MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Samantha M. Joslyn
Law Office of Samantha M. Joslyn
Rensselaer, Indiana

ATTORNEY FOR APPELLEE

Jacob A. Ahler
Law Office of Riley & Ahler P.C.
Rensselaer, Indiana

IN THE COURT OF APPEALS OF INDIANA

In Re the Matter of the Guardianship of Sarah Turner

Mary Luedtke,

Appellant,

v.

Deborah Hubers,

Appellee.

July 13, 2022

Court of Appeals Case No. 22A-GU-475

Appeal from the Jasper Circuit Court

The Honorable John D. Potter, Judge

Trial Court Cause No. 37C01-0103-GU-87

Bailey, Judge.

Case Summary

[1] Mary Luedtke ("Luedtke") appeals a court order removing her as a co-guardian of the person and estate of her daughter, Sarah Turner ("Turner"). Luedtke presents the sole issue of whether the trial court abused its discretion. We affirm.

Facts and Procedural History

[2] Turner is an incapacitated adult who functions at the intellectual level of a six-year-old child. In 2001, around the time that Turner turned eighteen years old, Luedtke was appointed as Turner's sole guardian. In 2011, Luedtke relocated to Florida and left Turner in the physical custody of Luedtke's other daughter, Amy. The sisters resided in a home owned by Luedtke. Because of her relocation, Luedtke requested that her sister, Deborah Hubers ("Hubers"), serve as Turner's co-guardian. Hubers was appointed as a co-guardian and assumed the responsibility of attending educational and care team meetings.

[3] In 2014, Luedtke returned to Indiana. She attended some team meetings on Turner's behalf, but Hubers was the main meeting representative and point of contact for Turner's service providers. Over time, Hubers and Luedtke came to disagree over the appropriate educational programming for Turner. They also disagreed as to whether Amy should be required to participate in formal caregiver training. In 2020, Luedtke contacted Hubers, through legal counsel, to request that Hubers withdraw as Turner's co-guardian. Hubers refused to do

so. On October 30, 2020, Luedtke petitioned the court to remove Hubers as co-guardian. Hubers counter-petitioned for the removal of Luedtke as co-guardian.

[4] The trial court conducted hearings on June 29 and August 25, 2021. Turner appeared as the first witness. She was unable to independently state her age but was responsive to questions. Turner described her role as "[being] here to get Aunt Debbie off the guardianship." (Tr. Vol. II, pg. 6.) She claimed that "[Hubers] has been trying to bother us" and the formerly good relationship "changed when she started wanting her way." (*Id.* at 14, 16.) Turner expressed her belief that the program Opportunity Enterprises was unsafe and opined that Hubers was "trying to control our lives" and wanted Turner "back at Opportunity Enterprises." (*Id.* at 13.) Turner claimed that she had returned a birthday card to Hubers with a handwritten message. Turner's long-term program specialist testified that Turner would "absolutely not" have the ability to independently draft a letter or card; rather, she could write her name, copy a letter, or have her hand guided. (*Id.* at 123.)

[5] On February 22, 2022, the trial court issued its findings of facts, conclusions thereon, and order removing Luedtke as a co-guardian. In relevant part, the trial court concluded that Luedtke was unsuitable to continue as a co-guardian because she had "coached a developmentally disabled ward of the Court to lie in [Luedtke]'s favor in Court." Appealed Order at 4. Luedtke now appeals.

Discussion and Decision

[6] Findings and orders issued in guardianship proceedings are within the discretion of the trial court. *In re Guardianship of Xitumul.*, 137 N.E.3d 945, 951 (Ind. Ct. App. 2019). Accordingly, we review a trial court's findings for an abuse of discretion, which occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court, or when the court has misinterpreted the law. *Id.* We review any questions of law de novo. *Id*.

[7] Where, as here, neither party filed a written request for findings from the trial court but instead the trial court directed the parties to prepare proposed findings, we treat the trial court's findings as sua sponte findings of fact. *Estudillo v. Estudillo*, 956 N.E.2d 1084, 1089 (Ind. Ct. App. 2011). Sua sponte findings control only the issues they cover, and a general judgment standard will control as to the issues upon which there are no findings. *Id.* at 1089-90. "A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence." *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). When a trial court has made findings of fact, we apply a two-tiered standard of review: whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions thereon. *Estudillo*, 956 N.E.2d at 1090. We will set aside findings only if they are clearly erroneous. *Id*. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Id*. To determine that a finding or conclusion is clearly erroneous, an appellate court's review must leave it with the firm conviction that a mistake has been made. *Id*.

