

erred in entering judgment against her individually because she was sued in her capacity as guardian of Michael's estate. We reverse.

¶ 3 This appeal involves an account set up by Michael Treece and his former wife, Darla Karnes, for their older son, Zachary, under the UTMA. Prior to his stroke, Michael was the custodian of Zachary's UTMA account. As noted, Michael suffered a stroke in November 2007. At the time, Zachary was 19 years old and his younger brother, Jackson, was a minor. Zachary was a full-time college student. As a result of the stroke, Michael became physically and mentally disabled. He required care in a nursing home. In February 2008, Devra was appointed plenary guardian of Michael's estate and person. One of the assets in Michael's estate was Zachary's UTMA account. As Michael's guardian, Devra became the custodian of the UTMA account.

¶ 4 At issue are various payments Devra made from the account for Zachary's living expenses. Specifically, Devra paid off an automobile loan and paid the insurance premiums for a pickup truck driven by Zachary but owned by Michael. In addition, she paid Zachary's cell phone bills. The cell phone account was in Michael's name, although the phone was used exclusively by Zachary. Devra also paid the bills for a credit card that was used solely by Zachary, although the account was in the names of both Michael and Zachary. Finally, Devra paid premiums for a life insurance policy. Zachary was the owner and sole beneficiary of the policy. Devra made many of the payments from the assets of Michael's guardianship estate; however, she then reimbursed the estate from Zachary's UTMA account.

¶ 5 In August 2009, Zachary filed a petition for breach of fiduciary duty, an accounting, and reimbursement. He alleged that Devra breached a fiduciary duty by paying off the car loan and paying the car insurance premiums, cell phone bills, credit card bills,

and life insurance premiums from Zachary's UTMA account rather than from the assets of Michael's guardianship estate. Zachary further alleged that he suffered investment losses as a result of Devra's decision to sell bonds in order to pay off the vehicle loan. He requested reimbursement, an accounting, and attorney fees.

¶ 6 The court held hearings in the matter over four different dates between January and May 2010. Michael Treece died in June 2010, a few weeks after the final hearing.

¶ 7 Darla Karnes testified that the UTMA account was set up for Zachary when he was very young. She testified that the purpose of the account was to provide money for Zachary's college education. Asked what expenses it was meant to cover, she replied, "College expenses, tuition, fees, room and board if he lived away. Books." Darla further testified that after her marriage to Michael was dissolved in 2002, she became the custodian of Zachary's UTMA account. However, Michael became the custodian of the account a few years later after litigation between Michael and Darla.

¶ 8 Darla testified that she and Michael took out the life insurance policy on Zachary while they were married. During the marriage, they paid the premiums. She also testified that Zachary obtained a cell phone when he was in eighth grade. She believed that Michael paid the bills for the account. She further testified that the pickup truck was purchased in 2006, while Zachary was in high school, and that Zachary drove it "all the time."

¶ 9 Zachary testified that he went to a car dealership with his father when the pickup truck at issue was purchased. He admitted that he was the only person who drove the truck or used the cell phone at issue. He further admitted that he was not disabled and was capable of working. Zachary testified that Devra never consulted with him about use of the UTMA account and did not tell him that the account was being used to pay any of the relevant expenses. Devra testified that she attempted to discuss matters with

Zachary, but he did not return any of her phone calls and replied only to some of her text messages.

