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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 10/30/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

In the Matter of the) 1 CA-CV 11-0217
Guardianship of:)
) DEPARTMENT E
MICHAEL THOMAS PETRAMALA,)
) **MEMORANDUM DECISION**
An Adult.)
) (Not for Publication -
) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
_____)
MICHAEL PETRAMALA,)
)
Petitioner/Appellant,)
)
v.)
)
MARICOPA COUNTY PUBLIC FIDUCIARY,)
as Guardian and Conservator of)
Michael T. Petramala; JUDITH)
MORSE, Guardian ad Litem for)
Michael T. Petramala,)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. PB2006-002295

The Honorable Rosa Mroz, Judge

AFFIRMED

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N O R R I S, Judge

¶1 Petitioner/Appellant Michael Petramala appeals the probate court's order denying, first, his petition to terminate his guardianship to allow him to file actions in the superior court without prior permission; second, his petition to modify his guardianship to remove his name from the federal National Instant Criminal Background Check System ("NICS"); third, his request for a hearing under Arizona Revised Statutes ("A.R.S.") section 13-925(A) (2010) to determine whether he should be allowed to possess a firearm ("firearm hearing"); and fourth, his requests for other relief. As we explain, we need not address Petramala's arguments on appeal challenging the court's denial of his petition to terminate his guardianship because it is moot. And as we also explain, the probate court did not abuse its discretion in denying Petramala's petition to modify

his guardianship to remove his name from the NICS, request for a firearm hearing, and requests for other relief.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In 2003, the City of Scottsdale charged Petramala with a misdemeanor offense ("criminal case"). In 2004, the superior court dismissed the charge without prejudice when it ruled Petramala was incompetent to stand trial, finding he was "unable to understand the nature of the proceedings and/or [was] unable to assist counsel in [his] defense, and [was] therefore criminally incompetent, pursuant to A.R.S. [s]ection 13-4517(3)."

¶3 In 2005, the presiding judge of the Maricopa County Superior Court entered an administrative order declaring Petramala a vexatious litigant and prohibiting him from filing an action in superior court without permission from the presiding judge or associate presiding judge for limited jurisdiction courts ("Administrative Order").¹ The

¹To file an action, the Administrative Order required Petramala to:

- (1) caption the motion "Application Pursuant to Court Order Seeking Leave to File,"
- (2) cite the administrative order in the application or attach it as an exhibit,
- (3) certify under penalty of perjury that the claim or claims he wishes to present are new and have never

Administrative Order authorized Petramala to petition for a hearing to dispute the court's findings, but there is no indication he requested such a hearing.²

¶4 In February 2007, a jury found Petramala's court-appointed guardian ad litem ("GAL"), Respondent/Appellee Judith Morse, had proven by clear and convincing evidence Petramala needed a guardian.³ The probate court appointed Defendant/Appellee Maricopa County Public Fiduciary ("Public Fiduciary") as Petramala's guardian and conservator, and granted it all powers authorized by A.R.S. § 14-5312 (2007). Petramala appealed, and we affirmed. We held the evidence supported the

been raised and disposed of by another court in any jurisdiction, and

- (4) certify the claims are not frivolous or made in bad faith.

²Petramala filed an untimely appeal from the Administrative Order, which we dismissed because the order was not substantively appealable. See A.R.S. § 12-2101 (2011); *Madison v. Groseth*, 230 Ariz. 8, 14 n.8, ¶ 16, 279 P.3d 633, 639 n.8 (App. 2012) (appellate court lacks jurisdiction over administrative orders and must exercise special action jurisdiction to review such orders). We later dismissed Petramala's special action petition for review of the Administrative Order.

