

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (4th) 170921-U

NO. 4-17-0921

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

October 18, 2018

Carla Bender

4<sup>th</sup> District Appellate Court, IL

<i>In re</i> GUARDIANSHIP OF DENISE RAE SANDERS, a Disabled Person	)	Appeal from the
	)	Circuit Court of
	)	Livingston County
(Denise Rae Sanders,	)	
Petitioner-Appellant,	)	No. 12P8
v.	)	
Leon R. Sanders and Susan A. Sanders	)	Honorable
Respondents-Appellees.	)	Robert M. Travers,
Curtis W. Myers, Guardian <i>Ad Litem</i> -Appellant).	)	Judge Presiding

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Knecht and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court concluded that the trial court had no authority to order visitation between a disabled adult and her parent.

¶ 2 In September 2012, when Denise Sanders was 18 years old, the trial court adjudicated her to be a disabled adult and appointed Susan Sanders (Denise’s mother) as the plenary guardian of Denise’s person and estate. The court also ordered that Denise’s father, Leon Sanders, have visitation.

¶ 3 In June 2017, Denise filed a motion to vacate court-ordered visitation and a petition for limited guardianship. In November 2017, the trial court denied these motions. Denise appeals, essentially arguing that the trial court erred by (1) denying her motion to vacate court-ordered visitation and (2) denying her petition for a limited guardianship. Regarding her first argument, Denise argues that the trial court had no statutory authority to require visitation be-

tween a disabled adult and a parent. We agree with this first argument and reverse the trial court's order.

¶ 4

## I. BACKGROUND

¶ 5

### A. The Relevant Background Information

¶ 6 Denise is a 24-year-old woman who suffers from a mild intellectual disability. She resides with her mother, Susan, in Dwight, Illinois. Leon resides in Naperville, Illinois.

¶ 7

In 2001, Leon and Susan divorced. In September 2012, when Denise was 18 years old, the trial court adjudicated her to be a disabled adult and appointed Susan as the plenary guardian of Denise's person and estate. The court also ordered that Leon have visitation with Denise. Leon often took Denise to Naperville, and Denise alleged his doing so interfered with her work and social activities.

¶ 8

### B. The Procedural History of This Case

¶ 9

In June 2017, Denise filed (1) a motion to vacate court-ordered visitation and (2) a petition for a limited guardianship. In her petition to vacate court-ordered visitation, Denise argued that the trial court had no statutory authority to require visitation between a disabled adult and her parent. In her petition for limited guardianship, Denise argued that her guardianship should be limited so as to allow her to decide when and how she will spend time with her father, instead of requiring court-ordered visitation. In November 2017, the trial court denied both of Denise's motions.

¶ 10

This appeal followed.

¶ 11

## II. ANALYSIS

¶ 12

Denise appeals, essentially arguing that the trial court erred by (1) denying her motion to vacate court-ordered visitation and (2) denying her petition for a limited guardianship.

Regarding her first argument, Denise argues that the trial court had no statutory authority to require visitation between a disabled adult and a parent. We agree with this first argument and reverse the trial court's order.

¶ 13 A. The Applicable Law

¶ 14 Section 11a-17 of the Illinois Probate Act of 1975 (Probate Act) provides as follows:

“If a guardian unreasonably prevents an adult child of the ward from visiting the ward, the court, upon a verified petition by an adult child, may order the guardian to permit visitation between the ward and the adult child if the court finds that the visitation is in the ward's best interests.” 755 ILCS 5/11a-17(g)(2) (West 2016).

¶ 15 In August 2018, section 11a-17 of the Probate Act was revised to read as follows:

“If a guardian unreasonably prevents an adult child, spouse, adult grandchild, parent, or adult sibling of the ward from visiting the ward, the court, upon a verified petition, may order the guardian to permit visitation between the ward and the adult child, spouse, adult grandchild, parent, or adult sibling. \*\*\* The court shall not allow visitation if the court finds that the ward has capacity to evaluate and communicate decisions regarding visitation and expresses a desire not to have visitation with the petitioner.” Pub. Act 100-1054 (eff. Jan. 1, 2019) (amending 755 ILCS 5/11a-17).

