No. 126956

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

In The Matter of the Estate of:	)	On leave to appeal from the Appellate Court of Illinois, Second
JOHN W. MCDONALD, III	)	District, No. 2-19-1113
Deceased.	)	There on Appeal from the Circuit Court of the Sixteenth Judicial
SHAWN MCDONALD,	)	Circuit, Kane County, Illinois,
Appellant,	)	No. 17-P-744
v.	)	
ELLIZZETTE MCDONALD,	)	Date of Judgment: March 2, 2020
Appellee.	)	

APPELLANT SHAWN MCDONALD'S REPLY BRIEF AND RESPONSE TO REQUEST FOR CROSS RELIEF

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E-FILED
9/8/2021 4:27 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Discussing the documented history of an individual's utilization of multiple identities, false personas, and deliberate falsification of her name, birth date, birth place, and listed occupation on a marriage license application is not character assassination, it is telling the full, unvarnished truth necessary to appreciate each of the critical issues at stake. Facts and context always matter. This is especially true when a major issue in this case involves a determination as to what is in included in a ward's right to vigilant protection in this State with respect to the decision to marry. If that right to protection is to have any legitimacy, it must include finding a best-interest determination before the ward makes the most consequential decision in his or her life is a requirement in Illinois. Once the marital relationship is formed, the law holds *both* parties to various obligations and liabilities. *Maynard v. Hill*, 125 U.S. 190, 211 (1888). It stands to reason that if the integrity of marriage is a salient purpose to be preserved,

when one of the parties to the marital contract is a disabled ward without capacity, the reasonable requirement of a best-interest determination pursuant to Section 11a-17(a-10) is an absolute. 755 ILCS 5/11a-17(a-10); See, *Zablocki v. Redhail*, 434 U.S. 374, 386 (1978) (reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed).

Regardless of Ellizzette's decision to only re-state the facts she believes are necessary for this Court to consider on review, the fact remains that on May 30, 2017, John W. McDonald, III, was found to be totally without capacity, declared a ward of the court, and his brother Shawn McDonald was appointed to serve as his plenary guardian. (C2030) This legal determination by a court of competent jurisdiction was made after the careful consideration of a physician's report along with the guardian *ad litem* report of Attorney Fred Beer, who functioned as the "eyes and ears of the court". *In re Mark W.*, 228 Ill.2d 365, 374 (2008) (the role of the guardian ad litem is to advise the court what is in the ward's best interests). The details in those reports are revealing. (C549-563)

They tell the troubling story of a vulnerable former neurologist who hadn't worked or earned any income for years, spent what money he had recklessly, and suffered from long-standing mental health and substance abuse disorders which impaired his decision making ability and put him at a high risk to harm himself as well as being hurt by others. (C546-563) The first-hand observations of John, the observations and accounts of John's immediate family members, and John's own admission of being manic depressive and in need of help, detailed throughout Attorney Beer's report to the court are in stark contrast to the illusory version of John depicted in Ellizzette's brief. (Resp. Brief, p. 24-26). Although Ellizzette points out that John "promptly objected to the order appointing Shawn his plenary guardian", she makes no mention that after John's objection, he was court ordered into a behavioral health

hospital, ordered to be evaluated by two additional physicians, one of which he personally chose, and thereafter his status as a disabled ward subject to a plenary guardianship remained undisturbed. (C150-152)

Rather than acknowledge these undeniable important facts, Ellizzette intentionally glosses over this critical period in her statement of facts. (Resp. Brief, p. 3) The innuendo, of course, being John's guardianship was some sort of nefarious device instead of a critical safeguard put in place to vigilantly protect a brother and son who, despite the best efforts of his family, remained in desperate need of help and protection. A safeguard which remained in place up to the date John tragically passed away on December 11, 2017.

For the reasons stated previously and those stated in this Reply, Shawn respectfully requests this Court reverse the appellate court's findings of error and affirm the circuit court's directed finding in his favor.

ARGUMENT

I. RULINGS ON MOTIONS IN LIMINE ARE REVIEWED UNDER AN ABUSE OF DISCRETION STANDARD.

This Court should apply an abuse of discretion standard, not the *de novo* standard suggested by Ellizzette, when reviewing the trial court's ruling on Shawn's motion *in limine*. Trial courts possess broad discretion to grant or deny a motion *in limine* as part of their inherent power to admit or exclude evidence. *Colella v. JMS Trucking Company of Illinois, Inc.*, 403 Ill.App.3d 82, 92-92 (2010). A trial court's ruling on such motions will not be disturbed on review absent an abuse of that discretion. *In re Leona*, 228 Ill.2d 439, 460 (2008). A trial court abuses its discretion only if it acts arbitrarily without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law or if no reasonable person would take the position adopted by the court. *Alm v. Loyola University Medical Center*, 373 Ill.App.3d 1, 4 (1st Dist. 2007).

