# Missouri Court of Appeals
## Southern District

### In Division

CRAIG ALLEN RICE,

Respondent,

v.

MADASYN SCARLETT,

Appellant.

No. SD38873

**Filed: December 12, 2025**

APPEAL FROM THE CIRCUIT COURT OF STONE COUNTY

Honorable Eric O. Chavez, Judge

**AFFIRMED**

In a family law case governed by Chapter 452,[1] must a minor child's guardian ad litem be disqualified, as a matter of law, for not conducting a pre-trial interview of a non-party family member or acquaintance at the request of the child's parent? No, a guardian ad litem has discretion in whom to interview and is not statutorily mandated to conduct a pre-trial interview of every person requested by the child's parent, even if those persons

[1] Statutory references are to RSMo. (2016).

have regular contact with the child. The trial court did not abuse its discretion in refusing to disqualify the guardian ad litem in this case. Accordingly, we affirm the amended judgment of modification.

**Background**

One child ("Child") was born to Craig Rice ("Father") and Madasyn Scarlett ("Mother"). The parties were awarded joint physical and joint legal custody, an equal division of parenting time, and Mother's address was to be Child's address for mailing and educational purposes. Eleven months after the initial judgment and parenting plan were entered, Mother filed a motion to modify, seeking to decrease Father's parenting time. Father filed a counter-motion to modify, seeking sole legal custody, elimination of the midweek visit, and the designation of Father's address as Child's address for mailing and educational purposes.

Father moved for discretionary appointment of a guardian ad litem for Child. After a hearing at which Mother agreed to the appointment, the court entered an order appointing a guardian ad litem. No party moved to disqualify the guardian ad litem within ten days of her appointment.

The guardian ad litem reviewed records, interviewed Mother and Father, and observed Child interacting with Mother. She elected not to interview Child as to his wishes, feelings, attachments, and attitudes because he was only three years of age at the time. Mother provided a list of other persons she wanted the guardian ad litem to contact and interview. That list included Child's maternal grandmother, who purportedly would contradict assertions Father had made about Child's regular schedule, and four witnesses

who purportedly would confirm Mother's accounts of times when Father was "snarky" with her or, when Mother attempted to speak to Father in social settings, he refused to speak to or make eye contact with Mother.

The guardian ad litem did not contact or interview any of these persons because, even assuming to be true what Mother told her the witnesses would share, the guardian ad litem "did not feel that interviewing those witnesses would provide any benefit," and she "still would have landed at the same recommendation." Based on the investigation and interviews she had already conducted, the guardian ad litem was well aware Child's parents had "very high conflict communications."

At the beginning of the hearing on the competing motions to modify, Mother's attorney orally moved to disqualify the guardian ad litem primarily because she had not interviewed any of the persons on the list provided by Mother.[2] The guardian ad litem acknowledged Mother provided a list of persons she wanted interviewed, but the guardian ad litem decided not to interview them because her recommendations would not have changed even if their accounts were consistent with Mother's descriptions. The motion to disqualify was overruled.

Mother, Father, and five other witnesses testified at the hearing. No party presented testimony from Child's grandparents or any other person Mother had wanted the guardian ad litem to interview. The guardian ad litem did not call any witnesses but she did cross-examine the parents and one other witness. After the parties had presented their

[2] Mother nominally raised other grounds for disqualification at the hearing, but they are not relevant to her points on appeal.

evidence, the guardian ad litem requested leave to submit a written recommendation, which the court granted.

In her 12-page written Report and Recommendation, the guardian ad litem detailed what investigation and interviews she undertook, provided her thoughts and observations on each of the statutory factors to be considered in determining child custody, and made recommendations as to child custody. Among other things, the guardian ad litem observed:

- Child "is clearly very loved and cared-for by both parents."
- Child "spends quite a bit of time" with his maternal and paternal grandparents, "with whom [Child] has a good relationship." Mother's proposed parenting plan would substantially limit the amount of time Child could spend with his paternal grandparents.
- Both parents have placed "their own hurt feelings toward the other before the best interests of [Child]," yet drastic changes to the existing parenting plan were not required.