- ¶ 10 Devra testified about the bill payments at issue. She testified that she paid \$12,247.62 for credit card bills, \$3,136.04 for car insurance premiums, \$1,181.44 for cell phone bills, and \$536.50 for life insurance premiums. She testified that the credit card bills were for charges that Zachary incurred after Michael suffered his stroke. The charges were for cash advances, food, gas, clothing, and recurring charges for Internet services. Devra explained that she paid these charges from Zachary's UTMA account because she did not want to "nitpick" to determine which of the charges were related to educational expenses. Similarly, Devra testified that she paid for Zachary's cell phone bills and the truck insurance premiums from the UTMA account because she considered these to be educational expenses. This was because Zachary used the phone and the truck while he was at school. She explained that she paid the life insurance premiums from the UTMA account because she wanted to keep the policy "up to date" for Zachary.
- ¶ 11 Devra testified that she used \$15,634 from the UTMA account to pay off the balance of the loan on the truck. Asked why she paid off the loan rather than continuing to make monthly payments on it, Devra explained that she wanted to transfer title to the truck to Zachary for two reasons. She believed that it was Zachary's truck, and she was concerned about Zachary incurring more liabilities for her brother's estate after Zachary was involved in a vehicle accident.
- ¶ 12 Devra testified that all of the bills at issue were addressed to Michael's home or office; none were mailed to Zachary. She testified that prior to his stroke, Michael used a business account to make monthly loan payments on the truck.
- ¶ 13 Devra also testified about the assets in Michael's estate and the change in his financial

circumstances that occurred after the stroke. Prior to the stroke, Michael was a physician with an internal medicine practice. He had liquid assets of approximately \$750,000 in addition to real estate. After the stroke, his only income was \$2,200 per month in social security disability benefits, from which \$300 per month was deducted for Medicare premiums. At first, Michael's nursing home costs were \$9,000 per month, but once a place became available for him at a Veterans Administration facility, the cost was reduced to \$600 per month. In addition, Michael had a business loan, a mortgage on his home, taxes, life insurance premiums, and "regular bills." Portions of his 2002 divorce settlement still had to be paid to Darla. By the time Devra testified, the liquid assets in Michael's estate had been reduced to approximately \$75,000.

¶ 14 To help pay Michael's expenses, Devra sold his interest in the building that housed his medical practice. He shared the building with other physicians. However, Devra testified that she did not sell Michael's home. She explained that she hoped Michael's condition would improve to the point where he would be able to live in his home again. She further explained that Zachary and his brother, Jackson, had personal property in their father's house that they had not yet retrieved.

¶ 15 At the end of the hearing, the court noted that both parties had referred to the account at issue as a UTMA account and had stipulated that it was intended to be an education account. However, the court further noted that there was no documentation or evidence as to any restrictions placed on the use of the account other than those in the relevant provisions of the UTMA. The court asked the parties for clarification. They agreed that Michael and Darla's intent when they established the UTMA account was to provide for Zachary's college education. They further agreed that there were no restrictions on the use and management of the account other than those provided by

statute in the UTMA. The court took the matter under advisement.

¶ 16 In a written order, the court found that Devra improperly used Zachary's UTMA account to pay "various bills" in Michael's name despite acknowledging that the account was established to provide for Zachary's education. The court further found that Zachary "was an adult in that he was over 18 years of age, but was dependent in that his father continued to provide for his education and day to day living expenses." The court noted that the guardian of a disabled adult has a duty to provide support for the ward's adult dependent children. See 755 ILCS 5/11a-17(a), 11a-18(a) (West 2008). The court thus found that Devra had a statutory duty to provide support to Zachary. The court found that she breached this duty by failing to pay his living expenses from guardianship funds. The court further found that Devra breached the duty to "conform as closely as possible to what the ward, if competent, would have done or intended under the circumstances." See 755 ILCS 5/11a-17(e) (West 2008). The court awarded damages of \$29,576 and ordered Devra to pay Zachary's reasonable attorney fees. Devra filed a motion to reconsider, which the court denied. This appeal followed.

¶ 17 We review the court's factual findings regarding breach of fiduciary duty to determine whether these findings are against the manifest weight of the evidence. *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 363, 373, 816 N.E.2d 754, 762 (2004). A finding is against the manifest weight of the evidence only if the opposite conclusion is "clearly evident" or if the finding is arbitrary and unreasonable and "not based on the evidence." *In re Estate of Michalak*, 404 Ill. App. 3d 75, 96, 934 N.E.2d 697, 717 (2010). However, we review *de novo* the court's interpretation of relevant statutes. *Fleissner v. Fitzgerald*, 403 Ill. App. 3d 355, 366, 937 N.E.2d 1152, 1163 (2010).