II. THE REQUIREMENT OF A BEST INTEREST HEARING FURTHERS THE PURPOSE OF THE PROBATE ACT AND THE MARRIAGE ACT AND IS A REASONABLE REQUIREMENT WHICH DOES NOT DEPRIVE THE WARD OF HIS RIGHT TO MARRY.

Over forty years ago, this Court recognized that the policy of the Illinois Marriage and Dissolution of Marriage Act gives the State a strong continuing interest in the institution of marriage, which adheres to the traditional doctrine that marriage is a civil contract between three parties: the husband, the wife and the State. *Hewitt v. Hewitt*, 77 Ill.2d 49, 63 (1979). The *Hewitt* Court's observance of the State's interest in the institution of marriage was not novel. The importance of the institution had been recognized long before then. *Maynard v. Hill*, 125 U.S. 190, 211 (1888) ("[Marriage] is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.").

Although the freedom to marry has similar long-standing recognition (*Loving v. Virginia*, 388 U.S. 1 (1967)), that right is not without its own limitations. Marriage has always been subject to the control of the legislature which prescribes the age at which parties may contract to marry, the procedure or form essential to constitute marriage, the duties and obligations it creates, its effects upon the property rights of both, present and prospective, and the acts which may constitute grounds for its dissolution. *Maynard v. Hill*, 125 U.S. 190, 205 (1888). The Illinois legislature has set forth many of its own substantive rules concerning marriages contracted in the State and those which the State recognizes. See e.g., 750 ILCS 5/201 (formalities to a marriage); 750 ILCS 5/203(1) (minimum age to consent to marriage); 750 ILCS 5/212 (marriages which are prohibited); 750 ILCS 5/213 (validity of foreign marriages); 750 ILCS 5/215 (prohibition of common law marriages). The requirement that a best interest determination pursuant to Section 11a-17(a-10) take place when a disabled ward seeks to marry should be viewed no differently especially when considering what the law aims to achieve. 755 ILCS 5/11a-17(a-10).

Should this Court acknowledge the law of this State requires a best interest determination as to a disabled ward's decision to marry, such a conclusion would not be akin to judicial lawmaking as Ellizzette incorrectly suggests. (Resp. Brief, p. 28). It would be giving effect to the intention of the legislature when it incorporated Section 11a-17(a-10) into the Probate Act in direct response to this Court's decision in *Karbin v. Karbin, ex rel. Hibler*, 2012 IL 112815. It is well established that a statute should not be construed in a manner which will lead to consequences which are absurd, inconvenient, or unjust. *McMahan v. Industrial Commission*, 183 Ill.2d 499,514 (1998). The reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another are

additional considerations a court may consider. *Roberts v. Alexandria Transportation, Inc.*, 2021 IL 126249, ¶29.

Given the plain text of Section 11a-17(a-10), how could requiring a court to first consider the reason for and nature of the ward's proposed marriage, the benefit or necessity of it, and the possible risks and other consequences should the marriage take place not have been the purpose the legislature aimed to achieve? The notion of caveat emptor may very well apply in the scenario where the two parties entering the marriage contract are of sound mind and body, however it defies common sense, reason, and also subverts the stated purpose of the Marriage Act to take the position that such a harsh result would also apply when the scenario involves a disabled ward, incapable of appreciating the false representations made by his suitress through his own inquiry. 750 ILCS 5/102(2). By its very nature, a plenary guardianship establishes judicial recognition that the individual who is made a ward of the court is considered a "favored person" in need of heightened protection. *In re Mark W.*, 228 Ill.2d 365, 375 (2008).

On May 30, 2017, John was one such individual, adjudicated a disabled person under the Probate Act and from that day forward, the court was charged with vigilantly protecting him as its ward. (C2030) The significance of that charge and the legislative requirements that extend from its creation do not disappear as a result of Ellizzette's attempt at minimizing John's need for protection. After John was adjudicated a disabled person, totally without capacity, the heightened protection he was entitled to was non-negotiable. Because that legal determination was undisturbed for the remainder of John's life, the protection that extended to him by way of his special legal status remained in place throughout it, including the day he purportedly participated in a marriage ceremony with one holding herself out to the world as a 53 year old, physician scientist named Ellizzette Duvall Minicelli born in Lyon, France in 1963. (C753) Because the ceremony took place without any prior judicial consideration for what was in John's

best interest, its solemnization amounted to nothing beyond a mere idle ceremony, which conferred no right, leaving the legal status of John and Ellizzette unchanged. *Hagenson v. Hagenson*, 258 Ill. 197, 198-199 (1913).

It is important to consider after a plenary guardianship is established, the court functions in a central role, wherein it is permitted to oversee and control *all aspects* of the management and protection of the disabled person's estate. *In re Estate of Wellman*, 174 Ill.2d 335, 348 (1996) (emphasis added). "All aspects" obviously includes the decision to marry. The plenary guardianship is the vehicle through which the court oversees the ward's person and estate, and also directs the guardian's care, management, and investment of the estate. *Id.* It is equally important to consider guardians only act as the hand of the court and are at all times subject to its direction in the manner in which they provide for the care and support of the disabled ward. *In re Estate of Nelson*, 250 Ill.App.3d 282, 287 (1st Dist. 1993). Since the Probate Act requires guardians to always act in the best interests of the ward, the guardian, as the court's hand, can only have the power to take appropriate legal action to accomplish that end if a best interest hearing is required for a ward to marry.

