memory. This was even more so in Audrey's case, because she was prescribed Exelon patches, which should have delayed the deterioration of her memory. Malhotra noted, however, that Audrey may have been experiencing another urinary tract infection at the time of the December MMSE. Malhotra testified that the December MMSE did not change his opinion as to Audrey's competency and mental capability. Malhotra also noted that Audrey generally was a very anxious person, and she did not do very well whenever she was "put on [the] spot." Malhotra did not reference the December results in any of his follow-up examinations. Nevertheless, based on his interactions with Audrey, Malhotra opined that she had the capacity to make financial, personal-care, healthcare, and legal decisions.

¶ 21 The trial court, in evaluating Malhotra's opinion as to Audrey's competency, lessened the weight accorded that opinion. The court stated: "Because of his insistence that there be no change in his opinion and his follow up records in 2010 did not mention the 6 point decline, the weight to be given to his conclusion as to need for a guardian is decreased."

¶ 22 Dr. Laurie Deckard-Tankersley (Deckard) testified that she is a licensed clinical psychologist specializing in forensic psychology and neuropsychology. She testified that Audrey was referred to her by Malhotra, and, on August 20, 2010, she administered various tests to Audrey. Based on the testing, Deckard opined that Audrey was experiencing Alzheimer's-type dementia without behavioral disturbance. Deckard opined that Audrey's level of impairment was mild to moderate,

and she believed that Audrey was competent to make her own decisions regarding personal care, healthcare, legal issues, and financial issues, and otherwise required no assistance with the activities of daily living.

¶ 23 Dr. Kurt Warkenthien, Audrey's treating physician, began treating her in 2010. Dr. Warkenthien's files appear to have been the source of the Kelly report, and respondent's counsel objected to the admission of Kelly's report as substantive evidence as Kelly was not present to propound his report or to submit to cross-examination. Warkenthien testified that Audrey had good cognitive ability and was competent. He believed that Audrey had the ability to know the nature and extent of her property, to know her family members, to make a plan to dispose of her property before and after her death, and to decide and express her preferences regarding where to live. Additionally, Warkenthien testified that he observed how Audrey and Steve interacted, and, based on this, he opined that she was neither subject nor susceptible to being unduly influenced by Steve or others.

¶ 24 Robert Nelson, an attorney retained by Audrey who assisted her with estate planning and managing her financial affairs by drafting powers-of-attorney documents, testified that he had met with Audrey several times. He testified that he was impressed by Audrey's understanding of the issues they discussed about managing her financial estate and her wishes in estate planning. Nelson testified that, based on his interactions with Audrey, he believed that Audrey could make decisions, was aware of the issues facing her, including the care of her own person, and knew what she wanted to do.

¶ 25 Petitioner cross-examined Nelson about Kelly's report based on Kelly's examination of Audrey before she left North Carolina and moved to Illinois. Nelson admitted that he was aware of Kelly's report and diagnosis that Audrey had moderate to severe dementia. Nelson testified that, because he had been dealing with the elderly for many years, he understood how dementia could

present in an elderly client. He testified that, based on his meetings with Audrey, he discounted Kelly's diagnosis because Audrey was always oriented and responsive to the conversation. Nelson testified that Audrey knew what she wanted to do with regard to revoking Robert's powers regarding her estate. Nelson testified that Audrey was also clear in her belief that Robert had usurped her own duties towards her estate. Nelson prepared documents accomplishing the revocation of Robert's responsibilities and believed that Audrey was capable of executing all of the documents he prepared for her.

¶ 26 Nelson also testified that he drafted a promissory note/line of credit to cover the situation that evolved when Audrey moved to Illinois. According to Steve, Robert would not agree to release any funds from Audrey's trusts so he and Jan had to give Audrey money to pay her bills. They worked out a line of credit of up to $400,000 that Audrey could borrow from Steve. Nelson testified that Audrey fully understood the purpose and necessity for the promissory note. At some point in 2010, Audrey received control over her assets and repaid the outstanding amount on the $400,000 note. Nelson testified that he drafted a satisfaction of the note for her and Steve.

¶ 27 Nelson testified that he met with Audrey privately at her apartment at Alden to complete a document, entitled "Wishes and Preferences," to set forth her intentions on managing her person, finances, estate, and eventual death. Nelson explained that he met with her privately so that she could be entirely candid with him and avoid any pressure from her relations in expressing her desires. Nelson testified that Audrey was "crystal clear" in voicing her wishes and preferences regarding a future guardianship and related matters.

¶ 28 Nelson also testified about Audrey's decision to revoke the old powers of attorney that petitioner had been using. Nelson testified that he was careful and made sure to determine, at least

to his personal satisfaction, that she knew and understood what she was doing when she was making those changes. Likewise, he made sure that she understood when Audrey's trust was amended.

¶ 29 Alden employees Joanne Bernardi and Ancelma Varela testified about their experiences with Audrey at the Alden. Both noted that Audrey is always well dressed and clean. Audrey takes advantage of the activities offered at Alden. They testified about the fact that Audrey customarily helps one of her neighbors by guiding her back to her apartment after activities end. Both believed that Audrey was competent to manage her person without a guardian and, with prompting, to remember medications and appointments.

¶ 30 Kyle Kirkham, a lawyer, testified that he had been a trust officer for U.S. Bank for 15 years. In August 2010, U.S. Bank became trustee of Audrey's revocable living trust. Kirkham testified that he had three face-to-face meetings with Audrey, one of which included discussion about making gifts to family members. Kirkham testified that he believed that Audrey understood U.S. Bank's strategy and goals in managing her assets. Kirkham testified that Steve was present at the meetings. It was Kirkham's opinion, based on his observations of them, that Steve could not change Audrey's mind. Kirkham opined that Audrey understood what was happening with her money, the bank's financial strategy, and to whom she wanted to give gifts. Kirkham also testified that, while Audrey needed assistance with her finances, due to the sophistication of the investments involved and her lack of sophistication, her need for assistance was not unusual, particularly because she had never been the main money manager for her family.

