

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sherry A. Renner Biggs,
Appellant-Respondent,

v.

Terri Renner,
Appellee-Petitioner.

March 3, 2023

Court of Appeals Case No.
22A-GU-2042

Appeal from the Monroe Circuit
Court

The Honorable Geoffrey J.
Bradley, Judge

Trial Court Cause No.
53C01-2107-GU-92

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Sherry Renner Biggs appeals the Monroe Circuit Court's order appointing her sister, Terri Renner, as guardian of the person of their mother, Peggy Renner. In its order, the court also appointed a guardian of the estate of Peggy and revoked Peggy's 2003 Power of Attorney. Sherry appeals and raises two issues, which we reorder and restate as:

- I. Whether the trial court abused its discretion when it appointed Terry as the guardian of Peggy's person, and;
- II. Whether the trial court erred when it revoked Peggy's Power of Attorney executed in 2003 naming her son, Randy Renner, as her attorney-in-fact.

[2] We affirm.

Facts and Procedural History

[3] Peggy Renner was born in 1933 and she has three adult children: Randy, who resides in Carmel, Indiana; Terri, who resides in Bloomington, Indiana; and Sherry, who resides in Florida. After her husband's death in 2002, Peggy's relationship with Randy and Terri became estranged. Terri also did not communicate with either of her siblings. Sherry maintained a close relationship with her mother and with Randy.

[4] In July 2003, Peggy executed a General Durable Power of Attorney. She designated Randy as her attorney-in-fact and Sherry as the alternate attorney-in-

fact. She also executed a Living Will and Appointment of Healthcare Representative in which she again designated Randy, then Sherry, as her health care representative.

[5] On December 27, 2019, Peggy executed checking and savings account agreements transferring ownership of her accounts at Centier Bank from herself as a sole account holder to herself and Sherry under the designation “joint-with survivorship.” Appellee’s App. p. 3. Funds from these accounts were later transferred to three separate accounts maintained at First Source Bank: a checking account owned jointly by Peggy and Sherry, a checking account owned by Sherry, and a certificate of deposit owned by Sherry.

[6] Peggy lived independently in her home in Valparaiso until January 2020. During that month, her home was damaged by a sewage backup. Peggy had to move out of her home while it was being repaired. Peggy did not want to move to Florida with Sherry while her house was undergoing repairs. Therefore, she initially lived with a neighbor but then moved to a nearby assisted living facility. During Peggy’s pre-admission assessment, Sherry expressed concern that Peggy might have dementia. Appellant’s App. p. 3. And Peggy’s responses to the mental status questionnaire indicated that Peggy exhibited moderate

confusion on the assessment scale. Also, in January, Peggy executed a Power of Attorney naming Sherry as her attorney-in-fact.¹

- [7] During the early months of 2020, Terri began to rebuild her relationship with Peggy. Sherry and Terri also began to communicate about Peggy's care. Peggy returned to her restored home in April or May 2020, and Sherry lived there with Peggy temporarily. Terri and Sherry agreed that Peggy should not live on her own.
- [8] Sherry believed that Peggy should return to an assisted living facility. But Terri, who was working remotely due to the COVID-19 pandemic, offered to move into Peggy's house and be her caregiver. Terri and Peggy lived in Peggy's Valparaiso home for a few days, but then Terri moved Peggy into her home in Bloomington.
- [9] Peggy resided in Terri's home until April 2021. Sherry and Terri decided to move Peggy to an assisted living facility in Florida near Sherry's home. Peggy also had a good friend who resided at the facility. The sisters hoped that living at the facility would provide additional activities and stimulation for Peggy. However, when Terri visited Peggy at the assisted living facility in May, she was not satisfied with the care that Peggy was receiving. She also observed that

¹ Randy resigned his authority under Peggy's Health Care Power of Attorney on July 2, 2021.

Peggy was not participating in activities and did not remember her friend who lived at the facility.

[10] During May, the sisters discussed their concerns about Peggy remaining at the assisted living facility and other possible living options for Peggy. They eventually agreed that it would be best for Peggy to move back to Bloomington and live with Terri.