³We set forth the factual background underlying the guardianship order in three prior decisions. *In re Guardianship & Conservatorship of Petramala*, 1 CA-CV 07-0285, 2008 WL 4149005 (Ariz. App. Apr. 8, 2008) (mem. decision); *In re Guardianship & Conservatorship for Petramala*, 1 CA-CV 08-0561, 2009 WL 3460742 (Ariz. App. Oct. 27, 2009) (mem. decision); *In re Guardianship & Conservatorship for Petramala*, 1 CA-CV 08-0330, 2009 WL 3463920 (Ariz. App. Oct. 27, 2009) (mem. decision).

jury's verdict and rejected his argument that the guardianship proceedings had violated his due process rights and physician-patient privilege. *In re Guardianship & Conservatorship of Petramala*, 1 CA-CV 07-0285, 2008 WL 4149005, at *2-5, ¶¶ 15-26 (Ariz. App. Apr. 8, 2008) (mem. decision).

¶15 In July 2007, Petramala requested termination of his guardianship. In November 2007, he asked the probate court to amend his guardianship to authorize him to make all legal decisions for himself and to direct his guardian to assist him with his lawsuits. The court denied his motions and ordered him not to appear or file litigation papers without the court's prior written approval ("2008 Order"). It also prohibited him from possessing a firearm.

¶16 In April 2009, Petramala petitioned the probate court to remove his name from the NICS. The court denied his petition, ruling it did not have authority to determine whether a federal agency acted appropriately in entering Petramala's name into the NICS. The NICS is a database mandated by the Brady Handgun Violence Prevention Act of 1993 and maintained by the Federal Bureau of Investigation ("FBI"). The NICS allows licensed firearms sellers to determine whether a prospective buyer has a criminal record or is otherwise ineligible to purchase a firearm. Petramala had asked the FBI to remove his name from the NICS, but the FBI had refused to do so, and had

informed him he was ineligible to possess a firearm because in the criminal case, the superior court had found he was "criminally incompetent." In support of its denial, the FBI cited 18 U.S.C. section 922(g)(4) (2005). This statute prohibits possession of a firearm by a person adjudicated "mental[ly] defective."

¶17 Thereafter, Petramala repeatedly asked the probate court to set aside the pre-filing review orders and modify or terminate his guardianship to allow him to sue *pro se* Morse, the Public Fiduciary, the Arizona Health Care Cost Containment System ("AHCCCS"), and his healthcare providers. The court denied these requests, but indicated that if Petramala's GAL, guardian, or counsel informed it that a proposed action was legally viable, it would allow Petramala to file the action ("2010 Order").

¶18 In May 2010, Petramala petitioned the probate court to modify his guardianship to remove his name from the NICS or, in the alternative, conduct a hearing under the NICS Improvement Amendments Act of 2007 ("Act"), Pub. L. No. 110-180, 122 Stat. 2559, to "find that Mr. Petramala does not meet the requirements to remain in the NICS . . . or find that Mr. Petramala should never [have] been entered into the NICS."⁴ And, as we discuss

⁴The Act created a congressional grant program which gives states that elect to participate federal funding to

below, he also asked the court to grant him other relief. See *infra* ¶ 12. In July 2010, Petramala again petitioned to terminate his guardianship so he could sue AHCCCS and Magellan Health Services based on denials of services. The court denied his petitions and requests for relief, and Petramala timely appealed.

DISCUSSION

¶19 Petramala argues the probate court should not have denied his petitions to first, terminate his guardianship; second, modify his guardianship to remove his name from the NICS; third, conduct a firearm hearing; and fourth, grant other relief. We review the probate court's order denying these requests for an abuse of discretion. *In re Guardianship of Kelly*, 184 Ariz. 514, 518, 910 P.2d 665, 669 (App. 1996) (probate court has wide latitude to safeguard ward; appellate court will not reverse guardianship order absent abuse of

improve their reporting to the NICS. NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180, 122 Stat. 2559 (2008). If a state elects to receive federal funding by providing the relevant records to the NICS, then the state is "required" to implement a "relief from disabilities program . . . as [a] condition for participation in grant programs." NICS Improvement Amendments Act of 2007 § 105. Before the Act's enactment, a prohibited possessor had to apply to the Attorney General for relief, and if denied, had to file an action in federal district court to challenge the NICS listing. See 18 U.S.C. § 925 (2003). Under the Act, however, a prohibited possessor can apply for relief directly to the state agency of the participating state that rendered the "mental[ly] defective" adjudication. NICS Improvement Amendments Act § 105.

discretion). For the reasons discussed below, we see no abuse of discretion.

