Missouri Court of Appeals
Southern District
In Division

IN THE MATTER OF:
REAGAN NOELLE DILLARD, an Incapacitated and Disabled Person,

SUSAN DILLARD

Appellant,

v.

SHERRY DILLARD, Guardian and Conservator,

Respondent.

Case Number SD39166

Filed: August 5, 2026

APPEAL FROM THE CIRCUIT COURT OF JASPER COUNTY

Honorable Anna Christine Rhoades, Special Judge

AFFIRMED

Susan Dillard (Mother) appeals from a judgment entered in the Circuit Court of Jasper County, Missouri, in an adult guardianship case. Mother raises three points on appeal, alleging the trial court erred by: (1) denying her motion to change guardian and conservator; (2) erroneously declaring and applying the law in denying her motion for therapeutic visitation; and (3) erroneously applying the law governing the

removal and replacement of guardians. We deny all of Mother's points and affirm the judgment of the trial court.

Factual and Procedural Background

Mother and Heath Dillard (Father) are the parents of three children: (1) Hayden Dillard, a male child who was born in May 2000; (2) Reagan Dillard, the subject of this action, who is a female child born in December 2001 (Ward); and Savannah Dillard, a female child who was born in April 2003 (collectively, the Children). This case has a complex procedural history, and this is the second time a case involving many of the same parties has come before this Court. In a 4-3 opinion issued by this Court in 2019, we reversed the trial court's termination of Mother's parental rights to Ward. *See* ***In re Adoption of H.D.D.***, 590 S.W.3d 360 (Mo. App. S.D. 2019).[1]

Mother and Father divorced on November 9, 2007. At that time, the trial court granted the parties joint legal and joint physical custody of the Children. While the Children all have autism-spectrum diagnoses, the oldest and youngest are extremely high functioning. Ward, however, has a severe form of autism and will never be able to live independently.

[1] We borrow facts from that case here in our factual and procedural background without further attribution.

On February 21, 2008, Father filed a motion to modify custody of the Children. Mother filed a counter-motion to modify on October 10, 2008. The modification proceeding was heard on November 6, 2009. At that time, Mother had moved to Ohio. She was unrepresented and did not appear at that proceeding. On January 27, 2010, the trial court entered judgment modifying the custodial order. This modification granted Father, who was married to Amanda Dillard at the time of the hearing, sole legal and sole physical custody of the Children, "subject to the right of reasonable visitation by Mother[.]" Father and Amanda divorced in 2013, and Father married Sherry Dillard (Guardian).

Mother moved back to the area of Missouri where the Children were living in October 2010. At that time, the parties, without a court modification, began practicing an alternating-weekend visitation schedule with the Children. In September 2015, this practice ended, and Mother ceased visitation with Ward. Mother claimed Father told her, "[i]t's very apparent you cannot handle [Ward], and you will not be seeing her for some time." Father claimed that Mother called him during one of Ward's meltdowns and told him to "never bring her back and that [Guardian] and [Father] needed to pay for the damage that our daughter caused to [Mother's] home." Mother did not make any additional efforts to see Ward until March 2018.

At that time, Mother began repeatedly sending Father text messages asking him if she could see the Children. Father denied Mother all visitation, prompting

Mother to file a motion to modify on April 9, 2018. On April 17, 2018, Father and Guardian filed a three-count petition for termination of parental rights and Guardian adoption on behalf of the Children, asking the court to transfer legal custody of the Children to Father and Guardian. On April 23, 2018, Father and Guardian asked the court to appoint a guardian and conservator for Ward. On June 7, 2018, Mother filed a motion for therapeutic visitation with all of the Children, followed by a motion requesting a family access order.

The hearing on the petition to terminate Mother's parental rights and the application for a guardian were heard together. The latter application asked the trial court to appoint Father and Guardian as legal guardians for Ward and Savannah Dillard. The court also heard Mother's motion to modify the then-current custody order. After hearing the evidence, the court concluded that Mother had abandoned Ward by not requesting to see her between 2015 and 2018 and ordered termination of her parental rights on that ground. This Court, however, reversed that decision on appeal on the basis that Mother had attempted many times to contact her other two children during that timeframe, but did not have the ability to do so with Ward given the severity of her autism. ***Adoption of H.D.D.***, 590 S.W.3d at 371. In remanding this case to the trial court, this Court also directed that the trial court conduct further proceedings on the petition for guardianship of Ward. ***Id***. at 371-72.

Ward turned 18 years of age in December 2019. In January 2020, Letters of Co-Guardianship of an Incapacitated Person and Co-Conservator of a Disabled Person

were issued to Father and Guardian. Father died on July 29, 2020. On August 27, 2020, the trial court issued Amended Letters of Guardianship and Conservatorship to Guardian, making her the sole guardian and conservator of Ward.