[11] However, in early June 2021, the sisters argued about Sherry's decision to sell Peggy's Valparaiso home to Sherry's daughter and son-in-law. Terri expressed concern about future issues that could arise if Medicaid was needed and whether Sherry had an appraisal completed. Sherry was upset that Terri questioned the sale and refused to communicate with Terry after June 2, 2021. Thereafter, Terri became concerned that Sherry was using Peggy's funds for her own benefit.

[12] In mid-June, Terri removed Peggy from the assisted living facility in Florida and moved her back to Bloomington. Terri did not inform Sherry or the facility of the move. On June 15, a physician determined that Peggy suffers from dementia, moderate and degenerative, and is totally incapacitated. The physician recommended that Peggy live in a home environment with twenty-four hour care.

[13] Terri did not provide Sherry with any of Peggy's medical information after she removed Peggy from the Florida facility. This included medical care Peggy received in November 2021 after she fell in Terri's home. Sherry's contact with

Peggy has been limited as well. Sherry is able to speak with Peggy approximately once per week, but Sherry used to converse with Peggy nearly every day.

[14] On July 8, 2021, Terri filed an “Emergency Petition for Appointment of Temporary Guardian over the Person and Estate” of Peggy, and a “Petition for Revocation of Power of Attorney and for State of Removal of Incapacitated Adult from Jurisdiction” in Monroe Circuit Court. In the petitions, Terri alleged that Randy is estranged from Peggy and that Sherry “is not acting with due care towards Peggy Renner or her finances as required by [IC § 30-5-6-2.](#)” *Id.* at 34. The trial court appointed a guardian ad litem who filed his report on January 21, 2022. The court held evidentiary hearings on the petitions on March 3 and April 7.

[15] In addition to the evidence discussed above, the court issued the following pertinent findings of fact:

48. Sherry admitted to using funds from Peggy’s account for her own benefit beginning in February 2020 according to her ledger. Sherry created a Promissory Note in December 2020 that purported to cover the funds that she had used from Peggy’s accounts. At the time of the withdrawal of the funds, Sherry was acting Power of Attorney for Peggy, as Peggy was no longer competent, and could not authorize any of those withdrawals. Peggy was not competent to enter into a Promissory Note with Sherry in December 2020. Further, the Promissory Note contained no due date for repayment of the funds; only a statement that indicated, “this Note is repayable within 365 day(s) of the Lender providing the Borrower with written notice of demand.” A written notice of demand would have never taken

place because Peggy (Lender) had no knowledge of the Note, nor the ability to comprehend its terms.

49. The GAL report and the testimony presented at the hearings found several problematic financial actions undertaken by Sherry:

- a. Sherry testified Peggy's home in Valparaiso was being rented to her daughter and son-in-law, Timothy and Lindsay Ammons, in the amount of One Thousand Five Hundred Dollars (\$1,500.00) per month from approximately May 15, 2021 through September 13, 2021. The total rent due over this time period totals Six Thousand Dollars (\$6,000.00). Rent payments were never tendered to Peggy and the 2021 Profit & Loss Detailed Reports, contain no reference to funds deposited into either the Centier Bank or [First] Source Bank accounts for rent paid by Timothy and Lindsay Ammons.
- b. Sherry Renner testified that the cash, intended as rent, was retained in a safe at the Valparaiso residence of Timothy and Lindsay Ammons.
- c. That \$2300 of cash from the farm rent in December 2020, and many cash transactions reported but not validated with any receipts or proof that the cash exists. Sherry's reports indicate that these cash transactions alone amount to over \$36,000.
- d. As Power of Attorney, Sherry spent Peggy's funds on maintenance and improvements to the Valparaiso residence after her daughter began residing in the home which did not benefit Peggy. These included \$5,800 for tree removal services, \$2,750 for a boundary survey, and continued payment of utilities and cable in the home, totaling \$1,678, until at least September 2021.
- e. The testimony of Sherry Renner did not address (1) the necessity of the tree removal service; (2) any benefit which

Peggy Renner received from clearing the trees; or (3) why these expenses were not paid by Timothy and Lindsay Ammons.

