

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: RICHARD J. STAMPAHAR, AN
ALLEGED INCAPACITATED PERSON

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF LAURA S. MCCLARAN

No. 836 WDA 2013

Appeal from the Order Entered on May 8, 2013
In the Court of Common Pleas of Allegheny County
Orphans' Court at No.: 1361 of 2013

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

MEMORANDUM BY WECHT, J.:

FILED APRIL 10, 2014

Laura S. McClaran ("McClaran") appeals from the May 8, 2013 order that denied her petition seeking an adjudication of incapacity, and the appointment of a permanent guardian, for her father, Richard J. Stampahar ("Stampahar"). Specifically, McClaran alleged that Stampahar is incapacitated due to dementia. We affirm.

The orphans' court summarized the factual and procedural history of this case as follows:

On February 26, 2013, [McClaran] filed a Petition for Adjudication of Incapacity and Appointment of a Permanent Guardian of the Person and Estate of [Stampahar]. [McClaran] is a child of the alleged incapacitated person. On April 22, 2013, an Answer to the Petition was filed on behalf of Shelley S. Stoecklein, an interested party, as a child and Agent. The Answer claimed the existence of a power of attorney naming the alleged incapacitated person's daughter, [Stoecklein,] as Agent for financial matters and the son, Scott Stampahar, as Agent for healthcare matters. On May 2, 201[3, McClaran] filed a Motion to Obtain Independent Medical Evaluation

[That same day, the orphans' court] denied the Petition on the record after a hearing was conducted on the matter. On May 8, 2013, [the orphans' court] entered an order dismissing the Petition because [McClaran] failed to meet her burden.

On May 20, 2013[, McClaran] filed an appeal to [this Court] and on May 23, 2013, [McClaran] was ordered to file a [Pa.R.A.P.] 1925(b) statement of errors complained of on appeal. On June 11, 2013[, McClaran] filed her [Rule 1925(b) statement].

Orphans' Court Opinion ("O.C.O."), 7/9/2013, at 1-2. On July 9, 2013, the orphans' court filed its Rule 1925(a) opinion.

McClaran presents the following issues for our review:

1. Whether the [orphans'] court abused its discretion and committed a prejudicial error of law by refusing to acknowledge that the answer filed by the interested party, [Stoecklein], admitting that [Stampahar] suffers from dementia, was evidence.
2. Whether the trial court abused its discretion and committed a prejudicial error of law by refusing to order an Independent Medical Evaluation [p]ursuant to [20 Pa.C.S. § 5511(d)].

McClaran's Brief at 2. We will address each issue in turn.¹

In McClaran's first issue, she claims that the orphans' court erred in refusing to consider an admission in Stoecklein's April 22, 2013 answer as

¹ Although both issues advanced by McClaran appear to address an identical issue – namely, whether there was sufficient evidence to compel the orphans' court to order an independent medical evaluation – the issues are distinct. In her first claim, McClaran challenges the refusal of the orphans' court to **consider** Stoecklein's admission as proper evidence of incapacity. In her second claim, McClaran alleges that Stoecklein's admission constituted sufficient evidence to compel a medical evaluation. Accordingly, we will address the issues separately.

evidence of Stampahar's dementia. Specifically, McClaran argues that "[a]n averment in the pleadings, acknowledged as true in a response, should be considered as evidence, and thus, would be sufficient to establish the causal connection necessary to require an Independent Medical Evaluation." McClaran's Brief at 8. Stampahar asserts that McClaran has waived her first issue for failure adequately to develop her argument and to cite to the record pursuant to Pa.R.A.P. 2119(a) and (c). Stampahar's Brief at 10-11. We agree with Stampahar, and we conclude that McClaran has waived her first claim for failure to support her argument with citations to relevant legal authorities. **See** Pa.R.A.P. 2119(a).

"The argument portion of an appellate brief must include a pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities." ***In re Estate of Whitley***, 50 A.3d 203, 209 (Pa. Super. 2012) (quoting ***Estate of Lakatosh***, 656 A.2d 1378, 1381 (Pa. Super. 1995)). "This Court will not consider the merits of an argument which fails to cite relevant case or statutory authority." ***Id.*** (quoting ***Iron Age Corp. v. Dvorak***, 880 A.2d 657, 665 (Pa. Super. 2005)). "Failure to cite relevant legal authority constitutes waiver of the claim on appeal." ***Id.***; **see** Pa.R.A.P. 2119(a).

Instantly, McClaran's relevant discussion of her first appellate issue approximately is one page long. McClaran's Brief at 7-8. The only legal authority that McClaran cites in support of her first claim is Pa.R.C.P.

