

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: LILLIAN R. GIBSON, AN ALLEGED
INCAPACITATED PERSON OR
INCAPACITATED PERSON

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: ALVIANETTE GIBSON-
KENNEDY

No. 1288 EDA 2013

Appeal from the Decree of April 17, 2013
In the Court of Common Pleas of Montgomery County
Orphans' Court at No(s): 2013-X0769

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and WECHT, J.

MEMORANDUM BY LAZARUS, J.:

FILED JUNE 04, 2014

Alvianette Gibson-Kennedy¹ appeals, *pro se*, from the Final Decree entered in the Court of Common Pleas of Montgomery County, Orphans' Court Division, adjudging Lillian R. Gibson to be an incapacitated person and appointing a plenary guardian of her person and estate. Upon careful review, we affirm.

On February 20, 2013, Montgomery County Aging and Adult Services ("Agency") filed a petition for adjudication of incapacity and appointment of emergency and plenary guardians of the estate and person of Lillian R. Gibson ("Lillian"), then aged 82, of Willow Grove. The petition alleged that

¹ In her brief, Gibson-Kennedy identifies Lillian R. Gibson, the subject of the incapacity proceedings at issue here, as a co-appellant. However, Gibson is represented by court-appointed counsel, Diane M. Zabowski, Esquire, who has filed an appellee's brief on her behalf.

Lillian suffered from, *inter alia*, dementia and that Appellant, her daughter, with whom she resided, had taken financial advantage of her by assisting Lillian in obtaining a reverse mortgage on Lillian's home and spending the proceeds on herself. Petitioner requested that both emergency and plenary guardians be appointed for Lillian. That same day, the Orphans' Court issued a preliminary decree scheduling hearings on both the emergency and plenary guardianship requests. The court also entered an order freezing Lillian's assets pending further order of court.

On February 25, 2013, the court held a hearing on the emergency guardianship. Tivia Oslon, a case worker with the Agency, testified that the Agency had received a report of need from Lillian's bank, alerting the Agency to possible financial exploitation based on recent withdrawals of "massive amounts of money" from Lillian's account. N.T. Emergency Guardianship Hearing, 2/25/13, at 24. Oslon obtained copies of Lillian's bank statements, which showed expenditures totaling \$16,246 for the period from October 15, 2012 to November 14, 2012 and \$14,795 for the period between November 15, 2012 and December 14, 2012.

Lillian's personal physician, Gerald Hansen, M.D., testified telephonically. Doctor Hansen opined, to a reasonable degree of medical certainty, that Lillian suffers from moderate dementia and, as a result, her ability to receive and evaluate information is impaired to such a significant extent that she can no longer make and communicate appropriate decisions for her health care and her financial welfare. ***See id.*** at 70.

After hearing testimony, the court appointed Kalpana Doshi as emergency guardian of Lillian's estate. The court also directed that Lillian's financial institutions provide the emergency guardian access to her bank accounts and records and suspended Lillian's powers of attorney until further order of court. Finally, the court appointed Attorney Zabowski to represent Lillian in the plenary guardianship proceedings.²

On April 11, 2013, upon request from Attorney Zabowski, the court issued an order directing an independent medical evaluation of Lillian, to be performed by Andrew B. Rosenzweig, M.D. A hearing on the plenary guardianship was held on April 17, 2013. Prior thereto, Appellant contacted the court to advise that she would not be in attendance at the hearing because Attorney Zabowski "only advised of the hearing last evening after an e-mail inquiry." N.T. Plenary Guardianship Hearing, 4/17/13, at 6. However, the court noted that it had mailed a copy of the scheduling order to Appellant on March 15, 2013. *Id.* Moreover, Attorney Zabowski informed the court that Dr. Rosenzweig had been unable to perform an independent examination of Lillian because Appellant would not allow him access to her mother. Nonetheless, based upon the testimony elicited at both hearings,

² At the hearing on the plenary guardianship, the Honorable Stanley Ott explained that he had appointed Attorney Zabowski to represent Lillian because "the emergency hearing was contentious, if not rancorous, largely because of the behavior of [Appellant, which] began before the emergency hearing[.]" N.T. Plenary Guardianship Hearing, 4/17/13, at 5.

the court concluded that Lillian was an incapacitated person as defined by the statute and appointed Doshi as plenary guardian of her person and estate. The court also scheduled a review hearing in six months, leaving open the possibility that Lillian's other daughter, Jocelyn Gibson, might then be appointed as guardian of the person.

