[Cite as *In re Guardianship of Clark*, 2009-Ohio-3486.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: Guardianship of Marcia S. Clark aka Marcia Stewart Clark,	:	
	:	No. 09AP-96
(Paula Clark,		(Prob. No. 519798)
	:	
Appellant).		(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on July 16, 2009

Giorgianni Law LLC, and *Paul Giorgianni*; *Dinsmore & Shohl, LLP, Charles E. Ticknor, III*, and *Nicole M. Loucks*, for appellant.

Wiles, Boyle, Burkholder & Bringardner Co., L.P.A., and *Michael L. Close*, for Richard D. Bringardner, Guardian of Marcia S. Clark.

Morris, Starkey & Waid LLC, and *Robert V. Morris, II*, for John Clark and Louise Johnston.

APPEAL from the Franklin County Court of Common Pleas, Probate Division.

FRENCH, P.J.

{¶1} Appellant, Paula Clark ("Paula"), appeals the Franklin County Court of Common Pleas, Probate Division's December 18, 2008 decision and entry granting the motion of appellee, Richard D. Bringardner ("Bringardner" or the "guardian"), to quash a

subpoena and the probate court's December 30, 2008 decision denying Paula's motion to remove Bringardner as guardian of her mother's person and estate.

{¶2} On April 10, 2007, pursuant to R.C. 2111.02, the Franklin County Probate Court issued orders appointing Bringardner as guardian for the persons and estates of Paula's parents, Dean O. Clark ("Dean") and Marcia S. Clark ("Marcia"). Dean and Marcia's three adult children, Paula, John Clark, and Louise Johnston, agreed to Bringardner's appointment. The April 10, 2007 orders authorized Paula to make urgent health care decisions for her parents if, despite bona fide attempts, a treating physician is unable to reach Bringardner. Dean Clark died on April 1, 2008.

{¶3} On October 16, 2008, Paula filed a motion to remove Bringardner as her mother's guardian, arguing that he failed to act in her mother's best interests. Significant among her arguments in support of Bringardner's removal, Paula argued that Bringardner has restricted her access to information concerning her parents' care and has severely restricted her right to visit her mother.

{¶4} On November 26, 2008, Paula's counsel issued a subpoena ("the subpoena") to Marcia Wool, Golden Guidance LLC ("Golden Guidance"), the case manager hired by Bringardner, requesting documents relating to her parents' care. On December 1, 2008, one day before the date for production specified in the subpoena, Bringardner filed a motion to quash the subpoena. Bringardner argued that the subpoena did not comply with the Health Information Portability and Accountability Act of 1996 ("HIPAA"). Bringardner also argued that the requested documents were irrelevant to any claim or defense and that Paula was not entitled to the documents

based on past misuse of her parents' medical information. Bringardner requested an order quashing the subpoena and any similar subpoena issued to Marcia's other health care providers or physicians. Without holding a hearing or taking any evidence, the probate court granted the motion to quash on December 18, 2008, for non-compliance with HIPAA.

{¶5} The probate court conducted an evidentiary hearing on Paula's motion to remove Bringardner as Marcia's guardian on December 22-23, 2008, and issued a decision denying Paula's motion to remove Bringardner on December 30, 2008. Based on its findings regarding Paula's conduct, including her attempts to micro-manage the activities of health care workers and verbal attacks of health care workers, the probate court concluded that Bringardner's restrictions on Paula's access to her parents and their medical information were reasonable. The probate court ultimately concluded that Bringardner has acted in the best interests of Paula's parents and that he should not be removed for any alleged mishandling of their care or treatment.

{¶6} Paula filed a timely notice of appeal and raises the following assignments of error:

> 1. The probate court erred by quashing [Paula's] subpoena of healthcare documents.
>
> 2. The probate court's evidentiary rulings rendered unfair the hearing on Paula's motion to remove the Guardian.
>
> a. The probate court erred by sustaining the Guardian's objection to any inquiry into the Guardian's experience serving as guardian of other persons.

> b. The probate court erred by sustaining the Guardian's objections to inquiry into the Guardian's financial interest in remaining as guardian.
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> c. The probate court erred by sustaining the Guardian's objections to Carol Foreman opining on the Guardian's restrictions on Marcia seeing Paula.
>
> d. Taken together, these errors constitute an unfair denial of Paula's right to present evidence.
>
> 3. The probate court erred by failing to remove the Guardian.

