2018 IL App (1st) 170540-U
Order filed: June 29, 2018

FIRST DISTRICT
FIFTH DIVISION

No.1-17-0540

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF JOEL KAPLAN, a Disabled Person	)	Appeal from the Circuit Court of Cook County.
(Mark Kaplan and Brian Kaplan,	)	
Petitioners-Appellees,	)	
v.	)	No. 16 P 001240
Joel Kaplan,	)	Honorable Shauna L. Boliker, Judge Presiding.
Respondent-Appellant).	)	

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.*

O R D E R

¶ 1 *Held*: Order appointing petitioners as plenary co-guardians of respondent's person and estate is affirmed, where the finding that plenary guardianship was necessary was not against the manifest weight of the evidence and the selection of petitioners as co-guardians was not an abuse of discretion.

* Justice Hall has listened to the audio recording of oral arguments.

¶ 2 Following a bench trial, petitioners-appellees, Mark Kaplan and Brian Kaplan, were appointed plenary co-guardians of the person and estate of their father, respondent-appellant, Joel Kaplan. Joel now appeals from that order and, for the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 29, 2016, a petition was filed pursuant to section 11a-3 of the Probate Act of 1975 (Act) (755 ILCS 5/11a-3 (West 2016)), seeking to have Mark and Brian appointed as plenary co-guardians of the person and estate of their father, Joel. Therein, petitioners Mark and Brian, who were previously named Joel's agents pursuant to the execution of powers of attorney for property and health care, alleged that Joel was disabled due to "cognitive impairments due to stroke." As a result, petitioners alleged that Joel: (1) lacked understanding or capacity to make or communicate responsible decisions regarding his own personal care; and (2) was unable to manage his estate or financial affairs. Joel's estate was estimated to be worth in excess of $6,000,000, with Joel's annual income estimated to be $230,000.

¶ 5 Petitioners also filed, pursuant to section 11a-4 of the Act (755 ILCS 5/11a-4 (West 2016)), a separate petition seeking appointment as temporary co-guardians of the person and estate of Joel, asserting that temporary guardianship was necessary for the immediate welfare and protection of Joel's estate and person. In support of this assertion, a written exhibit attached to this petition provided a brief factual background and outlined a number of specific concerns raised by petitioners.

¶ 6 Therein, petitioners alleged that Joel had successfully practiced labor and employment law in Chicago for over 40 years, accumulating assets in excess of $6 million. However, in June 2014, Joel suffered a stroke that left him without the use of the left side of his body, incontinent, partially blind, wheelchair-bound, and totally reliant upon others for assistance with all aspects

of his daily living. Since October 2014, Joel had resided in an apartment at The Clare, an assisted-living residential facility located in Chicago's Gold Coast neighborhood.

¶ 7 With regard to the need for a temporary guardian of Joel's person, petitioners alleged that Joel's lack of insight into his physical limitations and his dependency upon others for all aspects of his daily living left him personally vulnerable. As an example, petitioners noted that Joel had become increasingly dependent upon Suzanne Mallo, a woman Joel had met online and who had become Joel's companion over the prior eight months. Petitioners alleged that, within the prior month, Suzanne had replaced Joel's licensed and bonded caregivers with one of Suzanne's friends. That caregiver had to be replaced due to The Clare's policy of requiring caregivers that were in fact licensed and bonded. Petitioners also asserted that Joel had recently indicated that he planned to marry Suzanne, despite the fact that his stroke left him easy to influence and manipulate, unable to understand the implications of marriage, and unable to consent to such a union. While petitioners did not want to restrict Joel's ability to socialize with anyone, they did seek an order appointing them temporary guardians of Joel's person and prohibiting Joel from marrying anyone, pending the resolution of the plenary guardianship petition.

