RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1873-21

IN THE MATTER OF A.S.E.,
an incapacitated person.

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Argued February 15, 2023 – Decided March 3, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. P-000197-17.

G.E., appellant, argued the cause pro se.

L.F., respondent, argued the cause pro se.

PER CURIAM

In this guardianship matter, appellant G.E. (Greg)[1] challenges an October 15, 2021 order denying his motion to: (1) remove respondent L.F. (Liz), as guardian for the parties' incapacitated son, A.S.E. (Adam); and (2) appoint Greg

[1] We use initials and pseudonyms to protect the confidentiality of the parties pursuant to Rules 1:38-3(e) and 4:86-1(b).

as Adam's guardian. Greg also appeals from a February 8, 2022 order denying his motion for reconsideration of the October 15 order. We affirm both orders.

I.

The parties are divorced and have two sons: Adam, age twenty-three, and N.E. (Neil), age nineteen. Adam is diagnosed with autism, attention deficit hyperactivity disorder, obsessive-compulsive disorder, and an anxiety disorder. He also has a history of physically aggressive behavior.

Under the marital settlement agreement (MSA) incorporated into the parties' 2014 judgment of divorce (JOD), Greg retained physical custody of Neil and Liz retained physical custody of Adam. Greg and Neil live in California; Liz and Adam reside in New Jersey. Under the MSA, the parties agreed to share legal custody of their sons, but Liz was given "sole and exclusive authority over all medical and education decisions concerning [Adam]." Further, the MSA provided that when Adam reached the age of twenty-one, the parties would "work together to move [Adam] to live in a state residence as an adult permanently."

Pursuant to a May 25, 2018 amended judgment of legal incapacity, the parties agreed Liz should be appointed as Adam's sole guardian; she has served in that role ever since. The guardianship judgment (GJ) confirmed the parties

would maintain "all custody rights as set forth in their" MSA.

In 2019, consistent with the recommendations of Adam's doctors, he was moved to a residential facility that housed individuals up to the age of twenty-one. That same year, Greg filed a motion to remove Adam from this facility, contending it was substandard. Greg also requested guardianship and physical custody of Adam. In September 2019, a Family Part judge denied Greg's motion. Greg moved for reconsideration and that application was denied in November 2019. After Greg appealed from the September and November 2019 orders, we affirmed the challenged orders in an unpublished opinion. [L.F.] v. [G.E.], No. A-1360-19 (App. Div. Jan. 21, 2021) (slip op. at 1).

While Greg's appeal was pending, Adam turned twenty-one and was moved to another residential treatment facility. In July 2021, Greg filed a motion in the Probate Part, asking the court to review Liz's "conduct," and to modify the GJ to appoint him as Adam's guardian. Greg alleged Liz "misused her guardianship for her own agenda," "to settle grudges and to profit, against [Adam's] best interest." Further, he claimed she "used the guardianship to block [his] parenting time with" Adam, and Adam's dignity and hygiene suffered while he remained confined to the facility.

The following month, Liz filed a certification opposing Greg's motion.

She denied Adam was mistreated at his group home and stated Greg's allegations about her "misusing the guardianship" were "distorted, misleading, and false." Additionally, Liz certified Greg obstructed her access to Neil.

Following argument on Greg's motion on October 15, 2021, the judge orally denied the application and entered a conforming order that day. He prefaced his remarks by noting "[t]he parties . . . provided the court with extensive documents, papers, orders, opinions, [and] transcripts, which are reflective of the dozens of motions that have been filed in this matter after the parties divorced in July of 2014." Based on his review of these submissions and the parties' arguments, the judge concluded Greg provided "not a scintilla of evidence to support [his] claim" that Liz violated the GJ or failed to perform her guardianship duties. Further, the judge found the facility Adam was currently living in was a "closely monitored" state facility and there was "no indication . . . the facility [was] anything other than a reputable and good and appropriate facility for" Adam.

The judge also concluded, "[t]here [was] no indication from any mental health professionals or any of the people [at the facility] that [Adam] [was] abused, neglected or in any way treated in any manner other than with respect and appropriately." He added, "there's no evidence before this court, none, that

[Adam] isn't being appropriately taken care of."

Greg moved for reconsideration of the October 15 order. During argument on the reconsideration application in January 2022, Greg reiterated that Adam was "being harmed" at his residential facility. Further, Greg stated he "didn't sign up for [Adam] to be thrown away in this low-end place" and "didn't sign up" for Liz to "violate every term of the guardianship agreement with no consequences." Moreover, Greg informed the judge that Adam "was afraid for his life" at the facility "because there [was] a person . . . targeting him," and Greg was also attacked while visiting the facility.

When argument concluded, the judge orally denied Greg's motion. The judge informed the parties he had listened to the recording from the October 15 hearing in preparation for argument on Greg's reconsideration motion and was satisfied he "made the appropriate ruling based on the facts and . . . law" at that time. Additionally, the judge stated,

> I found then as I find now . . . there is no legal basis to remove [Liz] as the guardian for [Adam]. . . . [S]he has functioned in good faith and well in accordance with her responsibilities. And . . . based upon the information supplied to me, . . . [Adam] is in a facility that addresses his needs.
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> I am going to deny the motion for reconsideration for the reasons that I set forth on the record back on October 15th as supplemented by this record today.