{¶7} We begin with Paula's first assignment of error, by which she contends that the probate court erred in granting Bringardner's motion to quash the subpoena. Paula urges this court to reverse the probate court's decision and entry quashing the subpoena, vacate the trial court's decision and entry overruling her motion to remove Bringardner as guardian, and remand this matter for enforcement of the subpoena and a new hearing on the motion to remove Bringardner. We review the decision to quash a subpoena under an abuse of discretion standard. *Cunningham v. Ohio Dept. of Transp.*, 10th Dist. No. 08AP-330, 2008-Ohio-6911, ¶13, citing *State v. West*, 10th Dist. No. 06AP-11, 2006-Ohio-6259, ¶8. An abuse of discretion consists of more than an error of judgment; it connotes an attitude by the trial court that is unreasonable, unconscionable or arbitrary. Id., citing *Rock v. Cabral* (1993), 67 Ohio St.3d 108.

{¶8} In his motion to quash, Bringardner argued that the subpoena was unenforceable under HIPAA, sought irrelevant information, and sought information to which Paula was not entitled, based on her alleged misuse of her parents' medical

information in the past. The entirety of the probate court's reasoning for quashing the subpoena is as follows:

> While being a concerned daughter, Paula Clark does not have a medical power of attorney over Dean or Marcia Clark and does not have the authority to unilaterally request their medical records. The subpoena at issue in this matter does not comply with [HIPAA], which prevents a health care provider from disclosing a patient's medical information without that patient's consent or a Court order. Neither of these two things are present in this matter. Since this is so, the subpoena issued on November 26, 2008 is unenforceable and the Guardian's motion is hereby GRANTED.

Thus, the probate court quashed the subpoena based on its finding that the absence of either patient consent or a court order rendered the subpoena unenforceable under HIPAA. The probate court did not address Bringardner's objections to the subpoena based on relevancy or Paula's alleged misuse of her parents' medical information.

{¶9} Section 264 of HIPAA, 42 U.S.C. 1320d-2, Note, directed the Secretary of Health and Human Services to promulgate regulations to protect the privacy of medical records. Pursuant to that direction, the Secretary adopted regulations that generally prohibit health care providers from disclosing a patient's personal health information without their consent. 45 C.F.R. 164.508(a) provides, in part, that: "Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section." Despite the general rule, however, 45 C.F.R. 164.512 provides, in pertinent part, that a covered entity *may* disclose protected health information without the patient's written authorization in the situations enumerated therein and subject to the applicable

requirements of that section. There is no dispute that Golden Guidance is a "covered entity" or that the subpoena sought "protected health information."

{¶10} As applicable here, 45 C.F.R. 164.512(e)(1) provides that "[a] covered entity may disclose protected health information in the course of any judicial or administrative proceeding" without the patient's written authorization under the following circumstances:

> (i) In response to an order of a court or administrative tribunal * * *; or
>
> (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
>
> (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request[.]

{¶11} The trial court correctly found that there was neither patient consent nor a court order directing disclosure of the subpoenaed records. A plain reading of the applicable HIPAA regulations reveals that the trial court erred in stating that HIPAA prohibits disclosure of protected health information without patient consent or a court order, however. The introductory paragraph to 45 C.F.R. 164.512 states that a covered entity may disclose protected health information without written patient consent in the enumerated situations, and section 164.512(e)(1) permits disclosure in the course of a judicial or administrative proceeding in response to a subpoena not accompanied by a court order if the covered entity receives satisfactory assurances that the requesting

party has made reasonable efforts to ensure that the patient has been given notice of the request. Thus, the absence of either patient consent or a court order does not compel the conclusion that the subpoena is unenforceable under HIPAA. Rather, the question becomes whether Golden Guidance received satisfactory assurances that reasonable efforts had been made to ensure that the patient had been given notice of Paula's request. Paula maintains that Bringardner, as her mother's guardian, received actual notice of her request for her parents' medical information.