¶ 31 Jonathan Shanower, the court-appointed guardian *ad litem* of Audrey, submitted a report that was entered into evidence. Shanower found that Audrey was "very pleasant and gracious," "immaculately dressed and groomed," and possessed a good sense of humor. He noted that, at age 86, she still reads and writes. She was able to respond to most of Shanower's questions and

appeared to enjoy the interaction. She was able to take care of herself, to maintain her apartment, and to get around on her own. Shanower believed that Audrey was content and happy with her circumstances at the Alden, and she gave him a tour of the facility, showing him the dining room, the ice cream shop, the beauty salon, the lobby, and the recreation room with pool tables (it had been remarked that Audrey enjoyed shooting pool with the other residents). Shanower concluded that, for her age, Audrey was "doing pretty well." Audrey did not need a plenary guardian and was not at risk for exploitation, but, "like most [people] her age, [she] needs some assistance but she is not totally without capacity."

¶ 32 Steve Baber was extensively examined and cross-examined, particularly by petitioner. The tenor of the examination was designed to support petitioner's position that Steve was exploiting Audrey and improperly taking her money. For example, Steven was extensively examined about the fact that he charged mileage to Audrey for trips he took her on and times he visited her. When examined by Audrey's attorney, however, Steve estimated that he charged mileage for only about 15% of his trips with, to visit, or on behalf of Audrey. Another example is examination surrounding the $400,000 loan Steve made to Audrey. The note included a provision that the outstanding balance was charged interest at the rate of 9.25% interest. At some point, the bank, apparently as trustee, refused to pay the interest on the grounds that it was exorbitant. Steve testified that Audrey wanted interest included because she believed that, otherwise, she was essentially accepting gifts from her children and she did not want that. Steve also acknowledged the bank's objection and testified that he forgave the interest term of the note. A third, less successful example (from petitioner's standpoint) concerns Malo's examination of Audrey. Petitioner noted that a court order forbade Steve from being present during Malo's examination. Nonetheless, Steve admitted that he took Audrey to be examined by Malo, as well as meeting with Malo and answering questions before

Malo proceeded to examine Audrey. Steve acknowledged the court order and, correctly, maintained that he was not present at Malo's examination of Audrey. (It was apparently Steve who indicated to Malo that Audrey had recently experienced a urinary tract infection.) Despite this evidence, the trial court did not reference Steve's testimony in its order, other than in passing.

¶ 33 We also note several instances in Audrey's testimony that should be highlighted. During questioning about her financial situation, Audrey appeared to be uncomfortable in providing answers, not because she did not know the answer, but because she considered the information to be private and did not want to disclose it in an open forum. For example, when asked about how much money she had in the bank, following an objection by her counsel which was overruled by the court, Audrey asked, "What does that mean?" The court responded, "That means you can answer," to which Audrey replied, "I can or I must?" The court told her, "You can," and Audrey stated that she would not answer. The court then instructed that she should answer. Petitioner restated the question, and Audrey asked, "Does that have to be public knowledge?" A similar exchange occurred when petitioner asked how much money she kept in her checking account, and Audrey asked, "Does that need to be public knowledge?" Finally, during Kirkham's cross-examination by petitioner, Kirkham was asked, "What statements did [Audrey] make that led you to conclude she understood the financial strategies?" Audrey, sitting in the gallery with her daughter, interjected, "Why don't you ask me?"

¶ 34 Following the presentation of evidence, the trial court issued its decision. The court, in providing a factual basis for its judgment, stated, pertinently:

> "b. *** Since Dr. Kelly did not testify and his examination and report are remote in time, his opinion is disregarded. The fact of his treatment and report are instructive as to

the reasons this proceeding may have been initiated by Petitioner, and why [Audrey] is estranged from her son [petitioner].

***

e. *** Because of [Dr. Malhotra's] insistence that there be no change in his opinion and his follow up records in 2010 did not mention the 6 point decline [in Audrey's MMSE tests], the weight to be given to his conclusion as to [the] need for a guardian is decreased.

f. *** Dr. Malo's opinion is given less weight because of his decision to proceed with testing, even though he testified that other experts in the field may not have proceeded knowing as he did that [Audrey] had a recently diagnosed urinary tract infection, and that she had been on antibiotics for 2 days. However, Dr. Malo's diagnosis does not differ dramatically from Dr. Malhotra's, in that they both find moderate dementia. It is their respective conclusions regarding [the] need for guardianship that differs.

g. Dr. Laurie Deckard administered a neuropsychological examination to [Audrey] upon a referral from Dr. Malhotra, on August 20, 2010. Her diagnosis echoed Dr. Malhotra's Oct. 2009 finding of dementia of Alzheimer's type without behavioral disturbance, except that Dr. Deckard categorized the impairment as 'mild to moderate,' and found that [Audrey] was competent to make financial, healthcare and legal decisions.

***

I. Robert Nelson, an attorney for [Audrey], *** was impressed by [Audrey's] understanding of the issues discussed [in their meetings]. Attorney Nelson testified that [Audrey] was capable of making decisions, was aware of issues, including the care of her own person, and knew what she wanted to do.

j. At the time of Attorney Nelson's first meetings with [Audrey], he was aware of Dr. Kelly's physician's report based on an examination done in North Carolina prior to [Audrey's] move to Illinois. Attorney Nelson had been informed that Dr. Kelly had diagnosed moderate to severe dementia, but based on his meeting with her, he discounted that diagnosis. Despite his information regarding Dr. Kelly's opinion, Attorney Nelson believed that [Audrey] knew what she wanted to do with regard to revoking her son Robert's [petitioner's] powers as successor agent on powers of attorney, that she was clear in believing that [petitioner] had usurped duties as successor trustee of her revocable trust, and that she [was] perfectly capable of executing the documents that he had prepared for her.

k. *** Attorney Nelson also met with [Audrey] in [*sic*] drafted a document entitled 'Wishes and Preferences' which is in evidence, after consulting with [Audrey]. Attorney Nelson believed that [Audrey] was 'crystal clear' in her responses to what her wishes and preferences were in relation to guardianship and related matters.