During a post-submission hearing on the guardian ad litem's recommendation, she testified that the persons on Mother's list were not unimportant, but interviewing them was not "necessary to guide [her] in [her] recommendation[.]" At the conclusion of her testimony, the court remarked:

> I think you're both good parents. I think you both love [Child]. I have no doubt. I also think that you both will, on occasion, put aside the best interest of [Child] if you can upset the other. And I wish you would quit doing that, okay? It's – it's not about you two. Your relationship is over, all right? You -- it would be easier on both of you if you could get along with each other. It would be better on [Child].

Consistent with the guardian ad litem's recommendation, the motion court continued joint legal and joint physical custody, continued the equal division of parenting

time, eliminated the midweek visit, and changed Child's address to be that of Father for educational and mailing purposes.

During a hearing on Mother's motion for new trial, at which her attorney argued the court erred in not disqualifying the guardian ad litem, the court remarked:

> [T]he parties in this case are not attorneys, and they are generally not privy to the legal and factual issues that a GAL believes to be the most relevant to the statutory factors that are at issue. **The GAL is not required or obligated to talk to every person that a party requests.** And … I remember [the guardian ad litem] stating at trial that she took as true that the folks that [Mother] wanted her to talk to would say what [Mother] represented that they would say, but that she didn't feel that that was germane to her primary concerns with the case. So … if [Mother] wanted this Court to hear from those folks, then [Mother] could have called those folks as witnesses.

(Emphasis added.) Mother appealed.

**Principles of Review**

We are required to presume the trial court's judgment is valid. ***Craig v. Craig***, 644 S.W.3d 857, 860 (Mo.App. W.D. 2022). Appellant bears the burden of demonstrating that the judgment is incorrect. ***Id.*** We must affirm the judgment of modification unless the trial court's findings are not supported by substantial evidence, are against the weight of the evidence, or the judgment erroneously declares or applies the law. ***Soehlke v. Soehlke***, 398 S.W.3d 10, 16 (Mo. banc 2013). "Ultimately, removal of a guardian ad litem is a matter vested in the sound discretion of the appointing court." ***Frawley v. Frawley***, 597 S.W.3d 742, 757 (Mo.App. W.D. 2020) (citation modified).

The central concern in a modification proceeding is the best interests of the child. ***Winfrey v. Cahalan***, 609 S.W.3d 507, 511 (Mo.App. S.D. 2020). "[T]he provisions of

section 452.423 are intended to serve the child's best interest—and only that interest." ***Soehlke***, 398 S.W.3d at 15. "[S]ection 452.423 may not be used as a mechanism to generate additional support for one side or to cast shade, no matter how well deserved, on the other." ***Abernathy v. Collins***, 524 S.W.3d 173, 179 (Mo.App. W.D. 2017). When an appellant seeks a new trial based on a claim the trial court erred in applying § 452.423, the appellant must show that the child's interest was not adequately protected at trial, resulting in a modification that was not in the child's best interests. ***Winfrey***, 609 S.W.3d at 511.

"Missouri courts have consistently adhered to the traditional view that the guardian's principal allegiance is to the court." ***DeSpain v. DeSpain***, 717 S.W.3d 796, 805 (Mo.App. W.D. 2025), *as modified* (June 25, 2025) (citation modified). "In custody matters, the guardian ad litem has traditionally been viewed as functioning as an agent or arm of the court." ***Id.*** (citation modified). "The guardian ad litem essentially functions as the court's investigative agent, charged with the same ultimate standard that must ultimately govern the court's decision – *i.e.*, the best interests of the child." ***Id.*** (citation modified). A guardian ad litem "'must be active in determining the best interests of the [child].'" ***Allen v. Allen***, 330 S.W.3d 838, 842 (Mo.App. S.D. 2011) (quoting ***Baumgart v. Baumgart***, 944 S.W.2d 572, 579 (Mo.App. W.D. 1997), *as modified* (May 27, 1997)).

**Discussion**

Mother does not challenge the court's child custody determinations or the parenting plan. Instead, she contends the trial court erred in refusing to discharge the guardian ad litem because § 452.423.3(2) requires her to interview persons having

contact with or knowledge of Child, and she did not interview Child's grandparents despite acknowledging Child "spends quite a bit of time" with them.[3] Mother raises this point as a misapplication of the law.

Section 452.423 distinguishes two circumstances for appointment of a guardian ad litem. Subsection 2 requires mandatory appointment ("shall") "in any proceeding in which child abuse or neglect is alleged." Subsection 1 allows for discretionary appointment ("may") at the request of a party when "custody, visitation, or support of a child is a contested issue[.]" The appointment in this case was discretionary under § 452.423.1.