{¶12} Paula's first assignment of error implicates two distinct issues: (1) whether there was compliance with HIPAA, specifically compliance with the satisfactory assurance requirements under 45 C.F.R. 164.512(e)(1); and (2) whether the requested documents are privileged or otherwise shielded from discovery or admissibility. HIPAA is not rightly understood as creating a privilege. *Northwestern Mem. Hosp. v. Ashcroft* (C.A.7, 2004), 362 F.3d 923, 926. "All that 45 C.F.R. § 164.512(e) should be understood to do * * * is to create a procedure for obtaining authority to use medical records in litigation. Whether the records are actually admissible in evidence will depend among other things on whether they are privileged." Id. at 925-26. The *Northwestern* court stated, at 926, as follows:

> The purely procedural character of the HIPAA standard for disclosure of medical information in judicial or administrative proceedings is indicated by the procedure for disclosure in response to a subpoena or other process; the notice to the patient must contain "sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court." § 164.512(e)(1)(iii)(B). The objection in court would often be based on a privilege-the source of

> which would be found elsewhere than in the regulations themselves.

{¶13} To evaluate whether Golden Guidance received satisfactory assurances under 45 C.F.R. 164.512(e)(1)(ii)(A), we look to the requirements listed in 45 C.F.R. 164.512(e)(1)(iii). That section provides as follows:

> (iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
>
> (A) The party requesting such information has made a good faith attempt to provide written notice to the individual * * *;
>
> (B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
>
> (C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
>
> (1) No objections were filed; or
>
> (2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

{¶14} Here, the probate court did not undertake the necessary analysis to determine whether the subpoena was enforceable under HIPAA. It is clear from the record that Bringardner received timely, actual notice of Paula's request for medical records and that Bringardner was on notice of the proceeding for which the records were requested. Bringardner had been served with Paula's motion to remove him as guardian, and he filed a motion to quash the subpoena prior to the stated date for

disclosure, arguing, in part, that the requested documents do not relate to a claim or defense of any party. Beyond requiring a good-faith attempt by a requesting party to provide notice to the patient, the remaining requirement under 45 C.F.R. 164.512(e)(1)(iii) is that the patient has not raised objections to the request for disclosure or that the court has resolved the patient's objections. Thus, 45 C.F.R. 164.512(e)(1)(iii) clearly intends a determination of a subpoena's enforceability only after the time for objections has run and, if objections are filed, after the court has ruled on the objections.

{¶15} At oral argument before this court, Bringardner essentially claimed that there were no objections before the trial court because Paula did not give him appropriate notice to interpose objections. Bringardner's motion to quash, however, expressly refutes that suggestion. In fact, Bringardner states in his motion to quash that Paula cannot demonstrate that she provided satisfactory assurance under HIPAA because "Bringardner is objecting to the subpoena and his objection has not been resolved by the Court as required by 45 C.F.R. 164.512(e)(1)(iii)(C)(2)."

{¶16} In addition to Bringardner's HIPAA-based arguments, the motion to quash sets forth Bringardner's substantive objections to Paula's request for documents under the subpoena. Bringardner based his motion to quash, not only on the HIPAA regulations, but also on Civ.R. 26 and 45. Bringardner cited Civ.R. 26(B)(1), which permits discovery of any matter, not privileged, which is relevant to the subject matter of the pending action. Bringardner also cited Civ.R. 45(C)(3)(b), which permits a court to quash a subpoena that requires disclosure of privileged or otherwise protected matter.

Bringardner argued that the requested records are irrelevant because they do not pertain to a claim or defense of any party and also argued that the requested documents are protected and confidential. Finally, Bringardner argued that Paula was not entitled to the requested information because Bringardner revoked the HIPAA release and health care power of attorney that had previously been given to Paula and because Paula allegedly misused medical information provided to her in the past. Thus, in addition to his argument regarding HIPAA compliance, Bringardner raised substantive objections to Paula's request for her parents' care records.

{¶17} Section 164.512(e)(1)(iii) anticipates that a patient may raise objections to a request for disclosure of his or her medical information and, for that reason, requires a demonstration of efforts to notify the patient before permitting disclosure in response to a subpoena or discovery request. Moreover, whether the covered entity may disclose protected information in response to a subpoena without running afoul of HIPAA requirements is contingent, in part, upon the court's resolution of any objections raised by the patient, the bases of which are generally found elsewhere than in the HIPAA regulations. See *Northwestern* at 926.

