[Cite as *In re Guardianship of Alexander*, 2015-Ohio-1908.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
IN RE: GUARDIANSHIP OF:	:	Hon. W. Scott Gwin, P.J.
MARY BELL "MAGGIE" ALEXANDER	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
	:	
	:	
	:	Case No. 2014CA00154
	:	
	:	
	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil appeal from the Stark County Court of Common Pleas, Probate Division, Case No. 211161
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	MAY 18, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
DEREK GRAHAM 35 North Fourth Street Suite 100 Columbus, OH 43215	AARON KOVALCHIK Kovalchik Law Office LLC 116 Cleveland Avenue N.W., Suite 808 Canton, OH 44702

Gwin, P.J.

{¶1} Appellant appeals the July 16, 2014 judgment entry of the Stark County Court of Common Pleas, Probate Division, overruling her request for termination of guardianship.

Facts & Procedural History

{¶2} On February 14, 2011, appellee Advocacy and Protective Services, Inc. ("APSI") filed an application for guardian of the person of appellant Mary Bell "Maggie" Alexander. A statement of expert evaluation by Dr. Anthony Perry, Jr. recommended the establishment of the guardianship. On April 5, 2011, APSI was appointed guardian of the person of appellant.

{¶3} Appellant requested termination of the guardianship in both July of 2011 and February of 2012, which the trial court denied. In July of 2012, Dr. Reddy at Phoenix Rising filed a statement of expert evaluation stating the guardianship should be continued. In February of 2013, appellant's niece filed an application for guardian of the person of appellant. In March of 2013, the trial court denied the application because of the applicant's previous conviction for grand theft and the failure of the applicant to disclose her criminal record to the trial court when questioned.

{¶4} In May of 2013, appellant requested termination of the guardianship and submitted medical records from Eugene Talmadge Memorial Hospital with her request. On June 7, 2013, the trial court issued a judgment entry denying appellant's request to terminate guardianship and stated that the medical records did not reflect appellant's current mental state and were too remote in time because the records were from the 1960's and 1970's, with the most recent discharge summary from March of 1979.

{¶5} On September 10, 2013, appellant filed a motion to terminate guardianship. Appellant submitted a statement of expert evaluation by Dr. Robert Humphries, Jr., psychologist, stating that the guardianship should be terminated. On November 4, 2013, guardian ad litem Eugene Cazantzes ("Cazantzes") filed a report with the trial court. In his report, Cazantzes found that some of appellant's answers to his questions would devolve into rambling statements that were paranoid in nature. Cazantzes recommended the guardianship continue and stated that if the guardianship does not continue, appellant is at risk of harm.

{¶6} A magistrate issued a decision and order on January 23, 2014 after an oral hearing, stating that while there was an expert statement opining the guardianship should terminate, the guardian ad litem opined the guardianship should continue. The magistrate found that appellant was able to arrange her own transportation and that appellant acknowledged during the hearing that she would still require services, but wanted the guardianship terminated. The magistrate implemented a six-month trial period during which appellant's daily care was reduced to eight hours and further reduced as much as possible thereafter. APSI and the guardian ad litem remained in place during this interim period.

{¶7} On March 28, 2014, Ed Lewis, Service Support Administrator, filed a statement of expert evaluation finding the guardianship should be continued. On April 14, 2014, appellant, APSI, and Cazantzes all agreed it was in appellant's best interests for her service providers to remain in place and an agreed judgment entry was filed.

{¶8} The trial court held a further hearing on appellant's motion to terminate guardianship on July 8, 2014, after the six-month trial period. Appellant testified that

she was responsible for setting her own appointments. The remainder of appellant's answers were inaudible, but appellant's attorney made clear that appellant wanted to have the guardianship terminated. Christopher Meister ("Meister"), personal services representative at APSI, testified that appellant refuses all psychiatric medication and refuses to attend any doctor's appointments about her psychiatric care. Meister stated that appellant was diagnosed with dementia in February of 2012, diagnosed with organic brain disorder in January of 2013, and diagnosed with psychiatric burden disorder non-specific in August of 2012. Meister testified that since the last court hearing, appellant was released from RESCARE as her provider and now has BioQuest for her residential care. Appellant fired her current payee, so APSI is trying to find appellant a new payee. Meister stated that when appellant's personal services were reduced to eight hours per day as required by the magistrate's decision and order, appellant got upset, wanted her services reinstated, and appellant's attorney requested this increase in services.