When considering these important purposes and requirements, Ellizzette's position that the paramount decision to marry is not encompassed by this significant judicial oversight is precisely the type of absurd and unjust result this Court is to avoid when interpreting Section 11a-17(a-10) of the Probate Act and the Appellate Court was wrong when it interpreted the statute and came to the same conclusion. *McMahan v. Industrial Commission*, 183 Ill.2d 499, 514 (1998). Requiring thoughtful consideration of a ward's best interests with respect to the decision to marry is the only logical interpretation this Court should come to because it accomplishes the purpose of vigilantly protecting the ward and it remedies the inherent risks of a disabled person

entering a marriage contract with another who is not subject to similar judicial oversight.

Marriage has been described as a moral and financial partnership of coequals. *In re Marriage of Reynard*, 344 Ill.App.3d 785, 792 (4th Dist. 2003). The marriage association imports rights, duties and responsibilities to both parties. When considering what is at stake, the requirement of a best-interest hearing is in no way a legislative impediment which significantly interferes with a ward's fundamental right to marry. It is a reasonable requirement which can be legitimately imposed, as it should. *Zablocki v. Redhail*, 434 U.S. 374, 386 (1978) (Reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may be imposed); *Boynton v. Kusper*, 112 Ill.2d 356, 369 (1986) (same). Acknowledging the Probate Act requires a best interest hearing to occur prior to a ward marrying is the only way disabled wards can be guaranteed their right to vigilant protection while simultaneously preserving and upholding the integrity of such marriages which are contracted in the State of Illinois and the Appellate Court was incorrect when it held to the contrary.

III. MARRIAGES WHICH ARE VOID AT THEIR INCEPTION DO NOT REQUIRE INVALIDATION AFTER THE FACT BY THE JUDICIARY.

The language of the May 30, 2017, guardianship order should not be taken lightly. The order provided John was a disabled person *totally* without capacity. (C2030) As set forth above, this legal determination as to John's diminished decision making ability was initially justified and later supported by the evaluations of three separate physicians in total, one of which John selected. (C150-152; C 546) Marriage contracts require the mutual consent of two persons of sound mind, and if, at the time a marriage ceremony is performed, one of the parties to the contract is mentally incapable of giving an intelligent consent to what is done, with an understanding of the obligations assumed, the legal status of each party is unaltered. *Hagenson v. Hagenson*, 258 Ill. 197, 198-199 (1913).

A person lacks capacity to consent to a marriage where he is unable to understand the nature, effect, duties and obligations of marriage. *Larson v Larson*, 42 Ill.App.2d 467, 473 (2nd Dist.1963). By way of him being adjudicated a disabled person, completely without capacity, and because the court who declared him a ward never determined whether the marriage to Ellizzette would be in his best interest, John intrinsically lacked the requisite capacity to consent to the marriage. 755 ILCS 5/11a-17(a-10).

It is this exact position Shawn incorporated into the affidavit of heirship he filed following John's death wherein he plainly stated to the same court that adjudicated John a disabled ward that the marriage his brother participated in with Ellizzette was void *ab initio*. (C21) Consequently, if a marriage is void *ab initio*, its validity is subject to attack in any proceeding in which the question of its validity arises, including actions in probate after death of the incompetent party. *In re Estate of Crockett*, 312 Ill.App.3d 1167 (5th Dist. 2000). However, Shawn's affidavit of heirship was not a collateral attack on the marriage as Ellizzette wrongly claims. The void nature of John and Ellizzette's marriage was an established fact from its inception.

As stated above, a void marriage is ineffectual to alter the marital status of either party and therefore no judicial proceeding or decrees are required to establish its invalidity. *Hagenson v. Hagenson*, 258 Ill. 197, 198-199 (1913); *In re Estate of Crockett*, 312 Ill.App.3d 1167 (5th Dist. 2000) A void marriage is good for no legal purpose, and its invalidity may be shown in any court between any parties either in the lifetime of the parties thereto or after their death. *Jardine v. Jardine*, 291 Ill.App.152, 161 (1st Dist. 1937). Since there was no need for Shawn to obtain a decree that the marriage was invalid, once Ellizzette appeared in the probate proceedings claiming to be John's rightful heir, it became incumbent upon her to establish the marriage ceremony she had with John was not idle, and did actually meet each of the formalities

required in this State for it to be recognized which included proving a best interest hearing occurred prior to the ceremony taking place since the person she claims to have married was at the same time adjudicated a disabled person, totally without capacity, and subject to an active plenary guardianship. 755 ILCS 5/11a-17(a-10)

