IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In the Matter of the Guardianship of and
Conservatorship for:

BRADFORD D. LUND,
An Adult.

MICHELLE A. LUND, et al.,
Petitioners/Appellants,

v.

WILLIAM S. LUND, et al.,
Respondents/Appellees.

No. 1 CA-CV 16-0453
FILED 12-26-2017

Appeal from the Superior Court in Maricopa County
No. PB2009-002244
The Honorable Robert H. Oberbillig, Judge, *Retired*
The Honorable Robert D. Myers, Judge, *Retired*
The Honorable Gary E. Donahoe, Judge, *Retired*
The Honorable Barbara A. Hamner, Judge *Pro Tempore*, *Retired*

AFFIRMED

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MEMORANDUM DECISION

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Judge Jennifer B. Campbell and Judge Margaret H. Downie (retired) joined.

B R O W N, Judge:

¶1 After more than six years of contentious litigation and a ten-day bench trial, the superior court found that Michelle A. Lund and Kristen Lund Olson did not meet their burden of proving Bradford D. Lund ("Bradford") is in need of a guardian or conservator. Olson raises several issues on appeal, including whether the court abused its discretion in (1) denying the petition for guardianship and conservatorship; (2) refusing to order the court-appointed investigator and physician to update their reports; (3) denying requests to update discovery; (4) admitting and excluding evidence at trial; (5) limiting Bradford's examination; (6) rejecting the argument that Bradford was not represented by independent counsel;

and (7) dismissing the guardian ad litem ("GAL"). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In February 2006, Bradford filed a voluntary petition for guardianship, stating that a "guardian is necessary because . . . [he] is impaired by reason of mental deficiency to the extent that he is easily influenced and lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his medical care." Bradford, however, later withdrew the petition.

¶3 In October 2009, Olson filed a petition to appoint a guardian, conservator, guardian ad litem, and next friend for Bradford,[1] who is Walt Disney's grandson and the beneficiary of significant trusts. She amended the petition in November 2010, alleging in part that due to Bradford's cognitive and mental disabilities, he is incapacitated. She further alleged that Bradford is "unable to manage [his] estate and affairs effectively" and has "property which will be wasted or dissipated." Olson requested that the court order a "limited guardianship and conservatorship" to help Bradford with decisions regarding health care, his living situation, his assets, and how his funds are expended. Bradford, represented by private counsel, objected to the petition but admitted he "has had to cope with developmental disabilities." William S. Lund (Bradford's father), and his wife, Sherry L. Lund (Bradford's step-mother), filed a separate objection to Olson's petition.[2]

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[1] Diane Disney Miller (Bradford's aunt), Kristen Lund Olson (Bradford's half-sister), and Karen Page (Bradford's half-sister) were the original petitioners. An amended petition filed in November 2010 added Michelle A. Lund (Bradford's twin sister) as a petitioner. Diane Disney Miller subsequently passed away and Karen Page withdrew as a petitioner, leaving Kristen and Michelle as the petitioners at trial and the appellants on appeal. For ease of reference, and unless otherwise noted, we refer to the two appellants as "Olson."

[2] Rachel Lund Schemitsch (daughter of William and Sherry) lives with Bradford in his Paradise Valley home, along with Rachel's children. Rachel joined the litigation in 2010, taking the same positions as Bradford, William, and Sherry in the superior court and on appeal. For ease of reference, except where noted, we refer to William, Sherry, and Rachel as "the Lunds."

¶4 The superior court appointed Robert Segelbaum as the investigator and Dr. H. Daniel Blackwood as the physician to determine whether Bradford needed a guardian and conservator. Segelbaum filed his investigative report on May 19, 2011, and Dr. Blackwood evaluated Bradford on May 3, 2011.

¶5 Following years of intensive litigation, including appointment of a special discovery master, substitution of counsel at various stages, and successive re-assignment of the case to several judges, the superior court conducted a bench trial that concluded in April 2016. At Bradford's request, the court issued findings of fact and conclusions of law (*see* Appendix A), denying Olson's petition.

¶6 After considering post-trial motions, including requests for attorneys' fees and costs submitted by the Lunds, the superior court entered a final judgment dismissing the petition and declining to award fees or costs. The court also vacated "restrictions previously imposed . . . on the distribution of income and principal of the Walt Disney Family Trust" to Bradford, and directed Wells Fargo, as trustee, to release funds to Bradford in accordance with the terms of the Trust. Olson's timely appeal followed.

DISCUSSION

A. Guardianship

¶7 We review guardianship orders for an abuse of discretion. *See In re Guardianship of Kelly*, 184 Ariz. 514, 518 (App. 1996). The court, when exercising its discretion, "has wide latitude to perform its statutory duty to safeguard the well-being of the ward." *Id.* But the court abuses that discretion "where the record fails to provide substantial support for its decision or the court commits an error of law in reaching the decision." *Files v. Bernal*, 200 Ariz. 64, 65, ¶ 2 (App. 2001). When findings of fact are issued according to Rule 52 of the Arizona Rules of Civil Procedure, we will affirm the superior court's factual findings "unless they are clearly erroneous or not supported by substantial evidence." *Nordstrom, Inc. v. Maricopa Cty.*, 207 Ariz. 553, 558, ¶ 18 (App. 2004).

Consistent with their filings in the superior court, Bradford and the Lunds submitted joint briefing on appeal. Thus, unless otherwise noted, references to "the Lunds" herein include Bradford.

¶8 Under Arizona Revised Statutes ("A.R.S.") section 14–5304(B),

> [t]he court may appoint a general or limited guardian . . . if the court finds by clear and convincing evidence that:
>
> 1. The person for whom a guardian is sought is incapacitated.
>
> 2. The appointment is necessary to provide for the demonstrated needs of the incapacitated person.
>
> 3. The person's needs cannot be met by less restrictive means, including the use of appropriate technological assistance.

The term "incapacitated person" is defined as an individual who is "impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person." A.R.S. § 14-5101(3). The phrase "responsible decisions concerning his person" means that the "putative ward's decision-making process is so impaired that he is unable to care for his personal safety or unable to attend to and provide for such necessities as food, shelter, clothing, and medical care, without which physical injury or illness may occur." *In re Guardianship of Reyes*, 152 Ariz. 235, 236 (App. 1986).

¶9 Olson argues the court abused its discretion by denying her petition for guardianship based on insufficient evidence.[3] She contends

[3] Throughout her appellate briefing, Olson points to many examples of conflicting evidence to show certain findings are not supportable. Simply because conflicting evidence exists does not mean the superior court's factual findings are clearly erroneous. *Kocher v. Dep't of Revenue of State of Ariz.*, 206 Ariz. 480, 482, ¶ 9 (App. 2003) ("A finding of fact is not clearly erroneous if substantial evidence supports it, even if substantial conflicting evidence exists."). Olson specifically challenges finding nine (Michelle's testimony in a California court) and finding ten (Kristen's testimony about a $1 million loan from Bradford). *See* Appendix A. As to finding nine, we grant the Lunds' unopposed request to correct the record on appeal by recognizing that the transcript excerpts included in Tab A of the Lunds' Appendix to their answering brief were submitted to and

that William, Sherry, and Rachel "cannot be trusted" as Bradford's "*de facto*" guardians because they have abused the role by "isolating, controlling, surveilling, and medicating Brad[ford] against his own wishes." We therefore review whether substantial evidence supports the court's denial of the guardianship petition. Because it would serve no useful purpose to analyze all of the testimony and exhibits presented at the ten-day trial, by way of example only, we briefly summarize some of the evidence supporting the court's decision.

¶10 Mike Lovell, who traveled with Bradford on several occasions, testified that he and Bradford traveled to Los Angeles for a movie premier about a year before trial. While staying at a hotel, the two were in separate rooms. Bradford did not need help showering, shaving, dressing, or being on time. Bradford "appeared to be competent when [he] traveled with him" and was "capable of managing his daily affairs."

¶11 The court-appointed investigator, Segelbaum, reported in 2011 there was no "reason to secure a guardianship." Bradford seemed "very satisfied and very content with his present environment." He was able to do what he wanted and articulated his "needs, wants, and desires." His needs were met and he was not "in any danger of hurting himself or others." At trial, Segelbaum confirmed his prior recommendation and findings.

¶12 Dr. Blackwood, a neuropsychologist and the court-appointed physician, reported in 2011 that Bradford, although "suffer[ing] significant cognitive deterioration from 2003 to [2011]," was not cognitively

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considered by the superior court. The transcripts included in Tab A support finding nine.