I. Petition to Terminate Guardianship (Pre-filing Review)

¶10 As discussed, Petramala argues the probate court should have terminated his guardianship so he could sue *pro se* AHCCCS and Magellan Health Services, challenging their denials of services.

¶11 After this appeal was at issue, in another appeal filed by Petramala pending in this court, *In re Guardianship and Conservatorship of Petramala*, 1 CA-CV 12-0041, Petramala informed this court the probate court had terminated his guardianship. Thus, even if we were to decide the court improperly denied Petramala's petition to terminate his guardianship, our decision would be moot. See *Sandblom v. Corbin*, 125 Ariz. 178, 182, 608 P.2d 317, 321 (App. 1980) (issue is moot when event occurs, pending appeal, which renders relief sought without practical effect). Accordingly, we decline to consider this issue.

*II. NICS Database, Constitutionality of the Act, Firearm Hearing, and Clarification of Criminal Incompetency Ruling*⁵

¶12 As discussed, in May 2010, Petramala asked the probate court to remove his name from the NICS or, in the alternative, conduct a hearing under the Act to determine whether entry of his name in the NICS was appropriate or whether Petramala should remain listed. See *supra* ¶ 8. He argued first, he was not “mental[ly] defective” under 18 U.S.C. § 922(g)(4), and second, the Act and corresponding regulations violated his constitutional rights. In addition to seeking removal of his name from the NICS, he also asked the court to conduct a firearm hearing under A.R.S. § 13-925(A) and to re-open the criminal case to “clarify” that the criminal incompetency determination related only to his competency to assist his counsel.

¶13 The probate court correctly rejected all of these arguments and his requests for relief. First, as the probate court determined, the Act was inapplicable because, at the time of the court’s ruling in January 2011, Arizona had not elected to participate in the Act’s grant program and thus, was not entitled to hear challenges to NICS listing. See *supra* ¶ 8 and accompanying note 4; Arizona Criminal Justice Commission, *Notes*

⁵Although as discussed, see *supra* ¶ 11, Petramala’s arguments in this appeal challenging the guardianship are moot, the termination of his guardianship does not moot his arguments concerning the entry of his name in the NICS, his request for a firearm hearing, and his requests for other relief discussed in this section of the decision.

of Public Meeting of the Information Technology and Systems Improvement Committee of the Arizona Criminal Justice Commission and Agenda, 6 (Nov. 3, 2011), available at http://www.azcjc.gov/acjc.web/pubs/InfoTechAgenda110311_FINAL.pdf

(U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics notified the Arizona Criminal Justice Commission on September 12, 2011 that Arizona had received the NICS grant award.). Second, because the court had rejected his attacks on the constitutionality of the Act in April 2009, it correctly refused to reconsider that ruling.⁶

¶14 Third, the probate court properly denied his request for a firearm hearing under A.R.S. § 13-925(A). As the court explained, Petramala was not entitled to a hearing under that

⁶The probate court, however, recognized his attacks on the Act presented purely federal questions, which should be raised in federal court. Thus, the court authorized Petramala to file an action in federal court to challenge both the constitutionality of the Act and the entry of his name in the NICS. In 2010, Petramala filed such an action. *Petramala v. U.S. Dep't. of Justice*, CV 10-2002-PHX-FJM, 2011 WL 3880826 (D. Ariz. Sept. 2, 2011). The district court dismissed his complaint with prejudice, finding he "[fell] squarely within the definition of 18 U.S.C. § 922(g)(4) as one who had been adjudicated as a [sic] mental defective due to mental illness or incompetency." The court explained that the superior court had "found [him] criminally incompetent, appointed a guardian to manage his affairs because it found him incapable of providing for his own needs, and implicitly found that he posed a danger to himself or others by ordering him not to possess a firearm." *Id.* at *2. It also rejected Petramala's argument the Act and accompanying regulations violated his constitutional rights or the Americans with Disabilities Act. *Id.*

statute because he had never been ordered to undergo involuntary mental health treatment "pursuant to A.R.S. § 36-540."⁷ A.R.S. § 36-540 (2009).