Ellizzette's reliance on *Pape v. Byrd*, 145 Ill.2d 13 (1991) in an effort to convince this Court that John's diminished capacity could not be outcome determinative is unpersuasive for a number of reasons. First, the individual in *Pape* was subject to a guardianship after the marriage in question took place, unlike the marriage here where John had been declared totally without capacity and was subject to a plenary guardianship at the time he participated in a marriage ceremony with Ellizzette. Based on the law in effect at that time, the marriage in *Pape* arguably enjoys the presumption of validity whereas the marriage here should not. *Larson v Larson*, 42 Ill.App.2d 467, 473 (2nd Dist.1963); 755 ILCS 5/11a-17(a-10). Second, the ward in *Pape* had a guardian appointed on the basis he could not make decisions regarding his care, whereas John was appointed a plenary guardian because he lacked the requisite capacity to make decisions related to his finances in addition to those relating to his care. Because John did not possess financial decision making autonomy over himself, how could he ever fully appreciate or be bound by the financial duties that would be imposed on him once the marital relationship to Ellizzette was established? Third, and most importantly, at the time *Pape* was decided, Section 11a-17(a-10) of the Probate Code had not been enacted because the decision in *Karbin v. Karbin, ex rel. Hibler*, 2012 IL 112815 would not be rendered until two decades later. Stated differently, the requirement that a best interest hearing take place before a ward marries was not the law in Illinois.

The impossibility to prescribe a definite rule to test whether the requisite mental capacity to consent to a marriage was met may have very well existed when cases such

as *Pape* or *Larson* were decided, but the legislature of this State solved that legal conundrum when it enacted Section 11a-17(a-10) following this Court's decision in *Karbin v. Karbin, ex rel. Hibler*, 2012 IL 112815. When the proposed marriage involves a disabled ward of the court, a best interest hearing must take place first. Nevertheless, even though the *Pape* decision predates *Karbin* and the enactment of Section 11a-17(1-10), the decision still at the very least acknowledged a ward's need for a guardian to make decisions related to his care is strong evidence he lacked capacity to marry. *Pape v. Byrd*, 145 Ill.2d 13, 22 (1991).

Finally, this Court should also consider the identity issue presented in this case because it highlights why the best-interest hearing requirement is so fundamentally important in ensuring a disabled ward is vigilantly protected when the important prospect of marriage is being considered. Marriages have incredible personal and legal significance and although marriage has long been recognized as a sacred institution, that does not mean all those who attempt it treat it that way. See e.g., *Wilson v. Cook*, 256 Ill. 460, 464 (1912) (the sacredness and stability of marriage lay at the very foundation of social order and civilization). The bonds and life-long relationships John shared with his parents and three siblings can be upended and jeopardized after his death by a legal stranger claiming to have secretly wed John using a marriage license rife with falsehoods, without adherence to the two witness rule, and without the knowledge of his guardian or the probate court charged with vigilantly protecting its ward. It was a flagrant attempt at avoiding what the laws in this State require and is a chilling example of what can go wrong if the protective mechanisms the legislature created to ensure a ward's vigilant protection are not strictly enforced. In this case, the ability of the probate court to oversee and control *all aspects* of the management and protection of the disabled person's estate was rendered meaningless and the ward's right to vigilant protection became illusory.

Because the Appellate Court failed to appreciate these distinguishing factors and the inherent problems Section 11a-17(1-10) sought to remedy, its finding that the statute does not render a marriage such as John's void, when it is entered into without a best interest hearing occurring, should be reversed.

IV. A *PRIMA FACIE* CASE CANNOT BE MADE IN AN HEIRSHIP PROCEEDING IF THE IDENTITY OF A PURPORTED HEIR IS NEVER ESTABLISHED.

As she did before the Appellate Court, Ellizzette dedicates much of her response brief reinterpreting Shawn's motivation for highlighting the various identities she has employed, along with the substantial inaccuracies which appear on her marriage license application to John which she certified as being true to the best of her knowledge. (Resp. Brief, p. 30-31, 34); (C2034-2035) The information contained in the marriage application, a legal document Ellizzette signed and filed with the Edgar County Clerk is an unrestricted work of fiction and her argument in response to it is a misdirection made with the clear purpose to avoid its consideration. (C2035)

Conveying this troubling information to the trial court was not done with the intention of invalidating John's marriage to Ellizzette on the basis of fraud as she posits. As stated previously, void marriages do not require decrees to invalidate them. *Hagenson v. Hagenson*, 258 Ill. 197, 198-199 (1913); *In re Estate of Crockett*, 312 Ill.App.3d 1167 (5th Dist. 2000). It is true that stating a false name (*Cartwright v. McGown*, 121 Ill. 388, 396 (1887)), false age (*Long v. Long*, 15 Ill.App.2d 276 (2nd Dist. 1957), and false claims as to social standing on a marriage license (*Wolfe v. Wolfe*, 76 Ill.2d 92, 97 (1979)) although troubling, are by themselves insufficient to invalidate a marriage. However, it stands to reason that when a person attempting to marry a disabled ward without the prior consent of the probate court, intentionally commits every one of these transgressions in one fell swoop, the statutory requirements for marriage in this State and the integrity of the institution itself are not strengthened and preserved. 750 ILCS 5/102; 750 ILCS 5/202. They are made a mockery of.