{¶18} Here, in addition to stating an incorrect standard for disclosure under HIPAA, the probate court did not resolve Bringardner's objections to Paula's request for documents. Under 45 C.F.R. 164.512(e)(1)(ii) and (iii), resolution of Bringardner's objections was a necessary prerequisite to the determination of the enforceability of the subpoena. Because the court did not determine the validity of Bringardner's objections based on relevance, confidentiality, and Paula's alleged prior misuse of her parents'

medical information, the court could not determine whether disclosure of the requested information could be made in compliance with HIPAA. Based on the probate court's misapplication of the HIPAA privacy regulations and failure to evaluate and determine Bringardner's objections to Paula's request for her parents' medical information, as set forth in the subpoena, we must conclude that the probate court abused its discretion in quashing the subpoena. Accordingly, we sustain Paula's first assignment of error, reverse the trial court's judgment quashing the subpoena, and remand this matter to the probate court for the court to rule on the motion to quash after conducting the analysis required by the HIPAA regulations.

{¶19} Paula's second assignment of error concerns the probate court's rulings on objections during the December 22-23, 2008 evidentiary hearing on Paula's motion to remove Bringardner as Marcia's guardian. Paula asserts that the probate court erred by sustaining objections to evidence of Bringardner's prior experience as a guardian of other persons, to evidence of Bringardner's compensation for serving as Dean and Marcia's guardian, and to testimony by Carol Foreman regarding her opinion of Bringardner's restrictions on Paula's visitation with Marcia. Paula maintains that these evidentiary rulings constitute error and rendered the evidentiary hearing unfair. We will briefly address each of the identified rulings in turn. We review rulings regarding the admission or exclusion of evidence under an abuse of discretion standard. *Barnett v. Sexten*, 10th Dist. No. 05AP-871, 2006-Ohio-2271, ¶5, citing *Dunkelberger v. Hay*, 10th Dist. No. 04AP-773, 2005-Ohio-3102.

{¶20} First, Paula argues that the probate court erred by sustaining Bringardner's objection to inquiry into his prior experience as a guardian over a person. Paula contends that Bringardner's prior experience is relevant to the question of his qualification to remain as Marcia's guardian. Bringardner's counsel objected to this line of questioning based on relevancy, noting that Bringardner was appointed with the parties' agreement, and the probate court sustained the objection.

{¶21} Prior to any objection, Bringardner testified that he has served as a guardian over a person at least once, and Paula's counsel stated that Franklin County records indicate that Bringardner has served as a guardian over a person one previous time. When asked to explain its ruling on the objection, the court stated: "I don't want to spend a lot of time on it. He's already answered the question." (Vol. I Tr. 12.) Nevertheless, Paula's counsel immediately returned to the topic to "clear it up." (Vol. I Tr. 12.) Bringardner testified that he did not know how many times he has served as guardian of a person and acknowledged that he typically serves as an attorney for guardians. In addition to the guardianship mentioned by Paula's counsel, Bringardner recalled another person over whom he served as guardian. Bringardner denied or did not recall making statements to the effect that he lacked experience serving as guardian of a person. Thus, although the probate court sustained the objection to this line of questioning, Bringardner had already answered a question regarding his prior experience, and the court permitted follow-up questions regarding that experience. This testimony was therefore before the court, and we do not conclude that the trial court's decision sustaining the objection to further testimony on this subject was arbitrary,

capricious or unreasonable. Nor do we conclude that the ruling prejudiced Paula in any way.

{¶22} Paula next argues that the probate court erred by sustaining Bringardner's objection to inquiry into the compensation he and his law firm have realized as a result of the guardianship over Dean and Marcia. Bringardner's counsel objected, again based on relevance, and the probate court sustained the objection, noting that Bringardner's fees were already a matter of record. All fees for which Bringardner has applied, and all fees that the probate court has approved for Bringardner's services, are matters of public record and part of the file in this case. Accordingly, all of the requested information was readily available to the probate court and the sustaining of the objection was not prejudicial. As a result, we cannot conclude that the trial court abused its discretion by sustaining the objection to this line of questioning at the evidentiary hearing.

{¶23} In her final argument regarding a specific evidentiary ruling, Paula argues that the probate court erred by sustaining Bringardner's objection to a question posed to Carol Foreman. Foreman is a registered nurse certified in critical-care nursing, and she had been Paula's friend for about ten years. Foreman testified that she had known Dean and Marcia for about eight years and, since 2005, had visited Dean and Marcia, independent of Paula, three to four times a year. Paula's counsel asked Foreman: "What do you think about the current restrictions on Paula's ability to visit her mother?" (Vol. I Tr. 202.) Bringardner's counsel objected based on qualification, and the court

sustained the objection. Nevertheless, the court permitted Foreman to testify that she thinks Marcia misses seeing Paula.