l. Respondent has appointed an agent under a power of attorney for health care; she understands that she needs assistance in remembering medications and arranging doctor appointment. The court finds no reason to appoint a limited guardian of the person, nor is there any reason to limit, suspend or restrict the power of attorney that was granted to Steve. The neuropsychological evaluation by Dr. Laurie Deckard supports the finding that [Audrey] has or had the capacity to understand and execute a power of attorney for health care. The testimony of [Audrey], as well as Dr. Deckard, Dr. Malhotra and the Alden employees supports the finding that Respondent is capable of taking care of herself at Alden, with some assistance in regard to medications and meals, and that [Audrey] even helps out with other less capable residents, such as guiding them back to their rooms. [Audrey] has sufficient

understanding or capacity to make or communicate responsible decisions concerning the care of her person, such that under the circumstances of her present residential placement and having a valid power of attorney for health care, she needs neither a plenary nor a limited guardian of the person. [Audrey] had continuing health issues regarding urinary tract infections, but with treatment through her doctors and staff while she has been at Alden, the situation is being monitored and has stabilized.

m. *** The court is persuaded, however, that [Audrey] currently has no idea what she did with regard to the substantial gifts she made to her grandchildren and the loan or line of credit from her son Steve. The testimony of the trust officer of US Bank did little to persuade the court otherwise.

n. The durable power of attorney given to Steve by [Audrey] was not witnessed, except that Steve later had his neighbors sign as witnesses, and the Court for various reasons previously suspended said power. Having heard the testimony of Steve as to the gifts to grandchildren and the loan to his mother, and having observed his demeanor in so testifying, the Court finds that he would have a conflict in serving as a limited guardian of the estate or agent under the financial power [of] attorney. The Court finds that it is in the best interests of [Audrey] that the Limited Guardian of the Estate exercise any powers under such durable power of attorney and that the power [granted to Steve] remain suspended or revoked."

¶ 35 The court held:

"It has not been demonstrated by clear and convincing evidence that [Audrey] is disabled and is totally unable to care for her own person. It has also not been demonstrated

by clear and convincing evidence that [Audrey] lacks some but not all understanding or capacity to make or communicate responsible decisions concerning the care of her person."

The court also held:

"It has not been demonstrated by clear and convincing evidence that [Audrey] is disabled and is totally unable to manage her estate or financial affairs. However, there is clear and convincing evidence that [Audrey] is disabled and lacks some but not all of the capacity to manage her estate or financial affairs and a limited guardianship of the estate is necessary for the protection of the disabled person's estate."

The court concluded:

"Pursuant to the directive of the Probate Act that guardianship shall be utilized only as is necessary to promote the well-being of the disabled person, to protect her from neglect, exploitation, or abuse, and to encourage development of her maximum self-reliance and independence, the Court finds that guardianship is necessary for the protection of [Audrey's] estate, and the Court should therefore appoint a limited guardian of [Audrey's] estate."

¶ 36 The court ordered that American Bank & Trust be appointed as the limited guardian of Audrey's estate. The court also ordered:

"The following authority under 755 ILCS 5/11a-18 [(West 2010)] is specifically reserved to [Audrey], unless modified hereafter by further order of court:

(I) Dealing with the trustee of [Audrey's] revocable trust;

(ii) Making gifts to children, grandchildren, and great grandchildren, either outright or in trust, subject to review by the Limited Guardian o [*sic*] of the estate;

(iii) Making gifts or deciding not to make gifts to irrevocable life insurance trusts from time to time, subject to review by the Limited Guardian of the Estate;

(iv) Instituting or continuing in her own name any civil litigation now pending or contemplated by [Audrey];

(v) Submitting any proposed changes in her will or trust, or proposed codicil, new will or trust, to the Limited Guardian for review and presentation to the Court for approval under Illinois Probate Act Section 11a-18 [(755 ILCS 5/11a-18 (West 2010)], and cooperating and communicating with the limited Guardian and other professionals approved by the Limited Guardian in the management and disposition of her estate."

Finally, the court also ordered that "[p]etitioner's request that a plenary guardian of the person [be appointed] is denied and that part of the petition is dismissed." From this order, petitioner timely appeals.

¶ 37 On appeal, petitioner challenges the trial court's factual findings and the conclusions it draws from those findings. Petitioner's disagreements with the trial court's decision boil down to whether the trial court's decision not to appoint a limited or plenary guardian for Audrey's estate was against the manifest weight of the evidence, whether to appoint a limited guardian for Audrey's estate versus a plenary guardian was against the manifest weight of the evidence, and whether the trial court's reservations of rights to Audrey in the management of her estate (with oversight from the limited guardian) amounted to an abuse of discretion. In addition, petitioner challenges the trial court's decision to disregard Kelly's report as an abuse of discretion.

¶ 38 Petitioner sought the appointment of a plenary guardian for Audrey under the Probate Act of 1975 (Act) (755 ILCS 5/1-1 *et seq.* (West 2010)). The Act provides, pertinently, that the term, "disabled person" means:

"a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a

person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate." 755 ILCS 5/11a-2 (West 2010).

The trial court, in adjudicating a person's status,

"may adjudge a person to be a disabled person, but only if it has been demonstrated by clear and convincing evidence that the person is a disabled person as defined in Section 11a-2 [(755 ILCS 5/11a-2 (West 2010))]. If the court adjudges a person to be a disabled person, the court may appoint (1) a guardian of his person, if it has been demonstrated by clear and convincing evidence that because of his disability he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person, or (2) a guardian of his estate, if it has been demonstrated by clear and convincing evidence that because of his disability he is unable to manage his estate or financial affairs, or (3) a guardian of his person and of his estate." 755 ILCS 5/11a-3(a) (West 2010).

However, a:

"[g]uardianship shall be utilized only as is necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations." 755 ILCS 5/11a-3(b) (West 2010).

¶ 39 Section 11a-12 of the Act governs the types of appointments that may be made:

(a) If basis for the appointment of a guardian as specified in Section 11a-3 is not found, the court shall dismiss the petition.