¶15 Finally, as the probate court also correctly found, the order entered in the criminal case finding him "criminally incompetent" was "clear and unambiguous," and, further, his request for clarification of the order -- entered in 2004 -- was untimely.

III. Other Arguments

¶16 Petramala asserts other arguments that we previously rejected, are not properly raised in this appeal, or are moot.

A. Propriety of Pre-Filing Review Orders

¶17 Petramala argues the probate court's continued enforcement of the pre-filing review orders and its denial of his petition to terminate his guardianship violate the Americans with Disabilities Act, the Social Security Act, and his constitutional rights to due process, equal protection, and access to courts. We decline to consider these arguments.

⁷After the court denied Petramala's May 2010 petition in January 2011, the legislature amended A.R.S. § 13-925 to permit a prohibited possessor under 18 U.S.C. § 922(g)(4) to petition "the court that issued the relevant determination" to restore his or her right to possess a firearm. A.R.S. § 13-925(A) (Supp. 2011). Because the amendment became effective approximately six months after the court denied Petramala's petition, his argument on appeal that he is entitled to a hearing under amended A.R.S. § 13-925 is not properly before us.

Because the court terminated his guardianship, these arguments are moot. *Sandblom*, 125 Ariz. at 182, 608 P.2d at 321.

B. The Administrative Order

¶18 Petramala argues the probate court's denial of his petition to terminate and its continued reliance on the Administrative Order is not supported by Arizona's guardianship statutes and is not the least restrictive means of addressing Petramala's alleged incapacity. The Administrative Order was not an appealable order and we subsequently dismissed Petramala's petition for special action from that order. See *supra* note 2. Accordingly, Petramala may not challenge the merits of the Administrative Order in this appeal.

¶19 Nevertheless, the record contains ample evidence of Petramala's abusive litigation in the superior court and we take judicial notice of his filings in that court. Ariz. R. Evid. 201; see *In re Sabino R.*, 198 Ariz. 424, 425, ¶ 4, 10 P.3d 1211, 1212 (App. 2000) (appellate court may take judicial notice of its own records, records of another action tried in the same court, or anything the superior court could have taken judicial notice of). Since 1995, Petramala has been involved in at least 38 civil cases filed in Maricopa County Superior Court or civil justice court. See Maricopa County Superior Court Cause Nos. CV 1995-012338, CV 1996-004304, CV 1996-008606, CV 1996-015907, CV 1996-016865, CV 1996-020996, CV 1996-022329, CV 1997-004720, CV

2000-003812, CV 2000-011724, CV 2000-092257, CV 2001-090535, CV 2002-093042, CV 2002-093043, CV 2003-002250, CV 2003-002251, CV 2003-002253, CV 2003-090270, CV 2003-090271, CV 2003-093197, CV 2004-015460, CV 2005-001778, CV 2005-004654, CV 2005-006724, CV 2005-011419, CV 2005-017988, CV 2006-004114, CV 2006-004115, CV 2009-052111, CV 2012-070936, LC 1996-001030, LC 2003-000362, LC 2003-000372, LC 2004-000564, LC 2005-000031, LC 2005-000638, LC 2005-000747, and LC 2005-000863. Almost all of these cases were initiated by Petramala as a plaintiff and resulted in dismissal, abandonment, or judgment for the defendant(s).⁸ The courts in these various proceedings ordered Petramala to pay sanctions totaling between \$30,000 and \$50,000, and, in several cases, dismissed his lawsuits as a sanction for his behavior.