f. Additionally, Two Thousand Seven Hundred Fifty Dollars (\$2,750.00) was incurred on October 1, 2021 for a boundary survey. The testimony of Sherry Renner did not address (1) the necessity of the survey; (2) any benefit which Peggy Renner received from the survey; or (3) why this expense was not paid by Timothy and Lindsay Ammons.

g. In March 2021 Sherry transferred \$112,100 from one of the Centier joint accounts and \$6,331 from a joint [First] Source account to an account at [First] Source that was in Sherry's name alone.

h. On January 1, 2020, Peggy had total cash in three bank accounts of \$199,421. By March 31, 2021, these accounts contained only \$2,028. The difference was funds that had either been spent by Sherry (\$83,018) or contained in an account owned by Sherry alone (\$114,546).

i. Sherry received the proceeds for the sale of the Valparaiso home on September 13, 2021, but did not deposit the same to Peggy's account until December 10, 2021 and gave no reason for this delay. Sherry's records show that she sent the check for the proceeds from Key West, Florida to the Centier Bank in Indiana via overnight mail on December 8, 2021, although the closing took place in Valparaiso, Indiana, thus indicating that she had the check in her possession.

j. Nineteen days prior to the exam by Dr. Schulte, December 27, 2019, ownership of two bank accounts at Centier Bank was changed from Peggy alone to Peggy and Sherry.

k. Many thousands of dollars were spent by Sherry in cash, without authentic receipts or the ability to audit.

l. Peggy Renner's personal property, including a vehicle, household furnishings and collectibles were retained at the Valparaiso residence. The Profit & Loss Detailed Reports for 2020, 2021 and 2022, contain no reference to deposits into either the Centier Bank or [First] Source Bank accounts of funds received from the sale of any of Peggy Renner's personal property. The testimony of Sherry Renner did not indicate the current whereabouts or disposition of any of the personal property owned by Peggy Renner.

50. Terri testified regarding her general observations of Peggy. She noted that Peggy has difficulty remembering past events. . . .

51. Peggy testified that she was satisfied living with Terri and that she has a great relationship with Sherry.

52. However, Peggy had difficulty responding to various basic questions. For example, Peggy:

- a. Talked about the conditions of her house when asked about her health and how she was feeling;
- b. Said that there were two dogs at Terri's house and that she loved them very much. But, she could not state their names;
- c. Could not describe what she did each day, what she liked to do or how long she had lived with Terri;
- d. Said she only had two children; Terri and Sherry; and
- e. She did not know why she was at the hearing on March 3, 2022.

Id. at 25-30. The trial court also noted that after Terri filed the petition for guardianship, Sherry transferred over \$75,000 back to Peggy’s Centier Bank account. *Id.* at 28 n.4.

[16] The trial court found that Peggy “is an incapacitated adult person who suffers from mental and physical disability due to moderate dementia, osteoporosis, and the issue of advanced age.” *Id.* at 31. The court concluded that “a guardianship is reasonable and necessary and in her best interests.” *Id.* The trial court found that there was good cause to not name Sherry as the guardian in this case. *Id.* The court appointed Terri as the guardian over Peggy’s person and a third-party guardian over her estate. The court also revoked the Power of Attorney and Health Care Representative documents signed in January 2020 and July 2003.

[17] Sherry now appeals.

Standard of Review

[18] The trial court is vested with discretion in making determinations as to the guardianship of an incapacitated person. *In re Guardianship of Atkins*, 868 N.E.2d 878, 883 (Ind. Ct. App. 2007) (citing Ind. Code § 29-3-2-4 (2001)), *trans. denied*. Therefore, we review the trial court’s judgment for an abuse of discretion. *In re Guardianship of M.N.S.*, 23 N.E.3d 759, 765 (Ind. Ct. App. 2014). In determining whether the trial court abused its discretion, we review the court’s findings and conclusions, and we may not set aside the findings or judgment unless they are clearly erroneous. *Id.* We will not reweigh the

evidence nor will we reassess the credibility of witnesses; instead, we will consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* We review questions of law de novo and owe no deference to the trial court’s legal conclusions. *In re Guardianship of Phillips*, 926 N.E.2d 1103, pin (Ind. Ct. App. 2010).