(b) If the respondent is adjudged to be disabled and to be totally without capacity as specified in Section 11a-3, and if the court finds that limited guardianship will not provide sufficient protection for the disabled person, his or her estate, or both, the court shall appoint a plenary guardian for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings.

(c) If the respondent is adjudged to be disabled and to lack some but not all of the capacity as specified in Section 11a-3, and if the court finds that guardianship is necessary for the protection of the disabled person, his or her estate, or both, the court shall appoint a limited guardian of the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings and specifying the duties and powers of the guardian and the legal disabilities to which the respondent is subject.

(d) The selection of the guardian shall be in the discretion of the court, which shall give due consideration to the preference of the disabled person as to a guardian, as well as the qualifications of the proposed guardian, in making its appointment." 755 ILCS 11a-12 (West 2010).

Finally, the court, in making its determination, shall consider:

"(1) the nature and extent of respondent's general intellectual and physical functioning; (2) the extent of the impairment of his adaptive behavior if he is a person with a developmental disability, or the nature and severity of his mental illness if he is a person with mental illness; (3) the understanding and capacity of the respondent to make and communicate responsible decisions concerning his person; (4) the capacity of the respondent to manage his estate and his financial affairs; (5) the appropriateness of proposed and alternate living arrangements; (6) the impact of the disability upon the respondent's functioning in the basic activities of

> daily living and the important decisions faced by the respondent or normally faced by adult members of the respondent's community; and (7) any other area of inquiry deemed appropriate by the court." 755 ILCS 5/11a-11(e) (West 2010).

Whether and to what extent a guardian is needed is in each case a factual determination that is made by the trial court. *In re Estate of Silverman*, 257 Ill. App. 3d 162, 168 (1993). The reviewing court will not disturb the trial court's determination on guardianship unless it is against the manifest weight of the evidence. *Estate of Silverman*, 257 Ill. App. 3d at 168-69. With these principles in mind, we turn to petitioner's specific arguments.

¶ 40 Petitioner initially contends that the trial court's determination that Audrey had the capacity to care for her person and make necessary medical decisions without the intervention of a guardian was against the manifest weight of the evidence. In support of this contention, petitioner cites to *In re Estate of Hickman*, 208 Ill. App. 3d 265 (1991), and analogizes the facts adduced here to that case in an effort to demonstrate that this case is on all fours with *Estate of Hickman*. Indeed, petitioner's argument consists of pointing out the purported factual similarities between *Estate of Hickman* and this case. We determine both that *Estate of Hickman* is distinguishable, and the trial court's determination on the personal guardian issue was not against the manifest weight of the evidence.

¶ 41 In *Estate of Hickman*, the lay witnesses all testified that the respondent, around the time of the hearing, was no longer keeping herself clean. *Estate of Hickman*, 208 Ill. App. 3d at 267, 270. In addition, there was testimony that the respondent's house was dirty, that she allowed a bird to fly throughout the house unimpeded, that she kept a ball of bird seed on the dining room table, and the ball had become infested with bugs, that her house was full of empty beer and liquor bottles, and that the rooms were packed with old clothes and stuffed toys. *Estate of Hickman*, 208 Ill. App. 3d at 268, 271-72. In contrast, in this case, the only testimony showed that Audrey was always clean and

well-groomed. Further, the evidence uniformly showed that she kept her apartment clean. These facts contrast strongly with the facts in *Estate of Hickman* that showed that the respondent no longer maintained the cleanliness of herself or her home.

¶ 42 Similarly, the expert testimony in *Estate of Hickman* generally agreed that the respondent was unable to make personal or financial decisions based on her deteriorating mental abilities and capacity. *Estate of Hickman*, 208 Ill. App. 3d at 269-70, 272. One expert opined that the respondent was able to take care of herself, but this opinion was diminished by the fact that the expert had seen the respondent only briefly and admitted that, had he known of the respondent's inability to maintain her cleanliness, his opinion might have been different. *Estate of Hickman*, 208 Ill. App. 3d at 274. In this case, however, the expert testimony was divided. Warkenthien, Deckard, and Malhotra all concluded that Audrey was able to perform the activities of daily living without assistance. Malo, on the other hand, concluded that Audrey required 24-hour supervision and assistance with all activities of daily living. This conclusion was ameliorated in Malo's testimony, when he retreated from the "all" to "many" of the activities of daily living. Additionally, the court noted that Malo's diagnosis did not differ from Malhotra's diagnosis of Audrey, but he concluded from essentially the same facts that Audrey was totally unable to manage her person, while Malhotra concluded that she did not need assistance in managing her person. Likewise, Kelly, who did not testify and, arguably, was not entitled to present an opinion solely through its presence in Warkenthien's records, also opined that Audrey was completely unable to manger her own personal care without assistance. Thus, unlike *Estate of Hickman*, the expert opinion is divided and favors Audrey's independence, while that in *Estate of Hickman* favored a guardianship. Our determination here, that the trial court's judgment regarding Audrey's ability to manage her person and the activities of daily living was not against the manifest weight of the evidence runs in the same direction as that in *Estate of*

Hickman, because it follows the weight of the expert opinion, as the court did in *Estate of Hickman*. We note further that the lay testimony in this case was strongly in favor of Audrey's ability to manage her person and the activities of daily living, which contrasts with the lay testimony in *Estate of Hickman*, which noted that the respondent was uncleanly and unable to remember to take her medication. Accordingly, we determine that *Estate of Hickman* is readily distinguishable from the facts of the instant case.

¶ 43 We note further, that petitioner attempts to draw from *Estate of Hickman* the rule that:

> "a trial Court's finding that a respondent has the capacity to make or communicate responsible decisions concerning the care of her person is against the manifest weight of the evidence where the respondent suffers from an impaired memory, is prone to confusion and disorientation, and where she may be uncertain why she was in court."

This purported rule overlooks the court's own acknowledgment that "the adjudication of disability is a uniquely factual determination." *Estate of Hickman*, 208 Ill. App. 3d at 236. While petitioner's rule may be applicable to *Estate of Hickman*, the facts in this case are sufficiently different that such a rule no longer fits the facts found in this case. Accordingly, we reject petitioner's contention.