[8] Initially, Luedtke points out that Indiana Code Section 29-3-5-5, which sets forth considerations for appointment of a guardian, prioritizes appointment of a parent over a more distant relative.[1] True, but the statutory appointment scheme permits the court, acting in the best interest of the incapacitated person or minor, to "pass over a person having priority and appoint a person having a lower priority or no priority at all." *In re Guardianship of A.L.C.*, 902 N.E.2d 343, 353 (Ind. Ct. App. 2009). There is no statutory "entitlement" to be appointed a guardian or co-guardian. *Id.* at 359.

[9] Moreover, the petition before the trial court here was for removal – rather than appointment – of a co-guardian. Indiana Code Section 29-3-12-4, governing guardian removal, provides in relevant part:

> The court may remove a guardian on its own motion or on petition of the protected person or any person interested in the guardianship, after notice and hearing, on the same grounds and in the same manner as is provided under IC 29-1-10-6 for the removal of a personal representative.

In turn, Indiana Code Section 29-1-10-6 provides in relevant part:

> When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the

[1] Also, Indiana Code Section 29-3-5-4 provides that, in making a guardianship appointment, a trial court is to give "due regard" to a request made by a parent on behalf of a minor child.

> court, or has ceased to be domiciled in Indiana, the court may remove the representative[.]

[10] "Unsuitableness of one to act as a fiduciary may exist although actual misconduct or dereliction of duty is not shown." *Estate of Baird v. Milford*, 408 N.E.2d 1323, 1328 (Ind. Ct. App. 1980). A challenger to the continued service of the fiduciary need not show that the fiduciary is either absolutely unfit or incompetent. *Id.* Rather, the determination of suitability involves such concepts as a person's character, integrity, soundness of judgment, general capacity, possible conflicts of interest, and other special circumstances known to the court. *Id.* at 1327-28.

[11] Here, in concluding that Luedtke was "not suitable to continue as co-guardian," the trial court found that there had been no estate mismanagement, but rather that Luedtke had damaged her ward "and turned her into a pawn." Appealed Order at 4. The trial court entered relevant factual findings in this regard:

> [Turner]'s testimony was coached and rehearsed. She gave a pat answer about not liking Hubers because of a garage-sale quality gift that she gave to [Turner], and that Hubers "wants it her way." She also returned a birthday card to Hubers with a note, that the Courts find [sic] to have been written by [Turner] but the content provided by someone else. [Turner] herself testified, "My sister told me how to answer the questions the right way." The Court is extremely disturbed that one of the guardians, Luedtke, along with her other daughter, Amy, have coached a developmentally disabled ward of the Court to lie in their favor in Court. Nothing speaks louder to the Court regarding Luedtke's unfitness to continue to serve as co-guardian than this

> behavior. It is no wonder that Amy, with whom [Turner] lives and who would presumably have valuable testimony regarding [Turner]'s daily needs[,] did not testify and was not called by Luedtke or Hubers.

(*Id.* at 3-4.)

[12] The findings of the trial court have evidentiary support and they support the conclusion of coaching and manipulation reached by the trial court. Jodi Barnard, who had provided services to Turner for eight years, opined that Turner functioned at the level of a six-year-old. Barnard testified that Turner was able to write her own name, copy letters, and participate in "hand-over-hand" drafting, but "absolutely" could not independently author the card sent to Hubers. (Tr. Vol. II, pg. 123.) Turner indicated that she had spoken with her sister about her testimony; her stated desires were expressed in collective terms. Luedtke argues that the trial court ignored Turner's testimony that she understood "saying things the right way" to be "telling the truth." (*Id.* at 16.) Luedtke simply asks that we reweigh the evidence and we decline the invitation.

Conclusion

[13] Luedtke has not demonstrated that the trial court abused its discretion in removing her as Turner's co-guardian.

[14] Affirmed.

Najam, J., and Bradford, C.J., concur.