¶20 "Arizona courts possess inherent authority to curtail a vexatious litigant's ability to initiate additional lawsuits." *Madison*, 230 Ariz. at 14, ¶ 17, 279 P.3d at 639. To ensure a litigant's access to courts is not inappropriately infringed, however, courts must give the litigant notice and an opportunity to oppose the order, create an adequate record for appellate review, make substantive findings regarding the frivolous or harassing nature of the actions, and should narrowly tailor

⁸ Petramala was a defendant in cases either requesting injunctions to stop his harassment or involving criminal charges against him. See Maricopa County Superior Court Cause Nos. CV 2009-052111, LC 1996-001030, LC 2003-000372, LC 2004-000564, and LC 2005-000747.

their orders to fit the litigant's specific abuse. *Id.* at 14, ¶ 18, 279 P.3d at 639. The Administrative Order satisfied these requirements. The court detailed Petramala's abusive and wasteful conduct; noted the plainly frivolous nature of his lawsuits; authorized him to petition for a hearing to dispute the court's findings; and acknowledged the need to narrowly tailor its order, explicitly finding the only order to adequately address Petramala's litigiousness is one prohibiting him from filing any lawsuit without prior court permission.

¶21 The record clearly reflects Petramala is a vexatious litigant and the superior court was within its authority to enter the Administrative Order.

C. 2008 Order Prohibiting Petramala from Possessing a Firearm

¶22 Petramala argues the probate court's denial of his petition to modify his guardianship to remove his name from the NICS violates his rights under the Second and Fourteenth Amendments to the United States Constitution. We decline to consider these arguments. Because the probate court terminated his guardianship, these arguments are moot. *Sandblom*, 125 Ariz. at 182, 608 P.2d at 321.

D. Application of Guardianship Proceedings in this Case

¶23 Petramala argues Arizona's guardianship statutes, as applied to him, "equate[] to slavery and violate[] the

Thirteenth Amendment to the United States Constitution.” We decline to consider this issue because it is moot.

E. Alleged Ineffective Assistance of Counsel

¶24 Petramala argues the court’s denial of his petition to terminate his guardianship “continues to violate rights previously violated by alleged ineffective assistance of counsel” during the initial guardianship proceeding. He claims his counsel failed to raise appropriate objections at the guardianship proceeding, which resulted in the admission of testimony and other evidence the court relied on to conclude he needed a guardian. Although this issue is arguably moot as a result of the termination of his guardianship, *id.* at 182, 608 P.2d at 321, in the exercise of our discretion, we elect to consider it. *Parker ex rel. Parker v. Ariz. Interscholastic Ass’n*, 204 Ariz. 42, 45, ¶ 6, 59 P.3d 806, 809 (App. 2002) (appellate court may exercise discretion to consider moot issues when they have significant public importance or are likely to recur).

¶25 Petramala previously raised, and we rejected, this argument in his appeal from the probate court’s denial of his September 2010 petition to terminate his guardianship. *In re Adult*, 1 CA-CV 10-0784, 2012 WL 601336, ¶¶ 13-14 (Ariz. App. Feb. 23, 2012) (mem. decision).

¶126 Furthermore, the argument is without merit because Petramala has not alleged counsel's performance fell below an objective standard of professional competence for counsel in this specific context, nor has he alleged that had the objections been made, the court would have declined to appoint a guardian. See *John M. v. Ariz. Dep't. of Econ. Sec.*, 217 Ariz. 320, 322-23, ¶ 8, 173 P.3d 1021, 1023-24 (App. 2007) (party must show counsel's representation fell below prevailing professional norms and reasonable probability exists that, but for counsel's errors, the result of the proceeding would have been different) (citations omitted).⁹ Accordingly, we see no error.