¶ 44 If we read petitioner's argument on the issue of personal guardianship generously, petitioner can be seen to raise concerns over Audrey's mental faculties. We acknowledge that there is evidence in the record to support the conclusions that Audrey's memory is impaired, that she has been prone to confusion, and that she expressed uncertainty about the answers to seemingly simple or obvious questions during her testimony. There is also, however, evidence to support the conclusion that Audrey is able to maintain her person and perform the daily activities of living without assistance. (We note that the record also indicates that Audrey is prompted to take her daily medications as a benefit to living in an assisted care facility such as Alden. This benefit appears that

it will remain unaffected regardless of any court ruling in this matter.) For example, the Alden employees, Bernardi and Varela, testified that Audrey was always well-groomed, was able to make her way around the facility without assistance, participated in and enjoyed the activities offered, and even helped other residents to navigate back to their rooms after activities. Similarly, Nelson and the guardian *ad litem* both found Audrey to be clean and well-groomed, to keep a very neat house, and to be capable of performing the activities of daily living. As a result, while we acknowledge that Audrey has declining mental faculties as a result of the progressive nature of Alzheimer's, the evidence amply supports the trial court's conclusion that Audrey is able to take care of her person without the assistance of a guardian. Therefore, the trial court's conclusion on this issue is not against the manifest weight of the evidence.

¶ 45 Next, petitioner contends that the trial court's determination that Audrey lacked some, but not all, capacity to manage her estate and her financial affairs was against the manifest weight of the evidence. Petitioner argues that it presented clear and convincing evidence of Audrey's incapacity and inability to manage her estate and financial affairs. Petitioner argues that Audrey's testimony alone was sufficient to show that her incapacity let alone the other testimony. We disagree.

¶ 46 As an initial matter, we note that petitioner highlights 15 points, which he apparently believes to clinch his argument, including: (1) Audrey did not know her attorney; (2) she did not know why she was in court; (3) she did not know her age (although she knew the year of her birth); (4) she did not know the year; (5) she did not know her address (although she testified she lived at the Alden); (6) she did not know how many grandchildren she has; (7) she did not know the names of her nine grandchildren (although she testified that Quinn and Emmy were the names of two grandchildren, but they are actually great-grandchildren); (8) Audrey was inconsistent in her testimony about the number of her children; (9) she did not know that gifts totaling $169,000 had

been made from her assets during these proceedings (although she apparently was aware that she decided to give her grandchildren and their parents (except Robert) large gifts); (10) she did not know she has a trust (although she testified that a trust is where her money is kept, and she identified incomes flowing into the trust); (11) she did not know how much money she possessed (although she knew she had a lot of money); (12) she did not know her trust had been amended; (13) she was unable to explain the promissory note and its interest term; (14) she did not know the circumstances surrounding the execution of her power of attorney or its purpose; (15) she did not know that her estate planning attorney represents her (although she was not asked if Nelson represented her, only whether she knew who was her attorney). (We have inserted explanatory or countervailing matters of evidence in parentheticals that are associated with each of petitioner's points.) We note that the trial court heard all of the testimony, observed all of the witnesses, and mentions many of them in its memorandum of decision. We also note that the trial court appointed a limited guardian precisely because Audrey's testimony was fuzziest in regard to financial matters, especially the promissory note and the $169,000 in gifts to her grandchildren. As most of the points are otherwise explainable, the situation is not nearly as dire as petitioner would have us believe. The witnesses agreed that Audrey's mental faculties were impaired (but they did not agree to what degree they were impaired) and a number of witnesses expressed their belief and the reasons therefor regarding Audrey's competency to manage herself and had finances. The trial court thoroughly discussed the evidence, for and against, Audrey's independence and amply supported its decision and reasoning. Accordingly, we do not find the list of 15 points to be conclusive in petitioner's favor where many are explainable and they are not as starkly negative as petitioner maintains. Last, and importantly, we note that, for the purportedly conclusive facts established by the evidence, petitioner neglected to cite to where in the record each point was established. Such neglect would result in the forfeiture

of the argument on appeal, were we so inclined. Ill. S. Ct. R.341(h)(7); *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶31 (issue is forfeited where the party fails to cite to the record (or to authority) to support his or her argument). However, because we have already substantively discussed the issues surrounding the 15 points, we need not deem them forfeited.

¶ 47 Next, petitioner attacks the trial court's treatment of Kelly, Stroud, Deckard, Malo, and Nelson. In general, petitioner disagrees with the trial courts consideration of the effect of the testimony and the weight assigned to it. Essentially, petitioner contends that only an interpretation of the challenged testimony that favors his position is reasonable, and the trial court's determination was against the manifest weight of the evidence. We disagree.

¶ 48 Petitioner begins with the Kelly report. Petitioner waxes apoplectic because the trial court "disregarded" Kelly's report due to the facts that Kelly did not testify, had no opinion about Audrey's ability to manage or care for herself, and his examination and report were both remote in time. Petitioner argues that the trial court's judgment regarding the Kelly report violated section 11a-9(c) of the Probate Act (755 ILCS 5/11a-9(c) (West 2010)). Petitioner further contends that Kelly's report was no more remote in time than Malhotra's, so it should have received the same level of consideration as Malhotra's. We consider each point in turn.

¶ 49 Section 11a-9(c) of the Act requires only that the report "be available" to the trial court. 755 ILCS 5/11a–9(c) (West 2010). The Act does not mandate how the trial court must treat the report. The trial court reasoned that, because the examination that was the basis of the report and the report itself were remote in time, and because Kelly did not testify in this proceeding, his report was entitled to negligible weight. We cannot say that the trial court abused its discretion in treating the report in this fashion, especially in light of the fact that it was of questionable admissibility (see *Apa v. National Bank of Commerce*, 374 Ill. App. 3d 1082, 1087-88 (2007) (purported business record

created by a third party and kept in the proponent's records inadmissible if foundation not shown). In any event, the trial court's treatment of Kelly's report shows that, not only was it available, it was considered (see *In re Estate of Ohlman*, 259 Ill. App. 3d 120, 125 (1994) (interpreting the legislative intent behind section 11a-9 of the Act as requiring the court to consider the report attached to the petition in light of all of the evidence adduced at the hearing on the petition)) and the trial court determined that it should be accorded negligible weight. Moreover, the report contained information and conclusions similar to the other expert testimony in this matter. We cannot see how the trial court's disregard of Kelly's report worked any prejudice when Malo's testimony provided similar information (as did all of the other expert testimony) and similar conclusions to Kelly's. Thus, we see no abuse of discretion in the court's determination of the weight to accord the report; neither was that determination against the manifest weight of the evidence in light of its remoteness in time, the lack of testimony from the author, and the similarity of the report to the other evidence adduced at the hearing.