¶ 18 Devra argues that the court's findings were against the manifest weight of the

evidence. She argues that she did not breach duties imposed on her as custodian of Zachary's account under the UTMA or duties imposed on her as the guardian of her brother's estate under the Probate Act. We agree.

¶ 19 We first consider Devra's duties as custodian of the UTMA account. As previously discussed, the parties agreed that the only restrictions on the use and management of the account were those imposed by statute.

¶ 20 Section 13 of the UTMA specifically authorizes the custodian of the account to pay premiums on life insurance policies on the life of the minor "only if the minor or the minor's estate is the sole beneficiary" of the policy. 760 ILCS 20/13(c)(i) (West 2008). (For the sake of clarity, we note that Zachary was between the ages of 18 and 20 at all relevant times; he was thus an adult for most purposes. The UTMA, however, defines a minor as a person who is not yet 21 years old. 760 ILCS 20/2(12) (West 2008).) The life insurance policy at issue here insures Zachary's life, and Zachary is the sole beneficiary of the policy. Thus, payment of the premiums from a UTMA account is expressly permitted by statute.

¶ 21 Section 15 of the UTMA governs the use of UTMA account property more generally. That statute provides that the custodian may pay the minor from the account or make expenditures from the account "for the minor's benefit" to the extent "the custodian considers advisable for the use and benefit of the minor." 760 ILCS 20/15(a) (West 2008).

¶ 22 Here, all of the expenditures were for Zachary's benefit. Undisputed evidence showed that Zachary had exclusive use of the truck, cell phone, and credit card at issue. Zachary does not contend otherwise. He argues, however, that these expenses constituted "debts of Michael Treece" because Michael always paid these bills for Zachary prior to suffering a stroke. We note that the court sustained objections to

most questions relating to what Michael said and did before his stroke on grounds of relevance, lack of personal knowledge, or the Dead-Man's Act (735 ILCS 5/8-201 (West 2008)). However, there was evidence from which the court could infer that Michael paid most if not all of the bills. The bills were addressed to Michael, and neither Darla nor Zachary paid them. For purposes of this appeal, we may presume that Michael paid these bills while he was competent. We do not believe this changes the fact that the payments were for Zachary's benefit.

¶ 23 Zachary also contends that his account should not have been used for these payments because they were not "educational expenses." Devra argues that, in a different context, courts have found that "educational expenses" include the day-to-day living expenses of adult children who are full-time students. See *In re Marriage of Pauley*, 104 Ill. App. 3d 100, 105, 432 N.E.2d 661, 665 (1982); see also 750 ILCS 5/513(a)(1) (West 2008). We need not resolve this argument. The UTMA requires only that expenditures be for the benefit of the minor. 760 ILCS 20/15(a) (West 2008). We conclude that the court erred in finding that Devra breached any duty to Zachary under the UTMA.

¶ 24 We must also consider whether Devra breached any duties under the Probate Act. As previously discussed, the court found that she breached a duty to support Zachary financially (755 ILCS 5/11a-17(a), 11a-18(a) (West 2008)) and a duty to make decisions that conformed to what Michael would have done if competent (755 ILCS 5/11a-17(e) (West 2008)). We believe that the court's ruling misinterprets the relevant statutory provisions.

¶ 25 Here, Devra was appointed to act as both Michael's personal guardian and the guardian of his estate. The Probate Act provides that the personal guardian of a disabled adult has custody of the disabled adult ward as well as "the ward's minor and

adult dependent children." 755 ILCS 5/11a-17(a) (West 2008). The personal guardian has a duty to "make provision for [the] care, comfort, health, education[,] and maintenance" of the ward and his dependent children. 755 ILCS 5/11a-17(a) (West 2008). The Probate Act requires the guardian of a disabled adult ward's estate to "apply the income and principal; of the estate so far as necessary for the comfort and suitable support and education of the ward, his minor and adult dependent children, and persons related by blood or marriage who are dependent upon or entitled to support from" the ward. 755 ILCS 5/11a-18(a) (West 2008).