Mother had filed a motion for therapeutic visitation on January 27, 2020, which the trial court sustained on July 15, 2020. The order for therapeutic visitation, however, was not entered until April 27, 2022, some twenty-one months later. On May 6, 2022, Guardian filed a motion to set aside that order. Ten days later, the trial court sustained Guardian's motion without conducting a hearing. Thereafter, Guardian filed a motion to dismiss Mother's motion for therapeutic visitation. On March 21, 2025, Mother filed a motion to change the guardian and conservator, wherein she asked that Guardian be removed and that Mother be appointed as successor guardian and conservator.

The trial court held a multi-day hearing on all of the foregoing issues.[2] At trial, the court heard from multiple witnesses, including three witnesses whose testimony will be summarized below. Dr. Kara Reed (Dr. Reed) was Ward's treating psychiatrist and had regular visits with Ward every three months. Dr. Reed believed that Guardian was a very caring, involved, and appropriate guardian for Ward, and she believed Ward would "decompensate" – meaning display "more aggression, intense

[2] The trial court also took up other matters not relevant to the issues raised on appeal and thus not discussed herein.

anxiety episodes," and "exacerbated" compulsive behaviors – if Guardian were removed as her guardian.

Jennifer Eye (Ms. Eye), program coordinator for Connections Abilities Resources and Ward's case manager since 2021, testified that she had no concerns with Guardian or any caregivers for Ward. Ms. Eye stated that she had never spoken to Mother during her time as Ward's case manager.

Dr. Randy Bowles (Dr. Bowles), Ward's primary care physician, testified that Guardian was an attentive caregiver who does not abuse or neglect Ward. Dr. Bowles did not have any concern regarding Ward's home environment. While he was aware that Ward was eating a pureed diet for a limited period, he believed the diet had been put in place because Ward was obsessing over food and choking on it. Dr. Bowles believed that Guardian made decisions that were in Ward's best interest.

Additional witnesses included Ward's brother, Hayden Dillard, who corroborated the aforementioned witnesses' testimony that Ward was doing well in her environment and that continuing Ward in her current placement was in her best interest. The guardian ad litem also recommended that Ward should continue her placement with Guardian.

The trial court entered its judgment: (1) denying Mother's motion to change Ward's guardian and conservator; and (2) granting Guardian's motion to dismiss Mother's motion for therapeutic visitation. This appeal followed.

Standard of Review

Our review of the trial court's judgment in this matter is governed by Rule 84.13(d) and the principles articulated in ***Murphy v. Carron***, 536 S.W.2d 30, 32 (Mo. banc 1976). ***Oliver Firm, L.C. v. Hefner***, 732 S.W.3d 881, 884 (Mo. App. 2026).[3] This Court must affirm the trial court's judgment unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. ***Murphy***, 536 S.W.2d at 32; *see* ***Roland v. St. Louis City Bd. of Election Commissioners***, 590 S.W.3d 315, 318 (Mo. banc 2019). We consider the evidence and all reasonable inferences therefrom in the light most favorable to the judgment, and we disregard contrary inferences. ***Pulley v. Sandgren***, 197 S.W.3d 162, 166 (Mo. App. 2006). We review questions of law *de novo.* ***Pearson v. Koster***, 367 S.W.3d 36, 43-44 (Mo. banc 2012).

Discussion

Point 1

In Mother's first point on appeal, she argues:

> The trial court's judgment denying the motion to change guardian and conservator is against the weight of the evidence because the expert testimony established that [Ward] has significantly regressed under the current guardian's care, that [Guardian] has implemented rights restrictions that fit the definition of punishment procedures under applied behavior analysis principles and that have contributed to documented regression in [Ward's] functioning, and that [Mother]

[3] All rule references are to Missouri Court Rules (2025). All statutory references are to RSMo (2016), unless otherwise specified.

possesses superior qualifications including extensive training in applied behavior analysis, while [Mother's] parental rights were never terminated and were in fact restored by this Court's prior mandate reversing the termination of her parental rights.

We disagree.

We begin our analysis by reviewing the standard for removing a guardian:

"A guardian or conservator may also be removed on the same grounds as is provided in section 473.140, RSMo, for the removal of personal representatives." § 475.110.1. Section 473.140 provides for removal if, among other things, one is "in any manner incapable or unsuitable to execute the trust reposed in him, or fails to discharge his official duties." "[T]he burden of proof is upon him who brings charges of maladministration to make out a prima facie case, … not upon the administrator to exonerate himself from such charges." *In re Alexander's Estate*, 360 S.W.2d 92, 98 (Mo.1962).

In re Estate of Kelton, 141 S.W.3d 395, 399-400 (Mo. App. 2004) (internal footnote omitted).