As to finding ten, Kristen acknowledged that Bradford "put up a million dollars" for her husband, William, and Bradford for a property investment, but we have found nothing in her testimony indicating that Kristen opined as to Bradford's capacity when he made the loan. The court may have relied on deposition excerpts that were offered as exhibits but never admitted in evidence. Regardless, Olson does not attempt to show how the court's error as to finding ten would have made a difference in the outcome of the case; she has therefore failed to establish prejudicial error. *See Toy v. Katz*, 192 Ariz. 73, 84 (App. 1997) (placing burden on appellant to establish prejudicial error); Ariz. R. Civ. P. 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

incapacitated. Bradford "had an organizer, from which he produced his list of medications," and "did not . . . exhibit any psychotic symptomatology." Although having "word finding problems on occasion," Bradford's "[s]peech was fluent, articulate, and well modulated." Bradford's eye contact was also appropriate, and, when performing assessment tasks, he was able to monitor his performance reasonably well. At trial, Blackwood confirmed the findings of his 2011 report, explaining it was based on his interactions with Bradford and a clinical, quantitative, and qualitative examination. Ultimately, Blackwood concluded Bradford did not need a guardian.

¶13 Dr. Chung, a neurologist and one of Bradford's treating physicians, testified that Bradford is "able to direct his own medical treatment," and that Bradford knew and accurately spelled the names of his medications and explained why he was taking them. In his February 2016 consultation report on Bradford's overall cognitive function, Chung explained that Bradford was witty and could answer questions appropriately; he demonstrated "what he wants to do" and "how to acquire needed services." Overall, Chung believed Bradford's "intelligence is adequate for an independent living, and he is competent to make his own decisions."

¶14 Dr. Duane, a neurologist who examined Bradford as early as January 2003 and as late as April 2016, wrote in February 2010 that "Brad[ford] has the capacity to understand the nature and consequences of the current legal proceedings and to enter into a contract with an attorney to represent him in those legal proceedings." Bradford "is able to direct his attorneys to carry out his wishes in connection with the legal proceedings and is able to assist counsel in preparation of his case." With respect to Bradford's decisions about his "personal assets in his estate planning," Duane wrote in March 2011 that Bradford is "capable of and competent to understand the nature of his assets and possessions and to be able to direct them knowledgeably."

¶15 Bradford testified that he moved to Arizona from California on his own accord, and that he was comfortable with having Rachel and her family live in his house with him, especially given that he invited them to move in. He would also be willing to ask her and her family to move out if he was not comfortable with the living arrangements, and it was his decision not to live in the master bedroom. Acknowledging that his house has a video surveillance system, Bradford explained that he knows how to operate the system and that a camera was never installed in his bedroom. He stated that Rachel and her family have never invaded his privacy nor

has he had an occasion where he thought they were spying on him—they are respectful and they knock before entering his bedroom. Bradford also testified he can get around by himself using a taxi or similar transportation, or walking, and at times he goes to the grocery store alone.

¶16 Bradford told the court that the last time he took medications, except for "say a cold or an illness," were those prescribed by Dr. Duane. Bradford stopped taking such medications in 2011 because he "felt [he] didn't need to take them anymore and [he] was feeling a lot better without them." Specifically, when he was taking the medications, Bradford had trouble staying awake and "couldn't function very well." Without the medication, he is now able to "stay awake a lot longer," is "clearer," and "know[s] what is going on."

¶17 Olson points to evidence that arguably conflicts with the court's factual findings and the evidence outlined above, but it is not our role to "reweigh the evidence or substitute our evaluation of the facts." *See Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 52, ¶ 11 (App. 2009). And even though Olson sought a limited guardianship to ensure Bradford has independent help with medical decisions, legal counsel, investments, not being isolated from family, and privacy concerns, the record supports the superior court's implicit conclusion that Bradford does not need court-imposed assistance with such matters. Because the record includes substantial evidence supporting the court's decision that Bradford is capable of making his own decisions and is not incapacitated, we cannot say the court abused its discretion in finding Olson failed to prove the requirements of A.R.S. § 14–5304(B) by clear and convincing evidence.

B. Conservatorship

¶18 Because guardianship and conservatorship proceedings are similar in many respects, and because both statutory schemes give the superior court broad discretion, we also review conservatorship orders for abuse of discretion. *See In re Estate of Runyon*, 343 P.3d 1072, 1074, ¶ 9 (Colo. App. 2014) (citing cases supporting the conclusion that "an appellate court reviews the trial court's appointment of a guardian or conservator for an abuse of discretion"); *see also In re Guardianship of Sommer*, 241 Ariz. 308, 313 n.7, ¶ 22 (App. 2016) (noting that "[b]oth Colorado and Arizona based their probate codes on the Uniform Probate Code").

¶19 To appoint a conservator, the court must find both of the following:

> (a) The person is unable to manage the person's estate and affairs effectively for reasons such as mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.
>
> (b) The person has property that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

A.R.S. § 14-5401(A)(2). The burden of proof is by a "preponderance of the evidence." A.R.S. § 14-1311.

¶20 Olson argues the court abused its discretion in denying her petition for conservatorship by basing its decision on insufficient evidence. She argues Bradford does not understand money and his assets have been "taken from him and moved into esoteric, unsuitable trusts established" under William and Sherry's direction and control. She also argues future dissipation of additional assets is imminent because William and Sherry are continuing their efforts to move three major trust distributions into the "Nevada Trust." Additionally, she contends the court ignored evidence of the Lunds' misconduct and self-dealing. We will affirm the court's decision as long as it is supported by substantial evidence. And similar to our guardianship analysis, we need not attempt an exhaustive analysis of the evidence presented at trial.

¶21 Dr. Blackwood reported in 2011 that it is questionable whether Bradford needs a conservator. Although Bradford has difficulty in math calculations and "would need assistance in handling the mechanical operations of large financial matters," Dr. Blackwood's examination indicated that Bradford could probably make competent decisions regarding his finances. Explaining the meaning of "mechanical," Blackwood testified that he was talking about "the calculation, percentages," and "more clerical aspects of money tracking . . . and money management." But "[i]f [Bradford] is provided with the information that he would need to make a decision, then the [] results suggest he would able [sic] to make that decision." Bradford "underst[ands] that he ha[s] different types of investments with different risks," and it would be appropriate for him to "rely on people to give him investment strategies." Blackwood agreed that Bradford appeared to be able to conceptually understand a

conversation about high, medium, and low risk strategies, as well as their accompanying returns.

¶22 Reporting that Bradford demonstrates adequate insights into his "living condition[s]," Dr. Chung testified he was referring to such things as "how [Bradford]'s going to be able to earn money and where he gets money," and "how he's planning to spend the money and prioritizing it." Bradford acknowledged his "limitation in mathematic calculation," which was important "because people who ha[ve] cognitive impairment are not aware of what they're not able to do," and Bradford's ability to identify such weaknesses was a "very important insight" and would "serve him well in independent living." Bradford also understands his financial strategy, "telling [Chung] about the conservative approach that they have as an overall strategy."

¶23 Dr. Duane wrote in November 2009 that "Brad[ford] has the capacity to direct and voice his own opinions and personal goals." Although "[h]e lacks . . . the in depth ability to deal with complex issues," Bradford "has always been able to tell [Dr. Duane] what investments have been carried out and what they have netted in the way of property, whether it was his house in California or a pending real estate venture that was to close." In response to a "request[] with respect to [Bradford's] competence to direct [his] assets in [his] estate planning," Dr. Duane wrote in 2011 that he had "no reservation whatsoever" about Bradford's "capacity" and knowledge "to determine to whom and where the components of [his] estate would be directed." Bradford is "capable of and competent to understand the nature of his assets and possessions and to be able to direct them knowledgeably."

¶24 At trial, Duane testified that Bradford would "be able to decide who he would want to manage his investments" if he were given options, and that Bradford, just as in 2011, is "capable and competent to understand the nature of his assets and possessions and to be able to direct them knowledgeably." Since 2009, Bradford has "made significant improvements" from an "objective" standpoint, and from a "subjective sense," Bradford "looks a lot better." Although there were concerns about whether he would improve, the goal was to "optimize [Bradford's] performance," which was achieved "over time." Bradford improved, not because of medications but because of "his family" and his own "hard work," which may have been "stimulate[d]" from the "excitation about . . . these proceedings."

¶25 Andrew Gifford, one of the trustees of the Sharon D. Lund Residuary Trust for the benefit of Bradford, testified that Bradford had the capacity to sign documents in 2005 and 2007 establishing, among other things, a fee arrangement to appoint a successor trustee in 2007, and to consent to an increase in the compensation for the management of his personal accounts in 2005. He also testified that certain assets—bond, parametric, mutual fund, and separate account portfolios as well as Disney stock—listed in the December 2013 quarterly trustee meeting notes would not be dissipated or wasted by him or Bradford. Gifford understood "dissipated" to mean that the assets "were somehow . . . frittered away," and "wasted" to mean that the assets were "[b]rought down and devalued" by "some possible inaction of the trustee."

