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2019 IL App (3d) 180417-U

Order filed July 11, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

<i>In re</i> THE MATTER OF DAVID BROWN,	)	Appeal from the Circuit Court
Alleged Disabled Adult,	)	of the 10th Judicial Circuit,
	)	Tazewell County, Illinois
(David E. Brown, Alleged Disabled Adult,	)	
	)	
Respondent-Appellant,	)	
	)	
v.	)	
	)	Appeal No. 3-18-0417
Adult Protective Services (Michelle Martin)	)	Circuit No. 18-P-49
	)	
Petitioner-Appellee,	)	
	)	
and	)	
	)	
The Illinois Guardianship and Advocacy	)	
Commission,	)	Honorable
	)	Kirk D. Schoenbein
Appellee.)	)	Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court did not err when it appointed a plenary guardian for respondent who was unable to care for himself and make fully informed decisions. Trial court did

not err when it rejected guardianship petition filed by power of attorney, who subjected respondent to physical and emotional abuse and financial exploitation.

¶ 2 Petitioner Adult Protective Services (APS) sought the appointment of a guardian for respondent David Brown alleging he was in need of a guardian based on his inability to care for himself and the victimization of him by his power of attorney, Cindy Mason, who was emotionally and physically abusive and financially exploitative. Mason also sought to be appointed guardian. The trial court granted APS's petition for guardianship and denied Mason's petition. Brown appealed. We affirm.

¶ 3 **FACTS**

¶ 4 Petitioner APS petitioned for the appointment of a guardian for respondent David Brown. The petition alleged that Brown was a disabled person due to an intellectual disability, cognitive impairments, major depressive disorder, uncontrolled diabetes Type II, and paraplegia following a spinal cord injury, and that because of his impairments, "he lacks sufficient understanding or capacity to make or communicate responsible decisions" regarding his care and cannot manage his estate and financial affairs. The petition outlined five calls of concern the agency had received alleging Brown was the victim of abuse beginning in August 2015. The petition further alleged that Mason, Brown's friend and power of attorney for property and health care, emotionally and physically abused and financially exploited Brown. It set forth numerous instances where it was reported that Brown, who was a paraplegic and wheelchair bound, lacked adequate food and sufficient medication, suffered medical issues related to poor hygiene and lack of diabetic care, was depressed, and had attempted suicide. APS also sought the appointment of a temporary guardian on the same bases. The court appointed the Office of the State Guardian (OSG) as temporary guardian. It also appointed a guardian *ad litem* and an attorney to represent Brown. Mason filed a petition for the appointment of herself as guardian.

¶ 5 A trial took place on the petitions for plenary guardianship. David Brown testified. He was currently living in a nursing home. He was a paraplegic following a spinal cord injury and wheelchair bound. He also suffered from type II diabetes and was insulin dependent. He had been hospitalized 15 times between July 2015 and May 2018 for physical and emotional conditions and took approximately 20 medications per day. Mason was his Social Security representative payee and his power of attorney for property and health care. As his agent, she was designated as his guardian of choice on the power of attorney forms. He admitted he went back and forth whether he wanted Mason as his payee and power of attorney and that they would fight about it. She took out a life insurance policy on his life and was its beneficiary so that she could have a funeral and bury him. He discussed his episodes of depression and hopelessness and periods of stress with Mason. He both denied and admitted to documented episodes of emotional abuse perpetrated by Mason. He acknowledged that at times he was without food and medication but explained Mason was without gas or sufficient money to fill the prescriptions. At times, Mason ignored his phone calls. She also took his cell phone away.

¶ 6 On cross-examination, Brown said he considered himself self-sufficient and able to manage his finances, although he had trouble maintaining his medications. He described Mason as his best friend. He explained she was continuing to help him during his current stay in the nursing home. He wanted Mason named guardian if it was necessary that one be named. Mason was his girlfriend initially and when they executed the first powers of attorney. He believed her to be a good power of attorney and not a thief. In response to the court's questioning, Brown said it was his idea to name Mason his power of attorney. He thought she would be good because she had an honest face. On recross-examination, Brown admitted he told the police that Mason had hit him in the shoulder and that he filed a police report regarding the incident. He acknowledged

he went to the police because Mason was abusive. In response to additional questioning by the court, Brown stated he had recently been diagnosed with bi-polar disorder.