¶ 8 With respect to the need for a temporary guardian of Joel's estate, petitioners alleged that Joel had been the victim of financial exploitation on at least three occasions in the previous seven months. First, Joel gave the PIN code to his debit card to at least one caregiver, who then withdrew $1,400 that was not spent on Joel's behalf. Thereafter, Joel unsuccessfully requested that this caregiver not be fired for cause because he "liked her." Second, another caregiver utilized Joel's social security number to open two credit card accounts and apply for a loan. Third, four fraudulent charges had been made using Joel's credit card, requiring it to be reissued three times. On one occasion, a new credit card was stolen within an hour of Joel's receipt

thereof. In addition, petitioners alleged that Joel's partial blindness left him unable to properly examine legal documents, raising the possibility that Joel would execute documents placing his significant assets at risk. While petitioners did not want to restrict Joel's ability to spend the money he received monthly from his trust, they did seek an order appointing them temporary guardians of Joel's estate and prohibiting Joel from entering into contracts, withdrawing funds from his retirement accounts, or executing estate planning documents.

¶ 9 The petition was also supported by a written "Report of Physician" prepared by Dr. Mark A. Amdur, a psychiatrist that interviewed and evaluated Joel on February 26, 2016, before he also interviewed petitioners. In light of his evaluation and interviews, Dr. Amdur's written report opined that Joel was totally incapable of making personal and financial decisions, and required "24/7 assistance and monitoring."

¶ 10 On the day the two petitions were filed, the trial court appointed attorney Michael Delaney to serve as guardian *ad litem* (GAL). The GAL conducted an immediate investigation and also interviewed Joel on March 1, 2016.

¶ 11 A hearing on the petition for temporary guardianship was held the following day. At the hearing, the trial court reviewed the petition and supporting materials and heard the arguments of counsel for the parties, including counsel for Joel. The trial court also received an oral report from the GAL, who recommended that temporary guardianship was warranted in light of his investigation.

¶ 12 At the conclusion of the hearing, over the objection of Joel, the trial court appointed petitioners temporary co-guardians of Joel's person and estate. In addition to granting petitioners general authority to provide for Joel's personal care and oversee Joel's investments, the trial court's written order also specifically indicated that Joel was not authorized to enter into

contracts, execute estate planning documents, withdraw funds from his retirement accounts, or enter into a marriage without petitioners' approval of both the marriage and a prenuptial agreement. Finally, the written order provided that petitioners would continue to pay Joel's bills and provide him with spending money as they had since his stroke in 2014.[1]

¶ 13 The parties thereafter engaged in significant discovery practice, and the matter proceeded to a bench trial on the petition for plenary guardianship in December 2016. Prior to the start of trial, Seth Briggs, Jr., Joel's long-time friend and Joel's preferred choice of guardian, was granted leave to file a cross-petition seeking to be appointed a *limited* guardian of Joel's person and estate. The bench trial thus proceeded with respect to both petitions.

¶ 14 At trial, Mark and Brian each testified in support of their petition. Petitioners also presented testimony from: (1) Iride Martinez, the assisted-living clinical manager at The Clare; (2) Mary Cousino, the nurse clinical manager for Senior Bridge, a service that provided Joel with daily caregivers; and (3) Suzanne. In addition, the GAL also testified. In support of the cross-petition, the trial court heard the testimony of Mr. Briggs and Joel. In addition to a number of other exhibits entered into evidence, including a written report prepared by the GAL, by agreement of the parties the trial court also received into evidence written reports prepared by: (1) Dr. Amdur; (2) Dr. Alexander Obolsky, a psychiatrist and Joel's controlled expert; and (3) Dr. Geoffrey Shaw, a psychiatrist appointed by the trial court to prepare an independent medical evaluation of Joel. The evidence and testimony presented at trial will be discussed in more detail below.

[1] By agreement, the order appointing petitioners temporary co-guardians of the person and estate of Joel—under the same or substantially similar terms—was repeatedly extended pending the resolution of the petition for plenary guardianship.

¶ 15 At the conclusion of the bench trial, the trial court was presented with both oral and written closing arguments. The parties did not dispute that Joel required some type of guardianship over his person and estate. Rather, the dispute centered on whether the trial court should appoint a plenary or a limited guardian, and whether petitioners or Mr. Briggs should serve in that role.

