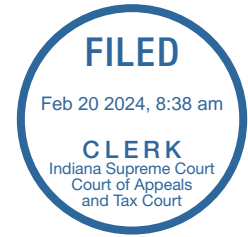


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of Guardianship of
Ralph W. Laux,
Christopher Lewis Laux,
Appellant-Cross-Petitioner,

v.

Giles Laux,
Appellee-Petitioner.

February 20, 2024

Court of Appeals Case No.
23A-GU-403

Appeal from the
Jay Circuit Court

The Honorable
Brian D. Hutchison, Judge

Trial Court Cause Nos.
38C01-2201-GU-3
38C01-2202-GU-5

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Christopher Lewis Laux (“Chris Laux”) appeals the trial court’s order appointing Giles Laux as the permanent guardian of Ralph W. Laux (“Ralph”), after the court first appointed Giles Laux as temporary guardian. Chris Laux raises the following four restated issues for our review:

- I. Whether Chris Laux’s claim that the trial court abused its discretion when it appointed Giles Laux as the temporary guardian of Ralph is moot;
- II. Whether the trial court abused its discretion when it determined that Ralph was not obligated to personally attend the evidentiary hearing due to his health;
- III. Whether the trial court abused its discretion when it appointed Giles Laux as the permanent guardian of Ralph; and
- IV. Whether the trial court abused its discretion when it declined to disqualify an attorney (“Wesley Schemenaur”) who represented Giles Laux in the proceedings.

[2] We affirm.

Facts and Procedural History

[3] Ralph was born on August 20, 1928, and has eight living adult children, including Chris Laux and Giles Laux. On April 11, 2019, Wesley Schemenaur drafted—and Ralph executed—a power of attorney (1) naming Giles Laux, Ralph’s youngest son, as Ralph’s attorney in fact and (2) designating Giles Laux to serve as Ralph’s guardian if protective proceedings were commenced.

Since the execution of the power of attorney, Giles Laux has served as Ralph's attorney in fact. During the COVID-19 pandemic in 2020, Terry Laux—Ralph's other son and the sibling of Chris and Giles Laux—became Ralph's primary caretaker. On August 17, 2021, Ralph was diagnosed with severe dementia.

[4] On January 28, 2022, Giles Laux—represented by Wesley Schemenaur—filed a petition for the appointment of a temporary and permanent guardian over Ralph and attached a letter from Indiana University Health confirming Ralph's dementia diagnosis. On February 8, 2022, Chris Laux, pro se,¹ filed a cross-petition for guardianship appointment over Ralph and attached a statement executed by Ralph on February 7, 2022, stating: "I want Giles [Laux] taken off of all of my financial accounts and legal documents." Appellant's App. Vol. 2 p. 44. On February 23, 2022, a hearing was held, and Chris Laux requested findings by the trial court pursuant to Indiana Trial Rule 52. The trial court entered findings of fact in support of its decision to appoint Giles Laux as the temporary guardian of Ralph.

[5] On February 24, 2022, Chris Laux filed a motion to disqualify Wesley Schemenaur from representing Giles Laux "due to an inherent conflict of interest." *Id.* at 67. The trial court conducted a telephonic hearing on the motion in March 2022, and denied Chris Laux's motion to disqualify, stating:

¹ Chris Laux is a licensed attorney.

[Wesley Schemenaur] was bringing to fruition the request made by client, Ralph [], by representing Giles Laux, the named power of attorney . . . I don't see a conflict of interest right now. I will not require his removal. Yes, if [Wesley Schemenaur is] a necessary witness he will not be representing a party at the trial.

Tr. Vol. 2 p. 42. Subsequently, the trial court appointed Leslie Mathewson as the guardian ad litem for Ralph (“the GAL”). Giles Laux filed a motion to excuse Ralph from attending the evidentiary hearing and attached a letter from Doctor Mark Haggenjos (“Dr. Haggenjos”) stating that, due to Ralph’s “mental and physical health” and “his medical condition of dementia,” “appearing in court would constitute and be a hardship on Ralph’s health[.]” Appellant’s App. Vol. 3 p. 74. The trial court granted Giles Laux’s motion pursuant to Indiana Code section 29-3-5-1(d), excusing Ralph from attending the evidentiary hearing. Appellant’s App. Vol. 2 p. 24.

[6] On January 31, 2023, the evidentiary hearing on the petition for the appointment of a permanent guardian for Ralph was held. The GAL testified that Giles Laux was the “best person suited for [the] guardianship” of Ralph. Tr. Vol. 2 p. 86. At the hearing, testimony at times focused on financial disbursements that Giles Laux—as temporary guardian—had authorized to be made from Ralph’s accounts. Giles Laux testified that he made cash withdrawals from Ralph’s account because “[Ralph] likes to have cash on him” to tip at restaurants and to give to the neighborhood kids that “drop off cookies for him.” *Id.* at 132–33. The GAL also accounted for some of the distributed funds, indicating that the siblings received “birthday present checks from . . .