The sole basis for bringing the identity issue to the trial court's attention was stated in Shawn's pleading filed on September 6, 2018, well before the trial on Ellizzette's claim of heirship occurred, "[t]he identity of Ellizzette McDonald needs to be established." (C736-737).

Shawn also did not know who Ellizzette actually was at the time he filed his affidavit of heirship as she wrongly claims. (Resp. Brief, p. 30) He only had knowledge of who she held herself out to be. Following a court order requiring her to appear for her deposition, Ellizzette was finally deposed, during which examination it was learned that she had a long history of employing various identities and personas, that she lived in Australia for several years and assumed the last name of the man she lived with there allegedly enjoying "all the rights and privileges of a marriage without going through a religious ceremony" pursuant to "the common law of Australia", and when confronted with a certified copy of her birth record, Ellizzette would not even admit the name she was actually born with was Lisa Ann Blaydes. (C725; C 736-737)

Following Ellizzette's deposition, the identity question remained unanswered after multiple attempts at obtaining her fingerprints and also after Ellizzette's presentation of evidence during the contested heirship proceeding. Ellizzette's claim that this issue is somehow unimportant and not worthy of further consideration is wrong because the very nature of an heirship proceeding is for the court to determine who is entitled to the decedent's estate by law. *George v Moorhead*, 399 Ill. 497 (1942).

The actual identity of a supposed heir certainly matters when a court is determining whether a *prima facie* showing was made and it is the burden of the person claiming heirship to present sufficient evidence that establishes they are who they claim to be. *In re Estate of Severson*, 107 Ill.App.3d 634,636 (2nd Dist 1982) (burden is on party claiming heirship). The words "*prima facie*" mean sufficient to establish a fact or raise a presumption unless disproved or rebutted. Black's Law Dictionary, 1310 (9th ed.

2009). Here, Ellizzette's own witness, Ray Bement, who is alleged to have presided over her marriage ceremony to John did not even know her by the name she supplied on the marriage license application he signed. (R 366)

Because the issue related to Ellizzette was never resolved after being brought into question on September 6, 2018 and remained unresolved at trial, the Appellate Court decision which found Ellizzette made a *prima facie* showing at the conclusion of her evidence was in error and should be reversed.

V. ELLIZZETTE'S INTERPRETATION OF THE DEAD MAN'S ACT IS CONTRARY TO ITS STATED PURPOSE AND THE APPELLATE COURT ERRED WHEN IT HELD *LAURENCE V. LAURENCE*, 164 ILL. 367 (1896) WAS NOT CONTROLLING AS TO HER ABILITY TO TESTIFY.

This Court's long-standing prohibition on a purported spouses ability to testify in a heirship proceeding was made in consideration of the Dead Man's Act's purpose to ultimately protect the estates of deceased persons from the assaults of strangers. *Laurence v. Laurence*, 164 Ill. 367, 373 (1896). Ellizzette is one such stranger. Her documented history of using fictitious names, false personas, and telling outright falsehoods on a marriage license application in this State not only reveals the temptation to testify falsely likely exists within her, it demonstrably proves she has a habit of engaging in such behavior. To Ellizzette, the truth appears to be whatever she says it. For example, according to Ellizzette, the information on her marriage license application, which can only be described as a complete work of fiction, is apparently the fault of the Edgar County Clerk's Office despite Ellizzette having signed the document and swearing the information contained therein was true. (R 383); (C2035) Another example is her claiming in court to have had a 38 year relationship with John, despite previously testifying under oath that she lived in Australia with a man named Rafael Minicelli from 2003 to 2014, assumed his last name, and thereafter enjoyed all the rights and privileges that come along with marriage. (C725; R 443 V2) These examples do not stand in isolation.

Removing a survivor's temptation to testify falsely is but one of the noteworthy purposes of the Dead Man's Act and this case demonstrates why the Act is important and also why it is not rooted in "the cynical view that a party who cannot be directly contradicted will lie" as Ellizzette baldly claims. (Resp. Brief, p. 45); *Hoem v. Zia*, 159 Ill.2d 193, 201 (1994); *Gunn v. Sobucki*, 216 Ill.2d 602, 609 (2005) (the purpose underlying the Dead Man's Act is to protect decedents' estates from fraudulent claims).