¶26 William Lund testified that Bradford is capable of understanding an estate plan, and that Bradford has been handling his personal finances since 2008 or 2009, including his checkbook and expenses for travel, housing, meals, restaurants, and hotels. The money Bradford receives every year in trust income distributions goes straight into accounts Bradford controls and is used by him for his personal finances. Yet, Bradford has saved "[v]ery little" of trust income he has received in the last five years because of the millions of dollars he has spent on legal fees. Although William Lund was a signatory on Bradford's accounts "[m]any years ago," Bradford is the only signatory on his bank accounts now.

¶27 As Bradford's attorney, Douglas Wiley testified about his role in drafting the majority of the provisions of the 2012 BDL Lifetime Irrevocable Trust ("Nevada Trust"). The trust was established in Nevada because Nevada, unlike Arizona and California, is one of about a dozen jurisdictions that allows a person to remain a sole beneficiary and be protected from creditors after transferring his or her assets into an irrevocable trust. The goals of the Nevada Trust included protecting assets deposited by Bradford into the trust from creditors and predators, giving Bradford the ability to access the funds, ensuring the funds would not be wasted or dissipated, and showing that Bradford "had the financial maturity and wherewithal to receive large distributions into his estate." The trustees are Bradford, Sherry, Wiley, Jim Dew, and Zions Bank, and it takes a majority of the latter four trustees to make distributions to Bradford, with at least two of the three being independent trustees (i.e., no business or family relationship with Bradford, any trustee, or any of Bradford's family). The Nevada Trust's standard for making distributions is broad so that "[Bradford] could request money for most circumstances: medical care, dental care, maintenance, comfort and support."

¶28 Wiley also explained that he was aware that Bradford had established a charitable lead annuity trust ("CLAT") in July 2004, and that he was very familiar with the structure of a CLAT, which he explained is "an irrevocable trust to achieve a donor's charitable intent" by making annuity payments to the named charity during the grantor's lifetime. Although William Lund is the beneficiary of Bradford's CLAT (i.e., remainder passes to him when Bradford dies), Bradford benefitted from the CLAT because he "was able to pass significant assets to his foundation, the BDL foundation," and achieve "significant estate tax savings" by saving "approximately 40 percent for every dollar" he transferred to the CLAT.

¶29 Wanda Tang, a certified public accountant, testified that her firm prepares Bradford's tax returns and provides tax planning and other services for several entities, including the CLAT and the Nevada Trust. The value of assets transferred into the CLAT was substantially less than the amount claimed by Olson's expert. In Tang's analysis of Bradford's business transactions" she did not "find any evidence where William Lund took advantage of Bradford Lund that was not otherwise supported by an agreement for the division of profits," which she explained was standard in real estate development.

¶30 Bradford testified that he made the decision to purchase the house next to William and Sherry on his own. He has a checking account, sometimes writes his own checks, and other times receives help with writing checks, meaning his bookkeeper prepares his checks for him but does not tell him how to spend his money. Bradford pays all the expenses for his home without contribution from Rachel and her family, he is okay paying all the expenses, and he does not "feel like they're taking advantage of [him] in some way because of that." As to estate planning, Bradford seeks the advice of William and Sherry, but sometimes disagrees with their advice. Although he trusts their advice, he testified that "a lot of it is [his] own decision." Bradford does not feel that William or Sherry have "in any way taken [his] assets and used them in some way."

¶31 Bradford further testified that he understands what attorneys are telling him when they go over such things as the CLAT, that his father and Sherry assist him in understanding such things, and that he is not afraid to ask for help if he does not understand. Bradford has no hesitation in seeking professional advice on how to invest significant amounts of money. With regard to his substantial future trust distributions, Bradford would seek professional and other advice on what to do with that money, but at the time of trial he did not have any investment strategies or plans on how to invest the money. He explained that he has no plans "to waste or throw

away [his] assets." Finally, Bradford stated that William and Sherry assisted him in finding and retaining attorneys, and that his attorney, along with William and Sherry, explained the Nevada Trust to him.

¶32 On this record, we cannot say the court abused its discretion in finding Olson failed to prove the requirements of A.R.S. § 14-5401 by a preponderance of the evidence, or that Bradford is in need of a conservator. Substantial evidence shows Bradford is able to manage his estate and affairs effectively, and that his property will not be wasted or dissipated.

C. Assessment of Bradford

¶33 In the superior court, Olson submitted (1) a motion asking the court to order Robert Segelbaum, the court-appointed investigator, to update his investigation and report, and (2) a separate motion requesting that the court order Dr. Blackwood to perform an updated evaluation of Bradford and allow Olson's expert, Dr. Bennet Blum, to perform a limited examination of Bradford. The court denied both motions.

1. Investigator and Physician Reports

¶34 In discovery matters, the superior court "has broad discretion which will not be disturbed absent a showing of abuse." *Brown v. Superior Court (Cont'l Nat'l Assurance, Inc.)*, 137 Ariz. 327, 331-32 (1983). This discretion "includes the right to decide controverted factual issues, to draw inferences where conflicting inferences are possible and to weigh competing interests," but "[i]t does not include the privilege of incorrect application of law or a decision predicated upon irrational bases." *Id.* The record must substantially support the court's decision. *Files*, 200 Ariz. at 65, ¶ 2.

¶35 Olson argues the court erred in denying her request to update Segelbaum's investigative report and Blackwood's physician report. But in making this argument, Olson fails to develop meaningful arguments or cite legal authority, in disregard of Arizona Rule of Civil Appellate Procedure 13(a)(7), to support the following contentions: (1) the reports were subject to limitations based on the passage of time; (2) Segelbaum and Blackwood may have been aware of additional information they were not aware of at the time of their initial reports; (3) Blackwood's statement that Bradford would continue to decline increased the "potential importance of an updated report"; (4) there was sufficient time to update the reports given the time frames in which the original reports had been prepared; and (5) the only "current evidence would be that which Brad[ford] chose to produce, or what could be elicited through Brad[ford]'s examination." And

as to Olson's contention that Segelbaum and Blackwood "could have been apprised of information that they did not know at the time of their initial reports," she lists several facts that Segelbaum and Blackwood allegedly could have been made aware but does not include "appropriate references to the portions of the record." ARCAP 13(a)(7)(A). Therefore, we consider these arguments waived. *Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62 (App. 2009) (stating that an appellant's claim can be waived for failure to provide, in the opening brief, "significant arguments," supporting authority, and citations to the record).

¶36 Waiver aside, the superior court did not incorrectly apply the law or make an irrational decision. In guardianship proceedings, the court is required to order the appointment of an investigator and a physician, psychologist, or registered nurse. A.R.S. § 14-5303(C). If the court determines the alleged incapacitated person's established physician, psychologist, or registered nurse is qualified, the court may appoint that individual. *Id.* Those conducting the investigation and examination are required to "submit their reports in writing to the court." *Id.* In conservatorship proceedings, the court is required to appoint an investigator if the alleged disability is, *inter alia*, mental illness, mental deficiency, or mental disorder. A.R.S. § 14-5407(B). On the other hand, "the court *may* direct that an appropriate medical or psychological evaluation of the person be conducted." *Id.* (emphasis added). Those conducting the investigation and medical or psychological evaluation are required to "submit written reports to the court before the hearing date," which is set by the court when a conservatorship petition is filed. *Id.* In addition, when appointed for either a guardianship or conservatorship proceeding, the investigator is required to "conduct an investigation before the court appoints a guardian or a conservator to allow the court to determine the appropriateness of that appointment." A.R.S. § 14-5308(B).

¶37 The superior court appropriately appointed an investigator (Segelbaum), and a physician (Blackwood), after the petition for guardianship and conservatorship was filed. Each of them investigated or evaluated Bradford and submitted written reports to the court before it considered whether Bradford should be appointed a guardian or conservator. Nothing in the guardianship or conservatorship statutes requires a court to order updated investigation or evaluation reports before trial; nor do the Arizona Rules of Probate Procedure address updating the reports. The only arguably relevant statutory provision is A.R.S. § 14-5308(B), which requires an investigator, "[a]s directed by the court," to "conduct additional investigations to determine if it is necessary to

continue the appointment." This provision applies only to an existing guardianship or conservatorship and thus it has no application here.

¶38 The record also substantially supports the court's denial of Olson's requests to update the investigative and physician reports. Soon after Olson's petition for guardianship and conservatorship was filed, the court appointed Dr. Blum to conduct an examination of Bradford. Bradford, however, requested that the court reconsider the appointment, asking that Dr. Duane or another physician be appointed. The court then asked the parties to nominate two physicians, but ultimately elected to "appoint a neutral doctor," Dr. Willson. In response, Bradford filed a motion for a protective order to limit the information Willson received. Bradford also filed a motion to dismiss and a motion for a determination on whether reasonable cause existed to "justify governmental imposition of further intrusion by a court investigator, and an involuntary medical examination." Following oral argument on the motions, in a detailed minute entry the court denied the motion to dismiss and the motion for a protective order.

