[Cite as *In re Guardianship of Cohodes*, 2015-Ohio-2532.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of the Guardianship of	:	
Jane E. Cohodes,	:	No. 14AP-318 (Prob. No. 478125)
(Andrew Cohodes,	:	No. 14AP-972 (Prob. No. 478125)
Appellant).	:	
In the Matter of the Guardianship of	:	No. 14AP-319 (Prob. No. 550851)
Sharon K. Cohodes,	:	
(Andrew Cohodes,	:	No. 14AP-973 (Prob. No. 550851)
Appellant).	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on June 25, 2015

Golden & Meizlish Co., LPA, and *Keith E. Golden*, for appellant.

Lee M. Smith & Associates Co., LPA, and *Bradley R. Glover*, Guardian, pro se.

APPEALS from the Franklin County Court of Common Pleas, Probate Division

DORRIAN, J.

{¶ 1} Appellant, Andrew Cohodes, appeals from the judgments of the Franklin County Court of Common Pleas, Probate Division, dated March 19 and October 31, 2014. These judgments appointed appellees, Bradley Glover and Kevin Craine, to serve as the successor guardians of the persons of Sharon Cohodes ("Sharon") and Jane Cohodes ("Jane"), respectively. For the reasons that follow, we affirm.

{¶ 2} In 2001, the probate court found Jane to be incompetent and appointed her mother, Sharon, to be the guardian of Jane's person and estate. In 2011, Sharon was removed as guardian of Jane's person and estate, and Attorney David Belinky was appointed as guardian of the person and estate of Jane. The probate court also found Sharon to be incompetent and appointed Attorney Bradley Glover as guardian of the estate of Sharon and Attorney Belinky as guardian of the person of Sharon. On November 3, 2013, Attorney Belinky passed away.

{¶ 3} On November 8, 2013, the court appointed Attorney Kevin Craine as successor guardian of the estate of Jane. Multiple applications for appointment as successor guardian of the person of Sharon and Jane were filed, including the applications of appellant, Sharon's son and Jane's brother.

{¶ 4} On December 5, 2013, a magistrate of the court held a hearing and considered the applications for successor guardian of the persons of Sharon and Jane. At the hearing, the attorney representing Teri Morof, Sharon's daughter and Jane's sister, respectively urged the magistrate to review the hearing of appellant's actions and behavior found in court documents and recordings. Appellant did not object. Therefore, the magistrate considered the same.

{¶ 5} On December 17, 2013, the magistrate issued a decision, which denied the applications of appellant to be appointed the successor guardian of the persons of Sharon and Jane. The magistrate appointed Attorney Bradley Glover as the successor guardian for the person of Sharon (since 2011 he had served as the guardian of the estate of Sharon) and Attorney Kevin Craine as the successor guardian of the person of Jane (he had recently been appointed successor guardian of the estate of Jane).

{¶ 6} In his decision, the magistrate referred to appellant's past actions and behaviors reflected in court proceedings in the guardianships of both Sharon and Jane. On December 30, 2013, appellant objected to the magistrate's decision. On March 19, 2014, the court overruled the objections and adopted the December 17, 2013 magistrate's decision in its entirety. On April 17, 2014, appellant appealed the March 19, 2014 judgment.

{¶ 7} On June 24, 2014, appellant, Attorney Kevin Craine, in his capacity as guardian of Jane, and Attorney Bradley Glover, in his capacity as guardian of Sharon, agreed to a joint motion for remand. By journal entry of June 25, 2014, this court approved the joint motion to remand "to the limited extent that [the] matter [be] remanded to the trial court for consideration and resolution of the parties' joint motion."

{¶ 8} As summarized below, the parties in their motion for remand asked the court:

- To remove from the December 17, 2013 magistrate's decisions the findings of fact A-H in Sharon's guardianship case and the findings of fact A-F in Jane's guardianship case because they were based upon facts outside the December 5, 2013 hearing;

- To issue amended decisions in both guardianship cases *arriving at the same results,* but without consideration and inclusion of findings of fact A-H in Sharon's guardianship case and findings of fact A-F in Jane's guardianship case;

- To seal the magistrate decisions in both guardianship cases;

- Provided the court issues amended decisions, appellant will not appeal the remainder of the judgments appointing Attorney Glover and Attorney Craine as guardians.

{¶ 9} On July 30, 2014, the parties filed a joint motion to modify judgment, pursuant to Civ.R. 60(B), requesting that the court amend the December 17, 2013 magistrate's decision, arriving at the same result but without consideration and inclusion of the objected-to facts. The parties again requested sealing of the December 17, 2013 decision.