The Act also aims to equalize the position of the parties in regard to the giving of testimony. *Id.* Staying true to form, here, Ellizzette asserts the trial court's misapplication of the Act allowed Shawn to do precisely the opposite. A position that can only be taken after ignoring the various ways Ellizzette could have supplied the trial court with a modicum of evidence that a valid marriage between John and her occurred. By Ellizzette's own design, the marriage ceremony she participated in with John had none because it was held in secret without any adherence to the two witness rule and not a single piece of tangible evidence supporting the event actually took place or memorializing what occurred was offered. See *Pike v. Pike*, 112 Ill. App. 243 (1904). Ellizzette did not even offer the trial court a photograph to consider. At the conclusion of her evidence, the trial court was left with nothing to contemplate other than the incredible testimony of a self-described "dazed" and "confused" officiant who did not even know the reported name of the woman he specifically obtained a officiant's certificate for in order to marry her to a disabled ward. (R 366, 371)

When deciding this issue, this Court should consider the theory behind the Act. *In re Maher's Estate*, 210 Ill. 160, 169-170 (1904) (as the mouth of the deceased is closed by death, the mouth of the living who assert a claim against the dead shall be closed by law). Had the trial court denied Shawn's motion in limine and allowed Ellizzette to testify as to her claimed heirship status, the theory behind the Act and its recognized purpose would have been thrown out the window. Prohibiting Ellizzette's

testimony was the only outcome compatible with what the Act aims to accomplish. *Agins v. Schonberg*, 397 Ill.App.3d 127, 130 (1st Dist. 2009) (the primary purpose of the Dead Man's Act is to preserve fundamental fairness and to preclude the presentation of a one-sided picture of an event or conversation). The Act relates to evidence whose admissibility courts are charged with determining, not the General Assembly. *See Kunkel v. Walton*, 179 Ill.2d 519, 528 (1997) ("the separation of powers principle is violated when a legislative enactment unduly encroaches upon the inherent powers of the judiciary, or directly and irreconcilably conflicts with a rule of this court on a matter within the court's authority"); Ill. Rule of Evid. 101 (providing a statutory rule of evidence is effective unless in conflict with a rule or a decision of the Illinois Supreme Court).

For these reasons, this Court should declare its decision in *Laurence* remains the law in the State of Illinois and as a result of that declaration, the Appellate Court should be reversed.

ARGUMENT IN RESPONSE TO REQUEST FOR CROSS RELIEF

I. THIS COURT SHOULD APPLY A MANIFEST WEIGHT OF THE EVIDENCE STANDARD WHEN REVIEWING THE CIRCUIT COURT'S ORDERS APPOINTING ADMINISTRATION.

The standard of reviewing an order declaring heirship is whether the ruling is against the manifest weight of the evidence. *In re Estate of Carmel Bennoon*, 2014 IL App (1st) 122224. The standard of review on a motion to vacate an order issuing letters of administration is whether the trial court's decision was against the manifest weight of the evidence. *In re Estate of Savio*, 388 Ill. App. 3d 242 (3rd Dist. 2009). Accordingly, this Court should not apply the *de novo* standard of review as Ellizzette suggests and instead review on a manifest weight of the evidence standard.

II. THE CIRCUIT COURT ORDERS APPOINTING ADMINISTRATION AND DECLARING HEIRSHIP SHOULD BE UPHELD BECAUSE ELLIZZETTE FAILED TO TIMELY APPEAL THE TRIAL COURT'S ORDER DENYING HER MOTION TO VACATE.

In her argument for cross-relief, Ellizzette raises the same argument she made to the circuit court in her motion to vacate the order appointing Shawn administrator of John's estate, her chief complaint being Shawn deprived her of notice when he filed his petition for letters of administration of John's estate. (C50-58) For the reasons stated previously in this brief, Ellizzette's claim is without merit.

The marriage ceremony that occurred between Ellizzette and John was good for no legal purpose, void at its inception, and amounted to nothing more than an idle ceremony which conferred no rights. *Hagenson v. Hagenson*, 258 Ill. 197, 198-199 (1913); *Jardine v Jardine*, 291 Ill.App. 152, 161 (1st Dist. 1937). If that ceremony was to have any legitimacy, it required a best interest determination first because of John's protected status as a disabled ward, totally without capacity. 755 ILCS 5/11a-17(a-10). Because a best interest hearing never occurred, Ellizzette's marriage ceremony to John conferred no rights to her, she is not an heir, was not entitled to notice and therefore her argument that the trial court's orders are void due lack of personal jurisdiction are without merit. Heirs are those the law designates to receive an intestate estate. *Gridley v. Gridley*, 399 Ill. 215, 222 (1948). This same explanation was provided to the trial court in Shawn's affidavit of heirship and petition for letters of administration which correctly left Ellizzette's name off the list of John's heirs at law. (C19-22)

Setting aside these facts, an additional reason this Court should not consider Ellizzette's request for cross relief is she failed to timely appeal the order appointing administration. She had 30 days to do so following the circuit court's denial of her motion to vacate. IL. S. Ct. Rule 303(a)(1). The Rules go on to provide, "[a] judgment or order entered in the *administration of an estate*, guardianship, or similar proceeding which finally determines a right or status of a party" is immediately appealable. IL. S. Ct. Rule 304(b)(1) (emphasis added). It is well established that the Rules promulgated by this Court are not aspirational or mere suggestions, they have the force of law and

the presumption is they will be obeyed and enforced as written. *Bright v. Dicke*, 166 Ill.2d 204, 210 (1995). Rule 304(b)(1) is not a permissive instruction. The time for a party to appeal orders entered in the administration of an estate are mandatory not optional. *In re Estate of Thorp*, 282 Ill.App.3d 612, 616 (4th Dist. 1996).