¶ 16 The Illinois Marriage and Dissolution of Marriage Act (Marriage Act) authorizes the trial court to enforce “[e]ducational expenses for a non-minor child” and “[s]upport for a non-minor child with a disability.” 750 ILCS 5/513, 513.5 (West 2016). However, the Marriage

Act does not authorize a trial court to order visitation between a disabled adult and her parent. 750 ILCS 5/101 *et seq.* (West 2016). In *In re Marriage of Casarotto*, 316 Ill. App. 3d 567, 571-72, 736 N.E.2d 1169, 1172-73 (2000), the First District concluded that a parent did not have the right to court-ordered visitation with his adult son who was disabled. In reaching this conclusion, the court reasoned as follows:

“[I]f the legislature had intended the visitation provisions to apply to disabled adults, it would have been a simple matter to so specify. For example, section 513 of the Marriage Act \*\*\* provides for the support of ‘non-minor children.’ There is no similar language [for visitation between a non-minor and a parent] in \*\*\* the Marriage Act.” *Id.*

¶ 17 The principal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *In re Jarquan B.*, 2017 IL 121483, ¶ 22, 102 N.E.3d 182. The best indicator of the legislature’s intent is the plain and ordinary meaning of the statute. *Id.* A subsequent amendment to a statute is also an appropriate source for discerning legislative intent. *K. Miller Construction Co., Inc. v. McGinnis*, 238 Ill. 2d 284, 298, 938 N.E.2d 471, 481 (2010). An amendment of an unambiguous statute indicates a purpose to change the law. *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 25, 990 N.E.2d 1144. When construing a statute, a court should read the statute as a whole, construing words and phrases in light of other relevant portions of the statute. *In re C.P.*, 2018 IL App (4th) 180310, ¶ 18. Courts should construe a statute to avoid absurd results. *Id.* Statutory interpretation is a question of law reviewed *de novo*. *Id.*

¶ 18 B. This Case

¶ 19 Section 11a-17 of the Probate Act—as it currently reads—authorizes the trial

court to order visitation when an *adult child* of the ward has been unreasonably denied access from visiting the ward. 755 ILCS 5/11a-17 (West 2016). The Probate Act omitted any reference to other individuals, such as parents, from being eligible for court-ordered visitation. See *id.* This plain and unambiguous reading is further buttressed by the recent amendment of the Probate Act, which will become effective in January 2019, that will allow “an adult child, spouse, adult grandchild, *parent*, or adult sibling of the ward” to be granted court-ordered visitation. (Emphasis added.) Pub. Act 100-1054 (eff. Jan. 1, 2019) (amending 755 ILCS 5/11a-17). Accordingly, the Probate Act, as it currently exists, does not authorize the trial court to require visitation between a disabled adult and a parent.

¶ 20 The Marriage Act does authorize “[e]ducational expenses for a non-minor child” and “[s]upport for a non-minor child with a disability.” 750 ILCS 5/513, 513.5 (West 2016). However, the Marriage Act does not explicitly authorize the trial court to require visitation between a disabled adult and a parent. 750 ILCS 5/101 *et seq.* (West 2016). This omission demonstrates that the Marriage Act does not authorize visitation between a disabled adult and a parent. *Casarotto*, 316 Ill. App. 3d at 571-72.

¶ 21 For the reasons stated, we reverse the trial court’s visitation order because the court had no authority to require court-ordered visitation between Denise and her father.

¶ 22 C. The Petition for a Limited Guardianship

¶ 23 Denise’s petition for a limited guardianship was, in essence, an alternative method for preventing the trial court from requiring court-ordered visitation. Because we have already concluded that the trial court had no authority to enter court-ordered visitation, we need not address this alternative argument.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we reverse the trial court's order.

¶ 26 Reversed.