Discussion and Decision

- [19] The appointment of a guardian is guided by statute. [Indiana Code section 29–3–5–3](#) provides that the trial court “shall appoint a guardian” if the trial court finds that: “(1) the individual for whom the guardian is sought is an incapacitated person or a minor; and (2) the appointment of a guardian is necessary as a means of providing care and supervision of the physical person or property of the incapacitated person or minor[.]” In this appeal, the parties do not dispute the trial court’s finding that Peggy is an incapacitated person.
- [20] The trial court’s discretion in appointing a guardian is somewhat limited by [Indiana Code sections 29–3–5–4 and –5](#). [Indiana Code section 29–3–5–4](#) provides, in pertinent part, that “[t]he court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to . . . [a]ny request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under [IC 30–5–3–4\(a\)](#).” The court should also consider the “relationship of the proposed guardian to the individual for whom guardianship is sought” and the “best interest of the incapacitated person . . . and the property of” that person. [I.C. § 29-3-5-4](#).

- [21] [Indiana Code section 29-3-5-5](#) establishes the order of people that are entitled to consideration as guardian. “A person designated in a durable power of attorney” is the first person a court should consider when appointing a guardian. [I.C. § 29-3-5-5\(a\)\(1\)](#). The court may then consider the adult child of an incapacitated person. [I.C. § 29-3-5-5\(a\)\(4\)](#). Importantly, the trial court may also “pass over a person having priority and appoint a person having a lower priority” if it is in the best interest of the incapacitated person. [I.C. § 29-3-5-5\(b\)](#).
- [22] Finally, [Indiana Code section 30–5–3–4\(a\)](#) provides, “[a] principal may nominate a guardian for consideration by the court if protective proceedings for the principal’s person or estate are commenced. The court shall make an appointment in accordance with the principal’s most recent nomination in a power of attorney except for good cause or disqualification.” In sum, “a person designated in a durable power of attorney is entitled to primary consideration as the person to be appointed as guardian and shall be appointed guardian unless good cause or disqualification is shown.” See *In re Guardianship of Hollenga*, 852 N.E.2d 933, 938 (Ind. Ct. App. 2006).

I. Appointment of Terri as Peggy’s Guardian

- [23] Sherry contends that the trial court failed to make the requisite findings to appoint Terri as Peggy’s guardian. Specifically, Sherry argues that the “trial court failed to consider the requisite statutory framework . . . for determining an appropriate guardian.” Reply Br. at 4; see also Appellant’s Br. 12-17. Sherry acknowledges the trial court’s finding that there was good cause not to name herself as Peggy’s guardian but suggests that the trial court chose Terri by

default after the court concluded that Sherry was not an appropriate guardian.
Id. at 4-5.

[24] We agree that the focus of the trial court's extensive findings of fact addressed the evidence presented to support the trial court's conclusion that Sherry is not an appropriate person to serve as Peggy's guardian. We can also discern the reasons for the trial court's decision to appoint Terri as the guardian of Peggy's person from the evidence presented and the trial court's order.

[25] The trial court considered Terri and Peggy's estrangement for many years. However, the evidence established that Terri and Peggy had repaired their relationship over the last few years. Sherry and Terri consulted with each other concerning Peggy's care after her inability to care for herself became evident. Specifically, Sherry considered Terri's opinion regarding whether Peggy should live in her home, live with Terri in Bloomington, or live in an assisted living center in either Indiana or Florida.

[26] Terri unilaterally removed Peggy from the assisted living center in Florida in June 2021 even though she lacked legal authority to do so. However, Terri presented evidence that Sherry also expressed concerns about the care that Peggy was receiving while she lived at that facility. Ex. Vol. 1, pp. 6-8. Sherry notified the facility that Peggy would be moving out but later rescinded that notice. Dr. LaFollette, who assessed Peggy's mental state when she returned to Indiana in June 2021, recommended that Peggy live in a home environment with twenty-four hour care. The guardian ad litem also believed a home

environment is generally best and “consistent with” Peggy’s “prior lifestyle.” Tr. Vol. 2, p. 16.