[Ralph]” and monthly stipends for “their care for [Ralph].” *Id.* at 95. When asked if he had read the statement attached to the petition for guardianship filed by Chris Laux, Giles Laux testified that Ralph did not know that “any of that information was in the [statement].” *Id.* at 16. The trial court entered findings of fact,² supporting its decision to appoint Giles Laux as the permanent guardian of Ralph. This appeal ensued.

Discussion and Decision

[7] When issues are tried upon the facts by the court without a jury, Trial Rule 52 provides that a trial court “shall find the facts specially and state its conclusion thereon” either “[u]pon its own motion” or upon “the written request of any party filed with the court prior to the admission of evidence.” “Our standard of review on judgments under Trial Rule 52 differs slightly depending upon whether the entry of specific findings and conclusions comes *sua sponte* or upon [written] motion by a party.” *Trust No. 6011, Lake County Trust Co. v. Heil’s Haven Condominiums Homeowners Ass’n*, 967 N.E. 2d 6, 14 (Ind. Ct. App. 2012) (quoting *Argonaut Ins. Co. v. Jones*, 953 N.E.2d 608, 614 (Ind. Ct. App. 2011), trans. denied). Where a trial court enters specific findings on motion, our standard of review is well established:

[We] will “not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Ind. Trial

² Chris Laux made a timely request for findings pursuant to Trial Rule 52.

Rule 52(A). Under our . . . two-tiered standard of review, we must determine whether the evidence supports the findings and whether those findings support the judgment. We consider the evidence most favorable to the trial court’s judgment, and we do not reweigh evidence or reassess the credibility of witnesses. We will find clear error only if the record does not offer facts or inferences to support the trial court’s findings or conclusions of law.

Johnson v. Johnson, 181 N.E.3d 364, 371 (Ind. Ct. App. 2021). Issues relating to guardianship of an incapacitated person are entrusted to the trial court’s discretion. *See* Ind. Code § 29-3-2-4; *In re Guardianship of Morris*, 56 N.E.3d 719, 723 (Ind. Ct. App. 2016). This court will reverse a trial court’s decision relating to guardianship only if there has been an abuse of that discretion. *See id.* An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In addition, this court may affirm “a judgment on any legal theory, whether or not relied upon by the trial court, so long as the trial court’s findings are not clearly erroneous and support the theory adopted.” *Dow v. Hurst*, 146 N.E.3d 990, 996 (Ind. Ct. App. 2020).

I. Temporary Guardian

[8] Chris Laux claims that the trial court abused its discretion when it appointed Giles Laux as the temporary guardian of Ralph. A threshold issue is whether this claim has been rendered moot by the subsequent order of permanent guardianship. Although we have not addressed mootness in the context of guardianship, “[t]he long-standing rule in Indiana courts has been that a case is

deemed moot when no effective relief can be rendered to the parties before the court.” *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991). When the controversy at issue has been ended or settled, or somehow disposed of so as to render it unnecessary to decide the question involved, the case will be dismissed. *Id.*

[9] Although we sometimes address moot issues when an exception exists, here, Chris Laux failed to raise any grounds as exceptions to mootness and we find none in the case at hand. *See Rainey v. Ind. Election Comm’n*, 208 N.E.3d 641, 644 (Ind. Ct. App. 2023) (addressed the merits of a moot case under the public interest exception); *see also Gaither v. Indiana Dept. of Correction*, 971 N.E.2d 690, 694 (Ind. Ct. App. 2012) (addressed the merits of a moot issue because it was “capable of repetition, but likely to evade review”); *see also C.P. v. Sr. Vincent Hospital and Health Care Center, Inc.*, 219 N.E.3d 142, 144 (Ind. Ct. App. 2023) (addressed the merits of a moot case under the collateral consequences exception). Therefore, any challenge to the order of temporary guardianship is moot.

II. Ralph’s absence from hearing

[10] Chris Laux contends that the trial court abused its discretion when it excused Ralph from attending the evidentiary hearing. Specifically, Chris Laux claims that “there is no evidence in the record or proper finding by the Court to legally justify the absence of Ralph from the proceedings in circumvention of his due

process and of Ind. Code [§] 29-3-5-1(d).” Appellant’s Br. p. 27. We disagree. Indiana Code section 29-3-5-1(d)(2), which provides:

A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that . . . it is not in the alleged incapacitated person’s best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court.