Once a guardian ad litem has been appointed, § 452.432 provides three avenues for disqualification. First, each party is entitled to one automatic disqualification. Section 452.432.1. Second, a party may move for discretionary disqualification for

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[3] As relevant here, Mother's oral motion for disqualification and amended motion for new trial were premised on the guardian ad litem's failure to contact and interview any of the persons in the list provided by Mother. Now, on appeal, she attempts to modify or broaden that ground for disqualification, alleging the trial court was required to discharge the guardian ad litem because she did not interview *any* of Child's grandparents despite knowing they had regular and continuous contact with Child. An objection to the performance of the guardian ad litem or the adequacy of her representation must be raised at trial to be preserved for appellate review. ***Allen***, 330 S.W.3d at 839. "[A]n appellant cannot alter or broaden the scope or nature of her objections asserted at trial." ***In re Adoption of S.J.B.***, 529 S.W.3d 49, 51 (Mo.App. S.D. 2017). Accordingly, we consider whether the guardian ad litem had a statutory duty to interview only those persons who were included in the objection properly raised at trial and preserved in the motion for new trial, which includes Child's maternal grandmother and the other persons on Mother's list. Mother's broader, different claim that the court had an obligation to discharge the guardian ad litem, *sua sponte*, for failure to interview *all* of Child's grandparents, regardless of request by a party, has not been preserved and will not be considered.

cause. Section 452.423.1. Finally, the court may disqualify a guardian ad litem for failure to discharge her duties faithfully. Section 452.423.4.

The distinguishing characteristics of these different avenues are when, why, and at whose request the disqualification is considered. Automatic disqualification is temporally bounded and occurs only at the written request of a party, but no reason or cause need be given. Disqualification for failure to discharge duties faithfully is not temporally bounded but must be based on a guardian ad litem's actions or inactions. It is a function of the court's policing of its own appointment, akin to a client discharging his attorney for unsatisfactory performance. *See* ***State ex rel. Bird v. Weinstock***, 864 S.W.2d 376, 385 (Mo.App. E.D. 1993). A motion for discretionary disqualification is not temporally bounded, must be initiated by a party, and requires that party to show good cause. Section 452.423.1 Good cause may include a guardian ad litem's failure to discharge her duties faithfully, but it also encompasses a broader range of circumstances that have little or nothing to do with the guardian ad litem's performance of her duties in a case, *e.g.* a conflict of interest that became known only after the time for automatic disqualification had passed.

In this case, Mother sought discretionary disqualification of the guardian ad litem, so it was her burden to show good cause under § 452.423.1. Mother asserts that the guardian ad litem failed to comply with § 452.423.3(2), which states that a guardian ad litem shall, "[p]rior to the hearing, conduct all necessary interviews with persons having contact with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments[,] and attitudes."

The guardian ad litem's decision not to interview Child's maternal grandmother or the other persons on Mother's list did not fall short of the expectations in § 452.423.3(2). The statute does not require a guardian ad litem to interview every person having contact with or knowledge of Child. Such a standard would be difficult, if not impossible, to meet for the guardian ad litem of a well-socialized child. The pre-hearing interviews are qualified by the adjective "necessary" and the prepositional phrase "in order to ascertain the child's wishes, feelings, attachments[,] and attitudes." Section 452.423.3(2). The stated reasons Mother wanted the guardian ad litem to interview certain persons was to impeach Father's statements about Child's schedule or to corroborate Mother's accounts of her public interactions with Father, not because these persons had special or unique information to provide about Child's wishes, feelings, attachments, and attitudes that had not already been gleaned from the persons the guardian ad litem had already interviewed.

Section 452.423.3(2) specifies only one person that "should be interviewed[,]" and that is [Child]. Even that interview is discretionary ("should") and is further qualified by the prepositional phrase, "[i]f appropriate."[4] Mother does not contend the guardian ad litem was subject to disqualification for her decision not to interview Child due to his young age.