¶ 26 The Probate Act defines a "dependent" as an individual "who is unable to maintain himself and is likely to become a public charge." 755 ILCS 5/1-2.06 (West 2008). The court did not find that Zachary met this statutory definition; instead the court simply found that he was dependent because Michael paid many of his living expenses prior to suffering a stroke. However, whether the ward actually provided support to help his adult child is not relevant to the question of whether the adult child is "dependent" within the meaning of the Probate Act. See *In re Estate of Berger*, 166 Ill. App. 3d 1045, 1058, 520 N.E.2d 690, 699 (1987) (finding that gifts to a ward's adult daughters from guardianship funds "were not justified by any gift giving pattern established" prior to the ward's incompetency); *In re Estate of Degner*, 164 Ill. App. 3d 959, 961, 518 N.E.2d 400, 401-02 (1987) (explaining that the relevant statute does not define a dependent "as one who is actually receiving financial support").

¶ 27 Generally, parents are not legally obligated to provide support for their adult children. See *Clark v. Children's Memorial Hospital*, 2011 IL 108656, ¶ 43-52, 955 N.E.2d 1065. In a dissolution proceeding, a court may order a parent to pay for the support of an adult child while the adult child is in school. See 750 ILCS 5/513(a)(1) (West 2008) (providing that courts may order payment of educational expenses, which

include living expenses). However, there was no order compelling Michael to make support payments for Zachary while Zachary was in college. Thus, Michael was under no obligation to provide support to Zachary.

¶ 28 In addition, paying for Zachary's living expenses from the guardianship estate would have breached important duties Devra owed to Michael as his guardian. The Probate Act requires the guardian of a disabled adult's estate to manage the estate frugally. 755 ILCS 5/11a-18(a) (West 2008). The "paramount duty" of the guardian is to conserve the assets of the ward for the use and benefit of the ward. *In re Estate of Berger*, 166 Ill. App. 3d at 1055, 520 N.E.2d at 697. As previously discussed, Michael's net income dropped to \$1,900 per month as a result of his disability, while his expenses increased due to the care he required. Michael was 59 years old when he suffered the stroke. Evidence at the hearing on Devra's guardianship petition showed that his condition was stable, but that future deterioration was possible. Although Michael subsequently died, at the time Devra made the expenditures at issue, she was faced with the task of providing long-term care for Michael from a rapidly dwindling estate. Depleting the guardianship estate to pay for Zachary's vehicle, cell phone, and credit card bills under such circumstances would have violated Devra's duties to manage the guardianship estate frugally and provide continued care and support for Michael. For all of these reasons, we conclude that Michael's guardianship estate was under no obligation to pay the day-to-day living expenses of Zachary.

¶ 29 The court also found that Devra breached a statutory obligation to make decisions that conformed as much as possible to those the ward would make under the circumstances. See 755 ILCS 5/11a-17(e) (West 2008). We note that this obligation is included in the statute that governs the guardian's duties as a personal guardian, not

the statute governing the duties of the guardian of an estate. The statute requires a personal guardian to make decisions on behalf of the ward "by conforming as closely as possible to what the ward, if competent, would have done or intended *under the circumstances*." (Emphasis added.) 755 ILCS 5/11a-17(e) (West 2008). We believe that the court's reliance on this provision ignores the phrase "under the circumstances." As we have discussed, Michael's circumstances after his stroke were markedly different from his circumstances before the stroke. We find no breach of fiduciary duty on the basis of this requirement.

¶ 30 Devra also contends that the court erred in awarding attorney fees to Zachary and in entering judgment against her, personally, rather than in her capacity as guardian of Michael's estate. Because we reverse the court's ruling finding Devra liable for a breach of fiduciary duty, we also reverse the award of attorney fees. In light of this decision, we need not consider Devra's argument that the court erred in entering judgment against her individually.

¶ 31 For the foregoing reasons, we reverse the order of the court.

¶ 32 Reversed.