Mother's point argues that the trial court's decision is against the weight of the evidence. This process requires a rigorous analytical approach by an appellant:

To bring a successful against-the-weight-of-the-evidence challenge, an appellant must follow the following analytical framework:

(1) identify the trial court's finding he or she seeks to challenge as against the weight of the evidence;

(2) identify all favorable evidence submitted during trial that would support that finding;

(3) identify evidence contrary to the trial court's finding; and

(4) explain why, in light of the whole record, the supporting evidence is so lacking in probative value that the trier of fact should have reached a different conclusion.

Ebert v. Ebert, 627 S.W.3d 571, 590 (Mo. App. E.D. 2021).

> "Appellate courts act with caution in exercising the power to set aside a decree or judgment on the ground that it is against the weight of the evidence." *Ivie v. Smith*, 439 S.W.3d 189, 205 (Mo. banc 2014). "[A] claim that the judgment is against the weight of the evidence presupposes that there is sufficient evidence to support the judgment." *Id*. "In other words, 'weight of the evidence' denotes an appellate test of how much persuasive value evidence has, not just whether sufficient evidence exists that tends to prove a necessary fact. *Id.* at 206. "When reviewing the record in an against-the-weight-of-the-evidence challenge, this Court defers to the circuit court's findings of fact when the factual issues are contested and when the facts as found by the circuit court depend on credibility determinations." *Id.* "A circuit court's judgment is against the weight of the evidence only if the circuit court could not have reasonably found, from the record at trial, the existence of a fact that is necessary to sustain the judgment." *Id.*

Distler Bros. Farm Ptr v. Distler, 729 S.W.3d 263, 278 (Mo. App. 2025) (citation modified).

Mother's argument acknowledges that the trial court "heard testimony from multiple witnesses who supported the judgment." Her argument focuses exclusively on the testimony of her own expert witness, Rachel Torrance (Torrance), a board-certified behavior analyst. According to Mother, Torrance presented "unrebutted" evidence that Guardian is not discharging her duties as required by chapter 475. Mother argues that the favorable evidence fails to induce belief in the fact that Guardian *is* discharging her duties as required, because the totality of the evidence showed that Ward lives "a dramatically restricted life" where she is prevented from leaving the basement of her home, restricted from using technology, "has regressed

on every functional metric" in her "Individualized Support Plan" documentation, and "has met none of the goals set for her."

On this issue, the trial court found as follows:

> The Court further finds that Mother's attempts to paint [Ward's] life as one of being confined to a basement where she is required to eat all of her meals pureed and alone, with no choices or community activities to enjoy, was not supported by the evidence. Specifically, the Court finds that [Ward] did have some food pureed for a period of time several years ago, that this was discontinued and was not long-lasting. Further, the Court finds that [Ward] enjoys a basement "apartment" that has been created for her and that includes an outdoor area that she enjoys very much. Finally, the Court finds that [Ward] does not eat alone, but with caregivers or family members. The fact that [Ward] is not allowed to have unfettered access to whatever food items she wants is found to be in her best interests and is not a restriction that is improper.
>
> In short, while Mother prefers the ABA methods and theories to those utilized by Guardian, Guardian's failure to utilize the ABA is not a failure to discharge her duties as Guardian, nor does it make her incapable or unsuitable to act as Guardian for [Ward].

We have reviewed the trial testimony from witnesses such as Dr. Reed, Dr. Bowles, and Ms. Eye, and conclude that this evidence was not so lacking in probative value that the trial court could not have reached the conclusions that it did. Based on our review of the record, the court's well reasoned decision was supported by ample testimony at trial. Mother's argument on appeal is asking this Court "to reassess the trial court's determination of credibility of witnesses[,]" which is a task this Court will not do. ***Estate of Kelton***, 141 S.W.3d at 400. Consequently, we accept as true the evidence and permissible inferences therefrom, which support the trial court's

finding that Guardian was discharging her statutory duties properly. *See* ***id***. at 401. Mother's first point is denied.

Point 2

Mother's second point on appeal states:

> The trial court erroneously declared and applied the law governing visitation in guardianship proceedings by finding it lacked authority to order therapeutic visitation under section 475.084 RSMo on the ground that the statute applies only to guardianships "for a minor," because the biological parent-child relationship that section 475.084 seeks to protect does not cease upon the child reaching adulthood, and because due process requires meaningful access to the courts for a biological parent whose parental rights were never terminated to seek contact with her incapacitated adult child[.]

This point presents a legal issue which we review *de novo*. Here, Ward was an adult when Mother filed her motion for therapeutic visitation. Although the court initially granted Mother's motion, the court later ruled that it lacked the authority to do so. For the following reasons, that ruling was correct.