{¶24} Paula maintains that the trial court should have permitted Foreman to testify regarding her opinion of Bringardner's restrictions on Paula's visitation pursuant to Evid.R. 701. That rule permits lay witnesses to offer opinion testimony where the testimony is "(1) 'rationally based on the perception of the witness,' *i.e.*, the witness must have firsthand knowledge of the subject of his testimony and the opinion must be one that a rational person would form on the basis of the observed facts; and (2) 'helpful,' *i.e.*, it must aid the trier of fact in understanding the testimony of the witness or in determining a fact in issue." *Lee v. Baldwin* (1987), 35 Ohio App.3d 47, 49. Paula states that Foreman's testimony would have been based on her first-hand perceptions of Paula and Marcia and that the exclusion of Foreman's testimony was prejudicial to her attempt to establish that Bringardner is acting contrary to Marcia's best interests.

{¶25} In support of her argument, Paula cites *In re Guardianship of Binkley*, 3d Dist. No. 2-06-29, 2007-Ohio-900; *In re Goolsby* (Apr. 19, 2001), 8th Dist. No. 78014; and *McGraw v. Connor* (Dec. 19, 1985), 10th Dist. No. 85AP-85. In each of those cases, the courts found no abuse of discretion where the trial court permitted lay opinion testimony. *Binkley* involved an opinion regarding the competency of a ward by the ward's treating physician, based on her visits with the ward, discussions with the guardian, and knowledge of the ward's dementia. *Goolsby* involved testimony by a family practitioner about the negative effect that removal of a child from her foster family

would have, even though the doctor was not qualified as an expert in child psychology.[1] *McGraw* involved opinion testimony by a decedent's wife regarding the cause of her husband's suicide. The cited cases do not demonstrate that the trial court here abused its discretion by sustaining Bringardner's objection to testimony regarding Foreman's thoughts about Bringardner's restrictions on Paula's visitation. While the cited cases held that admission of lay opinion testimony did not constitute an abuse of discretion, they do not suggest that, had the trial courts sustained objections to the testimony, exclusion would have constituted an abuse of discretion. We remain cognizant that trial courts retain broad discretion over the admission or exclusion of evidence and that, absent an abuse of discretion that results in material prejudice, an appellate court should be slow to reverse an evidentiary ruling. *Kaur v. Bharmota*, 10th Dist. No. 08AP-646, 2009-Ohio-2344, ¶25.

{¶26} Here, Foreman testified as to her relationship with Paula and her parents. Foreman last visited with the Clarks in July 2007, several months prior to Bringardner's restrictions on Paula's visitation, which were instituted in September 2007. Foreman testified as to her belief that Paula loves her parents, that there is no chance that Paula would pose a threat of harm, and that Paula is motivated by nothing other than Marcia's best interests. Although there is no evidence that Foreman visited Marcia after Bringardner's institution of restrictions on Paula's visitation, she testified as to her belief that Marcia misses seeing Paula. Given the evidence in the record, including the

[1] The *Goolsby* court's statement that the doctor's testimony was under Evid.R. 701 is dicta because the court had already concluded that the appellant's trial counsel waived any error based on lack of qualifications by failing to object on that basis.

evidence of Bringardner's restrictions on Paula, we do not conclude that Foreman's lay opinion regarding those restrictions would be helpful to a clear understanding of Foreman's testimony or would aid in the determination of a fact in issue. Moreover, even were we to conclude that Foreman's opinion would satisfy the foundational requirements of Evid.R. 701, we do not discern any prejudice suffered by Paula as a result of the probate court's preclusion of Foreman's opinion, especially when the court permitted Foreman to testify as to her opinion that Marcia misses seeing Paula. Accordingly, we discern no abuse of discretion in the probate court's ruling.

{¶27} Lastly with respect to her second assignment of error, Paula argues that the trial court's evidentiary rulings cumulatively constitute reversible error. Specifically, Paula states that, when considered together, the alleged errors require reversal even if, when considered individually, they do not. Paula is apparently attempting to invoke the cumulative error doctrine, which holds that a judgment may be reversed if the cumulative effect of multiple errors deprives a defendant of his constitutional rights even though, individually, the errors may not rise to the level of prejudicial error or cause for reversal. See *State v. Garner*, 74 Ohio St.3d 49, 64, 1995-Ohio-168. This court has previously noted that the cumulative error doctrine is not typically employed in civil cases. See *Westlake v. Ohio Dept. of Agriculture*, 10th Dist. No. 08AP-71, 2008-Ohio-4422, ¶25, citing *Sykes v. Gen. Motors Corp.*, 11th Dist. No. 2003-T-0007, 2003-Ohio-7217, ¶39. Moreover, having concluded that the trial court did not abuse its discretion in any of the three identified evidentiary rulings, we discern no basis for considering the question of cumulative error. See id. ("without error, harmless or otherwise, there can

be no cumulative error"). Accordingly, we reject Paula's argument and overrule her second assignment of error in its entirety.