¶ 16 In a written order entered on January 27, 2017, which incorporated the trial court's detailed oral findings made on the record the previous day, the trial court found Joel to totally lack understanding or capacity to make or communicate responsible decisions regarding his own personal care, and to be totally unable to manage his estate or financial affairs. The trial court therefore granted the petition filed by petitioners, denied the cross-petition, and appointed petitioners as plenary co-guardians of respondent's person and estate. Joel timely appealed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, Joel contends that the trial court improperly concluded that a plenary guardian of his person and estate was required, and also improperly concluded that petitioners should serve in that role. Because the parties do not dispute that Joel was disabled and required some form of guardianship over his person and estate, we generally limit our analysis to a discussion of the law and evidence relevant to a consideration of the proper scope of that guardianship and the trial court's selection of petitioners to serve in that role.

¶ 19 A. Plenary vs. Limited Guardianship

¶ 20 Petitioners sought to be appointed plenary co-guardians for Joel pursuant to the Act, which in relevant part provides 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 2016).

¶ 21 In adjudicating a person's status and determining the need for guardianship, the trial court:

"may adjudge a person to be a person with a disability, but only if it has been demonstrated by clear and convincing evidence that the person is a person with a disability as defined in Section 11a-2. If the court adjudges a person to be a person with a disability, 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 2016).

¶ 22 The clear and convincing evidence standard of proof, required by section 11a-3 of the Act, has been defined as follows:

"Courts have defined 'clear and convincing' evidence most often as the quantum of proof that leaves no reasonable doubt in the mind of the fact finder as to the truth of the proposition in question. Although stated in terms of reasonable doubt, courts consider clear and convincing evidence to be more than preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense." *Bazydlo v. Volant*, 164 Ill. 2d 207, 213 (1995).

Thus, clear and convincing evidence "need not be entirely void of discrepancies and unimpeached," so long as the evidence "is consistent and the discrepancies do not detract from its reasonableness." *In re Clarence T.B.*, 215 Ill. App. 3d 85, 103 (1991).

¶ 23 Furthermore, under the Act:

> "Guardianship shall be utilized only as is necessary to promote the well-being of the person with a disability, 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 2016).

¶ 24 Pursuant to the above limitations on the scope of guardianship contained in the Act, section 11a-12 thereof, which governs the types of appointments that may be made, provides:

> "(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 a person with a disability 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 person with a disability, his or her estate, or both, the court shall appoint a *limited guardian* for 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.
>
> (c) If the respondent is adjudged to be a person with a disability 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 person with a disability, 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." (Emphases added.) 755 ILCS 11a-12 (West 2016).

¶ 25 Finally, in making its determination the trial court 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 2016).

¶ 26 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. *Id*. at 168-69. A decision is "against the manifest weight of the evidence only where the opposite conclusion is clearly evident, or where it is unreasonable, arbitrary[,] and not based on the evidence." *Ross v. Civil Service Comm'n*, 250 Ill. App. 3d 597, 600-01 (1993) (citing *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992)). "Under the manifest weight standard, we give deference to the trial court as the finder of fact because it is in the best

position to observe the conduct and demeanor of the parties and the witnesses." *In re Estate of Michalak*, 404 Ill. App. 3d 75, 96 (2010). "A reviewing court, therefore, must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *In re D.F.*, 201 Ill. 2d 476, 499 (2002). This court may affirm the trial court's judgment on any basis contained in the record. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16.

¶ 27 Turning to the law and evidence specifically relevant to resolving this appeal, we reiterate that the Act provides for the appointment of a plenary guardian of a disabled person's person and estate where the evidence establishes that, because of his disability, the disabled person totally lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person or to manage his estate or financial affairs. 755 ILCS 5/11a-3(a), 11a-12(c) (West 2016). A great deal of evidence was presented at trial to support the trial court's finding that Joel was in fact totally incapable of making *responsible* decisions concerning the care of his person, or to manage his estate or financial affairs.