The central reason behind requiring parties to timely appeal orders entered in the administration of an estate mandatory rather than optional, is obvious. Certainty as to some issues is a necessity during the lengthy procedure of estate administration. *Estate of Kime*, 95 Ill.App.3d 262, 268 (3rd Dist. 1981). Rather than adhering to this Court's directives and filing a timely appeal within 30 days, Ellizzette waited a year and a half in direct violation of them. The Third District Appellate Court perfectly explained the fundamental importance of timely appeals of orders entered in the administration of estates and what the consequence would be if the deadline to seek review of such decisions was not enforced: "Little imagination is needed to conjure up the intolerable consequences of permitting a party, at his option, to wait until an estate administrative is concluded before appealing an order, entered perhaps several years previously, which denied a motion to remove an executor or allowed a claim against the estate. In such circumstances, were an appellant successful, then the entire administration might have to be begun again." *Estate of Kime*, 95 Ill.App.3d 262, 268 (3rd Dist. 1981).

The purpose of Rule 304(b)(1) is to provide for the prompt and efficient resolution of specific issues during the often lengthy process of estate administration. *Houghtaylen v. Russel D. Houghtaylen By-Pass Trust,* 2017 IL App (2d) 170195, ¶10. Had Ellizzette appealed the trial court's denial of her motion to vacate when she was supposed to, the considerable time, expense and judicial resources that were unnecessarily wasted following denial of her motion to vacate could have been avoided. Because Ellizzette failed to adhere to the Supreme Court Rules and file a timely appeal when she was required to, this Court should decline Ellizzette's substantially late

invitation to review this issue. The interests of efficiency and the sound and practical administration of estates require it. *Estate of Kime*, 95 Ill.App.3d 262, 268 (3rd Dist. 1981).

III. Ellizzette Cannot Claim She Was Prejudiced When the Circuit Court Allowed Her to File a Petition for Letters of Administration Even after the 3-month Statutory Window to Do So Had Passed.

Setting aside the fact Ellizzette's own inaction should preclude review of the trial court orders related to the administration of John's estate, the appellate court was correct in noting Ellizzette's claims of prejudice were difficult to accept given she was allowed, and did in fact file her own petition for letters of administration and affidavit of heirship pursuant to Section 9-7 of the Probate Act (755 ILCS 5/9-7). *In re Estate of McDonald*, 2021 IL App (2d) 191113, ¶55; (C275-281). The very things Ellizzette claims Shawn's alleged "race to the courthouse" deprived her of were resolved when the trial court afforded her this opportunity, notwithstanding Shawn's correct claim that she amounted to nothing more than a legal stranger and that the statutory time limit for her to file a competing petition for letters of administration had passed.

Section 9-7 of the Probate Act states:

> "Revocation of letters and issuance of new letters of administration – preference. If the petitioner has not mailed, as provided in this Article, a copy of the petition for letters of administration to any person, whether or not named in the petition, who is entitled to administer or to nominate a person to administer equally with or in preference to the petitioner, the person entitled to administer or nominate *within 3 months after the issuance of the letters* may file a petition for issuance of letters to him or to his nominee. The person entitled to preference must give 10 days notice of the hearing on his petition to the person to whom letters were issued. Upon the hearing the court may revoke the letters previously issued and issue new letters." 755 ILCS 5/9-7 (emphasis added).

Based on the aforementioned statute, when the probate court granted Shawn's petition for letters and entered the order appointing administration of John's estate on December 19, 2017, Ellizzette had 3 months thereafter to file a petition for letters to herself or whomever she chose to be a nominee. 755 ILCS 5/9-7. Considering Ellizzette

appeared in the probate proceedings on January 4, 2018, she was not even remotely foreclosed of her opportunity to file such a petition. (C39) She had two and a half months to act, did nothing during that substantial time period, and now claims she was prejudiced by being deprived of her opportunity to be heard. This position is also without merit especially because the trial court still gave Ellizzette the opportunity to file her own petition for letters and affidavit of heirship after the 3-month statutory time period to do so had elapsed. 755 ILCS 5/9-7.

When the trial court allowed Ellizzette to file her own petition for letters of administration despite the time period to do passing, any alleged claim of prejudice suffered were remedied. The probate court's judgment may be affirmed upon any ground warranted by the record regardless of whether the particular reasons or specific findings given by the trial court are correct. *In re Estate of Mackey*, 139 Ill.App.3d 126, 128 (1st Dist. 1985). For these reasons, Appellate Court determination that Ellizzette suffered no prejudice should be affirmed.