¶39 After receiving a subpoena for all reports she had drafted since January 2005, and before evaluating Bradford, Willson requested leave to resign, stating that she had "wasted a lot of time trying to schedule appointments" and that the subpoena was unduly burdensome. The court accepted the withdrawal, and next appointed Dr. Weinstock, who also requested he be allowed to withdraw because of "significant challenges in the data collection process," and because "the evaluation should be done by a clinician trained and experienced in the sub-specialty of neuropsychology." The court granted his request to withdraw.

¶40 In March 2011, the court appointed Blackwood, who evaluated Bradford in May 2011. Discovery was sought before Blackwood examined Bradford, but "to reduce the potential for overbroad discovery requests and to avoid the injection [of] additional collateral issues into this case," the court issued an order narrowing what Blackwood was required to review. Segelbaum was appointed as the court investigator early on in these proceedings, but did not submit his report until May 2011. He thought it best to incorporate the medical report into his investigative report, and ultimately did so, relying on Blackwood's evaluation when making his final recommendation.

¶41 Several years later, Olson submitted her motions to update Blackwood's and Segelbaum's reports, three months before trial. The court

denied the motions, outlining various reasons why it would not accommodate the request. *See* Appendix B.

¶42 Given this record, and the lack of authority suggesting the superior court must order updated investigator and physician reports, we cannot say the court abused its discretion in denying Olson's requests. The court's concerns about follow-up discovery and its impact on the trial date, *see* Appendix B, are well-founded given the many discovery disputes between the parties, both in the superior court and the appellate courts. The superior court carefully considered the parties' positions, evaluated the likely timing of when the reports could be updated, and recognized that Blackwood and Segelbaum could be questioned about their reports, as well as subsequent observations, at trial. *See* Appendix B. Given these considerations, the court acted within its discretion. *See Gullett ex rel. Estate of Gullett v. Kindred Nursing Ctrs. W., L.L.C.*, 241 Ariz. 532, 542, ¶ 34 (App. 2017) ("Trial judges have broad discretion to control the scope and extent of discovery.").

¶43 Olson argues the superior court committed reversible error when it refused her requests to update the reports, and then criticized Olson for, and relied on the absence of, such evidence.[4] When the court issued findings of fact and conclusions of law, it implicitly relied on the Segelbaum and Blackwood reports in finding that a guardianship and conservatorship were not warranted. The court did not find the reports insufficient or stale due to the passage of time. And even assuming the court intended to criticize Olson's evidence, Olson failed to show why this is error. Sitting as the trier of fact, the court's role is to make credibility determinations. *See Pima Cty. Mental Health No. MH-2010-0047*, 228 Ariz. 94, 98, ¶ 17 (App. 2011).

2. Examination by Opposing Expert

¶44 Olson argues the superior court erred in denying her alternative request to have Dr. Blum conduct a limited examination of

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[4] Olson waited until her reply brief to cite *Rasor v. Nw. Hospital, LLC*, 239 Ariz. 546 (App. 2016), in support of this argument. Even so, *Rasor* is unhelpful because it deals with expert testimony in the medical malpractice context, which is governed by statutes not pertinent to the issues here, and the portion of the opinion Olson relies on was recently vacated by our supreme court in *Rasor v. Nw. Hosp., LLC*, 243 Ariz. 160, 167, ¶ 34 (2017). Olson also relies on this authority in support of her request for a limited medical examination of Bradford, but she waived that argument, *infra* ¶ 44.

Bradford. Although we ordinarily review the court's refusal to allow an expert to conduct an examination for an abuse of discretion, *see Pima Cty. Severance Action No. S-2248*, 159 Ariz. 302, 305 (App. 1988), Olson does not cite any legal authority for the proposition that the court was required to allow her expert to examine Bradford. Additionally, because Olson's request below was based on Arizona Rule of Civil Procedure 35, we agree with the Lunds that Olson failed to substantively address this issue on appeal. Under Rule 35, the court may order the physical or mental examination of a person when his or her "physical or mental condition is in controversy," but there must be "good cause" for doing so. Ariz. R. Civ. P. 35(a)(1), (2). Olson does not explain why there was good cause here. Thus, the issue is waived. *See Ritchie*, 221 Ariz. at 305, ¶ 62. Regardless, Olson has made no showing she was prejudiced by the alleged error; at least three physicians examined Bradford and testified at trial (i.e., Blackwood, Chung, and Duane). *See Toy*, 192 Ariz. at 84 (requiring appellant to establish that an error was "prejudicial" to his or her "substantial rights").

D. Financial Discovery

¶45 In her opening brief, Olson includes a section entitled "Refusal to Allow Financial Discovery," and generally asserts the superior court blocked all of her efforts, except one, to update discovery. Construed broadly, the only argument Olson raised in this section is that Bradford's counsel had a duty under Arizona Rule of Civil Procedure 26.1 to make voluntary production of information, and no such information was produced.[5] In doing so, Olson does not explain, or cite to, the action the court did or did not take, and thus, how the court erred. *See* ARCAP 13(7)(B) (requiring the argument section of an opening brief to include "references to the record on appeal where the particular issue was raised and ruled on"). The only record citation Olson provides is to a motion where she states that Bradford "failed to comply with his affirmative duty to disclose," without any explanation how he failed to comply. Without more, this argument is waived due to Olson's failure to substantively argue

[5] In a different section of her opening brief, Olson states: "Reversible error occurs where, as here, a trial court refuses to allow collection of certain evidence then faults the party that sought such evidence for not presenting it at trial." Olson fails to cite authority or develop this argument and has therefore waived it. *See Ritchie*, 221 Ariz. at 305, ¶ 62. She also makes the broad assertion that the court faulted her for "failing to adduce more evidence of waste," but fails to explain why this is error or direct us to the portion of the record where the court allegedly faults Olson for not presenting more evidence of waste. This argument is also waived. *Id.*

the alleged error. *See Dawson v. Withycombe*, 216 Ariz. 84, 107, ¶ 68 (App. 2007).

E. Admission and Exclusion of Evidence

¶46 Olson argues the court erred "by refusing to require or admit key evidence," and then merely lists, in bullet format, the following: (1) "[r]efusing to require the Lunds to produce an executed or complete copy of the CLAT"; (2) "[r]efusing to admit evidence of Sherry's 1994 bankruptcy and non-dischargeable judgment"; (3) "[a]llowing the Lunds to introduce the alleged business success of [William Lund], after restricting [Olson's] testimony re[garding his] financial condition, and cutting off expert testimony about [his] inappropriate investments through BDL Foundation"; (4) "[r]estricting Michelle's testimony regarding how she gets along with [William]'s former wives, . . . but suggesting during closing arguments that [Olson] brought the case because of conflict with Sherry"; (5) "[r]elying on Michelle's statements regarding Brad's 'competence,' yet, ignoring Sherry's statement that '[t]he other board members know that Brad[ford] is not competent'"; (6) "[r]efusing to admit evidence of the Lunds' lawsuit against attorney Rosepink (alleged Ponzi scheme in soliciting investments from BDL Foundation); but finding that Brad[ford] had reasonably relied on Rosepink's advice"; (7) "[r]efusing to require Wiley to produce emails showing [William] and Sherry's involvement in the formation of the Nevada Trust or Brad[ford]'s requests for distributions from the Nevada Trust"; (8) "[a]llowing Wiley to testify regarding Brad[ford]'s goals for the Nevada Trust, but then sustaining privilege objections to [Olson's] questions regarding those same goals"; (9) "[r]elying on Wiley's testimony regarding the suitability of the Nevada Trust, while failing to address fact [sic] that Wiley was counsel to Brad[ford], [William], and Sherry, but did not obtain any waiver from Brad[ford] for this joint representation," and "[a]fter drafting the Nevada Trust, Wiley abandoned his representation of Brad[ford] to earn fees as a trustee of the Nevada Trust"; and (10) "[a]llowing the Lunds to offer argument in closing regarding the alleged fee bias of Brad[ford]'s trustee, Gifford, but refusing at same [sic] time to reopen the case to admit the decision in a California action which expressly rejected those same arguments."

¶47 Because Olson offers no context, supporting argument, or legal authorities, these issues are waived. *See Ritchie*, 221 Ariz. at 305, ¶ 62. Moreover, Olson does not even allege, much less establish, that she was prejudiced by the court's rulings in any of these evidentiary matters. *See Jimenez v. Wal-Mart Stores, Inc.*, 206 Ariz. 424, 427, ¶ 10 (App. 2003) ("We

will not disturb a trial court's ruling on the admissibility of evidence absent a clear abuse of discretion and resulting prejudice.").