¶ 28 Joel was 71 years old at the time of trial. Evidence was presented that, prior to his stroke, Joel was a highly intelligent, witty, and charming individual, who was also a successful practicing attorney who had accomplished a great deal in his professional career and amassed a considerable estate. However, a number of witnesses testified that Joel was also a very impulsive individual with a very strong will, and he had been married and divorced three times. Joel admitted that two of his three prior marriages "represented 'bad' decisions." Petitioners are Joel's sons from his first marriage.

¶ 29 This impulsivity and stubbornness remained a character trait following Joel's stroke, not always accompanied by Joel's own personal recognition that he did not also fully maintain his

prior cognitive and intellectual ability. This combination often did not lead to responsible personal decision-making.

¶ 30 For example, while Joel was provided daily caregivers to support his day-to-day living, he was very strict with them and had requested that over 60 of the caregivers provided to him since his stroke be reassigned. In addition, upon the suggestion of Suzanne, he hired one of Suzanne's friends, Lydia, to serve as a caregiver. He took this action despite the fact that Lydia was not subjected to any background investigation, could not work at The Clare because she was not licensed and bonded, and would be paid in cash. Joel utilized Suzanne as a caregiver at night, and would often dismiss his daytime caregivers before Suzanne would arrive home in the evenings. At times, Joel would refuse to allow his daytime caregivers to address instances of incontinence, preferring to wait until Suzanne arrived hours later. Such instances of impulsive and rash decision-making lead the GAL to have a concern that Joel could not be fully trusted to make future decisions regarding his living situation that protected his need to have a suitable and caring environment.

¶ 31 In addition, the trial court was presented with evidence that Joel was unaware of the type of medications he was taking. Numerous witnesses also noted that Joel's cognitive functioning suffered when he was fatigued, and that he was often fatigued simply by undertaking simple tasks such as using the bathroom or taking a shower.

¶ 32 With respect to Joel's ability to manage his estate and financial affairs, the trial court was presented with additional evidence regarding the instances of fraud asserted in the petition for temporary guardianship and discussed above. Undisputed evidence was presented that Joel was partially-blind and could not meaningfully review any legal documents or financial statements. Joel himself acknowledged that he needed significant assistance from his sons and his long-time

friend and financial adviser, Jim Kitzinger, and had no idea what his monthly income or expenses amounted to. Indeed, Joel informed the GAL that he did not know where his bank accounts were held and would not be able to locate them without assistance. At trial, Joel acknowledged that major decisions regarding his finances should and would be made by others with court approval, and he only specifically requested that he be allowed the freedom to spend an appropriate monthly amount as he wished.

¶ 33 Moreover, evidence was also presented that, despite his ability to enter into contracts being temporarily restricted by the trial court's temporary guardianship order and his inability to read the relevant documents, Joel executed a contract for a new service provider without the approval of petitioners.

¶ 34 Finally, the trial court was presented with evidence and opinions from both the three doctors who had examined him (Drs. Amdur, Obolsky, and Shaw) and the GAL. Dr. Amdur specifically opined that Joel was "disabled by a combination of physical and cognitive impairments," totally incapable of making personal or financial decisions, and required "24/7 assistance and monitoring." In turn, while Dr. Obolsky generally ascribed a higher level of functioning to Joel, he also specifically opined that Joel was "unable to competently process and integrate information that is presented visually," which we note would include contracts and other legal or financial documents. Dr. Obolsky also repeatedly stressed that Joel "fatigues easily" and that his "functioning decreases with fatigue."

¶ 35 Dr. Shaw opined that Joel was not likely to experience any significant physical improvement and would therefore suffer from "permanent physical limitations." Joel's stroke also resulted in significant cognitive deficits and impairment of executive functioning, leading to a diagnosis of neurocognitive disorder. While Joel's deficits might not always present

themselves in his everyday life, they left him: (1) subject to exhibiting poor judgment in all decisional areas, including those of a personal and financial nature, that could lead to "devastating and far-reaching consequences," (2) lacking "capacity to fully evaluate complex personal and financial matters," (3) and increasingly susceptible to the opinions and behaviors of others, leaving him vulnerable to exploitation. Dr. Shaw opined that Joel was in need of a guardian to "make all major financial decisions" and "ensure that he is living in a safe and appropriate environment."