IV. Rule 25 Sanctions

¶127 The record before us could warrant sanctions pursuant to Rule 25 of the Arizona Rules of Civil Appellate Procedure. Since 2003, Petramala has filed a total of 33 appeals or petitions for special action in this court. Sixteen of these appeals or petitions for special action have arisen out of the underlying guardianship proceeding.¹⁰ Petramala's practice has

⁹We assume without deciding a claim of "ineffective assistance of counsel" is properly raised in the context of a guardianship proceeding.

¹⁰See *In re Guardianship & Conservatorship of Petramala*, 1 CA-CV 07-0285, 2008 WL 4149005 (Ariz. App. Apr. 8, 2008) (mem. decision); *Petramala v. Baca*, SA 07-0032; *In re Guardianship & Conservatorship for Petramala*, 1 CA-CV 08-0330, 2009 WL 3463920 (Ariz. App. Oct. 27, 2009) (mem. decision); *In re Guardianship & Conservatorship for Petramala*, 1 CA-CV 08-

been to repeatedly petition the probate court to terminate his guardianship, raising no new grounds, and appeal every denial, resulting in multiple appeals to this court every year for the past five years. Many of these appeals raised issues previously decided or not properly preserved in the probate court, and this court dismissed several for lack of jurisdiction.¹¹ With the termination of his guardianship, we trust neither Petramala nor his counsel will continue to appeal issues previously decided or otherwise without merit. If Petramala or his counsel continue

0561, 2009 WL 3460742 (Ariz. App. Oct. 27, 2009) (mem. decision); *In re Guardianship & Conservatorship for Petramala*, CV 09-0350; *Petramala v. O'Connor*, SA 09-0207; *In re Guardianship & Conservatorship for Petramala*, SA 09-0549; *In re Limited Guardianship of Petramala*, CV 09-0621; *In re Limited Guardianship of Petramala*, CV 09-0648; *In re Guardianship & Conservatorship for Petramala*, 1 CA-CV 10-0261, 2011 WL 1855613 (Ariz. App. May 5, 2011) (mem. decision); *In re Adult*, 1 CA CV-10-0784, 2012 WL 601336 (Ariz. App. Feb. 23, 2012) (mem. decision); *In re Guardianship of Petramala*, CV 11-0217; *In re Guardianship of Petramala*, CV 11-0588; *In re Guardianship for Petramala*, CV 11-0694; *In re Guardianship of Petramala*, CV 12-0041; and *In re Guardianship of Petramala*, CV 12-0363.

¹¹See *In re Guardianship & Conservatorship of Petramala*, 1 CA-CV 07-0285, 2008 WL 4149005 (Ariz. App. Apr. 8, 2008) (mem. decision); *In re Guardianship & Conservatorship for Petramala*, 1 CA-CV 08-0330, 2009 WL 3463920 (Ariz. App. Oct. 27, 2009) (mem. decision); *In re Guardianship & Conservatorship for Petramala*, 1 CA-CV 08-0561, 2009 WL 3460742 (Ariz. App. Oct. 27, 2009) (mem. decision); *In re Guardianship & Conservatorship for Petramala*, CV 09-0350; *In re Limited Guardianship of Petramala*, CV 09-0621; *In re Limited Guardianship of Petramala*, CV 09-0648; *In re Guardianship & Conservatorship for Petramala*, 1 CA-CV 10-0261, 2011 WL 1855613 (Ariz. App. May 5, 2011) (mem. decision); *In re Adult*, 1 CA CV-10-0784, 2012 WL 601336 (Ariz. App. Feb. 23, 2012) (mem. decision); *In re Guardianship of Petramala*, CV 11-0217; and *In re Guardianship of Petramala*, CV 11-0588.

to do so, this court will consider imposing sanctions under Rule 25. ARCAP 25.

CONCLUSION

¶28 For the foregoing reasons, we affirm the probate court's order denying Petramala's petitions and requests for relief.

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

_____/s/_____
DIANE M. JOHNSEN, Judge

_____/s/_____
JON W. THOMPSON, Judge