¶48 To the extent Olson argues the court erred in offering no "basic rationale" for its rulings, "reacting to the Lunds with fear or undue deference" when making evidentiary rulings, "allowing [the Lunds] to dictate terms," and "depriv[ing] [her] of a fair trial and opportunity to present [her] case," we also find these arguments waived because she does not cite any supporting legal authority or include substantive arguments. *See Ritchie*, 221 Ariz. at 305, ¶ 62. She fails to explain which rulings are not supported by "basic rationale," or even assert that all the identified rulings are unsupportable. She cites nothing in the record that suggests the court issued its rulings "with fear" or "undue deference," or allowed the Lunds to "dictate terms." And she does not explain how the court's evidentiary rulings deprived her of a fair trial and an opportunity to present her case.

F. Bradford's Examination

¶49 Olson argues the court erred in refusing her request to call Bradford as her first witness and for the court to question Bradford in her place. She contends she was "[f]orced to choose between delay . . . and completing trial," and that her stipulation to allow the court to examine Bradford does not "wipe[] away the harm from prior rulings."

¶50 In their pretrial statement, the Lunds objected to Bradford being called as a witness, referring to his "Fourth, Fifth, and Fourteenth Amendment Right to Due Process and Right against Self-Incrimination." Olson listed Bradford as a witness in her pretrial statement, with an estimated six hours allocated for his testimony. After a lengthy discussion with counsel at a pretrial conference, the court denied Olson's request to call Bradford as her first witness, noting the issue would be tabled until the court heard the rest of Olson's case.

¶51 On the ninth day of trial, the court again considered whether Bradford could be compelled to testify. Bradford's counsel asked the court to deny Olson's request, and indicated he would seek special action relief if the court was inclined to grant the request. When the court asked how long he would need to examine Bradford, Olson's counsel replied, "30 minutes at most." The court denied the Lunds' objection, and indicating it would ask Bradford questions first, the court then granted Olson's request to examine Bradford for 30 minutes. The court also denied Bradford's request for a stay and a subsequent request to delay his examination. Bradford's

counsel then suggested that Bradford "may just decide to refuse to answer any of [Olson's] questions."

¶52 Shortly before Bradford was to testify, the court requested that the parties explain how Bradford would be examined. Olson's counsel responded: "[W]e have conferred about resolving the objection of Brad[ford] Lund to testify, and I believe there's a stipulation that for [our] part we're going to be allowed to present to [the court] a set of questions to read to Brad[ford] Lund to walk through with him." When asked by the court whether they were in agreement, Bradford's counsel responded in the affirmative. The court explained that when questioning Bradford, it would identify when Olson's questions began. The court then vacated "[w]hatever rulings [it] made before on this issue . . . because the parties have resolved it as indicated by the stipulation." When concern was voiced about what the court would do if faced with questions it thought were improper, Olson's counsel stated that he did not "have a problem[,] if the Court feels uncomfortable asking a question, either rephrasing it, or not asking it if the Court sees fit." The court then proceeded to ask Bradford its own questions, followed by the questions submitted by Olson's counsel.

¶53 Generally, parties are bound by their stipulations, *Pulliam v. Pulliam*, 139 Ariz. 343, 345 (App. 1984), and nothing in this record compels a different conclusion. After the court granted Olson 30 minutes to cross-examine Bradford over the Lunds' objections, Olson stipulated to allowing the court to ask the questions she proposed in writing. Olson does not direct us to any portion of the record where she asked to be relieved of the stipulation, nor does she cite any authority in her opening brief showing the stipulation was invalid. In the reply brief, she cites *Bogard v. Cannon & Wendt Elec. Co.*, 221 Ariz. 325 (App. 2009), but that case is unhelpful. Although stipulating to the admission of certain evidence, the appellant in *Bogard* "preserved its objection by filing a motion in limine." *Bogard*, 221 Ariz. at 334 n. 12. We explained that "a stipulation to the admission of evidence following an adverse ruling on the admissibility of the evidence" does not "waive[] the right to appellate review." *Id.* Here, Olson did not file a motion in limine; instead, she agreed to the stipulation after receiving a favorable ruling.

¶54 Thus, even assuming Olson was "[f]orced to choose between delay . . . and completing trial," or that she made the stipulation to "avoid disruption," she is bound by the stipulation in which she agreed to the precise format for Bradford's trial examination. As to Olson's suggestion that the "court's question[s] w[ere] leading and suggestive, resulting in development of little information," we find no error. Because the court

granted her request to examine Bradford for 30 minutes, Olson had an opportunity to question Bradford. Instead, she agreed to allow the court to ask her questions for her, and made no objection throughout the court's questioning.

¶55 Nevertheless, Olson correctly notes that, given the timing of the stipulation, we are not precluded from reviewing the court's order denying her request to have Bradford testify as the first witness at trial. Under Rule 611(a) of the Arizona Rules of Evidence, the superior court is to "exercise reasonable control over the mode and order of examining witnesses and presenting evidence." The court does so to help "determin[e] the truth," "avoid wasting time," and "protect witnesses from harassment or undue embarrassment." Ariz. R. Evid. 611(a). These rules give the court "broad discretion over the management of a trial." *Gamboa v. Metzler*, 223 Ariz. 399, 402, ¶ 13 (App. 2010). Thus, we review the court's denial of Olson's request to examine Bradford first for an abuse of discretion. *See State v. Hill*, 174 Ariz. 313, 324 (1993). And we will only reverse if Olson shows she was harmed as a result of the court's ruling. *See Gamboa*, 223 Ariz. at 402-03, ¶¶ 17-18.

¶56 As a threshold issue, Olson cites no authority suggesting that she had the right to compel Bradford to testify. Assuming, without deciding, that she had such a right, we find no abuse discretion. Olson does not explain how the court abused its discretion in denying her request to examine Bradford as the first witness nor does she explain why it was prejudicial to do so, which is particularly relevant given that Bradford testified under oath and answered the questions submitted by Olson's counsel. Moreover, the record suggests the court was concerned about wasting time and protecting Bradford from unnecessarily enduring an estimated six hours of examination. Further, because the court needed more time to consider the novel issue of whether an alleged incapacitated person is required to testify in probate proceedings, and because it wanted to rule on the issue after it heard Olson's evidence, it was reasonable to defer ruling on the issue and to refuse the request to call Bradford as Olson's first witness.

¶57 Finally, Olson argues that "[t]he saga of Brad[ford]'s testimony is another example of the Lunds' brazen efforts to frustrate this case" and "[t]he fact that Brad[ford]'s counsel supported the objections further demonstrates lack of independence." She also states that, "upon review of video depo clips of Brad[ford] testifying in other matters, . . . no amount of evidence can replace testimony directly from Brad[ford]." We disagree. First, we could find this issue waived because Olson does not cite

any authority supporting these broad assertions. *See Ritchie*, 221 Ariz. at 305, ¶ 62. Second, as far as Bradford's litigation strategy, the record is clear the Lunds were opposed to Olson's petition from the outset and have vigorously contested it for more than six years. Thus, the record does not suggest any improper motive for their objection to Bradford's examination. Third, we fail to see why the objection to Bradford testifying shows a lack of independence. The record is clear that Bradford did not want to be examined by Olson's counsel. Fourth, Bradford testified at trial and the court admitted in evidence the video clips of Bradford's deposition. We presume the court considered the evidence presented and gave it the weight it deemed appropriate; indeed, the court suggested during closing arguments the video clips were not credible. We do not reweigh the evidence on appeal. *See Castro*, 222 Ariz. at 52, ¶ 11.

G. Independent Counsel

¶58 In her October 2009 guardianship and conservatorship petition, Olson requested that the court appoint an attorney for Bradford. In December 2009, however, attorney Jeff Shumway, together with several attorneys from a California law firm, appeared on Bradford's behalf. After the court inquired as to counsel's independence, and considered letters submitted by these attorneys outlining the circumstances under which they were retained, the court "acknowledge[d]" them as counsel of record for Bradford. In July 2015, Shumway filed an emergency motion asking the court to *appoint* counsel for Bradford, explaining it had "become increasingly difficult to ethically represent Bradford because of the interference [from] third parties," and that "simply withdrawing from [] representation w[ould] not effectively resolve the problem or protect Bradford" because new counsel would have the same problem. Shumway requested an immediate hearing on the matter. In August 2015, Stephen Kupiszewski filed a notice of appearance as Bradford's attorney.