Appellant filed her notice of appeal on May 6, 2013, followed by a court-ordered statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). In her Rule 1925(b) statement, Appellant detailed four of what she claimed were a total of twenty-seven "elements on appeal," and asserted that she had been advised "that [the full complement of issues] need not be immediately disclosed to the lower court at this junction [sic]." Pa.R.A.P. 1925(b) Statement, 5/28/13.

On appeal, Appellant raises four entirely new "reasons for appeal" not set forth in her Rule 1925(b) statement. Moreover, Appellant's brief does not comply with the Rules of Appellate Procedure in any significant way. Rather, it is comprised of a jumble of accusations interspersed with recitations of her version of the factual and procedural history of the case. Although Appellant makes numerous references to specific matters raised and statements made during the emergency guardianship hearing, she provides no citations to the record. Further, Appellant makes no legal argument, with reference to statutes or case law, whatsoever.

Upon review of Appellant's brief, we are constrained to conclude that she has waived all issues on appeal. First, Appellant's issues are waived

because she failed to raise them in her Rule 1925(b) statement. **See *Madrid v. Alpine Mountain Corp.***, 24 A.3d 380 (Pa. Super. 2011) (appellant’s failure to include issue in Rule 1925(b) statement waives that issue for purposes of appellate review). Second, Appellant has not complied with the Rules of Appellate Procedure, and has failed to develop any case-specific, fact-based legal argument. **See *Commonwealth v. Clayton***, 816 A.2d 217 (Pa. 2002) (“[I]t is a well settled principle of appellate jurisprudence that undeveloped claims are waived and unreviewable on appeal.”). Accordingly, Appellant has waived consideration of the merits of her appeal.³

Even if we were to consider the appeal, Appellant would not prevail. To the extent we are able to discern the gist of Appellant’s main complaints on appeal, it is that the evidence was insufficient to establish that Lillian is incapacitated and in need of guardianship services. Contrary to Appellant’s contention, we find that the record amply demonstrates Lillian’s incapacity and need for court-supervised assistance in tending to her financial resources and physical health and safety.

³ As Judge Ott also noted in his Rule 1925(a) opinion, we question whether Appellant has standing to bring this appeal. However, Appellee has not raised the issue and we are unable to do so *sua sponte*. **See *Rendell v. Pa. State Ethics Comm’n***, 983 A.2d 708 (Pa. 2009) (under prevailing Pennsylvania law, the matter of standing is not available to be raised by a court *sua sponte*).

In order for the court to adjudicate an individual to be an incapacitated person under the governing statute, a petitioner must prove by clear and convincing evidence, **see** 20 Pa.C.S.A. § 5511, that the individual is a person:

whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.

20 Pa.C.S.A. § 5501.

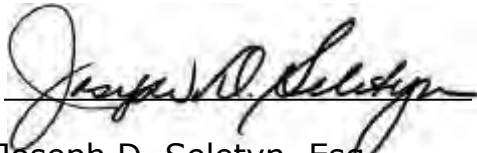
Here, the court heard the testimony of Dr. Hansen, who has been Lillian's personal physician for over twenty years. Dr. Hansen testified that Lillian suffers from moderate dementia and has limited cognition. Her short-term memory is "very, very poor," her long-term memory is "fair at best" and her insight is "limited." N.T. Emergency Guardianship Hearing, 2/25/13, at 66-67. Dr. Hansen testified that Lillian has not had the ability to understand a business transaction such as a mortgage "for several years." **Id.** at 68. As of Fall 2012, when Dr. Hansen last performed cognitive testing on Lillian, she was oriented times one – she knew who she was, but did not know the date or where she was. Moreover, Dr. Hansen testified that Lillian "was not able to exhibit good judgment in situations or really present any understanding of what her situation was." **Id.** at 69. She is unable to manage her medications or finances without assistance and was vulnerable to being taken advantage of by unscrupulous or designing persons. Dr. Hansen also stated that, in his opinion, Lillian was incapable of giving

informed consent for medical procedures. Finally, Dr. Hansen testified that Lillian's ability to receive and evaluate information was impaired to such a significant extent that she can no longer make and communicate appropriate decisions for her health care and financial welfare, as required under section 5501.

Based on the foregoing testimony and the other record evidence, we conclude that the Orphans' Court did not err in finding, by clear and convincing evidence, that Lillian is incapacitated as defined by the statute and in need of guardianship services.

Decree affirmed. Petition for supersedeas bond denied.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/4/2014