

No. 1-25-0350

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> Estate of Bertocchini	)	Appeal from the
	)	Circuit Court of
(Vincent Bertocchini,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 23 P 8145
	)	
Vincent Bertocchini,	)	Honorable
	)	Daniel B. Malone,
Respondent-Appellee).	)	Judge Presiding.

JUSTICE LYLE delivered the judgment of the court.
Justices Ocasio and Quish concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err by denying the petition to appoint a guardian.

¶ 2 On November 20, 2023, Mr. Bertocchini filed a *pro se* petition for the appointment of a guardian over his person and estate due to his disability. On February 11, 2025, the circuit court denied the petition. On appeal, Mr. Bertocchini argues the circuit court erred by denying his petition. For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 On November 20, 2023, Mr. Bertocchini filed a *pro se* petition for the appointment of a guardian of a person with a disability for himself. He alleged that he was disabled and needed a guardian for his person and estate. Mr. Bertocchini requested that the trial court appoint the Office of the Cook County Public Guardian (Public Guardian) as the guardian over his estate and person. On January 19, 2024, the trial court dismissed Mr. Bertocchini's petition without prejudice because he failed to attach a medical report.

¶ 5 On March 20, 2024, the trial court held a status hearing, where the court granted Mr. Bertocchini's oral motion to vacate the January 19, 2024, dismissal order and allowed him to file an amended petition to appoint a guardian *instanter*. The court appointed Adam Stern as guardian *ad litem* for Mr. Bertocchini. The court entered an order for the Public Guardian to conduct an intake assessment.

¶ 6 On April 20, 2024, the trial court authorized the Public Guardian to appear in Mr. Bertocchini's eviction case as a friend of the court and inform the eviction court of the pending guardianship matter and to request a stay of the eviction proceedings. On May 10, 2024, the court noted that the eviction court granted a stay of the eviction proceedings and would likely extend the stay if Mr. Bertocchini made two payments to his landlord. The Public Guardian also provided Mr. Bertocchini with a list of supportive living facilities, but Mr. Bertocchini refused to move to a facility. Mr. Bertocchini refused to live there based on the location of the facilities and the impact it would have on his finances. The court found that, due to Mr. Bertocchini's reluctance, a temporary guardian would not benefit him. However, the court allowed the Public Guardian to

continue to appear on the eviction case and to assist Mr. Bertocchini with supportive living applications, if he changed his mind.

¶ 7 On August 22, 2024, the trial court appointed the Public Guardian as the temporary guardian of Mr. Bertocchini's estate and person. The appointment order noted that Mr. Bertocchini was diagnosed with neurocognitive dysfunction and that the eviction order, which was previously stayed, was now in effect. The court appointed the temporary guardian to investigate Mr. Bertocchini's assets and to assist him with finding appropriate housing.

¶ 8 A trial court conducted a guardianship trial on February 7, 2025. Prior to the trial, the Public Guardian submitted multiple rental applications for Mr. Bertocchini with no success. Mr. Bertocchini did not submit a report of proceedings or bystander's report of the trial so the only record of the details of the trial proceedings are contained in the trial court's February 11, 2025, written order.

¶ 9 In the February 11, 2025, written order, the trial court summarized the court proceedings between March 20, 2024, through February 7, 2025. The order stated that Dr. James Voci and Mr. Bertocchini testified. Mr. Bertocchini testified that he would not cooperate with the Office of the State Guardian if they decided to place him in a supportive living facility. The Office of the State Guardian stated that his refusal would prevent it from being able to help Mr. Bertocchini.

¶ 10 Dr. Voci testified that he met with Mr. Bertocchini seven times between June 2023 and the most recent examination which occurred a few weeks before the trial. During that time, Dr. Voci's stated Mr. Bertocchini's medical history varied. He stated that Mr. Bertocchini suffered from various diagnoses due to multiple strokes. Mr. Bertocchini was diagnosed with an inflammatory disorder of the brain, idiopathic intracranial hypertension, posterior reversible encephalopathy

syndrome, hypercoagulable state with DVT, pulmonary emboli, vision difficulties, and fatigue. Dr. Voci testified that those conditions contributed to Mr. Bertocchini's impaired neurocognitive function with impaired attention, concentration, memory, and vision focus. He explained that Mr. Bertocchini needs assistance to understand instructions and his symptoms aggravate with physical and emotional stress. Dr. Voci opined that Mr. Bertocchini is partially incapable of making personal and financial decisions. Dr. Voci explained that Mr. Bertocchini had good days and bad days, and on his good days, he was capable of making his own decisions. He also noted that there are times when Mr. Bertocchini's condition worsens to the point where he is totally incapable of decision making. Dr. Voci believed that guardianship should be made available at all times to ensure that Mr. Bertocchini understands the full scope of his decisions. Dr. Voci acknowledged that Mr. Bertocchini's last hospitalization was in 2023 and his condition has improved since then with Dr. Voci's last examination of Mr. Bertocchini being his best.

