

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 02/23/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Limited) 1 CA CV-10-0784
Guardianship for:)
) DEPARTMENT E
)
An Adult.) Maricopa County Superior
) Court No. PB2006-002295
)
MICHAEL PETRAMALA,)
)
) **MEMORANDUM DECISION**
Petitioner/Appellant,) (Not for Publication -
) Rule 111, Rules of the
) Arizona Supreme Court)
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. CV PB 2006-002295

The Honorable Rosa Mroz, Judge

AFFIRMED

Baumann Doyle Paytas & Berstein, P.A. Phoenix
By Michael J. Doyle
and
Theut Theut & Theut, P.C. Phoenix
By Brian J. Theut
Attorneys for Petitioner/Appellant

Maricopa County Public Fiduciary Phoenix
By Michael Warzynski

Attorneys for Respondent/Appellee

Kessler Law Offices
By Eric W. Kessler
Attorneys for Appellee, Morse

Mesa

H A L L, Judge

¶1 Petitioner/Appellant Michael Petramala appeals from a superior court order denying his petition to terminate his guardianship and denying his request that the court vacate an administrative order restricting him from filing actions in the superior court without prior permission. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 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 the superior court without permission from the presiding judge of the court or the associate presiding judge for limited jurisdiction courts (the Administrative Order). To file an action in the court, 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 been raised and disposed of by another court in any jurisdiction, and
- (4) certify the claims are not frivolous or made in bad faith.

The Administrative Order authorized Petramala to petition for a hearing to dispute the court's findings, but there is no indication in the record that he requested a hearing or sought appellate review of the Administrative Order.

¶13 In February 2007, a jury found that Petramala's court-appointed guardian ad litem (GAL), Appellee Judith Morse, had shown by clear and convincing evidence that he was in need of a guardian.¹ The probate court appointed the Maricopa County Public Fiduciary (MCPF) as guardian and conservator for Petramala and granted it all powers authorized by Arizona Revised Statutes (A.R.S.) section 14-5312 (2005). Petramala appealed the order, and we affirmed, ruling that the proceedings had not violated Petramala's right to due process or his physician/patient privilege, and that the evidence supported the verdict.

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

¶14 Petramala later moved the probate court to terminate the guardianship or, in the alternative, order that he be entitled to make all legal decisions for himself and direct the guardian to assist him in addressing the Administrative Order. As relevant, the court denied the motion to terminate the guardianship and reaffirmed that Petramala could not file any litigation without the court's prior written approval (the 2008 Order).² Petramala appealed that decision, but did not challenge the pre-filing review requirement contained in the order.

¶15 Thereafter, Petramala repeatedly asked the court to set aside all pre-filing review orders and modify or terminate the guardianship to allow him to proceed pro se with litigation against Morse, MCPF, the Arizona Health Care Cost Containment System (AHCCCS), Magellan Health Services, and his healthcare providers. The court denied all of these requests. It did, however, indicate that if Petramala's GAL, guardian, or counsel advised the court that a proposed action was legally viable, the court would allow Petramala to file it (the 2010 Order). Petramala appealed that order, and we affirmed on May 5, 2011.

¶16 On September 21, 2010, Petramala filed a petition to terminate the guardianship on the grounds that the proceedings,

² The court did terminate the conservatorship and limited the guardianship to control over Petramala's medical, psychiatric, psychological, or other professional care, counseling, treatment, or service.

as applied in this case, violated his constitutional rights and conflicted with the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 to 12300 (2011).³ He also moved to vacate all pre-filing review orders, arguing the court lacked authority to enter such orders, which he asserted were discriminatory and unconstitutional.⁴

¶17 The court denied Petramala's request to vacate and his petition to terminate the guardianship. He timely appealed.

ISSUES

¶18 Petramala argues the court erroneously denied his petition to terminate the guardianship because it violates his constitutional rights and federal law. He contends the court erred in denying his petition to vacate all pre-filing review orders because such orders violate his constitutional rights.

DISCUSSION

¶19 As an initial matter, we consider Morse's argument that we lack jurisdiction over this appeal. *See Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007,

³ Petramala also generally challenged Arizona's guardianship statutes on the grounds that they violated the ADA and were unconstitutional.

⁴ Although Petramala styled his request as an *application* for leave to file a motion to vacate, he asked the court to vacate all pre-filing review orders and the court treated the pleading as a motion to vacate.

1008 (App. 1997) (stating appellate court has an "independent duty to determine whether it has jurisdiction to consider an appeal.").

¶10 Pursuant to A.R.S. § 12-2101(9) (Supp. 2011), certain orders in probate proceedings that do not finally dispose of the proceeding may be appealed, provided the order is "similar to a final judgment or decree entered in any formal proceedings under title 14." *Ivancovich v. Meier*, 122 Ariz. 346, 353, 595 P.2d 24, 31 (1979); *cf. In re Estate of McGathy*, 226 Ariz. 277, 280, 246 P.3d 628, 631 (2010) (holding that § 12-2101(J) [now § 12-2101(9)] permits appeal of the final disposition of each formal proceeding instituted in an unsupervised administration). Because the court's order denying Petramala's motion to terminate the guardianship fully resolved that matter and had the effect of continuing the guardianship indefinitely, it is a final, appealable order under A.R.S. § 12-2101(9).

