

[Cite as *In re Guardianship of Pinkney*, 2015-Ohio-2709.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102577

**IN RE: GUARDIANSHIP OF
REV. PAMELA M. PINKNEY**

[Appeal by Rev. Pamela M. Pinkney]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Probate Division
Case No. GRD 115435-B

BEFORE: Kilbane, P.J., McCormack, J., and Boyle, J.

RELEASED AND JOURNALIZED: July 2, 2015

APPELLANT

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APPELLEE

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MARY EILEEN KILBANE, P.J.:

{¶1} Pamela Pinkney (“Pamela”), pro se, appeals from the probate court’s order denying her motion to terminate her guardianship. For the reasons set forth below, we affirm.

{¶2} On July 5, 2006, Pamela’s mother, Betty Pinkney (“Mother”), filed an application for the appointment of guardian of Pamela’s person, indicating that Pamela has a mental illness. Mother attached a letter from Pamela’s treating psychiatrist stating that Pamela suffers from severe mental illness. The court held a hearing and issued guardianship to Mother on July 10, 2006.

{¶3} Thereafter, Pamela filed several motions to terminate her guardianship. The court held hearings before a magistrate in June 2014 and October 2014 to review the guardianship. The magistrate issued a decision on October 22, 2014, recommending to continue the guardianship. The magistrate noted that Pamela was not able to provide any new evidence in support of terminating the guardianship. A guardian’s report and Statement of Expert Evaluation (“SEE”) by Pamela’s treating psychiatrist indicated that Pamela refused to take her medication and continues to deny her illness. Pamela objected to the magistrate’s decision and moved to vacate it. The court denied and dismissed Pamela’s motions, stating that

[t]he SEE recommended a continuation of guardianship. The SEE also contained statements from the doctor that Ms. Pinkney is refusing medications prescribed to treat her mental illness.

The court further finds that Ms. Pinkney has provided no medical evidence that the guardianship should terminate. The Court further finds that Ms. Pinkney's own statements set forth in her Objections evidence the diagnosis of [her severe mental illness].

{¶4} Then on January 5, 2015, Pamela filed another motion to terminate the guardianship. The court denied and dismissed this motion, stating that

a hearing was held before a Magistrate to review the guardianship on October 20, 2014[,] and an Order continuing the guardianship was entered on October 22, 2014.

* * *

The Court finds that the Motion filed January 5, 2015, does not set forth any new evidence and the movant has not submitted any medical evidence suggesting that the guardianship should be terminated.

{¶5} It is from this decision that Pamela appeals, raising the following error for review.

Assignment of Error

The assignment of [error] in this matter is to be found in the fact that I was forced to sign an interstate document in exchange for my life and freedom because my Civil Protection Order granted to me [by] Magistrate Joan Pellegrin and Judge Cheryl S. Karner[,] issued on June 26, 2002[,] were never taken seriously or enforced. Neither have my cries for help. Instead of covering up my being abused and violating all of my rights the consideration of my not being safe is gravely compromised in every capacity. Racism, sexism, my religious freedom, and other forms of abuse are in place against me for crying out got help in the midst being abused.

{¶6} Pamela essentially argues that her guardianship must be terminated.¹ We note, however, as this court stated in prior appeals by Pamela, “[i]n putting forth her

¹At appellate oral argument, Pamela claimed she has asked the trial court to appoint her counsel for her guardianship-review hearings. While this request was

assigned errors, [Pamela] fails to cite to any legal authority for her claims, a failure that allows this court to disregard her arguments. “If an argument exists that can support this assigned error, it is not this court’s duty to root it out.” (Citation omitted.) *Pinkney v. Salett*, [8th Dist.] Cuyahoga No. 96130, 2011-Ohio-4121, ¶ 30.’” *Pinkney v. McCafferty*, 8th Dist. Cuyahoga No. 95905, 2011-Ohio-6258, ¶ 5.

{¶7} Notwithstanding the foregoing, we find that the trial court properly denied Pamela’s motion to terminate her guardianship. The probate court is required to act in the best interest of the incompetent individual, but it is well settled that a probate court has broad discretion in appointing guardians. *In re Guardianship of Poulos*, 8th Dist. Cuyahoga No. 96366, 2011-Ohio-6472, ¶ 16, citing *In re Estate of Bednarczuk*, 80 Ohio App.3d 548, 551, 609 N.E.2d 1310 (12th Dist.1992). Decisions regarding the appointment of guardians will not be reversed absent an abuse of discretion. *Id.* “The term ‘abuse of discretion’ connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” (Citations omitted.) *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980).

not set forth in the motion before us, we note the Ohio Supreme Court in *State ex rel. McQueen v. Court of Common Pleas of Cuyahoga Cty., Probate Div.*, 135 Ohio St.3d 291, 2013-Ohio-65, 986 N.E.2d 925, has held that upon the indigent ward’s request, the ward is legally entitled to the “appointment of counsel at court expense for the guardianship-review hearing” and the probate court has a clear legal duty “to appoint counsel for [the ward] at its expense.” *Id.* at ¶ 17, 19.

{¶8} In situations involving the termination of a guardianship, we note that there is a presumption that once a person is found to be incompetent that he or she remains incompetent, but the presumption is rebuttable. *Poulos* at ¶ 18, citing *In re Guardianship of Michael*, 10th Dist. Franklin No. 07AP-264, 2007-Ohio-5967, citing *In re Breece*, 173 Ohio St. 542, 184 N.E.2d 386 (1962). Pursuant to R.C. 2111.47, a guardianship may be terminated upon “satisfactory proof” that the necessity for the guardianship no longer exists. “Satisfactory proof” to rebut the presumption of continued incompetence has been offered as that which “causes the presumption to disappear” or “counterbalances the presumption.” *Michael* at ¶ 6, quoting *Breece*.

{¶9} In the instant case, the magistrate held two hearings on Pamela’s motion to terminate the guardianship. Mother testified that Pamela continues to need assistance with finances, medication, dental, and housing. The SEE prepared by Dr. Elaine Campbell, M.D. (“Dr. Campbell”), indicates that Pamela suffers from severe mental illness. She has a paranoid thought process, exercises poor judgment, refuses to take her medication, and denies her illness. Dr. Campbell noted that the “[patient] continues to refuse to accept her illness, feeling that she is involved in a complex conspiracy. Her inappropriate behavior has banned her from most Federal Buildings.” In denying Pamela’s motion, the court found that Pamela has not provided any medical evidence indicating that the guardianship should terminate, and her own statements evidence the need for the continued guardianship. Based on the foregoing, we find that the trial court did not abuse its discretion in refusing to terminate the guardianship.

{¶10} Accordingly, the assignment of error is overruled.

{¶11} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, probate division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and
MARY J. BOYLE, J., CONCUR