¶ 7 Michelle Martin, the APS supervisor, testified. APS is charged with investigating abuse, neglect and exploitation of the elderly and disabled. As long as a client is competent, APS may only suggest services. She met with Brown after the first “call of concern” in August 2015. At that time, Brown had lost three individual healthcare providers in three months, whom he said were not doing their jobs. Martin received a call from Mason, who said Brown was fine and that the harassment of her must stop. Mason also complained that the Advocates for Access workers did not like her. By February 2016, Advocates for Access was no longer providing healthcare services for Brown. In February 2017, APS received calls from his home healthcare workers with concerns about his sugar levels, lack of proper food, and that his medications were not available and Mason refused to bring them. At that time, she determined Brown needed a safe place and arranged for him to stay at a nursing home on an emergency basis. Martin further discussed entries in Brown’s file, including his seesawing decisions regarding who should be power of attorney and/or his representative payee. In total, five intakes occurred regarding Brown and all five were substantiated. On cross-examination, Martin explained the calls were substantiated on the bases of emotional and physical abuse, financial exploitation, passive neglect and deprivation. Mason was the person of concern.

¶ 8 Araceli Lear testified. She was the owner and chief executive officer of Care Solutions Home Health Care and Iris Home Health Care. Her companies began providing services to Brown upon his discharge from a nursing home approximately 10 years earlier. She became familiar with Mason two years prior, when Mason called about Brown’s medications and told

Lear that everything for Brown was to go through her. She received reports from her employees that Mason was interfering in Brown's care.

¶ 9 Gary Lear testified. He was Araceli's husband and had known Brown for 10 to 11 years. He was Brown's home healthcare nurse for several months when Brown first moved into his apartment. They became and remained friends. Approximately two years ago, Brown called him and said Mason was his girlfriend. He then called and said Mason had a boyfriend and was Brown's powers of attorney. Brown often stated that he did not want Mason as his power of attorney and that he did not trust her. When he would try to change his choice, Mason would become mad. Brown was afraid. He thought Mason was taking his money. Prior to Mason's arrival in Brown's life, Brown handled his bills but after Mason became involved, Brown was always asking Lear for money. Brown had been depressed and upset. He said Mason would yell at him in a threatening tone. Brown was required to get approval from Mason to have Lear visit so that Mason could also be there. In the last year, Brown had not complained about Mason. Lear described that Brown was not stupid but sometimes he let what he wanted take precedence over his needs. On redirect, Lear further described that Mason made it clear Brown was not going to do anything unless she approved it.

¶ 10 Candy Hazell testified out of order for Brown. She had been his home health care provider for three months beginning in March 2018. She worked for two weeks, three days a week for four hours each day. She met Mason at Brown's apartment and knew she was his power of attorney. Mason would take Brown to the doctor, give him money to do laundry and look after him. She had no concerns about Mason's care of Brown or about him living alone. He had plenty of food and all his needs were met. He was able to get around and participate in the community.

¶ 11 Kendra Moses Hagan testified for APS. She was the regional administrator at OSG, which was named Brown's temporary guardian in February 2018. Brown was subsequently placed in a skilled nursing center per his attending physician's recommendations. Brown was unable to meet his needs at home and did not care for himself. The placement was optimal for his medical needs. She investigated assisted and supportive living options but they were not appropriate for Brown. She spoke to him two to three times per week since February and visited him three times.

¶ 12 Jill Bell, Brown's APS caseworker, testified. She had known Brown since his August 2015 intake. There were five cases regarding him and all were substantiated. The abuse recognized by APS included emotional, financial exploitation, deprivation, confinement, physical abuse, and passive neglect. She described the events resulting in each "call of concern," details of her investigation into the allegations, and Brown's complaints to her. There were ongoing issues with Mason, causing Brown to feel hopeless. He had trust issues regarding Mason's care and control of his finances. At one point, she took the money he earned collecting cans, amounting to several hundred dollars. He believed Mason was using his money for herself. Brown did not always receive the food he needed. Mason dropped him off at a nursing home because she said she could not handle him and was not going to renew his apartment lease. She hit him in the shoulder about which he contacted the police. He later dropped the charges. In January 2017, Brown called Bell from a skilled nursing facility where he was looking for permanent placement because he could not handle Mason.