When Guardian was appointed, she was vested with "custody and control" of the Ward. *See* § 475.120.1.[4] Our Supreme Court addressed the operation of this statute in ***Hanson v. Carroll***, 527 S.W.3d 849 (Mo. banc 2017). There, grandparents filed a petition for third-party visitation and custody after unsuccessfully seeking to amend a guardianship over their grandchild. ***Id***. at 850. The circuit court dismissed their case, and our Supreme Court affirmed. ***Id***. at 852-54. The Supreme Court

[4] References to § 475.120 are to RSMo Cum. Supp. (2021).

reasoned that the grandparents did not have the right to court-ordered visitation because, pursuant to § 475.120.1, the issuance of letters of guardianship gave the guardians with custody of the child the corresponding right to control visitation:

> Here, [the guardians] were issued letters of guardianship as to [the child]. The judgment granting guardianship provided that [the guardians] "have custody of [the child] with full power as provided by law." Section 475.120.1 provides: "The guardian of the person of a minor shall be entitled to the custody and control of the ward and shall provide for the ward's education, support and maintenance." [The guardians], therefore, have control over the custody of [the child], which encompasses control over visitation by others like Grandparents. In their third petition, Grandparents sought third-party visitation pursuant to section 452.375.5(5)(a). Any order or judgment granting Grandparents third-party visitation under that section would necessarily conflict with [the guardians'] custody of [the child] pursuant to the letters of guardianship in effect at the time Grandparents filed their petition.

Hanson, 527 S.W.3d at 853-54; *see also* ***Matter of G.H.***, 703 S.W.3d 208, 214 (Mo. App. 2024) (trial court erred by granting visitation, along with appointing a guardian, because the former ruling interfered with the guardian's rights, powers and duties granted by § 475.120; the guardian alone had control over visitation by others). Thus, the trial court lacked the authority to grant therapeutic visitation to Mother because such an order would conflict with the custody and control over Ward granted to Guardian by § 475.120.

> The only statutory exception to § 475.120 is § 475.084, which states:
>
> If a guardian has been appointed for a minor under the provisions of subdivision (2) of subsection 4 of section 475.030 [involving parents "of a minor" who are "unwilling, unable or adjudged unfit" to assume guardianship duties], then a parent of the minor may petition the court

> for periods of visitation. The court may order visitation if visitation is in the best interest of the child.

§ 475.084; *see also* § 475.030.[5] When the language of a statute is plain and unambiguous, we are bound to apply that language as written. ***State ex rel. Bailey v. Fulton***, 659 S.W.3d 909, 912 (Mo. banc 2023). The exception in § 475.084 does not apply because: (1) Ward's guardians were not appointed under circumstances involving parents who were unwilling, unable or adjudged unfit to assume the duties of guardianship pursuant to § 475.030.4(2); and (2) Ward is no longer a minor. Thus, the trial court properly concluded that § 475.084 does not apply. For all of the foregoing reasons, the trial court was without authority to grant visitation rights to Mother, and it acted properly when it withdrew its order that had purported to grant those rights without the authority to do so.

The other contention in Point 2 is that Mother's due process rights were violated. "[T]o preserve constitutional questions for review on appeal, the constitutional issue must be raised in the trial court at the earliest opportunity, consistent with good pleading and orderly procedure." ***Carpenter v. Countrywide Home Loans, Inc.***, 250 S.W.3d 697, 701 (Mo. banc 2008). Mother's due process claims were not raised at the earliest opportunity in the trial court and are therefore waived. Point 2 is denied.

[5] References to § 475.084 are to RSMo Cum. Supp. (2018).

Point 3

In Mother's third point, she contends:

> The trial court erroneously applied the law governing removal and replacement of guardians because section 475.050 RSMo establishes a preference for parents and close relatives in the appointment of guardians, and because the evidence demonstrated that the current Guardian has failed to act in [Ward's] best interests by implementing unnecessary rights restrictions, isolating [Ward] from community participation, and presiding over documented regression in [Ward's] functioning and quality of life.

We disagree.

By statute, an application for the appointment of a guardian requires a trial court to consider a number of factors before making the appointment. *See* § 475.050.1-.6 RSMo Cum. Supp. (2018). Mother's third point is based on the mistaken presumption that once Father, the co-guardian, died in July of 2020, the trial court was "effectively faced with a new appointment decision[.]" This argument is incorrect. Because Father was the co-guardian in this case, his death merely required the court to amend the letters to show Guardian as the sole guardian of Ward. No notice or hearing was required because Guardian had already qualified and been appointed as Ward's guardian previously. After Father died, Guardian was the surviving appointed guardian, and the only action necessary was to strike Father's name – the deceased co-guardian – from the letters. Mother's sole recourse in this matter was to ask the court to remove Guardian, an avenue which Mother pursued unsuccessfully.

For the reasons discussed herein, Mother's third point is denied, and the judgment of the trial court is affirmed.

JEFFREY W. BATES, J. – OPINION AUTHOR

JACK A. L. GOODMAN, J. – CONCUR

BRYAN E. NICKELL, J. – CONCUR