¶ 11 The trial court found Dr. Voci's testimony did not provide clear and convincing evidence to support guardianship for Mr. Bertocchini. It noted that Dr. Voci presented evidence that it would be helpful if Mr. Bertocchini had someone to assist him with decision making on "bad days." The court stated that the appointment of a guardian should only occur when it is the least restrictive alternative means of supporting a disabled person. The court observed that Mr. Bertocchini "was articulate, intelligent and knowledgeable on many subjects related to his personal and financial needs." The court highlighted that Mr. Bertocchini did not want to live in a supportive living facility and that if the Office of the State Guardian tried to put him in one, it would likely exacerbate Mr. Bertocchini's condition. The court denied Mr. Bertocchini's petition for the appointment of a guardian. On February 24, 2025, Mr. Bertocchini filed his notice of appeal.

¶ 12

ANALYSIS

¶ 13 We note that we have jurisdiction to consider this matter, as Mr. Bertocchini filed a timely notice of appeal. See Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 14 Mr. Bertocchini argues that the trial court erred in denying his petition for the appointment of a guardian.

¶ 15 Notably, Mr. Bertocchini has failed to provide this court with a report of any proceedings or an acceptable substitute such as a bystander's report or an agreed statement of facts (see Ill. S. Ct. R. 323 (eff. July 1, 2017)) necessary for our review of the trial court's findings. Any doubt arising from the record's incompleteness will be construed against Mr. Bertocchini. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984); see also *Masters Transportation, Inc. v. G & P Auto Parts, Inc.*, 2020 IL App (1st) 191075, ¶ 15 ("we presume when faced with an incomplete record that the trial court's rulings were supported by the law and facts").

¶ 16 Additionally, Mr. Bertocchini does not cite to any statutory support or case law to defend his position. "A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented." *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993); See also Ill. S. Ct. R. 341(h)(5), (7) (eff. Oct. 1, 2020) (requiring identification of relevant statutes and an argument section containing "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). A court of review "is not a repository into which an appellant may foist the burden of argument and research, [citations] it is neither the function nor the obligation of this court to act as an advocate or search the record for error." *Obert*, 253 Ill. App. 3d at 682. "Arguments that do not comply with Rule 341(h)(7) do not

merit consideration on appeal and may be rejected by this court for that reason alone.” *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 43.

¶ 17 This court will not be more lenient with *pro se* litigants, who must comply with the same rules of procedure as other litigants. *Gillard v. Northwestern Memorial Hospital*, 2019 IL App (1st) 182348, ¶ 45. Supreme court rules are not mere suggestions, and we may strike a brief and dismiss an appeal for failure to comply with the rules. *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 14. While grounds exist to strike the brief (*Gillard*, 2019 IL App (1st) 182348, ¶ 45), we choose to not impose that harsh sanction here.

¶ 18 “Whether and to what extent a person needs a guardian is a factual determination to be made by the trial court and which a reviewing court may not reverse unless it is against the manifest weight of the evidence.” *In re Estate of Kusmanoff*, 2017 IL App (5th) 160129, ¶ 83 (quoting *In re Estate of Silverman*, 257 Ill. App. 3d 162, 168-69 (1993)). A decision is not against the manifest weight unless it is arbitrary, unreasonable, and not based on the evidence. *Kusmanoff*, 2017 IL App (5th) 160129, ¶ 83.

¶ 19 The trial court noted that Dr. Voci testified that Mr. Bertocchini was “partially incapable of making personal and financial decisions” but not completely incapable of making decisions. The court observed that Mr. Bertocchini was intelligent and knowledgeable on many subjects regarding his personal and financial needs and that his frustration with his limited housing options was not evidence of a lack of capacity to make responsible decisions. The court also noted that Mr. Bertocchini’s condition seemed to improve recently and his biggest issue was not being able to accept that his diminished income restricted his housing options. In light of the evidence detailed by the trial court, we cannot find that it was unreasonable for the court to deny the petition to

appoint a guardian. Moreover, we are to presume that the trial court operated correctly when faced with any doubt regarding an incomplete record. See *Foutch*, 99 Ill. 2d at 392.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.