¶ 50 Petitioner also contends that Kelly's report should be accorded the same treatment as Malhotra's report and testimony, as Malhotra also examined Audrey in 2009, just as Kelly did. The diagnosis of Alzheimer's-type dementia contained in Kelly's report was accepted by the parties and the trial court. Further, the conclusions were echoed by Malo's report and testimony. Thus, the trial court was aware of the contents of the report, had other, similar evidence before it, and Malhotra provided live testimony and was subject to cross-examination where Kelly was not, so the basis for his conclusions was untested, and the circumstances of his examination were unexplored. Based on this difference and the other facts discussed, there was a valid reason for the trial court to minimize its reliance on Kelly's report compared to Malhotra's report and testimony. Again, we see neither

an abuse of discretion nor was the trial court's determination to accord Kelly's report negligible weight against the manifest weight of the evidence.

¶ 51 Petitioner next argues that Stroud's testimony was improperly interpreted and improperly criticized for being remote in time as Stroud's last contact with Audrey occurred in 2009. Petitioner complains that, in contrast, the trial court accepted Malhotra's testimony notwithstanding the fact that his report dates from October 2009. We disagree.

¶ 52 Stroud had essentially daily contact with Audrey until Audrey moved from North Carolina to Illinois in 2009. She testified that she observed that Audrey's difficulties amounted to only the indicators or advancing age. She offered no opinion on Audrey's competence. The trial court recounted Stroud's testimony and noted that she had not had any contact with Audrey after she moved in 2009. We cannot say that the trial court's recitation of her testimony was against the manifest weight of the evidence. Further, we see nothing in the trial court's treatment of Stroud's testimony that supports petitioner's contention. We also note that Malhotra examined Audrey in 2009 and conducted several follow-up visits. Petitioner ignores the follow-up visits as well as the different sort of contact that Malhotra had with Audrey, as contrasted with Stroud's contact with her. Accordingly, we see little point to petitioner's attack on the trial court's treatment of Stroud's testimony and no merit to his arguments regarding Stroud's testimony.

¶ 53 Respondent next accuses the trial court of missing the change in Deckard's testimony, in which he purports that Deckard abandoned the position of her report that Audrey had the capacity to choose who should assist her as compared to her testimony in which she purportedly presumes that Audrey needed assistance. Petitioner, however, once again fails to provide any citation to the record to support his assertion. Rule 341 requires a party to cite to the record because this court is not required to comb through the record to find the testimony, if any, supporting the party's

argument. *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010). In addition, petitioner's argument regarding the trial court's error in appreciating Deckard's purportedly changed testimony is confused and incoherent. For example, petitioner complains that Deckard's written report, which opines that Audrey is competent to make personal and financial decisions, assumes that Audrey does not need assistance, whereas her testimony assumes she does. We fail to see the pertinence of this complaint because the trial court referenced Deckard's testimony, and that testimonial change actually favors petitioner's position, because she purportedly went from an assumption that no assistance was needed to one that presumes that a guardian will be appointed to assist Audrey (although petitioner does not specify in what area the presumed assistance will be). Moreover, we admit to being flummoxed by petitioner's summing up of his argument regarding Deckard: "It was against the manifest weight of the evidence to reach findings that ignored Dr. Deckard's new testimony at trial." The trial court actually appears to have summarized Deckard's trial testimony, so the findings necessarily included consideration of Deckard's trial testimony. Additionally, we fail to see how that summation of the argument is even related to petitioner's apparent concern, that the trial court missed a change in Deckard's testimony. Deckard's opinion at trial and her written opinion were the same, that Audrey had the capacity to make personal and financial decisions. We find no merit in this contention.

¶ 54 Petitioner also seems to fault Deckard's testimony and written report for failing to deal with Malhotra's suppression of the apparently aberrant 17 score on an MMSE examination. We are puzzled, as Malhotra did not reference the score of 17 in any of his follow-up notes and the record is silent as to whether Deckard had access to that score at the time she was testing Audrey. Instead, she was asked about it on cross-examination and noted that such a score, under her scoring method for the MMSE (which appears, from the record, to be variable across testers) would indicate

complete incapacitation. But, again, as Malhotra minimized the significance of the score, and there is nothing in the record to show that Deckard had timely awareness of the score, there seems to be little basis to criticize Deckard for not mentioning it in her report or direct testimony; likewise, there is little basis to complain about the trial court's treatment of Deckard's testimony on that point, especially as it appears to be consistent with her written report. We note that the trial court lessened the weight to be accorded to Malhotra's opinion precisely because he ignored the 17 result on an MMSE he administered to Audrey. On the other hand, Deckard does not appear to have had access to that score, and the trial court did not penalize her for not knowing information she could not know, despite petitioner's contentions.

¶ 55 Petitioner also faults the trial court for giving Malo's opinion less weight because he proceeded with the testing despite being informed that Audrey had a urinary tract infection or was still on antibiotics clearing up a urinary tract infection. Petitioner argues that other testimony showed that, according to medical records, Audrey had no urinary tract infection at or around the time of Malo's examination. Petitioner also castigates Steve for accompanying Audrey to Malo's examination, because he was forbidden to by a court order (the order appears to have barred Steve from being present during the examination, rather than from accompanying his mother to the doctor's office for the examination) and for telling Malo that Audrey had a urinary tract infection. The upshot of petitioner's argument, however, seems to be that, because the evidence showed that Audrey did not have a urinary tract infection, the trial court's decision to lessen the weight of Malo's testimony was against the manifest weight of the evidence. We disagree.