¶ 36 The GAL opined that, while Joel has the ability to "*present himself* as a person who still has the ability to manage all of his own personal and financial decisions" (emphasis in original), he actually lacks some of that capacity due to: (1) his "tendency to make rash and impulsive decisions, (2) his inability to "appreciate the consequences" of his decisions or to disregard those consequences, (3) his "lack of energy or interest in attending to many of the issues that must be dealt with in his life," and (4) his unawareness of or inability to take into account his current limitations. These factors have left Joel vulnerable to manipulation or exploitation.

¶ 37 Nevertheless, on appeal Joel points to evidence he believes tends to establish that the trial court should only have appointed a limited guardian of his person and estate. He notes that numerous witnesses described him as retaining a great deal of intelligence and cognitive functioning. He also notes that Dr. Amdur's report was premised, in part, on inaccurate and incomplete information provided by petitioners. In addition, neither Dr. Obolsky, Dr. Shaw, nor the GAL, recommended plenary guardianship to the trial court. He also points to the appropriate decision-making he undertook in the immediate aftermath of his stroke, including executing powers of attorney and estate planning documents. Evidence was also presented that Joel already has significant support services in place in the form of the professional personal care he receives

from The Clare and Senior Bridge, and the financial advice he receives from Mr. Kitzinger, all arranged without a plenary guardian.

¶ 38 Ultimately, our review of the record establishes that the trial court fully considered the relevant statutory requirements and carefully weighed the evidence presented at trial. The trial court specifically noted Dr. Amdur's opinion that Joel was totally without capacity to make personal and financial decisions, and specifically noted that this opinion was corroborated by the other evidence presented at trial. The trial court also specifically indicated that while Dr. Obolsky and Dr. Shaw opined that Joel only needed a limited guardian, those opinions were not corroborated or supported by the rest of the evidence. This was particularly true of Dr. Obolsky's opinion, which indicated that Joel should be well-rested before making important decisions due to the fact that his functioning suffered when he was fatigued. As the trial court correctly noted, Joel spends most of his day-to-day life suffering from some amount of fatigue. It is well recognized that the "conflicting testimony of the experts was determinable by the court as the trier of fact which was in a better position to assess credibility" *In re Estate of Bennett*, 122 Ill. App. 3d 756, 761 (1984).

¶ 39 Also of concern to the trial court was Joel's need for a considerable amount of assistance with his daily living, his repeated reckless decisions regarding the provision of caregivers in the past, and the seeming likelihood that such recklessness on the part of Joel with respect to the care of his person would continue into the future. In reviewing this conclusion, we are reminded that this court has previously recognized "[w]e cannot envision an instance in which the observation of the witnesses, particularly the alleged incompetent, is more critical to the final outcome of the proceedings." *In re Estate of Galvin*, 112 Ill. App. 3d 677, 682 (1983). Finally, the trial court reviewed the largely undisputed evidence that Joel's partial blindness left him unable to review

his financial statements, and that he had been completely dependent upon petitioners and his financial advisor to effectively manage his significant financial assets.

¶ 40 On this record, we cannot say that the trial court's decision to appoint a plenary guardian of Joel's person and estate was so unreasonable, arbitrary, or not otherwise based on the evidence that it was against the manifest weight of the evidence. *Ross*, 250 Ill. App. At 600-01. We certainly cannot do so without improperly substituting our judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn therefrom. *In re D.F.*, 201 Ill. 2d at 499.

¶ 41 In reaching this conclusion, we necessarily reject Joel's reliance upon a number of prior appellate decisions as support for a reversal of the trial court's decision to appoint a plenary guardian in this case. As an initial matter, we note again that to what extent a guardian is needed in any given case is a unique factual determination that must be made by the trial court. *In re Estate of Silverman*, 257 Ill. App. 3d 168. The factual situations presented in other cases are thus of somewhat limited value.