[11] Giles Laux filed a motion to excuse Ralph from personally attending the evidentiary hearing, supported by a statement from Dr. Haggengjos stating that Ralph’s appearance in court “would constitute and be a hardship on [his] health due to his medical condition of dementia.” Appellant’s App. Vol. 3 p. 74. Chris Laux challenged the motion, claiming that Ralph: had the legal right to attend the hearing, was able to attend because he attends other matters outside his home, attended the prior hearing in this matter before he was assigned a temporary guardian, and had made it abundantly clear that he did not want Giles Laux to be his guardian. *See id.* at 80. However, Chris Laux did not submit any evidence supporting any of his claims, making the only evidence before the trial court that which supported Ralph’s absence at the evidentiary hearing pursuant to Indiana Code section 29-3-5-1(d)(2). Because the uncontroverted evidence indicated that attending the hearing would be detrimental to Ralph’s best interest, we cannot say the trial court abused its discretion when it excused Ralph from personally attending the evidentiary hearing.

[12] Chris Laux also raises a due process claim, but fails to identify what process Ralph was due outside of the statutory process for excusal of an incapacitated person or present any cogent argument to support a due process violation outside of his regurgitation of the Fourteenth Amendment. As a result, Chris Laux has waived this claim on appeal. *See Zavodnik v, Harper*, 17 N.E.3d 259, 264 (Ind. 2014) (concluding that appellant waived his claim because “he fail[ed] to support it with cogent argument”); *see also* Ind. Appellant Rule 46(A)(8)(a) (requiring that “the argument must contain the contention of the appellant on the issues presented, supported by cogent reasoning . . . [and that e]ach contention . . . be supported by citations to the . . . parts of the Record on Appeal relied on, in accordance with Rule 22.”).

III. Permanent Guardian

[13] Chris Laux claims that the trial court abused its discretion when it appointed Giles Laux as the permanent guardian of Ralph after the evidentiary hearing. The appointment of a guardian is guided by statute. Indiana Code section 29-3-5-5 provides the list of priority of individuals that are entitled to consideration for appointment as a guardian. The first statutory priority is “[a] person designated in a durable power of attorney[.]” Ind. Code § 29-3-5-5(a)(1); *see also In re Guardianship of Hollenga*, 852 N.E.2d 933, 938 (Ind. Ct. App. 2006). “The court, acting in the best interest of the incapacitated person . . . , may pass over a person having priority and appoint a person having a lower priority or no priority under this section” I.C. § 29-3-5-5(b). “Thus, pursuant to these statutes, a person designated in a durable power of attorney is entitled to

primary consideration as the person to be appointed guardian unless good cause or disqualification is shown.” *In re Guardianship of Hollenga*, 852 N.E.2d at 938.

[14] Here, Ralph designated Giles Laux for guardianship consideration in a durable power of attorney that he executed on April 11, 2019. Chris Laux claims that the trial court should not have considered the designation of Giles Laux in the power of attorney because Ralph was coerced into executing it by Terry Laux and Giles Laux. Chris Laux claims that Ralph “could not have understood complex legal documents in 2018 because [Ralph] could barely decipher a menu at a restaurant during that same period.” Appellant’s Br. p. 28. Chris Laux failed to cite to the record or any authority in support of his contentions, contrary to the Indiana Rules of Appellate Procedure. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that “[e]ach contention . . . be supported by citations to the . . . parts of the Record on Appeal relied on, in accordance with Rule 22”); *see also City of Indianapolis v. Buschman*, 988 N.E.2d 791, 795 (Ind. 2013) (finding a party’s argument waived for noncompliance with Rule 46). Furthermore, although Chris Laux baldly asserted at the hearing that he “disputed th[e] power of attorney[,]” he failed to present any evidence of coercion, or argue the issue of coercion to the trial court. Tr. Vol. 2 p. 28. Therefore, Chris Laux has waived this portion of his argument on appeal. *See Harmon v. Fisher*, 56 N.E.3d 95, 99 (Ind. Ct. App. 2016) (“Arguments not presented first to the trial court are waived for appellate review.”).

[15] Chris Laux also claims that “financially, it is in Ralph’s best interest to appoint a neutral, third-party guardian” because (1) there is unaccounted for money that

was withdrawn from Ralph’s account; (2) approximately \$20,000 has been paid out to his siblings, and (3) Terry Laux, Ralph’s primary caregiver since the COVID-19 pandemic, is suspended from the practice of law with no expertise in the fields of accounting, finance, or medicine. Appellant’s Br. p. 29.

Furthermore, Chris Laux argues that a person named Leesa Ackerman should have been appointed guardian of Ralph because she is a neutral third-party and has “all the qualification[s] necessary to take care of Ralph.” *Id.* at 31. Finally, Chris Laux also claims that Ralph “made it clear that he did NOT want [Giles Laux] as the guardian.” *See* Appellant’s Reply Br. p. 9; *see also* Appellant’s App. Vol. 2 p. 44. Chris Laux’s claims are an invitation for us to reweigh evidence, which we will not do; “instead, we will consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment.”