[27] Aside from Peggy’s brief residence at the assisted living facility in Florida in May and June 2021, Terri has been caring for Peggy in Terri’s home in Bloomington since May 2020. Sherry agreed with this arrangement and there is no evidence that Sherry had any concerns about Terri’s caregiving before these proceedings were initiated. Terri is willing to continue to care for Peggy in her home. The guardian ad litem testified that appointing Terri as Peggy’s guardian was in Peggy’s best interest because 1) Peggy’s “current situation seems quite manageable and [] quite comfortable;” and 2) Sherry stated that if she was named Peggy’s guardian, Peggy would be placed in a nursing home. Tr. Vol. 2, p. 42; see also Tr. Vol. 1, p. 249 (Sherry’s testimony that she believes that her mother should reside in a nursing home in Valparaiso). The guardian ad litem did not believe that Peggy should reside in a nursing home. *Id.*

[28] Contrary to Sherry’s claims in this appeal, the trial court did not appoint Terri by default. Terri had cared for Peggy in her home for nearly two years before the hearings were held on her petition. And the trial court heard evidence that naming Terri as Peggy’s guardian was in Peggy’s best interest. After reviewing the testimony and exhibits in the record on appeal and the court’s findings of fact and conclusions of law, we conclude that the trial court considered Peggy and Terri’s relationship and Peggy’s best interests before appointing Terri as Peggy’s guardian. See [I.C. § 29-3-5-4](#).

- [29] Much of Sherry's argument is devoted to evidence of Peggy's and Terri's strained relationship prior to 2020, and the fact that Terri was not appointed as Peggy's power of attorney and will not receive any inheritance under Peggy's will. Sherry also absurdly suggests that the trial court should have considered Randy for appointment as Peggy's guardian even though Randy has not spoken to his mother since 2005 and has expressed no interest in seeing to her wellbeing. Also, contrary to Sherry's suggestion, there was no reason for the trial court to appoint a third-party guardian over Peggy's person. Terri is more than willing to serve in that capacity and the trial court was required to give her request priority pursuant to [Indiana Code section 29-3-5-5\(a\)\(4\)](#).
- [30] Finally, given the contentious relationship between Terri and Sherry, and Sherry's mishandling of Peggy's finances, the trial court wisely chose to appoint a third-party as guardian of Peggy's estate.

II. Revocation of the 2003 Power of Attorney

- [31] For the same reasons noted above, the trial court did not abuse its discretion when it revoked Peggy's 2003 General Durable Power of Attorney in which she designated Randy as her attorney-in-fact and Sherry as the alternate attorney-in-fact. [Indiana Code Section 30-5-3-4\(d\)](#) allows the trial court to issue an order revoking or amending a power of attorney after holding a hearing on the matter. *See also In re Guardianship of Morris*, 56 N.E.3d 719, 724 (Ind. Ct. App. 2016) (recognizing that "if an incapacitated person's attorney in fact is different than the person's guardian, the attorney in fact remains in control unless the trial court holds a hearing and orders the guardian to revoke the power of

attorney”). Therefore, a trial court has authority under [section 30-5-3-4](#) to establish a guardianship in place of a valid power of attorney if certain conditions are met.

[32] Sherry argues that the trial court should have allowed Randy to remain as Peggy’s Power of Attorney. Randy testified during these proceedings in support of Sherry but did not request to serve as Peggy’s guardian or continue to serve as her Power of Attorney. And Randy resigned his authority under Peggy’s Health Care Power of Attorney on July 2, 2021. The undisputed evidence is that Randy’s relationship with Peggy has been non-existent for many years, yet Sherry incredibly maintains throughout her brief that Randy should serve as her guardian or Power of Attorney. Moreover, during the hearing on Terri’s petition, Sherry argued that she should remain as Peggy’s Power of Attorney, and she never argued that Randy should be appointed as guardian or continue to serve as Peggy’s attorney-in-fact.

[33] For all of these reasons and those set forth above, the trial court did not err when it revoked Peggy’s 2003 General Durable Power of Attorney.²

² Sherry does not appeal that portion of the trial court’s order revoking Peggy’s 2020 Power of Attorney.

Conclusion

[34] The trial court did not abuse its discretion when it revoked Peggy's 2003 Power of Attorney and granted Terri's petition to be appointed Peggy's guardian over her person.

[35] Affirmed.

May, J., and Bradford, J., concur.