¶ 42 That said, the cases cited by Joel are also clearly distinguishable. *In re Estate of McPeak*, 53 Ill. App. 3d 133, 136 (1977), is inapposite as the record in that case was "barren" of *any* evidence showing the respondent's incapability of managing her person or estate. For all the reasons stated above, we come to a significantly different conclusion here. We also reject Joel's reliance upon *In re Estate of Galvin*, 112 Ill. App. 3d at 681-82, and *In re Estate of Bennett*, 122 Ill. App. 3d at 761, as in each case the appellate court *affirmed* the trial court's determination as to the proper scope of guardianship demonstrated by the evidence presented at trial. That is a markedly different situation than is presented here, where Joel asks that we *reverse* the trial court's decision despite a significantly deferential standard of review.

¶ 43 Finally, while this court did reverse a trial court's decision to appoint a plenary guardian for a respondent's person and estate in the case of *In re Estate of Barr*, 142 Ill. App. 3d 428, 434 (1986), we did so only after concluding that the evidence showed that: (1) while the 44-year-old respondent "ha[d] some mental peculiarities" and was eccentric, there was no evidence that "these eccentricities render respondent unable to manage his person" and where he had been "self-sufficient and has not presented a danger to himself or to the community:" and (2) "the evidence does not indicate that respondent lacks all capacity to understand or manage his day-to-day financial needs." Here, the evidence established Joel was reckless with respect to his personal care, and he is obviously and admittedly far from self-sufficient. Moreover, while Joel may be capable of handling his monthly spending money, the evidence established that he had no idea of his monthly income and expenses, and did not have an ability to manage his sizable financial estate.

¶ 44 In addition, we reject Joel's contention that by appointing a plenary guardian over his person and estate, the trial court failed to adhere to the Act's requirement that "[g]uardianship shall be utilized only as is necessary to promote the well-being of the person with a disability, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence." 755 ILCS 5/11a-3(b) (West 2016). It is true that, by appointing them plenary co-guardians for Joel's estate, petitioners were granted all of the powers contained in section 11a-17 of the Act. 755 ILCS 5/11a-17 (West 2016). However, that section itself mandates that, in exercising those powers, the "guardian shall assist the ward in the development of maximum self-reliance and independence." 755 ILCS 5/11a-17(a) (West 2016). Section 11a-17 also provides:

> "Decisions made by a guardian on behalf of a ward shall be made in accordance with the following standards for decision making. Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the ward's personal, philosophical, religious and moral beliefs, and ethical values relative to the decision to be made by the guardian. Where possible, the guardian shall determine how the ward would have made a decision based on the ward's previously expressed preferences, and make decisions in accordance with the preferences of the ward." 755 ILCS 5/11a-17(e) (West 2016).

¶ 45 Similarly, while it is true that in acting as the plenary co-guardians of Joel's estate, petitioners will have all the powers contained in section 11a-18 of the Act, those powers are also subject to significant limitations. 755 ILCS 5/11a-18 (West 2016). First, petitioners' decisions and actions regarding Joel's estate will be subject to significant court oversight, including a requirement for advance judicial authorization for some actions. 755 ILCS 5/11a-18(a), (a-5) (West 2016). In addition, the Act requires that decisions regarding Joel's estate be made "in keeping with [his] wishes so far as they can be ascertained," and that with respect to any actions taken, Joel's "wishes as best they can be ascertained shall be carried out." 755 ILCS 5/11a-18(a-5) (West 2016). Thus, even with the appointment of petitioners as plenary co-guardians of his person and estate, Joel is not—as he contends in his appellate briefs—left with "absolutely no voice in any personal or financial decision made in his life."

¶ 46 It is true that two doctors and the GAL recommended only limited guardianship, and Joel asked at trial to have as much freedom as possible while also recognizing the need for a guardian to make major personal and financial decisions. However, a close review of the

recommendations made to the trial court with respect to the powers to be granted to a guardian and the freedoms retained by Joel reveal that they are not at all inconsistent with the actual language, requirements, and safeguards contained in the Act with regard to the appointment of a plenary guardian.