¶ 13 In February 2017, Brown said Mason would not bring him his medication and he had no food. Later in February, she met him at another skilled nursing facility where he was placed on an emergency basis on the requests of Iris Home Health Care and APS. He was not receiving his

medications and was afraid to ask Mason for them. He asked to have Mason banned as a visitor. On a home visit where Mason was present, Bell noticed inadequate food and missing medications. Brown said he could not afford them all. He no longer had home health care services. In March 2017, Brown told her the information about the referral she provided for services went to Mason as she had forwarded all his mail to her address.

¶ 14 In November 2017, following a neuropsychological examination, APS's opinion of Brown's competency changed based on the doctor's conclusion that Brown was not competent. In the following months, Brown said Mason would not return his calls and he needed an attorney to fight her because she had financially exploited him and neglected his medical care. In January 2018, during an at-home visit where Mason was present, Brown was without a phone. Mason said he was homebound, had a LifeAlert button, and did not need a phone. When Bell asked if everything was okay, Mason said yes but Brown said no. She was unable to follow up.

¶ 15 On cross-examination, Bell explained that the August 2018 financial exploitation substantiated allegation was based on Mason using Brown's money for gas; the home healthcare workers reported all Brown's money was going to Mason. The rent was always paid and Brown was fed. The emotional abuse included Mason erasing the phone numbers of Brown's sisters from his phone, exerting undue influence, isolating him, excluding his support system, and firing the home healthcare workers. For example, when Brown was hospitalized, his room information was "not published" on Mason's request, leaving Brown's family and friends without a means to visit or contact him. On questioning by the court, Bell said Brown told her his cell phone bill had not been paid.

¶ 16 Mason testified. She was just friends with Brown and they had never been involved in a romantic relationship. She said Brown's cell phone was being repaired and denied that the bill

had not been paid. She disputed that Brown's cell phone was even discussed at the visit with Bell. She fired the homemaker services because Brown was making inappropriate sexual advances to the workers. The shoulder incident involved her merely tapping Brown on the shoulder. She always provided him with his medications. She bought his groceries based on a diabetic diet; however, Brown ate what he wanted and had problems with portion control. She never used any of his money without his consent but he would give her no more than \$50 for a gift to get her nails done or buy a blouse. He also gave her money for gas. She never took his car collecting money. She took out a \$20,000 life insurance policy on Brown so that she would be able to pay for his funeral and burial. The premiums came out of Brown's funds. There was not a written agreement directing the use of the policy proceeds. She erased his sisters' phone numbers from his cell phone because they were meant to Brown. His mail was forwarded to her because she was his power of attorney. She never called Brown stupid and did not drop him off at a nursing home. She took him to the facility because he would not take care of himself. She visited Brown two to three times per week at his apartment. She was capable of being his guardian.

¶ 17 On cross-examination, Mason opined that Brown could live on his own but his diet and hygiene were problematic. Her plan was to bring Brown back to his apartment, find homemaker services and a nurse, and ensure he was receiving the proper care, which she was already doing. She would be able to help him with his medications over the phone. She acknowledged she and Brown would have to work on the diet issues and a means to ensure that he was showered. She further acknowledged that Brown did not check his insulin. She denied he was ever without medication or that she took any money from him. Her solution to Brown's suicide attempts was to talk with him about them. She admitted the police had been called five times to Brown's apartment because of arguments between her and Brown. In response to questioning by the court,



Mason said she currently lived in Peoria with her boyfriend, who was a registered sex offender. She was scheduled for knee replacement the following month and a second knee replacement a few months later. Her boyfriend would check on Brown while she was recuperating.

¶ 18 Brown testified on his own behalf. He denied many of the allegations against Mason and stated he could care for himself. On cross-examination, he said he was truthful with his doctors and acknowledged that some of the concerns about Mason were true. He further said they were sometimes true about her taking his money but then stated that he gave her money.