{¶28} By her third and final assignment of error, Paula maintains that the probate court erred by denying her motion to remove Bringardner as guardian. On remand, should the probate court deny the motion to quash the subpoena and permit disclosure of the requested medical information, Paula would be entitled to a new hearing on her motion to remove Bringardner as guardian, and her third assignment of error would become moot. If the probate court again quashes the subpoena after undertaking the appropriate analysis, however, no further hearing would be warranted on the motion for removal absent a determination by this court that the probate court otherwise erred in denying the motion based on the prior hearing. Accordingly, we briefly address Paula's third assignment of error to avoid an identical appeal regarding the December 22-23, 2008 hearing should the probate court again quash the subpoena.

{¶29} "The axiomatic principle enveloping guardianship matters is that the Probate Court is the superior guardian of the person and property of an incompetent, while the guardian herself is an officer or agent of court, subject always to the court's control, direction and supervision." *In re Guardianship of Kreppner v. Pocker* (Jan. 28, 1988), 8th Dist. No. 54419. R.C. 2109.24 provides the specific statutory authorization for removal of a guardian and provides that the probate court may remove a fiduciary for, among other reasons, neglect of duty, incompetence or because the interest of the trust or estate demands it. "In matters relating to guardianships, the probate court is required to act in the best interest of the [ward]." *In re Estate of Bednarczuk* (1992), 80

Ohio App.3d 548, 551. In her motion for removal, Paula argued that Bringardner has failed to act in Marcia's best interests. Most significantly Paula argued that Bringardner, without justification, placed unreasonable restrictions on her access to her parents' medical information and on her visitation with her parents to punish her for demanding accountability with respect to her parents' care.

{¶30} A probate court's decision regarding the removal of a fiduciary or guardian, pursuant to R.C. 2109.24, will not be reversed absent an abuse of discretion. *In re Estate of Russolillo* (1990), 69 Ohio App.3d 448, 450; *In re Guardianship of Marsh*, 2nd Dist. No. 2007 CA 94, 2008-Ohio-5375, ¶40. " 'The probate court, as a trier of fact, has the discretion to determine what weight will be afforded to the evidence, and a presumption exists that the findings of the trier of fact are correct.' " Id., quoting *In re Guardianship of Worth* (June 20, 1997), 2d Dist. No. 1430.

{¶31} During the course of the December 22-23, 2008 hearing, the trial court heard testimony from eight witnesses: Bringardner; Paula; John Clark; Louise Johnston; Foreman; Pamela Hartman, a friend of Paula who had experience as a nurse's aid and who worked in the Clark home, caring for Paula's parents, from January 2006 to September 2007; Douglas W. Scharre, M.D., a neurologist who treated Marcia; and Ann Koerner, a registered nurse and owner/manager of National Care Advisors, a case management company. The probate court also admitted 55 exhibits.

{¶32} In its decision denying Paula's motion to remove Bringardner as Marcia's guardian, the probate court made six findings of facts. The court found that, after Bringardner's appointment, Paula attempted to maintain control of her parents' health

care by "attempting to micro-manage the activities of healthcare workers and by contacting medical providers without the guardian's knowledge." The court next found as follows:

> Further, [Paula] verbally assaulted and physically intimidated healthcare managers and workers' [sic]; frightened them by entering her parents['] home quietly and unannounced in the middle of the night; stalked two of them on separate occasions by following them in an unlighted vehicle late at night; initiated loud arguments with her siblings at their parents['] home; and meddled with medications in what was perceived as another attempt to make caregivers appear to be neglectful. While [Paula] denies virtually all of these allegations, the more credible evidence supports them.

The court also found that caregiver turnover "reduced dramatically" after appointment of the guardian and after Bringardner denied Paula access to caregivers and placed limits on her visitation with her parents. Finally, with respect to complaints filed by Paula against Dean and Marcia's caregivers, the court found that those substantiated by the Ohio Department of Health did not relate to actions or omissions that would endanger a patient's life or safety. The court concluded that Bringardner "has acted in the best interest of his Wards," that his actions toward Paula, "including the denial of access to information and restrictions on visitation, were reasonable and in the best interests of [his Wards]," and that Bringardner "should not be removed for any alleged mishandling of their care and treatment."