1029(a), which governs, in relevant part, the effect and scope of **denials** in civil pleadings. However, McClaran has offered no statutory or case citations that discuss the admissibility or effect of **admissions** in civil pleadings, nor has McClaran offered any other citations to support her argument.² As McClaran's first issue does not implicate denials in civil pleadings, but admissions, we are constrained to agree with Stampahar's argument that McClaran's sole citation is irrelevant "because it does not address the effect or admissibility of an admission in a pleading." Stampahar's Brief at 11. McClaran has failed to offer any relevant legal citations to support her first claim. Thus, McClaran has waived her first claim.^{3,4} **See** Pa.R.A.P. 2119(a).

² Notably, McClaran has not discussed how the Supreme Court Orphans' Court Rules, 231 Pa. Code §§ 1.1, *et seq.*, interact with the Pennsylvania Rules of Civil Procedure in this context.

³ Because we conclude that McClaran's first claim is waived pursuant to Pa.R.A.P. 2119(a), we do not address Stampahar's argument that McClaran's first claim is waived pursuant to Pa.R.A.P. 2119(c).

⁴ The relevant statutory provisions indicate that evidence of the type necessary to establish incapacity must originate from "individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner." 20 Pa.C.S. § 5518. Instantly, it is difficult to conclude that an admission by the agent of an alleged incapacitated person qualifies under the statutory definition recited above. The uncorroborated confirmation of Stampahar's incapacity from Stoecklein, offered as definitive proof by McClaran, simply is not the type of medical evidence contemplated at 20 Pa.C.S. § 5518. In relevant part, Stoecklein's admission reads as follows: "It is admitted, upon information and belief, that [Stampahar] suffers from some form of dementia, the extent of which is unknown." **See** Stoecklein's Answer to Petition for Adjudication of Incapacity, 4/22/2013, at ¶7. Even assuming, *arguendo*, that this
(Footnote Continued Next Page)

In McClaran's second claim, she argues that the orphans' court erred in refusing to order an independent medical evaluation of Stampahar pursuant to 20 Pa.C.S. § 5511(d). Specifically, McClaran argues that "in accordance with the [s]tatute, the [orphans' court] must order an Independent Medical Evaluation if the Alleged Incapacitated [Person] refuses to release their medical information." McClaran's Brief at 11 (emphasis in original). We disagree.

In relevant part, the statute cited by McClaran provides as follows:

§ 5511. Petition and Hearing; independent evaluation

* * *

(d) Independent evaluation.-The court, upon its own motion or upon petition by the alleged incapacitated person **for cause shown**, shall order an independent evaluation which shall meet the requirements of section 5518 (relating to evidence of incapacity). The court shall give due consideration to the appointment of an evaluator nominated by the alleged incapacitated person.

(Footnote Continued) _____

constituted relevant evidence of dementia, its strength is relatively weak. "A finding of mental incompetency is not to be sustained simply if there is any evidence of such incompetency but only where the evidence is preponderating and points unerringly to mental incompetency." ***In re Hyman***, 811 A.2d 605, 608 (Pa. Super. 2002) (quoting ***In Re Myers' Estate***, 150 A.2d 525, 527 (Pa. 1959)). Stoecklein's admission confirms only that Stampahar suffers from "some form" of dementia. It does not describe in any way the severity of his condition, nor its cognitive effect.

20 Pa.C.S. § 5511 (emphasis added). Additionally, the statutory provision describing the type of evidence necessary to demonstrate incapacity provides as follows:

§ 5518. Evidence of incapacity

To establish incapacity, the petitioner must present testimony, in person or by deposition **from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner**, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change.

20 Pa.C.S. § 5518 (emphasis added).

Although McClaran claims that the orphans' court is required to conduct an independent medical evaluation in cases where the allegedly incapacitated person refuses to provide access to their medical records, she has not cited any legal support for this assertion. Our reading of the relevant statute indicates, to the contrary, that the orphans' court is only required to order an independent medical evaluation "for cause shown." 20 Pa.C.S. § 5511(d). Furthermore, our review of applicable case law indicates that the ordering of an independent medical evaluation in the guardianship context is a question committed to the discretion of the orphans' court. **See**

In re Hyman, 811 A.2d 605, 609 (Pa. Super. 2002) (upholding a trial court's refusal to order an independent medical evaluation).