¶ 19 Exhibits, including Brown's medical records and the powers of attorney for health care and property, were entered into evidence without objection. A neuropsychological consult dated November 10, 2017, authored by Drake Steed, Psy.D., as a guide to Brown's attending physician, included his opinion that Brown lacked the cognitive capacity to make fully informed decisions about his medical care. Steed found Brown's ability to communicate a choice and decision-making skills were below normal limits. Steed concluded Brown did not understand the complexity of his medical situation and "did not appear to have capacity based on his limited understanding of and appreciation of the complexity of his condition."

¶ 20 The parties stipulated that Udit Verma, M.D., who authored a physician's report, was qualified and would testify per the report. Verma concluded in the report that Brown was a disabled person. Verma found that Brown did not understand the complexity of his medical issues and could not explain how to control his diabetes, including his diet and blood sugar monitoring. He displayed poor insights into his decision-making. In Verma's opinion, Brown needed a plenary guardian over his person and estate. His recommendation was that Brown move to a long-term care nursing facility or at home with in-home care during all waking hours to help him manage his chronic medical conditions.

¶ 21 The trial court found that Brown was disabled as defined by section 11a-2 of the Probate Act of 1975 (755 ILCS 5/11a-2 (West 2016)) and a person who cannot not fully manage his person or estate because of his incapacity, mental illness and developmental disability. The court further found that Brown lacked “sufficient understanding and capacity to make responsible decisions concerning the care of his person” and cannot manage his estate and financial affairs because of his conditions. See 755 ILCS 5/11a-3 (West 2016). The court determined that a limited guardianship would be inadequate and insufficient to meet Brown’s needs. The court further determined that Mason would not be an appropriate guardian and her appointment would not be in Brown’s best interest. The court found Mason was financially and emotionally exploitative of Brown; exhibited indifference and a lack of care and concern regarding his welfare; isolated Brown from friends and family; Mason was herself physically disabled, undergoing surgeries in the near future and had limited mobility; and Mason was not credible and her relationship with Brown was “simply too volatile for his fragile and vulnerable mental and physical condition.” Brown appealed.

¶ 22 ANALYSIS

¶ 23 The issues on appeal are whether the trial court erred when it appointed a plenary guardian for Brown’s person and estate and determined that Mason should not be the guardian.

¶ 24 The trial court may adjudge a person to be a disabled person when the clear and convincing evidence demonstrates that the person satisfies the definition of “person with a disability.” 755 ILCS 5/11a-3(a) (West 2016). A “person with a disability” is defined as

“a person 18 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).

¶ 25 The factors for the trial court to decide a guardianship petition include:

“(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 \*\*\*; (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)(1)-(7) (West 2016).

¶ 26 If the court adjudges a person to be disabled, it may appoint a guardian of his person if the clear and convincing evidence demonstrates that because of the person’s disability, “he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person.” 755 ILCS 5/11a-3(a)(1) (West 2016). The court may appoint a guardian of a disabled person’s estate where the clear and convincing evidence shows that person’s disability prevents them from managing his affairs or estate. 755 ILCS 5/11a-3(a)(2) (West 2016). The court may also appoint a guardian for a person’s person and estate. 755 ILCS 5/11a-3(a)(3) (West 2016). A guardian should only be appointed “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 11a-3(b)

(West 2016). Guardianship should be limited to the extent necessitated by the disabled person's actual mental, physical and adaptive limitations. *Id.* A reviewing court will not reverse a trial court's determination on whether and to what extent a guardian is necessary unless it was against the manifest weight of the evidence. *In re Estate of Kusmanoff*, 2017 IL App (5th) 160129, ¶ 83 (citing *In re Estate of Silverman*, 257 Ill. App. 3d 162, 168-69 (1993)).

¶ 27 APS presented clear and convincing evidence that Brown was in need of a guardian. His medical and psychological conditions require a level of care which Brown is unable to provide for himself, as the trial court determined. Brown's medical records and the APS files establish that he cannot understand the complexity of his situation, exhibits poor judgment and has limited understanding regarding his diabetes and management of it; severely impaired vocabulary; and an intelligence quotient (IQ) consistent with intellectual disability and cognitive impairment.