IV. ELLIZZETTE FAILED TO PROVIDE A SUFFICIENT RECORD ON APPEAL THEREFORE THIS COURT SHOULD PRESUME THE TRIAL COURT ACTED IN CONFORMITY WITH THE LAW.

When Ellizzette appealed the trial court's orders entered in the administration of John's estate, she had a duty to provide the reviewing court a sufficiently complete record on appeal. Ill. S. Ct. Rule 323. She failed to do so. It is but another example of Ellizzette's non-compliance with the Rules of this Court. Like the other rules governing appeals, Rule 323, is not a mere suggestion, it has the force of law and is binding on litigants and courts. *Hall v. Turney*, 56 Ill.App.3d 644 (1st Dist. 1977).

Filing a report of proceedings (Rule 323(a)), a bystander's report (Rule 323 (c)), or an agreed statement of facts (Rule 323 (d)) are all ways litigants adhere to this directive. In the absence of such a record on appeal, this Court should presume the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill.2d 389, 392 (1984). Despite her finger-pointing at

Shawn for this deficiency, it was Ellizzette's burden to provide a sufficiently complete record, not his. *King v. Find-A-Way Shipping, LLC*, 2020 IL App (1st) 191307, ¶ 29 ("It is the responsibility of every appellant to provide a complete record on appeal.") Accordingly, any doubts which may arise from the incompleteness of the record should be resolved against Ellizzette. *Foutch v. O'Bryant*, 99 Ill.2d 389, 392 (1984).

The Appellate Court was correct when it presumed the trial court's rulings conformed with the law and its decision should be affirmed on that basis.

CONCLUSION

Despite the painstaking efforts of his family and the orders entered by the probate court to help and protect him, John W. McDonald, III, ended his life on December 11, 2017. It was the denouement to his tragic life and an outcome foretold and feared by Dr. Ramon Gonzales who's physician's report was carefully considered by the probate court when it instituted John's plenary guardianship and found he was totally without capacity. (C546, C 2030) Although the right to vigilant protection John shared during his life was not able to save his life, it should save his legacy by extension to his estate. *In re Estate of Wellman*, 174 Ill.2d 335 (1996). John's right to vigilant protection as a disabled person, and the Marriage Act's purpose of strengthening and preserving the integrity of marriage and safeguarding family relationships demand such an outcome.

For all of these stated reasons, Appellant, Shawn McDonald, respectfully requests this Honorable Court:

(1) Affirm the judgment of the Second District Appellate Court, presuming the trial court properly denied Ellizzette's motion to vacate or in the alternative to find Ellizzette wavied review of these matters by failing to timely appeal;

(2) Reverse the judgment of the Second District Appellate Court, finding the trial court committed reversible error in barring Ellizzette from testifying regarding heirship;

(3) Reverse the judgment of the Second District Appellate Court, finding the trial court committed reversible error when it granted Shawn's motion for a directed finding; and

(4) Affirm the trial court's directed finding in Shawn's favor.

Respectfully Submitted,

Shawn McDonald

By: _____
One of his attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 22 pages.

Respectfully submitted,

Shawn McDonald

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STATE OF ILLINOIS)
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COUNTY OF KANE)

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and states that she served via email a copy of the foregoing **Appellant Shawn McDonald's Reply Brief And Response to Request for Cross Relief** on the 8TH day of September, 2021, or if email delivery is not available, in a United States Post Office Box in the City of Aurora, Kane County, Illinois, before the hour of 6:00 p.m., with United States postage fully prepaid thereon, enclosed in an envelope properly and securely sealed, or by other means if so indicated, to:

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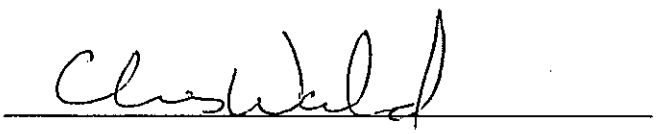
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.



No. 126956

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

In The Matter of the Estate of:	)	**On leave to appeal from the Appellate Court of Illinois, Second District, No. 2-19-1113**
JOHN W. MCDONALD, III	)	
Deceased.	)	**There on Appeal from the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois, No. 17-P-744**
SHAWN MCDONALD,	)	
Appellant,	)	
v.	)	
ELLIZZETTE MCDONALD,	)	**Date of Judgment: March 2, 2020**
Appellee.	)	

NOTICE OF FILING

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PLEASE TAKE NOTICE that on the 8th day of September, 2021, we have submitted for electronic filing with the Clerk of the Supreme Court of Illinois the attached **Appellant Shawn McDonald's Reply Brief And Response to Request for Cross Relief**.

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PROOF OF SERVICE

The undersigned on oath states that on September 8, 2021, I served this Notice via email to each person to whom it is directed.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Christopher Warmbold