¶11 Petramala also appeals the court's denial of his motion to vacate all pre-filing review orders. Generally, an order denying a motion to vacate is appealable. A.R.S. § 12-2101(2); *M & M Auto Storage Pool, Inc. v. Chem. Waste Mgmt., Inc.*, 164 Ariz. 139, 141, 791 P.2d 665, 667 (App. 1990) (an order denying or granting a motion to set aside a judgment is appealable as a "special order made after final judgment").

However, "not every order following a final judgment is appealable." *Arvizu v. Fernandez*, 183 Ariz. 224, 226, 902 P.2d 830, 832 (App. 1995). To be appealable, a post-judgment order must raise issues that are different from those that would arise from an appeal of the underlying judgment and relate to the judgment's enforcement. *Id.* at 226-27, 902 P.2d at 832-33; see also *In Re Marriage of Dorman*, 198 Ariz. 298, 300, ¶ 3, 9 P.3d 329, 331 (App. 2000) (stating special order after judgment must raise different issues than those that would be raised by appealing the underlying judgment; "must affect the underlying judgment, relate to its enforcement, or stay its execution; and it must not be merely 'preparatory' to a later proceeding that might affect the judgment or its enforcement.") (citation omitted). "This requirement prevents a delayed appeal from the judgment, and also prevents multiple appeals raising the same issues." *Arvizu*, 183 Ariz. at 227, 902 P.2d at 833.

¶12 Here, Petramala argued the pre-filing review orders were not authorized under Arizona law, were unsupported by the facts and contrary to public policy, and subjected him to discrimination in violation of federal law and the United States and Arizona constitutions.⁵ These challenges all could have been

⁵ Petramala also asserted the orders "exceed[ed] the jurisdiction of the superior court" and were "void." See Ariz. R. Civ. P. 60(c)(4) (permitting a court to relieve a party from a void

brought in an appeal from the orders themselves and therefore do not constitute proper grounds for a motion to set aside the orders. *Arvizu*, 183 Ariz. at 226, 902 P.2d at 832.⁶ As a result, the order denying Petramala's motion to vacate is not appealable as a special order made after final judgment.

Guardianship

¶13 Petramala argues the court erred in denying his petition to terminate the guardianship because the guardianship (1) is a discriminatory action prohibited by the ADA; (2) violates the Social Security Act, 42 U.S.C. § 301 to -1397mm (2011), and Petramala's constitutional rights to seek redress, to due process, and to equal protection; (3) violates his right to keep and bear arms; (4) violates his rights under the

judgment or order); *Matter of Adoption of Hadthrath*, 121 Ariz. 606, 608, 592 P.2d 1262, 1264 (1979) (judgment may be attacked as void if the court lacked subject matter or personal jurisdiction or jurisdiction to render particular judgment or order). However, he did not present a true challenge to the court's jurisdiction, as he argued only that no Arizona statute authorized the superior court to preemptively restrict filings, an argument that concerns the correctness of the order, not the court's jurisdiction. *Cf. State v. Maldonado*, 223 Ariz. 309, 311, ¶ 13, 223 P.3d 653, 655 (2010) (holding a defective or absent information in a criminal proceeding does not deprive the superior court of subject matter jurisdiction; "'subject matter jurisdiction' refers to a court's statutory or constitutional power to hear and determine a particular type of case.").

⁶ Indeed, Petramala raised many of these same arguments in his direct appeal from the 2010 Order. *See In re Petramala*, 1 CA-CV 10-0261, 2011 WL 1855613, ¶ 12 (Ariz. App. May 5, 2011) (mem. decision).

thirteenth amendment because it is tantamount to slavery; and (5) continues to violate rights previously violated by alleged ineffective assistance of counsel during the initial guardianship proceeding. "[T]he trial court has wide latitude to perform its statutory duty to safeguard the well-being of the ward," and we will not reverse a guardianship order absent an abuse of discretion. *In re Guardianship of Kelly*, 184 Ariz. 514, 518, 910 P.2d 665, 669 (App. 1996).

¶14 Arizona law requires a person who petitions for the appointment of a guardian for an alleged incapacitated person to prove the need for a guardian by clear and convincing evidence. *In re Guardianship of Reyes*, 152 Ariz. 235, 236, 731 P.2d 130, 131 (App. 1986). After a guardian is appointed, a ward may petition the court for an order that he or she is no longer incapacitated and for the removal or resignation of the guardian. A.R.S. § 14-5307(B) (2005). Petramala's motion to terminate the guardianship was based on his argument that he was never incapacitated and that Arizona's guardianship statutes are unconstitutional and violate federal law. As the superior court noted, he did not offer any evidence or argument that he was no longer incapacitated under A.R.S. § 14-5307, but simply presented yet another challenge to the appointment of the guardian, an issue that has long been settled. Accordingly, the

court did not err in denying Petramala's motion to terminate the guardianship.

CONCLUSION

¶15 For the foregoing reasons, we affirm.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
JOHN C. GEMMILL, Judge