¶ 47 Finally, to the extent that Joel appears to contend that he is left without any way to place a check on the future decisions petitioners will make as plenary co-guardians, we disagree. "Once a person is adjudicated disabled, that person remains under the jurisdiction of the court, even when a plenary guardian of the person has been appointed." *In re Mark W.*, 228 Ill. 2d 365, 375 (2008). While in no way intending to promote further litigation between Joel and his two sons, we note the Act specifically provides that "upon the filing of a petition by or on behalf of a person with a disability or on its own motion, the court may terminate the adjudication of disability of the ward, revoke the letters of guardianship of the estate or person, or both, or modify the duties of the guardian if the ward's capacity to perform the tasks necessary for the care of his person or the management of his estate has been demonstrated by clear and convincing evidence." 755 ILCS 5/11a-20(a) (West 2016). Any such "request by the ward or any other person on the ward's behalf *** may be communicated to the court or judge by any means, including but not limited to informal letter, telephone call or visit. Upon receipt of a request from the ward or another person, the court may appoint a guardian *ad litem* to investigate and report to the court concerning the allegations made in conjunction with said request, and if the ward wishes to terminate, revoke, or modify the guardianship order, to prepare the ward's petition and to render such other services as the court directs." 755 ILCS 5/11a-20(a-5) (West 2016). Thus, even though Joel has been deemed to be a disabled adult and has had plenary co-guardians appointed to act on his behalf, the Act continues to provide him with significant protections.

¶ 48 For all the foregoing reasons, we affirm the trial court's conclusion that the evidence established the need to appoint a plenary guardian of Joel's person and estate.

¶ 49 B. Selection of Petitioners as Co-Guardians

¶ 50 We now consider Joel's challenge to the selection of petitioners to serve as plenary co-guardians. In doing so, we first note that Joel does not contend on appeal that the trial court should have instead appointed Mr. Briggs, Jr. to serve as guardian, and as such has forfeited any challenge to the denial of the cross-petition. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017) (points not argued in appellant's brief are waived). Rather, Joel contends that we should remand for the trial court to appoint someone else to serve as his guardian.

¶ 51 With respect to the selection of the appropriate person to serve as a guardian, the Act provides:

> "The selection of the guardian shall be in the discretion of the court, which shall give due consideration to the preference of the person with a disability as to a guardian, as well as the qualifications of the proposed guardian, in making its appointment. However, the paramount concern in the selection of the guardian is the best interest and well-being of the person with a disability." 755 ILCS 11a-12(d) (West 2016).

¶ 52 Furthermore, it is has been recognized that:

> "In appointing a guardian of the estate of a ward, factors to be considered include the past actions, and conduct of the proposed guardian, business experience, ages, and family situations, as well as the degree of relationship between the disabled person and the guardian. [Citation.] In addition, serious consideration should be given to any conduct by the disabled person prior to the adjudication manifesting trust or confidence in the proposed guardian as well as prior conduct by the proposed

> guardian indicating a concern for the well-being of the disabled person. [Citation.] A person who is appointed by the court to act as the guardian of a disabled person's estate must be free from any interest which would prevent or impair the proper assertion or protection of the ward's rights. [Citation.]" *In re Estate of Kusmanoff*, 2017 IL App (5th) 160129, ¶ 95.

¶ 53 The trial court's decision as to whom to appoint as guardian is subject to an abuse of discretion standard of review on appeal. *In re Estate of McHenry*, 2016 IL App (3d) 140913, ¶ 139. " 'Abuse of discretion' is the most deferential standard of review—next to no review at all." *In re D.T.*, 212 Ill. 2d 347, 356 (2004). We will not find an abuse of discretion unless the trial court's ruling was arbitrary, fanciful, or unreasonable, or unless no reasonable person would have taken the view adopted by the circuit court. *In re Estate of McHenry*, 2016 IL App (3d) 140913, ¶ 139.