¶59 On Bradford's behalf, Kupiszewski filed an objection to Shumway's emergency motion, asserting he had been "independently retained" by Bradford. Kupiszewski objected to "any testimony being offered" by Shumway "as being potentially detrimental to [Bradford's] interests." Kupiszewski further added that "Bradford ha[d] not given informed consent to reveal any information in either his or Mr. Shumway's possession." Bradford also filed a motion to temporarily restrain Shumway from filing an affidavit that would allegedly violate attorney-client and work-product privileges. Olson opposed the temporary restraining order against Shumway, requesting the court "take steps, as requested by Mr. Shumway," to ensure that Bradford has independent counsel. Shortly

thereafter, Shumway prepared a draft affidavit, but the court ordered him not to file it in connection with an upcoming hearing, scheduled for September 28, 2015. The minute entry from the hearing indicates that Bradford, Kupiszewski, Shumway, and Olson's counsel were present, and that after discussion and argument, the court denied Shumway's emergency motion and removed him as counsel of record for Bradford.

¶60 Olson asserts that the superior court's "suppression of Shumway's noisy withdrawal, including efforts to obtain independent court-appointed counsel for Brad[ford] was error." She contends that Kupiszewski was not independent, which warrants reversal and a new trial at which Bradford "should be represented by court-appointed counsel who is not directed, controlled, and paid by [William] and Sherry." The Lunds counter that Olson has waived these arguments because she failed to raise them in the superior court. We agree. Despite the Lunds' waiver argument in their answering brief, Olson failed to address the argument in her reply brief; nor does she point to any location in the record where these assertions were raised in the superior court proceedings. *A Tumbling-T Ranches v. Flood Control Dist. of Maricopa Cnty.*, 222 Ariz. 515, 529, ¶ 34 (App. 2009) ("It is not our responsibility to search the record to determine if the issues raised on appeal were properly preserved."). And to the extent Olson may have asserted these arguments at the September 28, 2015 hearing, Olson has not provided a transcript of that hearing, which is her responsibility. ARCAP 11(c)(1)(A). Thus, the issue of whether the court erred by suppressing Shumway's efforts to obtain independent counsel is waived. *See Sobol v. Marsh*, 212 Ariz. 301, 303 ¶ 7 (App. 2006) ("As a general rule, a party cannot argue on appeal legal issues and arguments that have not been specifically presented to the trial court.").

H. Shumway's Draft Affidavit and Testimony

¶61 Olson vaguely suggests, in a footnote, that based on arguments made in her motion for new trial she should have been permitted to call Shumway as a witness at trial. As best we can tell, she contends that she should be granted a new trial because Shumway's draft affidavit, allegedly unknown to her until after trial, constitutes newly discovered evidence and serves as an offer of proof as to what Shumway could have testified to at trial. Olson cites no authority for her underlying assumption that Shumway could provide any admissible testimony, through an affidavit or otherwise, without Bradford's consent. *See* Ariz. R. Sup. Ct. 42, ER 1.6(a) (addressing confidentiality of information relating to client-lawyer relationship). Regardless, we find no error.

¶62 The superior court denied Olson's motion for new trial, in which she asserted in part that Shumway's affidavit was newly discovered evidence. We review the denial of a motion for new trial for an abuse of discretion. *Boatman v. Samaritan Health Servs., Inc.*, 168 Ariz. 207, 212 (App. 1990). Under Arizona Rule of Civil Procedure 59(a)(1), the court may grant a new trial based on newly discovered evidence if the following requirements are met: "(1) the newly discovered evidence must have been in existence at the time of trial; (2) the evidence must not have been possessed by the party seeking relief; (3) that party must not have known of the evidence; and (4) the evidence must not have been available to that party." *Soto v. Brinkerhoff*, 183 Ariz. 333, 336 (App. 1995) (internal citations omitted). The party must have also exercised diligence. *Id.* at 336 n.1. Here, assuming the first, second, and fourth requirements are met, and further assuming that an unsworn, unsigned affidavit constitutes "newly discovered evidence," Olson fails to show how she meets the third requirement.

¶63 In September 2015, Bradford filed a motion to temporarily restrain Shumway from filing his draft affidavit, asserting it would violate attorney-client and work product privileges. Olson opposed the temporary restraining order. In October, the GAL filed a petition for instructions asking the court to instruct him, among other things, concerning "the documents provided by Jeff Shumway to the GAL." As described in the petition, in May 2014 Shumway had "informed the GAL that he was experiencing significant difficulties in representing Bradford." Shumway had also given the GAL "draft documents," which included his draft affidavit, and these documents were the "primary impetus" for the GAL filing a petition for appointment of a limited conservator. The GAL's petition, sent to all counsel, explained that its contents were "primarily based upon Mr. Shumway's observations of the actions of [Sherry], and other family members, and Mr. Shumway's own inability to assist his client based upon their interference or significant influence over Bradford."

¶64 Olson has also not shown she exercised reasonable diligence in obtaining the evidence. Even though she was aware, at least generally, of the type of evidence Shumway could have provided at trial, Olson makes no argument that she attempted to depose him or call him as a witness. Indeed, Shumway was not listed in Olson's pretrial statement.

¶65 Further, we are not persuaded by Olson's suggestion (with no citation to authority) that Shumway's unsigned, unsworn affidavit served as an offer of proof of the testimony he could have provided. We are unaware of any point in these proceedings where the court ruled on the

admissibility of Shumway's testimony. *See Warfel v. Cheney*, 157 Ariz. 424, 431 (App. 1988) ("[E]rror may not be predicated on a ruling excluding evidence unless the substance of the evidence was made known to the trial court."). And even assuming there were two Shumway affidavits, as Olson suggests for the first time in her reply brief, she failed to make any showing that the court's failure to *sua sponte* rule that Shumway could properly be called as a witness at trial constitutes reversible error. *See Toy*, 192 Ariz. at 84; *Wean Water, Inc. v. Sta-Rite Indus., Inc.*, 141 Ariz. 315, 317 (App. 1984) ("Where the improper exclusion of evidence does not affect a substantial right of a party it is not reversible error.").

I. Guardian Ad Litem

¶66 In February 2010, the court appointed Joseph M. Boyle ("Boyle") as the GAL for Bradford, finding it was "prudent to appoint a neutral . . . [GAL] selected by the Court in this matter." Bradford, Wells Fargo, and the GAL then entered a stipulation specifying some of the GAL's duties with regard to certain trust distributions from Wells Fargo (e.g., writing checks for expenses). Several months later, Shumway asked the court to clarify the GAL's role because Bradford was represented by counsel and there had been no finding that Bradford was incompetent.

¶67 The superior court acknowledged there had been no prior determination of incompetency, but stated that even though it lacked a record of the proceedings when the GAL was appointed by a prior judge, the court assumed the GAL was appointed to determine Bradford's best interests and assure that his attorneys represent those interests. The court then directed the GAL to take several actions, including making a personal assessment as to whether Bradford selected his own attorney and whether he had the capacity to determine his own best interests. Depending on the outcome of the assessment, the GAL would then file a petition for discharge, or alternatively, inform the court whether Bradford was in need of protection.

¶68 The GAL filed a report in September 2010, stating that based on the evidence and a prior court ruling regarding Bradford's independent counsel, a GAL "would probably not be needed, or could be dismissed," if this were a "normal guardianship/conservatorship case." However, given the unique nature of this case, the GAL explained that his role as GAL "was somewhat expanded[;] [t]here were issues and logistical matters that the parties agreed a neutral third party GAL could be of assistance." The GAL also noted that the parties requested that he remain in the case to continue stipulated functions and other duties as approved by the court.

¶69 In May 2011, the GAL filed a motion asking to withdraw as Bradford's GAL for the reasons stated in Dr. Blackwood's May 3, 2011 report. In July, a different judge denied the GAL's motion to withdraw, noting the "appointment of the guardian ad litem was by stipulation" and there were "significant evidentiary bases for continuing the appointment."[6]

¶70 In December 2014, the GAL again asked for the court to "clarify the scope, reasons for and rights of access regarding his appointment." The GAL also petitioned the court to appoint a limited conservator for Bradford, alleging Bradford was not able to manage his estate and his assets would be wasted or dissipated if a conservator were not appointed. In July 2015, the GAL filed an emergency petition for the appointment of a temporary limited conservator, alleging Bradford would lose control of all of his substantial assets once they were placed in the Nevada Trust and that Bradford did not "fully appreciate the magnitude of such a decision." The GAL also alleged Bradford was "unable to make any appropriate decisions regarding his participation in various legal proceedings that drastically affect and diminish his assets," and that Bradford could no longer direct his attorneys.