¶ 56 Notwithstanding whether Audrey had an active urinary tract infection or was just recovering from one, the trial court's point was that, a neutral doctor, when faced with the possibility that his testing will be rendered unreliable by such a circumstance as the patient having a urinary tract

infection that compromises her faculties, would reschedule the test to a date when the effects of the infection would no longer be problematic. Malo admitted in his testimony that most experts would not have conducted the testing at that time if there were a possibility that the subject had a urinary tract infection. To have this knowledge and to disregard it smacks of partisanship, because the result is likely to be much worse for an elderly woman with a urinary tract infection than for the woman when she is free from such an infection. The trial court's determination as to the weight to be given to Malo's opinion is appropriate because it is a comment on his credibility, not on the objective correctness of his results. In other words, whether Audrey had a urinary tract infection is beside the point; Malo's decision to proceed in the face of that information shows bias and partiality towards petitioner, who retained Malo to perform the examination. We reject petitioner's argument.

¶ 57 Petitioner next complains that the trial court improperly and excessively credited Nelson's testimony in determining that Audrey was competent to manage her person and the activities of daily living and required only a limited guardian for financial and estate matters. Petitioner contends that Nelson's view of Audrey as competent and able to understand and execute the documents he prepared for her were based on false assumptions. First, petitioner points to his cross-examination of Nelson, in which Nelson would be concerned or troubled if Audrey did not know the identity of her attorney, the number and names of her grandchildren, that she has a trust, and the bank in which her trust was held. Because Audrey did not correctly answer these inquiries during her testimony, petitioner concludes that Nelson's opinion should have received no weight. We fail to see exactly how the trial court "over-relied" on Nelson's opinion.

¶ 58 Nelson opined that Audrey was competent to manage her own financial affairs without assistance. Yet the trial court did not arrive at this conclusion. Instead, based on Audrey's inability to describe the $169,000 in gifts she bestowed on her grandchildren, children, and in-laws, as well

as her inability to discuss the $400,000 note/line of credit advanced to her by Steve, the trial court determined that she needed a guardian. Thus, the trial court did not rely on Nelson's opinion regarding the appointment of a financial guardian.

¶ 59 In addition, even though Nelson indicated that he would be troubled or concerned about Audrey's inability to testify about her attorney, grandchildren, and financial matters, he did not indicate that he would then believe Audrey to be completely incapable of managing her own financial affairs. (Importantly, petitioner did not ask Nelson how Audrey's memory infirmities during testimony would have affected his opinion.) It is therefore speculative to assume that his opinion would have changed so drastically, especially in light of Nelson's personal interactions with Audrey, during which she was able to present herself as competent and able to understand what Nelson was trying to do for her.

¶ 60 Indeed, the trial court noted that Nelson was aware of Kelly's report, and Nelson testified at the trial that he discounted the report based on his own interactions with Audrey coupled with a professional lifetime of dealing with elderly clients. We also note that Kelly's report reached the same diagnosis of cognitive impairment due to Alzheimer's-type dementia as all of the other experts, but concluded that she was totally incapable of managing her financial affairs. Nelson apparently had not seen the mental infirmity Audrey displayed at trial in his personal dealings with her and his opinion as to her competence was based on those interactions. We are satisfied that the trial court appropriately considered Nelson's testimony in light of all of the evidence presented at the trial.

¶ 61 Petitioner also attempts to discredit the "Wishes and Preferences" Nelson created for Audrey. Petitioner claims that Steve was the driving force behind the document. This argument does not seem to bear directly on the issue of Audrey's ability to manage her financial affairs. It may be that petitioner is attempting to assert that Nelson was feeding Audrey Steve's thoughts as to how Audrey

should arrange her financial matters. If so, there is ample evidence in the record that Audrey was not susceptible to being pressured by her children or others and that once she decided something, she stuck to it. The trial court's implicit acceptance of Nelson's testimony about how he created the documents and instruments for Audrey, then, is not against the manifest weight of the evidence. We therefore do not accept petitioner's contention that the trial court's determination that Audrey was not completely incapable of managing her finances and estate was against the manifest weight of the evidence. Accordingly, we reject petitioner's contentions on this point.

¶ 62 Next, petitioner argues that the trial court's reservation of authority to Audrey in dealing with the trustee of her trust was an abuse of discretion. In support of this contention, petitioner relies on Kirkham's testimony. Kirkham met with Audrey several times on behalf of her trustee, U.S. Bank. Petitioner points to portions of his testimony, in which he agreed that Audrey did not initiate conversation or pose any questions regarding gifts or how to allocate her assets. Petitioner asserts that, because Steve was with her, he stage-managed Audrey's assent to the proceedings, and Audrey only nodded and gave looks in response to the proceedings. Petitioner concludes that Kirkham's testimony, properly considered, reveals that Audrey does not have the capacity to manage her trust and to interact with the trustee.

¶ 63 The trial court did not spend much time on Kirkham's testimony. Indeed, it rejected Kirkham's opinion that Audrey was fully competent to manage her own financial affairs and held that she needed the services of a limited guardian to oversee those financial affairs. The court further circumscribed Audrey's freedom by requiring the approval of the limited guardian for any actions that might dissipate her assets, such as gifting to her family and changing her will or the trust. Because the guardian will be involved in overseeing these matters, we do not believe that there is a great chance for unintended mischief to occur in Audrey's finances and estate. In addition,

we have held that the evidence supports the trial court's judgment imposing a limited financial guardian; the reservation of authority to deal with the trustee flows from this decision, and we cannot say that the trial court abused its discretion in fashioning this provision. Instead, the substance of petitioner's argument seems to be directed at assailing the evidentiary support for the provision. We note that the trial court considered and rejected Kirkham's opinion regarding Audrey's competency to handle her financial affairs unassisted; however, because she has the assistance of a limited guardian, and because the evidence otherwise supports the trial court's judgment, we also cannot say that the reservation of authority to deal with her trustee was against the manifest weight of the evidence.