In the alternative, McClaran also argues that she presented sufficient evidence to compel the orphans' court to order a medical evaluation. "Our review of the [orphans'] court's determination in a competency case is based on an abuse of discretion standard, recognizing, of course, that the trial court had the opportunity to observe all witnesses, including, as here, the allegedly incapacitated person." ***Hyman***, 811 A.2d at 607-08 (citing ***In Re Myers' Estate***, 150 A.2d 525, 526 (Pa. 1959)). "Any person interested in the alleged incapacitated person's welfare may petition the court for a judicial determination that the person is indeed incapacitated and for the appointment of a guardian." ***Id.*** at 607-08 (citing 20 Pa.C.S. § 5511). "[A] person is presumed to be mentally competent, and the burden is on the petitioner to prove incapacity by clear and convincing evidence." ***Id.*** at 608.

Instantly, the orphans' court had the opportunity to observe Stampahar and hear arguments from both parties' attorneys.⁵ The only evidence offered by McClaran at the May 2, 2013 hearing in support of her request for an independent medical evaluation was an admission in Stoecklein's response to McClaran's petition. Notes of Testimony ("N.T."), 5/2/2013, at 10-11. At the hearing, McClaran argued, as she does now

⁵ It is unclear from the record whether McClaran was present at the hearing, but her attorney was permitted to address the court at length.

before this Court, that Stoecklein's admission constituted sufficient evidence to compel the orphans' court to order an independent medical evaluation. We disagree.

As discussed above, the orphans' court refused to entertain Stoecklein's admission as evidence of his incapacity, stating that it was improper. The orphans' court aptly has discussed the resulting lack of evidence presented by McClaran in support of her petition:

[McClaran's] Motion to obtain [an] Independent Medical Evaluation does not contain a factual basis to support an independent medical evaluation. The [Motion] contains only the broad assertion that [Stampahar] is unable to assert his will to see [McClaran] and has been subjected to the whims and idiosyncrasies of his eldest daughter, [Stoecklein], who currently holds his [financial] Power of Attorney. [McClaran] failed to present any evidence to this Court to support her request for an independent medical evaluation of [Stampahar].

O.C.O. at 3. In relevant part, McClaran's petition seeking an independent medical evaluation was unsupported by any evidence of the type necessary to demonstrate incapacity.^{6,7}

⁶ Our reference to 20 Pa.C.S. § 5518 is not meant to suggest that the burden of proof for demonstrating "cause" pursuant to an independent medical evaluation is coextensive with the burden for establishing incapacity.

⁷ This Court has held that "[a] lay witness may testify to the mental condition of a person when the facts upon which the opinion is based are stated." *In re Owens' Estate*, 74 A.2d 705, 709 (Pa. Super. 1950). Under this precedent, McClaran might have been able to sustain her burden with reference to an independent medical examination without offering expert medical testimony. However, McClaran did not offer **any** other evidence or testimony to support her petition. **See** N.T. at 10-11 (McClaran's attorney (*Footnote Continued Next Page*))

Moreover, Stampahar's two other children (excluding McClaran) hold durable powers of attorney with respect to his financial and personal health care decisions. **See** General Power of Attorney of Richard J. Stampahar, 12/31/2010, at 1-8 (naming Stoecklein as general power of attorney); **see also** Living Will of Richard J. Stampahar (naming Scott Stampahar as medical power of attorney). At various points in McClaran's brief, she alleges that her siblings have abused their respective powers of attorney and exerted "undue influence" on Stampahar. McClaran's Brief at 11-13. However, McClaran has offered no evidence to support these undue influence claims. We note that Pennsylvania law mandates that 20 Pa.C.S. § 5511 must be read in conjunction with 20 Pa.C.S. § 5604(c)(2), which regulates durable powers of attorney. ***In re Duran***, 769 A.2d 497, 506 (Pa. Super. 2001). Collectively, these statutes "require the court to give effect to the patient's selection of a guardian, except for good cause or disqualification." ***Id.***

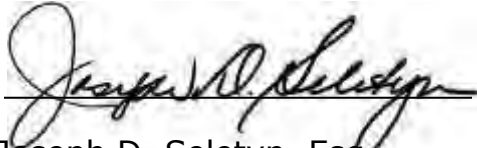
Based upon the foregoing, we conclude that the orphans' court did not abuse its discretion in refusing to order an independent medical evaluation. McClaran was required to demonstrate cause in order to trigger an order for an independent medical evaluation. The lack of evidence adduced by McClaran to support her petition indicates that the orphans' court did not err
(Footnote Continued) _____

stating that Stoecklein's admission was the only evidence offered in support of McClaran's medical evaluation petition).

in refusing to order a medical examination of Stampahar. "A petition for adjudication of incapacity, without more, may not itself serve as a *carte blanche* for a broad inquest into the allegedly incapacitated person's physical and mental health and personal finances; the potential for abuse is simply too great." **Hyman**, 811 A.2d at 610. McClaran's second claim fails.

Order affirmed.

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: 4/10/2014