¶71 In October 2015, Bradford filed a motion to terminate the GAL, alleging the appointment of the GAL violated his right to due process. Among other things, Bradford argued there was "no statutory or other regulatory authority for a GAL over Bradford Lund." The GAL then filed a petition for instructions asking the court to instruct him, among other things, concerning Bradford's "financial matters" and the documents Shumway provided to the GAL. The petition recommended the draft documents be disclosed to all parties and the court so that everyone could "review them and conduct any additional discovery or make their own determinations as to veracity of Shumway's statements in the documents and the reasonableness of the GAL's actions given the receipt of these documents and related information."

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[6] The record before us indicates the parties stipulated to the GAL's duties, but not his appointment. In the stipulation, Bradford asserted he entered into it "only as a means of resuming his access to funds that previously were provided to him for a period of years, and to avoid further litigation expense," and he disputed "any and all assertions to the effect that he is incapacitated or incapable of making decisions about how to use and spend the full amount of the Distributions."

¶72 In response, Bradford filed a motion to dismiss the guardianship and conservatorship petition in December 2015, arguing the record was irreconcilably corrupted such that he could not receive a fair trial based on the information that had been in the GAL's possession for nearly a year and a half. Bradford further stated it was disappointing to learn from the GAL "that Shumway had secretly drafted conservatorship pleadings for the GAL and engaged in extensive communications with the GAL as far back as May, [sic] 2014." Alternatively, Bradford asked that the GAL and his counsel be disqualified from the case.

¶73 On January 21, 2016, the court terminated the GAL, finding that a GAL was not needed and that its decision was impacted by its denial of the GAL's motions "to enter some temporary orders relating to conservatorship" and the fact that trial was "two months away." The court explained further that one of the reasons a GAL was not needed was because the issues surrounding the GAL and Bradford's counsel had "become a distraction in the case on a very substantive level" and were "getting in the way" of finishing the case, something that "should have happened many, many years ago."

¶74 In March 2016, Bradford filed a motion in limine seeking to preclude Boyle from testifying. Olson wanted Boyle (the former GAL) to testify for "five to ten minutes," explaining in her response to Bradford's motion that the information she sought was "germane to [her] burden to prove whether Brad[ford]" could "manage his own estate (someone else does it for him now)" or "has assets that are likely to be wasted or dissipated (by showing that substantial sums have passed out of his apparent control)."

¶75 After hearing from Olson's counsel at a subsequent pretrial conference, the court stated, without explanation, that it was "going to grant the motion in limine." Two months earlier, however, at the hearing in which the GAL was terminated, the court explained that it would "take an awful lot to persuade" the court that the GAL or Shumway should testify, but it did not make any ruling on the issue at that time. The court was primarily concerned about giving Shumway and the GAL, who have "important roles" or are in "positions of confidentiality," an opportunity to testify "against people in this case" because Shumway, while representing the proposed ward, allegedly drafted a petition of conservatorship and gave it to the GAL to file. "You don't hire a lawyer and then use that lawyer against somebody . . . . And, you know, the GAL is in the middle of it . . . ." The court also noted that there were "plenty of other people" who could testify that had "observations and dealings with [Bradford]."

¶76 Olson argues the court abused its discretion in dismissing the GAL and granting the motion in limine precluding him from testifying because Boyle could have provided material evidence on the following: (1) William Lund's misrepresentation to him that Bradford had $20 million in assets; (2) the Lunds' refusal to cooperate with his oversight of Bradford's finances; (3) Boyle's "fear of reprisal" from the Lunds for trying to protect Bradford; (4) Boyle's belief that the extensive litigation brought in Bradford's name was neither controlled by Bradford nor in his best interests; and (5) Boyle's "views on the necessity of a guardian and conservator in light of the evidence." Olson also asserts the GAL could have testified about various issues relating to Shumway.

¶77 Because the superior court is given "wide latitude" to protect a ward's well-being, *Kelly*, 184 Ariz. at 518, we review the dismissal or appointment of a GAL for an abuse of discretion. We will not disturb the court's evidentiary rulings "absent a clear abuse of discretion and resulting prejudice." *Jimenez*, 206 Ariz. at 427, ¶ 10. We will affirm the court's decision if it is correct for any reason. *Kocher v. Dep't of Revenue of State of Ariz.*, 206 Ariz. 480, 482, ¶ 10 (App. 2003).

¶78 As noted in the comments to Rule 18 of the Arizona Rules of Probate Procedure, "A.R.S. § 14-1408 and Rule 17[], Arizona Rules of Civil Procedure, govern when a GAL may be appointed for . . . an incapacitated person." Section 14-1408(A) allows the court to "appoint a representative" to "represent, bind and act" on the incapacitated person's behalf "[i]f the court determines that an interest is not represented . . . or that the otherwise available representation might be inadequate." Rule 17(f)(2)(A) of the Arizona Rules of Civil Procedure requires the court to "appoint a [GAL]—or issue another appropriate order—to protect a[n] . . . incompetent person who is unrepresented in an action."

¶79 Substantial support exists in the record showing Bradford's interests were being represented by independent counsel and his representation was adequate under A.R.S. § 14-1408(A). Substantial evidence also exists demonstrating Bradford is not incompetent. Consistent with the court's findings of fact and conclusions of law, the record shows he understood the nature of the proceedings and was able to assist in the presentation of his case. Therefore, because substantial evidence shows Bradford was not in need of a GAL under A.R.S. § 14-1408 or Rule 17 of the Arizona Rules of Civil Procedure, we find no abuse of discretion in the court's dismissal of the GAL.

¶80 Even assuming Olson made a sufficient offer of proof, she has not demonstrated the court abused its discretion in granting Bradford's motion in limine, especially in light of the concerns the court outlined in addressing whether the GAL should be permitted to testify. *See supra* ¶ 75. Moreover, Olson has not shown how she was prejudiced by the court's decision to preclude Boyle from testifying. Although she identifies relevant evidence to which Boyle could have testified, none of the evidence would have made a difference in the outcome of this case, especially in the "five to ten minutes" Olson said would be needed for Boyle's testimony and due to the court already knowing, either from the GAL's filings or from other testimony or exhibits, the evidence the GAL could have provided.[7] *See State ex rel. La Sota v. Ariz. Licensed Beverage Ass'n, Inc.*, 128 Ariz. 515, 523 (1981) ("The exclusion of repetitious or cumulative evidence does not require reversal by an appellate court."); *State v. Cameron*, 146 Ariz. 210, 215 (App. 1985) (finding, in the context of erroneously admitted evidence in a bench trial, that the error was harmless in part because the trial judge already knew of the evidence from the doctor's report and the evidence was not "so prejudicial as to confuse the judge").

J. Attorneys' Fees and Costs

¶81 The Lunds request an award of attorneys' fees incurred on appeal pursuant to ARCAP 25 (authorizing fees for frivolous appeal or violation of rules) and A.R.S. § 14-1105 (authorizing fees as a result of "unreasonable conduct"). In our discretion, we deny the request. As the successful party on appeal, however, we award the Lunds taxable costs upon compliance with ARCAP 21.

CONCLUSION

¶82 We affirm the superior court's judgment denying Olson's petition for guardianship and conservatorship.

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[7] The only evidence arguably not before the superior court was the GAL's views on whether Bradford needed a guardian and the GAL's "fear of reprisal" from the Lunds. But Olson never gave these reasons for offering Boyle's testimony when she made her offer of proof. *See Sobol*, 212 Ariz. at 303 ¶ 7; *Cohn v. Indus. Comm'n of Ariz.*, 178 Ariz. 395, 399 (1994) ("[I]n order to establish error in the exclusion of evidence, one must first show that its substance was made known to the trial judge.").

APPENDIX A

The following includes the pertinent portions of the superior court's July 21, 2016 judgment:

> This case has had an unprecedented six-and-a-half year history of scorched earth litigation never before seen in the Probate Court, resulting in over 1300 docket filings, numerous Special Actions to the Appellate Courts of Arizona, multiple Court-appointed medical examiners, new lawyers, several judicial officers, and finally, culminating in a ten-day bench trial to this Court . . . . The Court heard approximately 55 hours of testimony and received 133 multi-page exhibits into evidence. Collectively, the parties . . . have incurred many millions of dollars in legal fees and expenses . . . . The Court having completed its review of the evidence, has evaluated the credibility of the witnesses, and issues its ruling below.
>
> . . . .
>
> Despite the long litigious history of this case, the issues [were] simple.
>
> . . . .
>
> The Court finds that substantial and credible evidence establishes:
>
> 1) Petitioners have failed to meet their burden of proof by clear and convincing evidence or by even a preponderance of the evidence as to the request for a Limited Guardianship.
>
> 2) Petitioners have failed to meet their burden of proof by a preponderance of the evidence to establish a Limited Conservatorship or other less restrictive alternatives.
>
> 3) Bradford Lund has established by clear and convincing evidence [that] presently, in 2016, he is not incapacitated, an appointment of a guardian is not necessary to provide for his demonstrated needs, and Bradford Lund's needs are currently being properly met by less restrictive means.