On February 8, 2022, the judge entered a conforming order, triggering this appeal.

II.

Greg now raises the following contentions for our consideration: (1) Liz "is after money" and "gros[s]ly violated" the terms of the GJ; (2) Adam "was harmed"; (3) the trial court did not examine Liz's conduct as Adam's guardian; (4) the court "failed to [follow] the best interest standards"; and (5) the court "shrugged off the motion for reconsideration."

None of these arguments are persuasive. We add the following comments.

We give great deference to a trial judge's findings and conclusions. Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974). We do not "engage in an independent assessment of the evidence as if [we] were the court of first instance." State v. Locurto, 157 N.J. 463, 471 (1999). A reviewing court will not disturb the factual findings of a trial judge unless it is convinced those findings "are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 365 (App. Div. 2010) (quoting Rova Farms, 65 N.J. at 484); see also In re Queiro, 374 N.J. Super. 299, 307 (App. Div. 2005) (affording "great deference" to a Chancery judge's

findings).

"The exercise of . . . discretion will be interfered with by an appellate tribunal only when the action of the trial court constitutes a clear abuse of that discretion." Salitan v. Magnus, 28 N.J. 20, 26 (1958). An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

We also review a motion judge's denial of reconsideration for abuse of discretion. Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010); see also Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016). Reconsideration should only be used "for those cases which fall into that narrow corridor in which either[:] 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)

(citation omitted).

Additionally, it is well established New Jersey has a strong public policy in favor of the settlement of litigation. Gere v. Louis, 209 N.J. 486, 500 (2012); Brundage v. Est. of Carambio, 195 N.J. 575, 601 (2008) (stating settlement of litigation ranks high in our public policy). "In furtherance of this policy, our courts 'strain to give effect to the terms of a settlement wherever possible.'" Ibid. (quoting Dep't of Pub. Advoc. v. N.J. Bd. of Pub. Utils., 206 N.J. Super. 523, 528 (App. Div. 1985)).

The ability of a Chancery judge to appoint a guardian, confer guardianship over a ward's affairs, and remove a guardian is broad and discretionary. Matter of Duke, 305 N.J. Super. 408, 438 (Ch. Div. 1995), aff'd o.b., 305 N.J. Super. 407 (App. Div. 1997). The jurisdiction of the court over guardianship proceedings is derived from its parens patriae power. See In Re Grady, 85 N.J. 235, 239 (1981). Under the doctrine of parens patriae, the court may intervene in the management and administration of an incapacitated person's estate for the benefit of the incapacitated person and the estate. See In re Keri, 181 N.J. 50, 58 (2004). In that regard, a trial court in a guardianship proceeding must follow "the only legislatively stated preference, 'the best interest and welfare of the [incapacitated person],'" when addressing the needs

of an incapacitated person. In re Queiro, 374 N.J. Super. at 311. Moreover, under N.J.S.A. 3B:12-36, "[i]f a guardian has been appointed as to the person of . . . an incapacitated person, the court shall have full authority over the ward's person and all matters relating thereto."

Governed by these standards, we perceive no basis to disturb either of the challenged orders and affirm substantially for the reasons expressed by the motion judge. Indeed, we concur with his finding that after the parties agreed to the entry of the 2018 GJ — which gave Liz "sole guardianship over" Adam — Greg sought to modify the judgment without providing "a scintilla of evidence to support [his] claim" that Liz was "a bad guardian." Additionally, we agree with the judge's conclusion that despite Greg's criticisms about the care Adam received at his current facility, there was "no indication from any mental health professionals or any of the people [at Adam's facility] that [Adam was] abused, neglected or in any way treated in any manner other than with respect and appropriately." These findings are entitled to our deference, particularly given the judge's familiarity with the parties' ongoing issues regarding Adam.

The record also supports the judge's finding that Greg admitted to filing "countless motions to move [Adam] to California," and those motions were "denied by countless judges." As the judge rightly explained, Greg's "repetitive

filings of the same motion usually get the same result. But there's no evidence before this court, none, that [Adam] isn't being appropriately taken care of."

Likewise, we decline to conclude the judge abused his discretion in denying Greg's reconsideration motion. Instead, we are satisfied the judge properly found Greg provided the court with "nothing new" in his reconsideration motion, so there was "no legal basis to remove [Liz] as the guardian," even if Greg "disagree[d] with judgments and decisions that she made." As the judge correctly stated, Liz's decisions "were clearly within her authority to make . . . as a guardian." Because the judge also found Liz's decisions were not "made in bad faith" and Adam was "in a facility that addresses his needs," we perceive no basis to second-guess the judge's denial of Greg's reconsideration motion.

To the extent that we have not addressed Greg's remaining arguments, we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.