¶ 28 The testimony of Bell and Martin and the APS reports indicate that Brown's condition had deteriorated since Mason became involved in Brown's life and that Brown reported Mason was verbally abusive, took his money and left him without any food. He was without sufficient medication. He attempted suicide and was hospitalized several times. In total, Brown was in the hospital 15 times since Mason became his power of attorney. Brown testified to his hospitalizations and medical, developmental and mental conditions. His medical records established that he was unable to handle his medical issues, including his diabetes, lacking the cognitive capacity to monitor his sugar levels and handle his insulin injections. His diabetes and poor hygiene caused wounds and his cognitive deficiencies affected his ability to care for them or seek appropriate medical treatment for them.

¶ 29 The doctors' opinions established that Brown had limited intellectual and physical functioning, multiple impairments that limited his ability to adapt and was unable to make

responsible decisions regarding himself and to communicate them. Bell, Martin, Brown and Mason also testified regarding Brown's medical, developmental and emotional conditions and his inability to manage them. Hagan explained she investigated alternative living arrangements other than a skilled nursing facility and found no appropriate options. Because of his limited cognitive and physical capabilities, Brown cannot function in basic daily living activities and make important decisions. Because of his disability, Brown cannot manage his person or estate. The trial court properly found he was in need of a guardianship.

¶ 30 The trial court also considered that a limited guardianship would be inadequate and insufficient to meet Brown's current and future needs. We agree. Under the instant circumstances, a plenary guardianship was necessary to protect Brown from neglect, exploitation and abuse. Brown has been unable to direct his own care and to protect himself from mistreatment. His complex medical needs coupled with his cognitive deficiencies necessitate daily, regular monitoring and care. The trial court's choice of a plenary guardianship was supported by the evidence.

¶ 31 We next look at whether the trial court erred when it rejected the appointment of Mason as Brown's guardian. Brown argues that the trial court should have opted for her as his choice of a guardian, as demonstrated by his appointments of Mason as powers of attorney for property and health care while he was competent and his designation of her on these forms as his desired guardian should the need arise.

¶ 32 In deciding who should be the proper guardian, the court should give "due consideration" to the guardian preferred by the person with a disability. 755 ILCS 5/11a-12(d) (West 2016). The paramount concern is the best interest and well-being of the person with a disability. *Id.* The court considers the following factors when selecting a guardian: the proposed guardian's

conduct, past actions, business experience, age, family situation, and degree of relationship with the disabled person. *Kusmanoff*, 2017 IL App (5th) 160129, ¶ 95. The court should also consider any previous conduct by the proposed guardian manifesting trust or confidence in him and prior conduct by the proposed guardian demonstrating concern for the disabled person's well-being. *Id.* A reviewing court will not reverse a trial court's decision on a guardianship appointment absent an abuse of discretion. *In re Estate of McHenry*, 2016 IL App (3d) 140913, ¶ 139.

¶ 33 Bell and Martin testified about the five "calls of concern" APS received about Brown's care. All five calls were investigated, determined to be substantiated, and the person of concern in each instance was Mason. They both spoke of instances where Brown was upset with Mason, told them that she took his money and his food stamps, and that she failed to tend to his needs. Mason arranged to have all of Brown's mail forwarded to her apartment. Brown's hospital admissions establish that Mason was unable to sufficiently tend to Brown's varied needs. Moreover, there were several hospitalizations precipitated by arguments with Mason.

¶ 34 Brown's testimony further demonstrated Mason was not a proper guardian. There were numerous instances of Brown complaining about abusive conduct by Mason, which he both admitted and denied when testifying. Medical records established that his hygiene and diet were poor, his wound care was insufficient, and he did not appear to be receiving proper care. He was hospitalized 15 times after Mason took over as his power of attorney. The dysfunction between Mason and Brown was further evidenced by the back and forth waffling regarding her appointment as power of attorney and Social Security representative payee. He would complain that he wanted to change Mason as his power of attorney and payee but was scared to do it. Mason also took out a \$20,000 life insurance policy on Brown for which he paid the premiums and she was the beneficiary.

¶ 35 The trial court found Mason to be not credible. Mason's conduct and the documented complaints about her support the court's decision that she would not serve as a guardian for Brown's best interests. We find it did not err when it rejected Mason as guardian and appointed the OSG as Brown's plenary guardian.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 38 Affirmed.