4) The Court-Appointed Independent Neuropsychologist Dr. Daniel Blackwood testified that "Mr. Lund is not in need of a guardian or a conservator as of May 3, 2011."

5) Court Investigator Robert Segelbaum testified that as of June 2011, he had "ambivalent" feelings whether a guardianship and/or conservatorship were warranted. He deferred to Dr. Blackwood, although he did conclude "there does not appear to be any reason to secure a guardianship at this time," referring to as of June 2011.

6) The Petitioners presented no credible expert testimony that Bradford Lund needs a limited guardian or conservator.

7) Bradford Lund's treating physicians Dr. Duane and Dr. Chung were the only neurologists who have examined Bradford Lund since May 2011 and both testified Bradford Lund was not incapacitated and not in need of a guardian or conservator to effectively manage his personal care, medical, or financial matters so long as Bradford Lund continued to rely on the advice of trusted family members and professional advisors.

8) Petitioners concede Bradford Lund has the capacity to manage all of his activities of daily living.

9) Michelle Lund testified in the Superior Court of California on December 17, 2013, that Bradford Lund is "competent" and "he ultimately had the capacity to decide what he would want to do in a business sense."

10) Petitioner Krist[e]n Olson testified Bradford Lund had capacity when he loaned her family approximately $1 million.

11) Michelle Lund joined this Petition in this case because she thought the action was about the alleged undue influence of her father, Sherry Lund, and Rachel Schemitsch, not because of Bradford Lund's lack of competence.

12) Bradford Lund is able to effectively manage his medical care, estate, and other affairs. Bradford Lund has consistently demonstrated that he makes mature and appropriate financial decisions. He properly relies and has relied upon the advice of his father, Sherry Lund, Rachel Schemitsch,

Robert Rosepink, Douglas Wiley, and others as any reasonable person of substantial wealth would do in making important decisions involving his personal affairs, estate, and financial matters.

13) Bradford Lund has sufficient understanding or capacity to make or communicate responsible decisions concerning his person. As Dr. Duane emphasized, Bradford Lund has the insight to know his intellectual weaknesses and relies on trusted advisors for assistance.

14) Bradford Lund is not a prisoner in his own home and is not isolated from the family members he chooses to see.

15) Bradford Lund, now 45, has been described by Petitioners and the other witnesses as a very "frugal" man with his money.

16) There was no credible testimony Bradford Lund has ever wasted or dissipated any property or funds at any time in his life.

17) The weight of the credible evidence does not support Petitioners' claim that Respondents are out to get Bradford Lund's funds or have wrongfully benefitted from or improperly used his funds.

18) There was undisputed evidence Bradford Lund's father has assisted Bradford Lund and Michelle Lund in making collectively over $100 million in profits.

19) As stated by estate planning attorney specialist Douglas Wiley, the Nevada trust is an excellent method for Bradford Lund to protect his assets from both creditors and predators. Further, the trust is set up to preclude Bradford Lund from wasting or dissipating his assets.

20) Petitioners concede that Bradford Lund will never run out of money during his lifetime and that he receives over a million dollars a year in income from various trusts.

21) Bradford Lund testified that for the last four years since he took himself off the medications, he is more alert, has a better memory, and is more outspoken. He also explained he

> is very content with his life, other than this lawsuit. He enjoys his friends, his home, and he likes living with Rachel Schemitsch and her children. He enjoys spending time with his father and Sherry Lund and values their advice. He also enjoys playing golf, going to the gym, boxing training, using his Uber account, going out to lunch, movies, and traveling.
>
> 22) Although not his burden of proof, Bradford Lund has proven that he deserves the freedom in life to make his own choices.
>
> . . . .
>
> The Court, having found in favor of Bradford Lund on all issues, enters a final order of dismissal of [this case].

APPENDIX B

In denying Olson's motions to update the physician and investigative reports, the superior court reasoned as follows:

> I've got a trial date in place, and I really think it's important for this group of people to have their day in court if we're going to get this thing done. And here's what I'm worried about. The normal things. You're asking for a do-over, and a do-over requires time. I don't even know how long -- when these things can be set.
>
> We're right in the middle of the holiday season as we know. We can probably wipe out the month of December as not even being possible. So then we're looking to January. And let's say they can do it by the end of January -- both of these folks. I'm not worried right now about your IME request because I'm sure your person will make themselves available. But these two people who are either retired or not waiting for this assignment are going to be imposed upon, and I don't know what their schedules are.
>
> So let's say I say by the end of January you've got to have this done. Then they prepare their report. They usually want 30 days. Let's say I make them do it by the middle of February. Now, folks are going to want to do some perhaps limited discovery, and whatever information comes out of those -- because we basically have a whole brand new case, because

everyone is going to be scurrying around with what does this mean now, and I get the importance of that.

But then we have a March 28th trial date, and we've got the most important disclosures in the case perhaps made 30 days earlier. It doesn't make sense. So then I'm going to get a motion to continue the trial date.

. . . .

[B]ut somebody might, and so they can pursue follow-up discovery, if necessary. I don't know. I just find that the idea of doing brand -- you know, essentially new evaluations. You can call them supplements if you want -- is a problem at this stage, you know, why it didn't go to trial a long time ago. I wasn't a party to and I didn't make any of those decisions. But it seems like maybe we ought to go to trial with the case that we have.

You all know that going into your settlement conference, so you know what case you're trying, not what case you're not trying. And then you can use whatever that means to help settle this case and move it forward or not or then we finish it at trial –-

. . . .

Which is fine, and who knows how it's going to play out at trial.

. . . .

But I have to tell you that in a lot of medical cases, yes, it comes up, take it in any context where sometimes people want to repeat an IME because there's been a period of time. And sometimes it's granted, and sometimes it's not. It's a discretionary thing. The thing that is affecting me right now is the timing --

. . . .

[A]nd where I think that would lead. And I'm also hearing this need for additional follow-up discovery even to get these investigators up to speed. You want some additional

information that hasn't been provided yet so that the investigator has something to look at or Dr. Blackwood has something to look at in addition to what he's already looked at. And now we're going down that can of worms, which I know there's going to be opposition to if we do that.

. . . .

And here we are, we're spinning issues that aren't getting us to March 28th.

. . . .

[A]t some point you've got to cut it off. That's what this is all about. It's not a perfect world. We don't have knowledge about all information. But I suspect there's five years of history that people -- some people have relevant information about that they can testify to --

. . . .

--and their observations. And they may be called as witnesses, and they may not be experts --

. . . .

I don't know. I don't know what the scope of the witnesses are. I haven't seen the witness list yet.

. . . .

I came from a world as a private civil lawyer where we did a lot of work with experts in the medical field, and so I know that it wasn't very easy to just call somebody and say, can I get your services tomorrow? I often needed 30 and 60 and 90 days for people, especially if they were really good because they were busy. That's what I'm used to, and I'm sure, you know, you are, too.

. . . .

I agree [that the Court will order an updated report or a court investigation report], by the way, in 99 percent of the cases. This case has proven to be that one percent. It's completely out of control.

. . . .

The tail is completely wagging the dog here, and it has been for several years, and it's already wagging me because I see what's being filed here. In the short time I've been on this case, it blows your mind. I've got motions to dismiss and inside motions to dismiss. I've got other requests. Just like I just got -- I've got requests for document requests within requests for an IME. I can't keep track of it all, and it's spinning out of control, and it has been spinning out of control.

So one way to do it is to say, you know what, you guys have an imperfect record in an imperfect world. We are where we are. We're going to trial. And that's kind of where I feel that that's the role I've been asked to assume. I'm also mindful of once I assume a role, I try to follow what makes sense. What does due process require on one side, what does procedural processes require on the other, and balance those.

So I totally get what you're saying. It would be nice to have an updated evaluation, and, as I said, the minute I do that, with this group of people, where's that going to spin off to?

. . .

Because right now I've got enough here to postpone the trial date. I've got motions to dismiss that are serious in their allegations. They're calling a fraud on the Court has occurred.

. . . .

And so if I'm supposed to address those and give them adequate time for briefing and perhaps hearings, where's the trial date going to be? . . . I get the big picture. These things are fluid, and it's nice to have updated information when you're making decisions that affect people's lives. And I understand that. I understand the importance of it.

. . . .

Again, on balance I've considered the various positions of the parties. I'm concerned about getting this case resolved on the merits. On March 28, I'm going to hold -- these rulings are in

part based on that. I just don't see that we have time to incorporate this type of very substantive type of follow-up on issues that are -- in my view, is going to delay the trial and not get us where we need to be.

AMY M. WOOD • Clerk of the Court
FILED: AA