In re Guardianship of M.N.S., 23 N.E.3d at 766.

[16] Here, the evidence reveals that Ralph designated Giles Laux for guardianship consideration in a durable power of attorney that he executed on April 11, 2019, and the GAL testified that Giles Laux was the “best person suited for [the] guardianship” of Ralph. Tr. Vol. 2 p. 86. As for the alleged unaccounted for money that was withdrawn from Ralph’s account, Giles Laux testified that he made cash withdrawals from Ralph’s account because “[Ralph] likes to have cash on him” to tip at restaurants and to give to the neighborhood kids that “drop off cookies for him.” Tr. Vol. 2 pp. 132–33. The GAL also testified that Chris Laux’s siblings received “birthday present checks from . . . Ralph” and monthly stipends for “their care for [Ralph].” Tr. Vol. 2 p. 95. There was

ample evidence presented to support the legitimacy of these expenses. As for the assertion that Ralph did not want Giles Laux as his guardian, the statement was not offered independently as an exhibit and was only addressed during Giles Laux's cross examination. When asked if he had read the statement attached to the petition for guardianship filed by Chris Laux, Giles Laux testified that Ralph did not know that "any of that information was in the [statement]." *Id.* at 16. Moreover, the statement was executed after Ralph's dementia diagnosis, leaving the statement's credibility to the trial court's discretion. In light of the facts and circumstances before the trial court, we cannot say the trial court abused its discretion when it appointed Giles Laux as the permanent guardian of Ralph.

IV. Conflict of Interest

[17] Chris Laux claims that the trial court abused its discretion when it denied his motion to disqualify Wesley Schemenaur from serving as counsel to Giles Laux in these proceedings. Specifically, Chris Laux argues that Wesley Schemenaur had a professional conflict of interest and, therefore, a duty to withdraw from this case because: (1) "[t]here are two parties in this case – the eldest son and a younger sister – who both state Ralph does not want [Wesley] Schemenaur's client as Ralph's guardian;" (2) he had an affirmative duty to rectify Giles Laux's alleged misappropriation of Ralph's funds and Ralph's missing funds; (3) he was a witness; (4) he was aware that money had gone missing from Ralph's account; (5) he was aware that Terry Laux had no qualifications as a caregiver, pays no rent or utilities, gets paid a salary plus bonus that has not

been declared as taxable income, has meals paid for by Ralph, and does not own a vehicle but claims “constructive possession” over Ralph’s vehicles; (6) he was aware of two false police reports made by Terry Laux; and (7) he was aware that Giles Laux committed perjury at the January evidentiary hearing. Appellant’s Br. pp. 32–33.

[18] “A trial court may disqualify an attorney for a violation of the Indiana Rules of Professional Conduct [(“IRPC”)], and the court’s decision is reviewed for an abuse of discretion.” *Duff v. Rockey*, 180 N.E.3d 954, 956 (Ind. Ct. App. 2022). Chris Laux directs our attention to IRPC 1.9(a), IRPC 3.7, and the commentary in IRPC 1.14 and IRPC 3.8. IRPC 1.9(a) provides:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

[19] IRPC 3.7(a) provides:

A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

[20] “If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward’s interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct.” Ind. Professional Conduct Rule 1.14, cmt. 4. “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.” Ind. Professional Conduct Rule 3.8, cmt. 1.

[21] Again, Chris Laux’s assertions are an invitation for us to reweigh evidence which we will not do. *See In re Guardianship of M.N.S.*, 23 N.E.3d at 766. Here, the trial court specifically found that Wesley Schemenaur’s representation of Giles Laux was not adverse to Ralph because “[Wesley Schemenaur was] bringing to fruition the request made by his client, Ralph [], by representing Giles Laux, the named power of attorney.” Tr. Vol. 2 p. 42. In other words, Wesley Schemenaur’s representation of Giles Laux was consistent with Ralph’s designation of Giles Laux as his guardian in the power of attorney. Furthermore, the GAL did not object to Wesley Schemenaur’s representation of Giles Laux. More importantly, Wesley Schemenaur had alternate counsel available to present the case at the hearing if he was called to testify at trial. Although Wesley Schemenaur did not ultimately testify, the alternate counsel handled the final hearing in this matter. Therefore, the trial court did not abuse its discretion when it declined to grant the motion to disqualify Wesley Schemenaur.

Conclusion

[22] Based on the foregoing, we conclude that Chris Laux's claim regarding the temporary guardianship of Ralph is moot. Further, we conclude that the trial court did not abuse its discretion when it excused Ralph from personally attending the evidentiary hearing and when it denied the motion to disqualify Wesley Schemenaur from representing Giles Laux. Finally, we conclude the trial court did not abuse its discretion when it appointed Giles Laux as the permanent guardian of Ralph.

[23] Affirmed.

Altice, C.J., and May, J., concur.