{¶33} The record contains evidence supporting the probate court's factual findings regarding Paula's behavior vis-à-vis her parents' caregivers and her attempts to maintain control of her parents' health care despite the appointment of Bringardner as

guardian. Paula herself admitted difficulty relinquishing control over her parents' health care after Bringardner was appointed and after he hired Golden Guidance to serve as a case manager. Paula disputes the evidence regarding her behavior, including evidence that she screamed at caregivers, frightened caregivers by quietly entering her parents' home in the middle of the night with no warning, and followed caregivers in her unlighted vehicle at night. Paula essentially maintains that the court should have believed her testimony over the testimony of other witnesses. The probate court, however, was in the best position to judge the credibility of the witnesses, and it determined that the evidence supporting its findings, as opposed to Paula's testimony, was more credible. It is within the probate court's discretion to determine what weight will be afforded to the evidence, and there is a presumption that the court's findings are correct. See *In re Guardianship of Marsh* at ¶40. We will not second-guess the trial court's determination where, as here, there is competent, credible evidence to support it. See *In re Guardianship of DiCillo*, 11th Dist. No. 2006-G-2718, 2007-Ohio-1785, ¶22.

{¶34} Based on its findings, the probate court concluded that Bringardner's restrictions on Paula's access to information regarding her parents' health care and on Paula's visitation were reasonable. Dr. Scharre, while finding it surprising that someone like Paula, who had experience and knowledge of her parents' care, would be excluded from medical information, acknowledged that there may be circumstances in which a family member's conduct may be detrimental or harmful to a patient's care and that there are reasons for excluding a family member from a patient's health care information. With respect to this case, however, Dr. Scharre stated that he did not have

enough knowledge of the issues regarding Paula's conduct to know if Paula's conduct has been detrimental to her mother's care. John Clark opined that Paula's conduct was detrimental to their parents' treatment, and Louise Johnston testified that it was in her mother's best interest to be shielded from turmoil, fighting, and aggressive behavior that resulted from Paula's presence. Upon review, we do not conclude that the probate court's determination that Bringardner acted reasonably in restricting Paula's access to information and visitation was arbitrary, unconscionable or unreasonable.

{¶35} Paula also argues that the trial court erred in denying her motion to remove Bringardner based on Bringardner's delegation of the coordination of Marcia's care to Marsha Wool, a social worker, who Paula claims is unqualified to oversee or scrutinize Marcia's medical care. Bringardner testified that Wool has advanced degrees in social work and gerontology, is a licensed social worker, has worked in a hospice unit for part of her career, and has strong skills and qualifications to serve as the case manager. Bringardner also testified that he felt the overall quality of Wool's services has been excellent. Dr. Scharre evaluated and treated Marcia in November 2008 and testified that, at that time, she seemed to be well taken care of. Wool accompanied Marcia to her appointment with Dr. Scharre, and Dr. Scharre, who had dealt with Wool many times, testified that Wool is a competent social worker. John Clark testified that Marcia enjoys the caregivers she currently has and that he believes maintenance of the status quo is in Marcia's best interests. We discern no abuse of discretion in the trial court's denial of Paula's motion for removal based on Bringardner's retention of Wool as Marcia's case manager.

{¶36} Based on our review of the testimony and documentary evidence presented to the probate court at the December 22-23, 2008 hearing on Paula's motion for removal, we cannot conclude that the trial court abused its discretion in overruling Paula's motion. Accordingly, we overrule Paula's third assignment of error.

{¶37} In conclusion, we sustain Paula's first assignment of error and overrule Paula's second and third assignments of error. Accordingly, we reverse the Franklin County Court of Common Pleas, Probate Division's judgment granting Bringardner's motion to quash, and we remand this matter for the probate court to reconsider the motion to quash in accordance with our discussion of the HIPAA regulations. Should the court deny the motion to quash and enforce the subpoena, the court shall then proceed to rehear Paula's motion to remove Bringardner as Marcia's guardian in light of any evidence obtained in response to the subpoena and presented in support of the motion for removal.

Judgment reversed and
cause remanded with instructions.

SADLER and McGRATH, JJ., concur.