¶ 54 Here, the record contains significant factual support for the trial court's decision to appoint petitioners as Joel's co-guardians. Petitioners are Joel's oldest adult children. They each have obtained advanced degrees and have successful careers. Subsequent to Joel's stroke, petitioners were named Joel's agents pursuant to the execution of powers of attorney for property and health care, and were also named co-trustees of Joel's trust. Petitioners will be the sole beneficiaries of Joel's trust upon Joel's death.

¶ 55 Since Joel's stroke, petitioners have undertaken significant steps to attend to Joel's personal care and oversee his considerable financial assets. They helped coordinate Joel's healthcare in the immediate aftermath of the stroke. They also assisted in locating a suitable residential facility, The Clare, and arranged for Joel to receive the support of daily caregivers. Petitioners have been in regular contact with Joel's caregivers to monitor his condition and his

well-being. At trial, petitioners also committed to obtaining the services of a professional care manager to oversee and coordinate the appropriate professional services for Joel.

¶ 56 In addition, petitioners have attended to a number of Joel's financial issues, including addressing the fraudulent charges on Joel's credit cards, legal issues involving two of Joel's ex-wives, and selling a home Joel owned in Wisconsin. Petitioners have paid all of Joel's bills and provided for his other expenses. They have insisted that Joel have the services of his own, independent financial advisor, and indicated their intent to bring all future major financial decisions to the trial court for approval.

¶ 57 Finally, we note that the GAL himself testified that he had no doubt that petitioners could successfully serve as Joel's co-guardians, noting specifically that with the use of a professional care manager, the fact that petitioners lived in California and New Jersey was not an issue. This testimony is uniquely noteworthy here, as the "traditional role of the guardian *ad litem* is not to advocate for what the ward wants but, instead, to make a recommendation to the court as to what is in the ward's best interests." *In re Mark W.*, 228 Ill. 2d at 374.

¶ 58 Nevertheless, on appeal Joel points to evidence he believes tends to establish that petitioners were not the appropriate choice to serve as his co-guardians. First, he notes his stated preference was that they not be placed in that role and that Mr. Briggs, Jr. instead serve as his guardian. Joel also notes that petitioners live in California and New Jersey, and had not visited Chicago specifically to visit him between the time they were appointed temporary co-guardians and the trial. Indeed, Joel points to the clear and undisputed evidence that petitioners' various objections to Joel's relationship with Suzanne and the progression of the guardianship proceeding had taken a significant toll on the personal relationship between petitioners and Joel.

¶ 59 Finally, Joel contends that petitioners made some inappropriate gifts to themselves and their families from Joel's trust, and that a loan Joel had made to Brian prior to his stroke was inappropriately forgiven by petitioners in their role as co-trustees, calling into question their motivations and ability to serve as co-guardians acting solely in the best interest of Joel. However, the evidence with respect to these particular issues could at best be described as conflicted. Moreover, the final written report provided to the trial court by the GAL indicated that Joel did ultimately acknowledge that the gifts and the decision to forgive the loan had actually been authorized by Joel in consultation with Mr. Kitzinger, an action taken in part to minimize any future estate taxes.

¶ 60 Once again, the record is clear that the trial court carefully considered and weighed all the relevant evidence prior to concluding that petitioners were the appropriate choice to serve as co-guardians. On appeal, the question is not whether we would have made the same decision. Rather, the question is whether or not the decision was arbitrary, fanciful, or unreasonable such that no reasonable person would have taken the view adopted by the trial court. *In re Estate of McHenry*, 2016 IL App (3d) 140913, ¶ 139. While Joel himself may not be happy with the selection of petitioners as his co-guardians, "the paramount concern in the selection of the guardian is the best interest and well-being of the person with a disability." 755 ILCS 11a-12(d) (West 2016). In light of all the evidence, we cannot say that the trial court abused its discretion in selecting Joel's two sons to serve in that role.

¶ 61 For all the above reasons, we affirm the selection of petitioners to serve as plenary co-guardians of Joel's person and estate.

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 64 Affirmed.