¶ 64 Petitioner also challenges the propriety of the trial court's order reserving the authority to make gifts to her family. Petitioner reasons that, because Audrey was unable to identify or quantify her grandchildren, and because she could not remember the $169,000 gift she gave to them during the pendency of these proceedings below, she cannot reasonably be expected to give them gifts. While this contention is not entirely without logical force, we nevertheless disagree.

¶ 65 As petitioner acknowledges, Audrey's power in this arena is subject to the agreement of the guardian. The evidence also suggested that the $169,000 in gifts was designed to take advantage of favorable tax provisions that were expiring. Further, while the $169,000 was a sizable amount to give, it represented less than 8½% of Audrey's estate of over $2 million. The requirement of the agreement of the limited guardian protects Audrey from donating too much in gifts to her family, and, bearing in mind that Audrey was 86 at the time of the trial, it is unlikely that she will give away so much of her estate as to pose future difficulties to her standard of living. Thus, we do not believe that Audrey can do an injury to her circumstances through having retained the power to bestow gifts subject to the guardian's approval. We also note, again, that while petitioner claims the provision

constituted an abuse of discretion, the argument proceeds more along the lines of manifest-weight-of-the-evidence review. As we believe that this provision also flows from the appointment of a limited guardian and a consideration of all of the evidence, we cannot find that the trial court's judgment was an abuse of discretion or was against the manifest weight of the evidence.

¶ 66 We also comment on the fact that, at trial, Audrey was unable to provide the names of her grandchildren (although she named great-grandchildren) or the correct number of grandchildren she has. The evidence did not suggest that Audrey was prone to bestowing gifts randomly and in large amounts. Instead, the gifts were given to take advantage of an expiring tax provision and to assist in avoiding some inheritance tax consequences accruing to her sizable estate. Further, while Audrey was unable to articulate it at trial, there appears to have been a valid reason to bestow the $169,000 in gifts to her family. There was also testimony supporting the fact that, at the time she made the gifts, she understood the reason, size, and purpose of those gifts. Based on all of these considerations, we do not see an abuse of discretion arising from this provision.

¶ 67 Petitioner next argues that the trial court abused its discretion by reserving to Audrey the authority to fund or make gifts to her irrevocable life insurance trusts. Petitioner's arguments sounds the same notes as the previous ones. Petitioner questions how Audrey can make decisions concerning her irrevocable life insurance trusts when she was unable to recall that she had a trust during her trial testimony, could not identify the year, could not describe how much money she has, and could not identify her attorney (and especially her estate-planning attorney). While we acknowledge and understand petitioner's argument, we continue to disagree.

¶ 68 Once again, petitioner acknowledges that this power is also subject to the review and approval of the limited guardian. Thus, Audrey is safeguarded against bizarre, frivolous, or exploitative actions in this area. In addition, the reservation of power flows from the court's

decision to appoint a limited guardian for financial matters and allows Audrey to maintain overall control of her finances and estate with the assistance of the independent limited guardian. Additionally, we once again note that, while petitioner characterizes the court's judgment in this matter as an abuse of discretion, the claim seems to be more properly a contention that the trial court's decision here was against the manifest weight of the evidence. In any event, we cannot say that the trial court's judgment was an abuse of discretion or that its decision in this regard was against the manifest weight of the evidence.

¶ 69 Petitioner also argues that the trial court abused its discretion in reserving to Audrey the power to institute or continue litigation. Petitioner's argument is the same as before, namely, how can a person who manifests obvious memory issues in her testimony, such as failing to recall the name of her attorney and the inability to explain why she was then in court, be expected to make responsible decisions concerning current of contemplated litigation?

¶ 70 The judgment flows from the court's findings that Audrey is not completely incapable of managing her financial and related matters, even though she needs the assistance of a limited guardian for her financial estate. The judgment is consistent with the purposes of the Probate Act, which require that guardianship be "utilized only as is necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations." 755 ILCS 5/11a-3(b) (West 2010). The reservation of this right also flows from the trial court's decision concerning Audrey's competence in the legal-financial arena. While Audrey might not be able to manage all of the details, she was deemed sufficiently fit to oversee the general policies and direction of her finances and legal rights, including managing her estate and her testamentary dispositions, which

decision we have determined was not against the manifest weight of the evidence. The trial court's judgment here gives effect to that determination, and we cannot say that the trial court abused its discretion.

¶ 71 Petitioner's next argument fares similarly. Petitioner contends that the provision in the judgment that Audrey retains the authority to submit changes to her will or trust to the limited guardian, who will then submit it to the court for its approval was an abuse of discretion. Petitioner's argument is as before: if Audrey cannot recall details about her estate and estate planning, who her attorney is, and who her family members are, then how can she make reasonable estate planning decisions? While petitioner believes the answer to be she cannot, we disagree.

¶ 72 This provision flows from the determination that Audrey was not completely incompetent to have a hand in managing her financial and estate matters. There is a double layer of protection in this provision, namely the approval of both the limited guardian and the trial court. Thus, Audrey will be protected from improper changes as will her estate and its beneficiaries. And, again, as the argument is couched in factual terms, it appears that petitioner is actually contending that the imposition of the provision was against the manifest weight of the evidence. Regardless, the trial court's determination that Audrey was mentally capable of participating in testamentary and financial decisions was not against the manifest weight of the evidence, and we cannot find that the trial court abused its discretion in preserving Audrey's participation in those matters.

¶ 73 Next, petitioner recharacterizes previous arguments as an abuse of discretion. First, petitioner contends that the trial court abused its discretion in disregarding Kelly's report. We have already extensively dealt with this issue above and petitioner makes no new argument for us to consider. Accordingly, we hold that the trial court did not abuse its discretion in dealing with the Kelly report.

¶ 74 Petitioner also argues that the trial court abused its discretion in appointing a limited guardian instead of a plenary guardian. We have previously held the decision to be supported by ample evidence such that we could not find it to be against the manifest weight of the evidence. Similarly, we also cannot determine that it was an abuse of discretion, and petitioner offers nothing to make us reconsider our holding.

¶ 75 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 76 Affirmed.