{¶9} The trial court issued a judgment entry on July 16, 2014. The trial court noted that appellant shouted "liar" throughout the hearing, flung herself to the floor, and refused assistance to get back into her wheelchair, so the proceedings were adjourned. The trial court found that appellant can set up her own appointments and noted that no update was provided by Dr. Humphries. The trial court found that Meister testified that appellant missed medical appointments and refused all psychiatric medications. Further, that appellant requested to have her services increased or reinstated after the magistrate ordered the reduction of services in January of 2014. The trial court found it

was in the best interest of appellant for the guardianship to continue and denied appellant's request for termination of guardianship.

{¶10} Appellant appeals the July 16, 2014 judgment entry of the Stark County Court of Common Pleas, Probate Division, and assigns the following as error:

{¶11} "I. THE JUDGMENT OF THE TRIAL COURT TO DENY APPELLANT'S MOTION TO TERMINATE GUARDIANSHIP OF THE PERSON WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I.

{¶12} The decision on whether or not to terminate a guardianship necessarily involves a factual inquiry, and a trial court's decision will not be disturbed on appeal unless the decision is against the manifest weight of the evidence. Appellant contends the trial court's decision is against the manifest weight of the evidence. As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent, and credible evidence upon which the fact finder could base its judgment. *Cross Truck Equip. Co. v. The Joseph A. Jeffries Co.*, 5th Dist. No. CA5758, 1982 WL 2911 (Feb. 10, 1982). Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶13} The issue in this case is whether appellant, at the time of the trial court's determination, continued to be incompetent. R.C. 2111.01(D) defines as incompetent "any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation * * * that the person is incapable of taking proper care of

the person's self or property * * *." The Ohio Supreme Court has noted that, once a person has been found incompetent, it is presumed that she has remained incompetent; however, this presumption is rebuttable. *In re Guardianship of Breece*, 173 Ohio St. 542, 184 N.E.2d 386 (1962). A proceeding to terminate a guardianship of an incompetent is governed by R.C. 2111.47. R.C. 2111.47 provides that upon the presentation of "satisfactory proof" that the reason for the guardianship no longer exists, the probate court must order its termination. *In re Guardianship of Breece*, 173 Ohio St. 542, 184 N.E.2d 386 (1962).

{¶14} The record demonstrates that there are conflicting opinions on this issue. Appellant argues her testimony that she can set her own appointments and the medical opinion of Dr. Humphries in September of 2013 should defeat the opinion of her guardian ad litem, APSI, and the trial court's own interpretation of her ability.

{¶15} However, we find there is some competent and credible evidence to support the trial court's decision. See *In re: The Guardianship of Morton,* 2nd Dist. Miami No. 2005-CA-22, 2006-Ohio-1139. The expert evaluation by appellant's Mental Retardation Team in February of 2014 recommended the guardianship continue and referenced appellant's diagnoses of dementia, psychiatric burden disorder, and organic brain disorder. The evaluation also states that appellant often refuses psychiatric treatment, refuses psychiatric medications, and often makes irrational decisions. Appellant's guardian of the person, APSI, recommends the continuation of the guardianship. Meister testified that appellant refuses psychiatric appointments and medication. Cazantzes, the guardian ad litem, recommends the guardianship continue so that appellant is not at risk of harm. Several months prior to the hearing, appellant

fired her payee, leaving her without financial assistance and leaving APSI to find a new payee. Further, when appellant's services were reduced as a part of a six-month trial period, she requested, through her attorney, and agreed in a judgment entry, for the services to be reinstated. Finally, appellant's own behavior during the hearing supports the trial court's decision. See *In the Matter of Guardianship of Anderson*, 5th Dist. Tuscarawas No. 93 AP 050035, 1993 WL 544419 (Dec. 23, 1993).

{¶16} We conclude that there is evidence upon which a reasonable fact-finder could rely in determining that the guardianship should not be terminated and that the decision of the trial court is not against the manifest weight of the evidence. Appellant's assignment of error is overruled. The July 16, 2014 judgment entry of the Stark County Court of Common Pleas, Probate Division, is affirmed.

By Gwin, P.J.,

Wise, J., and

Baldwin, J., concur