{¶ 10} On remand, the probate court issued a decision on October 31, 2014. The court summarized the proceedings and included the findings of fact A-H in Sharon's case and the findings of fact A-F in Jane's case. The court noted that appellant did not object to the request to review the history of appellant's actions and behaviors as found in court

documents and recordings.[1] The court also noted that the rules of evidence do not apply in guardianship appointment proceedings, as the purpose is to determine the best interest of the ward. The court cited *In re Estate of Janes*, 5th Dist. No. 03-CA-008, 2004-Ohio-1766, for the proposition that a probate court is authorized to take judicial notice of its own public record and the filings before the court. The court noted that guardianship is a continuous proceeding.

{¶ 11} The court observed that the findings of fact to which appellant objects are part of the basis for which appellant's applications were denied. Accordingly, the court denied the parties' request to remove the findings of fact to which appellant objected, denied the request to issue new decisions, and denied the request to seal the decisions, noting that, in Ohio, the court records are presumed to be open to public access. The court also noted that the facts found in the magistrate's decisions are found in other public recordings filed in Sharon and Jane's guardianship cases.

{¶ 12} On November 24, 2014, appellant filed a notice of appeal of the probate court's October 31, 2014 decisions in both Sharon and Jane's guardianship cases. One day later, the trial court filed an amended judgment entry, concluded the same as in the October 31, 2014 judgment entry, except noting that the parties had asked the court to take action on the remand as requested in its joint motion to modify judgment pursuant to Civ.R. 60(B). Appellant filed a motion to amend his notices of appeal to reflect his appeal of the November 25, 2014 judgment entry. We grant the motion to amend his notices of appeal.

{¶ 13} Appellant asserts the following assignment of error:

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT INCLUDED OUTDATED INFORMATION AND FACTS THAT WERE NOT PART OF THE DECEMBER 5, 2013 HEARING WHEN DECIDING UPON THE SUCCESSOR-GUARDIAN OVER THE PERSONS OF JANE COHODES AND SHARON COHODES.

{¶ 14} Appellant argues that: (1) there was no request to take judicial notice at the December 5, 2013 hearing, and (2) even if there was, it was not proper for the court to

[1] The trial court referred to this review as taking judicial notice of the record.

take judicial notice because the "facts" do not meet the definition of facts of which a court can take judicial notice pursuant to Evid.R. 201.

{¶ 15} Appellant also noted that he "*is not attempting to change the successor-guardian appointment*, he is merely trying to eliminate these improper factual statements from the record." (Emphasis added.) (Appellant's Brief, 15.) He further submits that there was more than enough evidence in the record for the court to make the appointments of Attorneys Glover and Craine, and that the court needlessly included inflammatory, attacking, and embarrassing statements addressed against him "in an attempt to kick him while he was already down." (Appellant's Brief, 16.) Appellant alleges that the court committed reversible error when it failed to follow the remand instructions contained in this court's June 25, 2014 journal entry. He also states that this matter should be remanded to the probate court for the issuance of amended decisions in both cases "*arriving at the same result* but without consideration and inclusion of citation to Findings of Fact items A-H in the Sharon Cohodes Decision and items A-F in the Jane Cohodes Decision; and * * * [t]he Magistrate's Decisions in both cases filed on December 17, 2013 shall be sealed." (Appellant's Brief, 17.)

{¶ 16} Appellant provides no authority to support his arguments and requests.

{¶ 17} A trial court is vested with broad discretion in appointing guardians. The standard of review for such matters is to determine whether the trial court abused its discretion in reaching its judgment. Absent a clear abuse of that discretion, the lower court's decision should not be reversed. *Mobberly v. Hendrick*s, 98 Ohio App.3d 839, 845 (9th Dist.1994). An abuse of discretion implies more than an error of law or judgment. Rather, abuse of discretion suggests that the trial court acted in an unreasonable, arbitrary, or unconscionable manner. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983). *In re Guardianship of Keller*, 5th Dist. No. 02CA76, 2003-Ohio-3168, ¶ 7.

{¶ 18} Furthermore, if objections are filed, a trial court undertakes a de novo review of a magistrate's decision. *McNeilan v. Ohio State Univ. Med. Ctr.*, 10th Dist. No. 10AP-472, 2011-Ohio-678, ¶ 19, quoting *Mayle v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-541, 2010-Ohio-2774, ¶ 15. " 'However, the appellate standard of review when

reviewing a trial court's adoption of a magistrate's decision is an abuse of discretion.' " *Id*. Therefore, we will only reverse a trial court's adoption of a magistrate's report if the trial court acted in an unreasonable or arbitrary manner. *Id*.

{¶ 19} We find that the trial court did not err in overruling the objections to the magistrate's decision and adopting the same in its March 19, 2014 judgment entry. The court very clearly cited to its standard of review when considering the objections and stated that it was reviewing the objected matters de novo. The court noted:

> In the case[s] at bar, the best interest of Sharon [and Jane] Cohodes cannot be determined using just the facts from an isolated hearing. Rather, the court must use all of the facts available in the history of a guardianship case and in record during the pendency of Sharon [and Jane] Cohodes' guardianship proceedings. Andrew Cohodes' behavior in [case Nos. 550851 and 478125] reveals an inability to follow court orders. The court is the superior guardian and a guardian must have the ability to follow court orders. Consequently, Andrew Cohodes' behavior throughout the duration of the guardianship proceedings [in these cases] will be considered by this court when making decisions in the best interest of Sharon [and Jane] Cohodes. Therefore, Findings of Fact A through H [in Sharon's case and Findings of Fact A through F in Jane's case] shall remain a part of the December 17, 2013 Magistrate's Decision and Andrew Cohodes' objection to the use of facts found in court records from proceedings other than the December 5, 2013 hearing is overruled, and the Senior magistrate's Findings of Fact shall be approved and adopted.

(Mar. 19, 2014 Judgment Entry, 3 in Sharon's case.) (Similar paragraph in Mar. 19, 2014 Judgment Entry, 3, in Jane's case.)

{¶ 20} The court, "upon independent review and careful consideration" adopted and approved the magistrate's December 5, 2013 decision "in its entirety." We find that the probate court did not abuse its discretion in doing so.

{¶ 21} Furthermore, we find that the trial court did not abuse its discretion in including the objected-to facts in its October 31 and November 25, 2014 judgment entries denying the motion for remand and the motion to modify judgment, pursuant to Civ.R.

60(B). Appellant offers no legal support, and we have found none, for the suggestion that the probate court committed reversible error in not deleting the objectionable findings, issuing new decisions, and sealing the magistrate's decision *pursuant to* this court's remand instructions. In our June 25, 2014 journal entry, we remanded the case "to the limited extent that this matter is hereby remanded to the trial court for consideration and resolution of the parties' joint motion." We did not reverse or instruct the court to vacate the decisions of the court, nor did we specifically order that the findings be deleted and the magistrate's decision be sealed. Finally, we stated: "Appellate briefing shall be suspended pending a determination by the trial court, following which appellant shall either [1] file appellant's brief within rule or [2] otherwise expeditiously file a motion to voluntarily dismiss this appeal." By including this language, specifically option one, it is obvious we contemplated that the court may, in its discretion, choose to deny the parties' motions.

{¶ 22} Although the trial court referred to the taking of "judicial notice" of the prior record, it is not necessary for us to determine whether the prior record qualifies for purposes of judicial notice. Regardless, we find that the trial court did not err. In *In re Guardianship and Conservatorship of Stancin*, 10th Dist. No. 02AP-637, 2003-Ohio-1106, we found the probate court did not err in considering a statement of expert evaluation and the findings of fact from an action pending in the Franklin County Municipal Court, a completely different court and a completely different case. *Id.* at ¶ 14. We noted that the rules of evidence did not apply in guardianship proceedings and, most importantly, "[t]he purpose of guardianship hearings is to gather information in order to determine the best interests of the prospective ward." *Id.* at ¶ 12, citing *In re Estate of Bednarczuk*, 80 Ohio App.3d 548 (12th Dist.1992). Likewise, here, we find no error in considering findings of fact and record of proceedings from this same court, and the same cases. We also do not find error in denying the request to seal the magistrate's decision.

{¶ 23} We note that, in addition to the objected-to findings of fact, the magistrate's decision also included the following:

> Andrew is Sharon's only son and his input and assistance with the guidance of the guardian of the person and the guardian of the estate is a necessary

> component to Sharon's well-being. Andrew is encouraged to work within the guidelines of the guardianship and with the guardian to assist in improving Sharon's life and be the loving son that he proclaims to be to aide [sic] in [her] health and happiness.

(Dec. 17, 2013 Magistrate's Decision, 7.) In Jane's case, the magistrate's decision included the following:

> Andrew is apparently Jane's closest friend and should continue to be a loving brother and assist the court appointed guardian in providing for her needs, expressing her wishes, helping Jane and the guardian implement authorized expenditures and living situations, and continue to assist Jane in all fascists [sic] of her daily life subject to the framework of the guardianship and direction of the guardian.

(Dec. 17, 2013 Magistrates Decision, 6 and 7.)

{¶ 24} Accordingly, we overrule appellant's sole assignment of error and affirm the March 19, October 31, and November 25, 2014 judgment entries of the Franklin County Court of Common Pleas, Probate Division.

Motion to amend granted; judgments affirmed.

LUPER SCHUSTER and BRUNNER, JJ., concur.