We are not persuaded by Mother's analogy to other cases involving disqualification of guardians ad litem. In ***Baumgart***, the guardian ad litem was appointed

[4] When questioning a child directly about his wishes, feelings, attachments, and attitudes is not appropriate due to a young age or some other reason, interviewing other persons involved in that child's life may be beneficial, it just was not necessary or beneficial in this case.

due to alleged sexual abuse of a child, yet the guardian ad litem conducted no pre-trial investigation, did not speak with the alleged perpetrator, called no witnesses, minimally cross-examined witnesses at trial, was "not really sure" what the child custody situation was at the time of trial, and offered no report or recommendation to the court. ***Baumgart***, 944 S.W.2d at 579. The facts in ***Baumgart*** are far removed from the circumstances in this case.

Mother also analogizes to ***K.S.H. v. D.J.H.***, 891 S.W.2d 144 (Mo.App. E.D. 1995). The holdings in ***K.S.H.*** concerned the court's failure to make a required finding, and the findings it did make were contrary to the evidence presented. ***K.S.H.***, 891 S.W.2d at 148-49. That is not this case. Moreover, that court's resolution of the guardian ad litem issue would support our affirmance in this case, not reversal. Although the appellant in K.S.H. had alleged the guardian ad litem was biased against the appellant, had a conflict of interest, and had not interviewed the child's father, grandparents, or other close relatives, the appellate court held that the trial court had not abused its discretion in denying appellant's motion to disqualify the guardian ad litem. ***Id.*** at 149.

In addition to Mother's failure to demonstrate a misapplication of the law, she has not met her burden to show Child's best interests were not adequately protected at trial, resulting in a modification that was not in Child's best interests. The guardian ad litem reviewed records, conducted interviews, appeared on Child's behalf at trial and cross-examined witnesses, and submitted a written report with recommendations to the court. Mother has made no effort–in her oral motion to disqualify, in her motion for new trial,

or in briefing to this court–to specify what information the guardian ad litem would have learned from additional pre-trial interviews that she did not already know. She knew Child loved and was loved by both of his parents and that he had good relationships with his grandparents. She knew the parents had high-conflict communications and sometimes placed their pettiness toward each other before Child's best interests. In turn, all of this information was relayed to the court and was credited as true.

If Mother believed any or all of the persons on her list had information that potentially was recommendation-changing or could change the outcome of the court's child custody determination, she had the opportunity to call them as witnesses at trial, where their sworn testimony could be considered by both the guardian ad litem and the court. Mother's decision not to call these persons as witnesses does not shift a new burden onto her or undermine the purpose of the guardian ad litem statute, as Mother claims. It simply makes her attack on the guardian ad litem ring hollow.

The trial court did not misapply the law or abuse its discretion in denying Mother's motion to disqualify the guardian ad litem. Point I is denied.

Mother's second and third points are a repackaging of her first point into not-supported-by-substantial-evidence and against-the-weight challenges. While we appreciate that Mother did not attempt to raise three separate challenges to the same ruling in a single point, these two points fare no better than her first.

The court's decision not to disqualify the guardian ad litem did not turn on the court's weighing of conflicting evidence to make a factual determination. The guardian ad litem admitted Mother provided a list of persons she wanted to be interviewed and the

guardian ad litem made the considered decision not to interview any of them. These facts were uncontested and the record provides no indication the court disbelieved the guardian ad litem or found otherwise.

Mother had the burden to show good cause to disqualify the guardian ad litem. Section 452.423.1. Her motion to disqualify was overruled not because the court disbelieved the facts she alleged but because those facts did not amount to good cause to disqualify the guardian ad litem. The guardian ad litem had no mandatory, statutory duty to interview any of the persons recommended by Mother, so her decision not to interview them constitutes neither good cause for disqualification nor a failure to discharge her duties faithfully. Points II and III are denied.

**Conclusion**

"'[S]ection 452.423 is not designed to provide grounds for disappointed parents to seek retrial.'" ***Abernathy***, 524 S.W.3d at 179 (quoting ***Soehlke***, 398 S.W.3d at 16). It is not the duty of a guardian ad litem to cater to the whims of a parent or to conduct discovery for a parent. The guardian ad litem was not statutorily mandated to interview the persons requested by Mother, and Mother failed to carry her burden to show good cause for disqualification. The trial court did not abuse its discretion in refusing to disqualify the guardian ad litem and Child's best interests do not require a different

result. Therefore, we affirm the amended judgment of modification.

JACK A. L. GOODMAN, J. – OPINION AUTHOR

JENNIFER R. GROWCOCK, C.J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS