STATE OF MICHIGAN

COURT OF APPEALS

In re Guardianship of ROBERTA MORE ASPLUND.

GEORGETTE E. DAVID, Guardian of ROBERTA MORE ASPLUND, a legally protected person,

Appellee,

v

RANDALL ASPLUND and ALEXIS MORE,

Appellants.

UNPUBLISHED
November 24, 2020

No. 351166
Washtenaw Probate Court
LC No. 17-001137-GA

In re Conservatorship of ROBERTA MORE ASPLUND.

KATHLEEN M. CARTER, Conservator of ROBERTA MORE ASPLUND, a legally protected person,

Appellee,

v

RANDALL ASPLUND and ALEXIS MORE,

Appellants.

No. 351168
Washtenaw Probate Court
LC No. 17-001138-CA

Before: SAWYER, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

In these consolidated appeals involving disputes over the guardianship and conservatorship of Roberta More Asplund,[1] Roberta's son Randall Asplund, and Roberta's niece, Alexis More,[2] appeal by right the probate court's order denying their petitions to remove Roberta's conservator, Kathleen M. Carter, and Roberta's guardian, Georgette David, and replace them with More as both Roberta's guardian and her conservator. For the reasons more fully explained below, we affirm the probate court's order of October 1, 2019, which denied the petitions.

I. BASIC FACTS

On August 21, 2017, Roberta suffered a brain aneurysm, which impaired her cognitive functions. She was 91 years of age at the time. Roberta's daughter, Karin Asplund, petitioned the probate court for the appointment of a conservator and a guardian on November 22, 2017. Karin nominated Joelle L. Gurnoe-Adams to be Roberta's conservator and nominated Georgette David to be Roberta's guardian. On December 14, 2017, the probate court granted the petitions. The record showed that Roberta responded well to the surgeries to correct the aneurysm, and she was eventually transferred from the hospital to a rehabilitation facility.

Even before the appointments, Randall clashed with his siblings—Karin and Richard Asplund—over their mother's care. After the probate court granted Karin's petitions, Randall disagreed with the decisions made by Gurnoe-Adams and David. Randall, who represented himself for much of the litigation, began filing petitions and other documents with the probate court contesting the actions of Gurnoe-Adams and David.

In January 2018, David and Gurnoe-Adams submitted a joint petition for instructions. They alleged that Randall had expressed many differences of opinion with them over the short five-week period since their appointments. Randall had also engaged in conflicts with Richard and Karin over Roberta's care. They stated that Randall had been having discussions with Roberta about her properties, the costs of her care, and about disputes with his siblings. These conversations were stressing Roberta. They stated that Roberta had been content at the facility where she was recovering but now expressed that she was a prisoner. They were concerned about Roberta's mental health and well-being under these continuing conditions. Accordingly, they asked the probate court to provide them with instructions on the "best way to protect Roberta More Asplund from the negative and harmful actions of her son, Randall Asplund."

In June 2018, the probate court authorized Gurnoe-Adams to resign and appointed Carter as her replacement. Additionally, the probate court authorized David to restrict Randall's interactions with Roberta after a hearing held in July 2018. The record showed that Randall ignored or circumvented David's efforts to limit his interactions with Roberta. Indeed, at one point David felt compelled to petition the probate court for a restraining order against Randall, but she withdrew the petition.

[1] For ease of reference, we refer to the members of the Asplund family by their first names.

[2] Although More is also an appellant, only Randall is listed on the brief submitted on appeal.

The record showed that, after Roberta recovered enough to be discharged from the rehabilitation facility, David made efforts to modify Roberta's home to allow her to remain there. Those efforts did not, however, succeed. There was evidence that the efforts failed, in part, because Randall interfered with the care provided by his siblings and the professional in-home caregivers. Randall took the position that Roberta had recovered enough that she did not need a guardian, a conservator, or constant in-home care, which he believed were all too expensive.

More petitioned the probate court to modify the conservatorship on November 7, 2018. More, who lived in Chestertown, New York, asserted that Roberta wanted More to be her conservator because Carter had been acting contrary to Roberta's best interests. More also filed a petition to modify Roberta's guardianship on the same day.

On November 13, 2018, Randall petitioned the probate court to remove Carter and appoint More to be her successor. Randall stated that Carter should be removed because she had "worked directly against [Roberta's] best interests by needlessly dissipating her estate, by making false representations to the court, by implementing needless restrictions contrary to the needs of the ward, by disposing of possessions in good condition, and by refusing competent help offered at no cost." Randall similarly petitioned to modify Roberta's guardianship because, he alleged, David was colluding with Carter to hide Roberta, and because David was trying to commit Roberta to a psychiatric ward so that she could remove Roberta from her home.

Randall filed an emergency petition to modify the guardianship and conservatorship with the probate court in December 2018. Roberta's brother also filed an emergency petition in that same month.

In January 2019, David petitioned for permission to resign and nominated another professional guardian to replace her.

The probate court held a hearing to consider the petitions in January 2019. It dismissed Randall's emergency petition from December 2018 and the petition by Roberta's brother. With regard to the petitions to remove David and Carter that Randall and More filed in November 2018, the probate court determined that those petitions had to be tried on the merits. The probate court thereafter took testimony and evidence over seven trial dates that spanned several months. The probate court held the final day of trial in August 2019.

The probate court entered an order denying Randall and More's petitions on October 1, 2019.

Randall and More appealed the probate court's order denying their petitions to modify or terminate the guardianship and conservatorship in this Court on October 22, 2019. This Court assigned Docket No. 351166 to the appeal from the guardianship case and assigned Docket No. 351168 to the appeal in the conservatorship case. This Court consolidated the two appeals for the efficient administration of the appellate process later that same month. See *In re Guardianship of Roberta More Asplund*, unpublished order of the Court of Appeals, entered October 29, 2019 (Docket Nos. 351166 and 351168).

II. SCOPE OF THE APPEALS

As a preliminary matter, we must address Carter and David's argument that this Court lacks jurisdiction to consider Randall's claims involving orders other than the probate court's order of October 1, 2019. See *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009) (stating that whether this Court has jurisdiction to hear an appeal is always within the scope of this Court's review). This Court's jurisdiction is generally determined by statute and court rule. *Id*. at 191-192. The Legislature provided this Court with jurisdiction to hear appeals of right from probate orders and judgments defined under the court rules as final orders. See MCL 600.308(1); see also *In re Rottenberg Living Trust*, 300 Mich App 339, 353-354; 833 NW2d 384 (2013). Our Supreme Court defined a series of orders to be final orders when those orders affect the "rights or interests of an interested person in a proceeding involving . . . a conservatorship or other protective proceeding." MCR 5.801(A)(2). An order appointing or denying a petition to appoint or remove a fiduciary—such as the probate court's opinion and order of October 1, 2019, is a final order. See MCR 5.801(A)(2)(a). As such, Randall had an appeal of right from that order, MCR 7.203(A)(2), which had to be appealed within 21 days, MCR 7.204(A)(1)(a). Randall appealed the order on October 22, 2019. Therefore, this Court has jurisdiction of that appeal. MCR 7.204(A).

Randall, however, also makes statements that suggest that the probate court erred with regard to orders other than the order specifically identified as the order from which he took his appeals. To the extent that Randall's claims of error involve the probate court's initial appointment of fiduciaries or orders affecting interests in real and personal property, those orders were final orders that had to be separately appealed. See MCR 5.801(A)(2)(a), (j), (o); MCR 7.204(A)(1)(a); see also *Mossing v Demlow Prod, Inc*, 287 Mich App 87, 91-94; 782 NW2d 780 (2010) (recognizing that multiple final orders in the same litigation must generally be separately appealed). To the extent that Randall's claims involve the probate court's grant or denial of a petition for instructions or the probate court's order that Roberta undergo a mental health exam, those claims too involved final orders that had to be appealed within 21 days of the entry of those orders. See MCR 5.801(A)(2)(cc); MCR 5.801(A)(3); MCR 5.801(A)(4); MCR 7.204(A)(1)(a). The time limit for an appeal of right is jurisdictional. MCR 7.204(A). Moreover, the appeals might be beyond the time limit for granting delayed leave to appeal. See MCR 7.205(G)(3).

We further note that Randall's brief on appeal includes assertions that suggest that the probate court committed evidentiary errors, had a judicial bias, violated due process, and made other errors not involving its findings or application of the law to its findings. To the extent that Randall's brief might be understood to have asserted such claims, he has abandoned them by failing to separately state and number the claims, see MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132-133; 610 NW2d 264 (2000), and by failing to offer any meaningful discussion of the law or facts in support of any such claim, see *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). For all these reasons, we limit the scope of these appeals to consideration of Randall's claims that the probate court erred with regard to its findings and its application of the law underlying its order of October 1, 2019.

III. PETITIONS TO REMOVE

A. STANDARD OF REVIEW

This Court reviews de novo whether the probate court properly applied the law to the facts. *In re Gerstler Guardianship*, 324 Mich App 494, 507; 922 NW2d 168 (2018). This Court reviews for clear error the findings of fact underlying the probate court's application of the law. *Id.* A finding is clearly erroneous when, although there might be evidence to support it, this Court's review of the entire record has left the Court with the definite and firm conviction that the probate court erred. See *Reed Estate v Reed*, 293 Mich App 168, 173-174; 810 NW2d 284 (2011). Finally, this Court reviews the probate court's dispositional rulings for an abuse of discretion. See *In re Redd Guardianship*, 321 Mich App 398, 403; 909 NW2d 289 (2017). A probate court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id.*

B. BACKGROUND LAW

Randall's claims of error involve the law applicable to the appointment and removal of guardians and conservators. Under the Estates and Protected Individuals Code, see MCL 700.1101 *et seq.*, the Legislature provided probate courts with the authority to appoint any "competent person" to serve as the guardian for a "legally incapacitated individual." MCL 700.5313(1). The competent person must be "suitable and willing to serve" as guardian. MCL 700.5313(2). When multiple persons qualify to serve as a legally incapacitated person's guardian, the court must appoint a person in the order of priorities established under MCL 700.5313(2)(a) through (d), which involves persons previously appointed or selected by the incapacitated person. If there is no person chosen, nominated, or named under MCL 700.5313(2), or none of the persons who qualify under that subsection are suitable or willing to serve, the probate court must then appoint a person using the order of priorities for related persons stated under MCL 700.5313(3). The probate court may only appoint a professional guardian if none of the persons designated or listed under MCL 700.5313(2) and (3) are suitable or willing to serve. See MCL 700.5313(4). Although the ward generally has the right to choose who will serve as his or her guardian—if the person is "suitable and willing to serve"—a probate court's compliance with the terms of MCL 700.5313 will satisfy MCL 700.5306a(1)(aa), for the Legislature limited the right to select one's own guardian to selection "as provided" under MCL 700.5313. See MCL 700.5306a(1)(aa).

A probate court may appoint a conservator if an individual is "unable to manage property and business affairs effectively for reasons such as," in relevant part, "mental illness, mental deficiency, physical illness or disability" and the "individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money." MCL 700.5401(3); see also *In re Bittner Conservatorship*, 312 Mich App 227, 236-238; 879 NW2d 269 (2015). The Legislature provided probate courts with the authority to appoint an individual or entity to serve as a legal incapacitated person's conservator under MCL 700.5409(1). The Legislature established the following order of priority for the appointment of conservators:

(a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.

(b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

(e) A parent of the protected individual or a person nominated by the will of a deceased parent.

(f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.

(g) A person nominated by the person who is caring for or paying benefits to the protected individual.

(h) If none of the persons listed in subdivisions (a) to (g) are suitable and willing to serve, any person that the court determines is suitable and willing to serve. [MCL 700.5409(1).]

The Legislature, however, provided probate courts with the discretion to "pass over a person having priority" if it is in the protected person's best interests to do so. MCL 700.5409(2).

The Legislature allowed probate courts "to appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator" for a person. MCL 700.5106(1). The probate court, however, could only "appoint a professional guardian or professional conservator" if it first finds on the record that the appointment is in the ward's best interests and that there "is no other person that is competent, suitable, and willing to serve in that fiduciary capacity" in accordance with the priority provisions stated under MCL 700.5313 and MCL 700.5409. MCL 700.5106(2).

A ward or a person interested in the ward's welfare "may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship." MCL 700.5310(2). The Legislature did not, however, provide a specific standard for the removal of a guardian. See *In re Redd Guardianship*, 321 Mich App at 405. Examining the statutory scheme as a whole, this Court held that a guardian may only be removed under MCL 700.5310 if the party requesting removal establishes by a preponderance of the evidence that the guardian is no longer suitable or willing to serve. See *id*. at 406-407, 410. The Court further described what constitutes a suitable guardian:

Taken together, the statutory context and guidance from dictionaries confirm that a "suitable" guardian is one who is qualified and able to provide for the ward's care, custody, and control. With respect to whether an existing guardian

> remains suitable, it logically follows that particularly relevant evidence would include (1) evidence on whether the guardian was still qualified and able, and (2) evidence on whether the guardian did, in fact, satisfactorily provide for the ward's care, custody, and control in the past. [*Id*. at 408.]

When a guardian resigns or is removed, the probate court must appoint a successor guardian consistent with the statutory scheme for initial appointments, including the rules of priority. See *In re Gerstler Guardianship*, 324 Mich App at 508.

The probate court similarly has the authority to "remove a conservator for good cause, upon notice and hearing, or accept a conservator's resignation," MCL 700.5414, and a person interested in the ward's welfare may petition the probate court to remove a conservator, MCL 700.5415(1)(d).

C. THE PROBATE COURT'S FINDINGS

Randall argues in part that the probate court erred in rendering its decision because the court did not address what Roberta's rights were and what rights More and Randall had. He further complains that the probate court's findings were inadequate because it failed to address "the lack of evidence for each of its findings" and it did not consider whether less intrusive measures might suffice to protect Roberta and her property.

The probate court did not have an obligation to discuss matters that were not before it; it only had to make "[b]rief, definite, and pertinent findings and conclusions on the contested matters . . . without over elaboration of detail or particularization of facts." MCR 2.517(A)(2). The probate court's findings are adequate if it appears that the court was aware of the factual issues and correctly applied the law, see *In re Cotton*, 208 Mich App 180, 183; 526 NW2d 601 (1994), and when further explanation is unnecessary for appellate review, see *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176-177; 530 NW2d 772 (1995).

The only matters before the probate court on the petitions to modify and terminate were whether Roberta continued to need a guardian and conservator, whether More and Randall had established grounds for removing Carter or David, and whether More would be a suitable replacement in the event of a vacancy in either position. The probate court also had to determine whether there were any suitable replacements in priority over a professional guardian, should it accept David's resignation. The probate court's findings adequately addressed each of these matters. See MCR 2.517(A)(2); *In re Cotton*, 208 Mich App at 183. Moreover, the probate court's discussion of the law and its reasoning for applying the law were sufficient to permit appellate review; as such, further explanation is unnecessary. See *Triple E Produce Corp*, 209 Mich App at 176-177.

The probate court found that Roberta continued to need a conservator and guardian. It did not need to engage in an elaborate discussion of the evidence in support of that finding. For the same reason, the probate court did not need to make specific findings with regard to each and every act or omission that Randall or More alleged David and Carter to have made that might warrant removal; it was sufficient for the probate court to find that Randall and More had not established grounds for removing David or More, which is what it found. Additionally, the probate court

specifically found that both David and Carter acted reasonably and in compliance with Michigan law, which was sufficient to address Randall's claims that David and Carter had breached their duties to Roberta. Finally, the probate court's findings regarding More's qualifications to serve as a successor to either David or Carter were sufficient to identify the basis for the probate court's determination that she would not be a suitable replacement for either in the event of a vacancy.

Randall further suggests that the probate court had an obligation to discuss Roberta's mental and physical health and discuss whether a less intrusive means of safeguarding Roberta's estate could be had without the appointment of a full conservator. See *In re Bittner Conservatorship*, 312 Mich App at 242-243. The hearings at issue in this case did not involve an initial determination that Roberta was incapable of handling her own finances, nor did it involve the first appointment of a conservator or guardian. The petitions involved a request to remove an existing conservator and guardian by interested parties, and the probate court found that there were no grounds for removing them. The probate court also found that Roberta continued to need a conservator and guardian. Finally, the court explained that, there being no other persons who were suitable and willing to serve as replacements for David or Carter in the event of a vacancy, it would be in Roberta's best interests to continue with professionals. On this record, the probate court's articulation of its findings and determinations met the requirements of MCR 2.517(2)(A). See *Triple E Produce Corp*, 209 Mich App at 176-177; *In re Cotton*, 208 Mich App at 183.

Randall also generally asserts that the probate court erred with regard to its credibility determinations; more specifically, he maintains that the probate court could not have found Karin, Richard, Carter, David, or the caregiver who testified against him at an earlier hearing, to be credible. When reviewing the probate court's findings of fact, this Court must give regard to the probate court's special opportunity to judge the credibility of the witnesses who appeared before it. See MCR 2.613(C). This Court defers "to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Redd Guardianship*, 321 Mich App at 412 (quotation marks and citation omitted). The probate court had extensive experience with Randall, Karin, Richard, Carter, and David—among others—that spanned months of litigation in addition to their appearances at the evidentiary hearing. These interactions provided the probate court with ample opportunity to judge the witnesses' credibility, and this Court is not in a position to second-guess the probate court's assessment of the weight and credibility to be given the witnesses. *Id.*

Randall also complains that the probate court transformed the nature of the hearing from one involving the suitability and competency of Carter and David into one involving allegations against him. The record showed, however, that Randall's conduct was the driving force behind the majority of David and Carter's decisions. The probate court was well aware of the long history of disputes involving Randall, as cataloged in the lower court proceedings, and it took judicial notice of those proceedings. See MRE 201; *Knowlton v Port Huron*, 355 Mich 448, 452; 94 NW2d 824 (1959) (recognizing that a court may take judicial notice of the files and records of the court in which he or she sits). The testimony and evidence established that from the earliest moments in the guardianship and conservatorship Randall was a challenge for those persons who were trying to care for Roberta. The guardian ad litem (GAL) originally assigned to investigate Roberta's situation reported that, even before the appointment of any guardian or conservator, Randall had already been in conflict with Richard over Roberta's estate, and the GAL also noted that the staff

at the rehabilitation facility where Roberta was recovering from her aneurysm had described Randall as very challenging.

The record showed that Randall fought every decision made by anyone involved in Roberta's care, no matter how routine the decision might be. For example, he disputed the decision to remove the carpet from Roberta's home to make it safer for her even though there was testimony that the carpet was old, posed a safety hazard, and was severely soiled. He even felt it was improper to replace Roberta's defective stove because, in his view, it did not pose a danger. He insisted on the installation of a chair lift in Roberta's home rather than establishing her living quarters on the ground floor, even though there was evidence that Roberta's physical condition made it unsafe for her to ascend and descend stairs and that a chair lift posed an unnecessary risk for her when unsupervised. Randall further fought Carter's efforts to reduce Roberta's monthly expenses by turning over her van to the van's lessor. He obstructed Carter's efforts ostensibly because Roberta might someday be able to drive again. Randall forced the dispute with the van despite the overwhelming evidence that the van was no longer necessary for Roberta's care, had a sizable debt associated with it, and served as a significant drain on her financial resources. Testimony and evidence further established that Randall interfered with the efforts to care for Roberta in her home to the point that potential family caregivers refused to care for her, contractors refused to perform needed repairs, and a firm engaged to provide professional in-home caregiving withdrew from Roberta's care.

Randall repeatedly challenged both Carter's and David's qualifications to serve on the basis of their decisions to limit Randall's involvement with Roberta. The record permits an inference that Randall manipulated Roberta—a cognitively impaired nonagenarian—and used her as a tool in his battle against his siblings, against Roberta's caregivers, and against her fiduciaries. David opined that Randall incited Roberta, changed the way Roberta thought, manipulated her, and was at times aggressive and hostile. Caregivers also reported to David that Roberta would not let them do additional chores around the house because Randall told Roberta that she needed to show that she was independent and that they were just babysitters. Additionally, the evidence showed that Roberta became agitated and angry when others discussed her financial condition, family disputes, and her care needs with her. Yet the evidence showed that Randall not only routinely raised such issues with Roberta, he enmeshed her in contentious litigation about the matters involved in the guardianship and conservatorship.

Randall also refused to comply with any efforts—both informal requests and court orders—to get him to stop discussing the litigation, Roberta's finances, and family disputes with Roberta. Indeed, Randall asserted that it was Roberta's right to hear about the things involved in her conservatorship and guardianship, despite David's efforts to restrict him from discussing them with her given that it caused her distress. Richard testified that Randall called Roberta 5 to 10 times per week and that Roberta called Randall the same number of times. Richard described their conversations as centering on the litigation and the "abusive guardianship." He overheard Randall cajoling Roberta into doing things to support his agenda, such as getting Roberta to contact her family physician, Dr. Amy Miller, in order to convince Dr. Miller to respond to Randall's letter. David too stated that Randall would speak with Roberta for hours on end and instruct Roberta to prepare things for hearings; he also told Roberta that her caregivers were babysitters that she did not need, that she had lost her rights, and that she was imprisoned, which sentiments Roberta then repeated in comments at hearings. Richard also offered testimony that Randall would do things to

cause Roberta to become agitated, such as driving her past one of her homes with a for sale sign out front.

The evidence and record showed that Randall would go to extreme lengths to gain access to Roberta to further his goals. Even after David succeeded in limiting Randall's contact with Roberta, Randall did not desist. Instead, he elicited the help of third persons and distant relations to circumvent the limitations. He did so with complete disregard for the mental, emotional, and financial toll that it took on Roberta. Richard stated that Roberta was less able to manage Randall's forceful and manipulative behavior after her aneurysm and he worried that Roberta seemed to need somebody to cling to after her aneurysm, which role Randall assumed. Randall also admitted that he knew where Roberta was living after an incident in November 2018, but notwithstanding that he reported Roberta missing to the police department and posted missing person fliers in the community.

Roberta's own testimony showed that she would rather discuss her past professional successes, her personal interests, her social life, and her family's heritage than become embroiled in bitter and contentious battles over every aspect of her care and every dispute between her children. Nevertheless, she made comments at the various evidentiary hearings that suggested that she had become convinced that there was a conspiracy to deprive her of her property and her personal liberties, which was unsupported by the recollections of everyone involved other than Randall and the third persons whom he had recruited. Even so, in other moments, Roberta expressed gratitude and affection for David, stated positive things about her court-appointed lawyer, Patrick M. Carmody, and related numerous positive things about the residents and staff of the home where she then resided. Indeed, at one point, Randall's lawyer interrupted Roberta while she was testifying positively about David and informed her that David—at least in her view—was the cause of all Roberta's problems. Roberta's testimony suggested that she might have better adjusted to her changed circumstances were it not for Randall's constant need to stir up controversy and involve her in his disputes with Richard, Karin, Carter, David, and every other caregiver or fiduciary involved with Roberta's care.

David's decisions about Roberta's care and Randall's involvement with Roberta's care cannot properly be evaluated without a full understanding of these events. Both fiduciaries were routinely confronted with Randall's extreme behaviors, which threatened Roberta's care and undermined their efforts to help Roberta. Randall's behaviors—from scaling roofs to take pictures inside Roberta's home to posing as a flower delivery person and misrepresenting a court order to get past the security at a nursing facility—motivated many of the decisions that Carter and David had to make. David received complaints that Randall engaged in intimidating and obstructive behaviors from nurses, social workers, and Roberta's in-home caregivers. Other testimony indicated that Randall's behaviors sabotaged David's efforts to permit Roberta to live out her days in her own home with the help of family and professional caregivers. As a result, David was compelled to find a facility that could provide Roberta with the care she needed. But Randall's conduct at that facility led the facility to refuse to take Roberta unless Roberta stayed in a related secure facility whose residents were persons with dementia. The change in facilities increased the monthly expense for Roberta's care and deprived Roberta of the social interactions that might have better served her care needs. These behaviors further depleted Roberta's assets, which in turn forced Carter to consider selling Roberta's home to free up the equity in the home so that Roberta would have sufficient funds for her care.

Given the history of Randall's interference, it was neither surprising nor inappropriate that the probate court allowed Carter and David to present evidence about Randall's conduct. The evidence was relevant and admissible as evidence in defense of their actions as Roberta's conservator and guardian. See MRE 401; MRE 402. The evidence that David's and Carter's decisions were in significant measure compelled by Randall's behaviors also supported the probate court's findings that Randall and More failed to establish grounds for removing Carter and David because the evidence tended to support the inference that the measures were reasonable and necessary to protect Roberta and to rectify the conditions created by Randall. For example, while Randall complains that David ignored Roberta's wish to live at her home on Newcastle, the evidence showed that David took significant steps to try and provide appropriate care for Roberta at her home. She tried to modify the home with Richard's help to make the home suitable for Roberta to reside there. She also tried to secure family members to provide Roberta with care without incurring the costs of professional care, and she hired professional caregivers to assist. The evidence further showed that Randall opposed the changes to the home and sabotaged the effort to find in-home care for Roberta.

Randall also implies that the probate court clearly erred when it found that Roberta continued to need the services of a guardian and conservator. He opines that her testimony showed that she was "very intelligent and cogent," and further asserts that there was no evidence that Roberta needed full-time care.

Contrary to Randall's contention, when examined as a whole, Roberta's testimony and in-court conduct was powerful evidence that she had a cognitive impairment that prevented her from making informed decisions about her own care and finances. Roberta was frequently unable to respond to a direct question. Her digressions and rambling answers suggested that she did not understand the questions and may have been confused about the nature of the proceedings. She also made statements that demonstrated that she did not understand the gravity of her own situation and could not make serious decisions about her own needs. For example, she testified that More would be fair and impartial because More's father was a "principal of a school and he got his doctorate—he was getting his doctorate to be in the library and he's an athlete and said nothing's going to be happening in this—if you can't study get out." She also said that she wanted to move back to her home because all her neighbors were tremendous people—they were all doctors with the exception of a couple—and she wanted to be a neighborhood watch person again. At another point she indicated that she had begun a relationship with an old acquaintance shortly before her hospitalization. She said that he was her brother's best friend and the most popular man in college. She stated that they had a really good time back then, even though the war was going on. She asserted that she intended to solve her financial predicament and need for help with her care by marrying that man. On still another occasion, she testified that she had "plans to earn money;" she explained that she was going to do some publishing and intended to return to work for Pfizer. Roberta's proposed solutions to her financial and care needs demonstrated that she lacked the cognitive ability to appreciate her circumstances and needs.

Roberta's testimony was also internally inconsistent. She at times expressed strongly negative views about the probate court, David, Carter, and the assisted living facility—claiming that she had been excommunicated, imprisoned, and lost her rights as a citizen—but she also gave testimony expressing affection for David, told lengthy stories about the people with whom she had been able to interact at the assisted living facility, and spoke proudly of all the things that she was

able to do and accomplish at the facility. Roberta's testimony showed that she was charming and vivacious; nevertheless, she also appeared to be disconnected from the reality of current events and was unable to comprehend the factors that had to be considered when making decisions about her finances and care.

When considered in light of the evidence that Randall had been poisoning the well against Roberta's caregivers, Roberta's inconsistencies suggest that her negative views were fostered by Randall. Her unsolicited comments and testimony permitted the inference that she had been brought to believe that she was supposed to express negative things about David, Carter, Carmody, and the assisted living facility, but that she sometimes forgot to do so. Notably, Roberta would on occasion stop her testimony to make some negative comment about her situation—as though the comments were expected or obligatory—and then would return to happily discuss the things which she had done and accomplished at the assisted living facility. She also inquired whether she had said what More or Randall wanted her to state at other points, and became concerned when she observed that Randall was "having a fit" after she described how much fun she had at the assisted living facility. Considered in context, the testimony suggested that Roberta's negative comments were motivated in part by a desire to please Randall.

On appeal, Randall accuses the probate court of summarizing Roberta's testimony "in a manner that was sort of scattered to give the appearance that Roberta is very confused." He offers that Roberta's testimony merely reflected her personality. The probate court sat through Roberta's testimony, saw her conduct and outbursts at numerous hearings, and was in the best position to evaluate the import of her testimony and behaviors. See MCR 2.613(C). The probate court did not misconstrue or misrepresent Roberta's testimony. Rather, it appears that Randall has presented Roberta's testimony in a false light to avoid the inferences most naturally to be made from her testimony.

Roberta's conduct at the hearings and her answers were consistent with Dr. Linas Augustine Bieliauskas's conclusion that Roberta suffered from a cognitive impairment. Dr. Bieliauskas specifically addressed whether Roberta needed a guardian in his neuropsychological evaluation of Roberta. Although he found that Roberta was "generally well-oriented" and was able to give "detailed personal information and was aware of contemporary political figures and current news events," he also found that she was "tangential, and perseverative during the testing process and often needed to be re-directed to task." She gave "unusual responses to verbal reasoning tasks" and her performance on a test that was "highly related to ability to function independently" showed that she was "impaired" and had "impaired executive functioning." She also demonstrated a "compromised ability to encode information." He further indicated that Roberta's test results likely did not reflect the true severity of her condition because the tests were normalized for a person of Roberta's age. On the basis of these results, Dr. Bieliauskas wrote that Roberta's neuropsychological test reflected "significant impairments in memory and executive functioning" that compromised her "ability to function independently and to make informed decisions." This was particularly true, he wrote, for any "task which requires effective memory." He determined that it was appropriate for Roberta to have an assigned caregiver and that it was appropriate for her to have an appointed "guardian to protect the patient's interests, given the conflict between the patient's children in doing so."

David testified that she was told after a care conference concerning Roberta that Roberta should not be left alone. Additionally, the probate court admitted a note in which a specialist opined that Roberta needed "24/7 supervision due to memory impairment and functional limitations." Although Randall submitted notes from Roberta's family physician, Dr. Miller, that appeared to suggest that Roberta might be able to care for herself, Dr. Miller also referred Roberta to a cognitive disorders clinic. Similarly, when Randall asked Dr. Nehal Gheewala to state whether Roberta's guardian should be removed, Dr. Gheewala stated that that could only be determined after a neuropsychology exam. Dr. Bieliauskas performed Roberta's neuropsychological examination thereafter and determined that Roberta was cognitively impaired and needed a guardian and a caregiver.

David also testified that Dr. Miller would not permit her to attend Roberta's examinations, and, when David asked Dr. Miller to give a formal written statement, Dr. Miller gave David the impression that that was not within her purview. David stated that it appeared to her that Dr. Miller was providing letters to Randall because Randall was demanding them. Randall's medical evidence was—at best—equivocal; and his preferred interpretation of the opinions by Dr. Miller and Dr. Gheewala were directly contradicted by Roberta's neuropsychological examination, and the evidence that Roberta lacked the capacity to make informed decisions about her own care. Therefore, to the extent that Randall argues that the probate court clearly erred when it found that Roberta was in need of a full guardian and a full conservator, his argument is without merit. There was strong evidence to support the probate court's finding—notwithstanding the evidence that Randall presented—and we are not left with the definite and firm conviction that it was mistaken. See *Reed Estate*, 293 Mich App at 173-174.

Randall also remarks that the probate court erred when it found that David and Carter had not done anything to warrant removal. He cites a list of acts and omissions that he believes should have been sufficient to warrant removal. Most of the acts or omissions that he identifies involve nothing more than disagreements with the decisions taken by David and Carter. Randall's mere disagreement with David and Carter does not establish grounds for removal. See *In re Norris Estate*, 151 Mich App 502, 512; 391 NW2d 391 (1986) (stating that mere mistakes or errors in judgment do not by themselves establish that a fiduciary has been guilty of negligence or a violation of duty). As such, Randall's opposition to Carter's decision to return Roberta's van to the lessor or with David's selection of a particular firm to provide in-home caregivers for Roberta did not by itself amount to evidence of misconduct, let alone misconduct that would justify removing David or Carter. Similarly, the fact that Carter may have inadvertently omitted items from a schedule of assets and liabilities did not establish that Carter was incompetent to serve as a conservator.

The evidence that David and Carter resisted Randall's further involvement in Roberta's affairs also did not establish grounds for removal. As discussed, there was evidence that Randall had been exacerbating Roberta's anxieties and that he was preventing Roberta from adjusting to her changed circumstances. There was also evidence that he was manipulating Roberta to further his need to cause conflict and make himself the center of attention. Accordingly, a reasonable finder of fact could reject Randall's contention that David was harming Roberta by limiting Roberta's interactions with Randall and the people whom Randall recruited to help him. Indeed, considering the evidence presented at the hearing and the history of the case, a reasonable finder

of fact could find that David would have been remiss had she not taken efforts to protect Roberta from Randall.

Randall argues further that the probate court ignored evidence that David had endangered and isolated Roberta by placing her in a secure assisted living facility. David testified that she felt that Roberta would be better served in a more traditional assisted living facility, but that she had to place Roberta in the more secure facility as a result of Randall's behaviors. As stated, there was evidence to support David's decision to limit Randall's access to Roberta. There was also evidence that Roberta was not isolated. Evidence showed that Richard and David visited Roberta regularly. David also stated that she would authorize appropriate visitors. Additionally, there was evidence that Roberta regularly socialized with staff and other residents, participated in events, and went on field trips. Consequently, the evidence showed that Roberta was not isolated.

Randall also makes much of the evidence that Roberta was involved in incidents with other residents. With regard to one incident, Roberta testified that another resident, who suffered from dementia, hit her because that resident thought Roberta was someone else. Roberta did not seem particularly concerned about it; in fact, she seemed amused. She wondered whether the woman was upset because her "little lover" looked at Roberta and laughed when Roberta changed the lyrics to "some of our college songs." She stated that the staff at the facility was, however, very concerned. Roberta also seemed unconcerned about a second incident involving a fall. She stated that she put a "little piece" under her shoe that compensated for a difference in leg length, which was loose. Another resident bumped into her and she fell. She stated that it was not planned. Although Randall places great weight on these incidents as evidence that David was not competent to serve as Roberta's guardian, the totality of the circumstances do not suggest that David neglected Roberta or that she was in danger while under David's supervision. Consequently, the probate court did not clearly err to the extent that it rejected Randall's claim that these incidents warranted David's removal. See *Reed Estate*, 293 Mich App at 173-174.

Randall's claim that Carter somehow acted inappropriately by failing to secure reverse mortgage is also inapposite. The evidence showed that Roberta had wealth in the form of equity in her home. Although Carter could have used a reverse mortgage to gain access to the equity, there was evidence that the amount of equity that could be unlocked through a reverse mortgage would not be sufficient to meet Roberta's long-term needs. Additionally, there was evidence that the costs associated with the reverse mortgage did not justify the liquidity that it would provide, especially in light of the fact that a significant portion of the funds unlocked by the reverse mortgage would be consumed by property taxes and the expenses associated with maintaining the home.

The evidence showed that Carter reasonably determined that selling the home would better serve Roberta's needs by unlocking the available equity and reducing Roberta's expenses. And More's testimony that her preliminary investigations into a reverse mortgage suggested that it might still be a viable option did not establish that Carter's weighing of the various factors amounted to a breach of fiduciary duty.

The same is true about Carter's other decisions involving Roberta's estate. Carter testified that Roberta's expenses at home far exceeded her expenses at an assisted living home, and Roberta did not even have enough to cover the cost of an assisted living facility.

Randall also repeatedly asserts that the probate court acted wrongfully when it granted David's petition to have Roberta evaluated by a mental health professional despite her refusal to submit to an evaluation. That order was a final order that had to be separately appealed. See MCR 5.801(A)(4); *Mossing*, 287 Mich App at 91-94. Randall did not timely appeal that order; as such, the propriety of that order is not before this Court. Nevertheless, to the extent that he cites that incident as an example of purportedly wrongful conduct by David, his argument is unconvincing.

David testified about the incident on November 8, 2018. She stated that it was her understanding that Roberta was standing on bins and trying to hang curtains when Roberta's caregiver confronted her about the danger of doing so. According to David, the caregiver said that Roberta became angry and threw a chair at her. Roberta then called Randall, and police officers arrived shortly thereafter. When David arrived, she saw that Roberta was upset; indeed, she had never seen Roberta so upset. David felt that Roberta should go to the hospital for a psychiatric and physical examination, but Roberta refused to go. So David prepared a petition to get an order allowing officers to transport Roberta for an evaluation. She did so in part because she felt that Roberta was in an altered mental state, and in part because Roberta had unruptured aneurysms and might be in danger given her emotional state. The probate court granted the petition, and Roberta was taken for an evaluation. David admitted that the hospital staff determined that Roberta was not a danger to herself, but she also said the hospital staff opined that Roberta was suffering from a mood disorder. David did not authorize Roberta's release to return home because she felt that Roberta's home was no longer a safe environment as a result of the caregivers' refusal to provide further in-home care for Roberta after the incident.

As Roberta's guardian, David had a duty to provide for Roberta's care, comfort, and maintenance. See MCL 700.5314(b). She also had the power to take steps to ensure that Roberta received proper medical and mental health care. See MCL 700.5314(c). And, when Roberta refused to go to the hospital for an evaluation, David had the authority to petition the court consistent with the requirements of MCL 330.1400 to MCL 330.1490. See MCL 700.5314(c).

On appeal, Randall asserts that David's conduct in preparing the petition for mental health treatment demonstrated grounds for removal. For example, he asserts that David did something wrong by failing to list him in the petition as an interested party. However, David was not required to list every interested person in the petition; at a minimum, she only had to list Roberta's guardian, which she did. See MCL 330.1434(2). He also faults David for failing to state clearly in her affidavit that she did not witness some of the events described and for failing to list the name and address of the caregiver who did witness the incident. The statute only required David to state the facts that were "the basis for the assertion" that Roberta was a person requiring treatment. MCL 330.1434(2). The statute does not require that the facts be stated in particular detail or that the person requesting the mental health examination identify the bases for the factual assertions. Although David's assertion of facts could have been better stated and could have provided more information, those failures did not establish that her petition was improper or amounted to a breach of her fiduciary duties. See *In re Norris Estate*, 151 Mich App at 512.

The same is true for Randall's claim that David failed to get a clinical certificate. David testified about the sudden nature of the incident and related that she prepared the petition immediately out of concern for Roberta's safety. Under the circumstances, the probate court could conclude that it was proper for David to submit the petition without a certificate as allowed under

MCL 330.1434(3). Moreover, the probate court plainly felt that the circumstances warranted an examination despite the missing certificate, as allowed under MCL 330.1435(2), because it authorized the petition. Consequently, although David might have done a better job of preparing the petition, the probate court could still find that David acted reasonably and in Roberta's best interests during that incident. As such, it could—and impliedly did—reject Randall's contention that David's handling of this incident established that David was unsuitable to be Roberta's guardian. Indeed, the probate court could have reviewed this evidence and found that it was further evidence that David diligently worked for Roberta's benefit.

Randall's characterization of Roberta's placement in an assisted living facility as captivity is also inapposite. David had a duty to provide for Roberta's care, custody, and control, MCL 700.5314, and had the authority to establish her residency, MCL 700.5314(a). Once Roberta's in-home caregivers refused to return to Roberta's home, David could reasonably conclude that it was unsafe to permit Roberta to live at home without caregivers. Accordingly, she could arrange for Roberta to live in an assisted living facility. The probate court heard the evidence concerning the events precipitated by the incident on November 8, 2018, and rejected the contention that David mishandled the events or otherwise acted inappropriately by finding alternate living arrangements for Roberta. The evidence supported the probate court's implied finding that David did nothing warranting removal in response to that incident, and we are notleft with the definite and firm conviction that the probate court erred in this respect. See *Reed Estate*, 293 Mich App at 173-174.

Finally, Randall argues that the probate court clearly erred when it found that More was not a suitable guardian or conservator for Roberta. The probate court found that, contrary to its hope, More was not the "neutral family member who could keep Roberta safe while navigating the friction between the immediate family members." Rather, she had "aligned herself with Randall" and had become more concerned about Randall's "crusade" than Roberta's well-being. The probate court cited the evidence that More had adopted views similar to Randall's that were simply not supported by the evidence and had adopted the "irrational" belief that Roberta had been kidnapped. The court found that she had made no attempt to be neutral. The probate court found it particularly troubling that More stated that she felt Roberta had the capacity to handle her own affairs, contrary to all the evidence, and intended to use Randall as a caregiver, even though that was clearly not in Roberta's best interests. The court also felt that More's examination of Roberta during the hearing demonstrated that she did not have the demeanor to assist an incapacitated person. Finally, the court recognized that More lived in the state of New York, which would make day-to-day decision-making difficult.

The probate court's findings concerning More were fully supported by the record. More admitted that she called the FBI and local police when she learned that Roberta had been removed from her home. More spoke with Karin about Roberta's removal, but she said that Karin refused to state where Roberta was at that time. More said that, once she learned where Roberta was staying, she was denied the authority to speak with Roberta. Under those circumstances, More felt that she was right to treat Roberta as missing because, in her view, there was no credible information concerning Roberta's whereabouts. She still felt that Roberta was missing, she explained, because Roberta was "missing" to her. Nevertheless, More admitted that Karin told her that Roberta loved her new home.

The evidence showed that More actually knew that Roberta was under her guardian's care, had been moved to an assisted living facility, and was not in any danger. Despite that, she reported Roberta missing or made allegations of wrongful conduct regarding Roberta to the FBI, local police, the Attorney General's office, adult protective services, and the department of licensing and regulatory affairs. Under those circumstances, the probate court did not clearly err when it found that More's response to Roberta's move was irrational and indicated that More had adopted an extreme view of the guardianship that was consistent with Randall's view, which in turn called into question her suitability to serve as Roberta's guardian. See *id.*

More testified that—after having had a few phone conversations with Roberta—she determined that Roberta was mentally capable and very coherent. She also stated that she would put Roberta back into her home, if that was what Roberta wanted. She explained that it was her view that this case was about Roberta's choices and what Roberta wanted. After stating this position, More clarified that she would not give Roberta anything that she wanted no matter what; rather, she would act in Roberta's best interests. More's indication that she felt that Roberta was mentally capable and coherent, and that she would move Roberta back into her home, if that was what Roberta wanted, was evidence that More did not fully comprehend Roberta's needs and the degree to which she suffered from a cognitive impairment. As such, the probate court did not clearly err when it found that More would improperly defer to Roberta. See *id.*

More testified that she lived in New York and stated that she would be willing to visit Robert at intervals that were no less than three months apart; she also opined that the flights would cost Roberta's estate less than the cost of a professional guardian. More stated further that she had been disabled since 1986 and could not help Roberta financially. The record showed that Roberta's guardian needed to intervene in Roberta's care far more often than once every three months. In fact, the disputes between Randall, Richard, and Karin required significant time commitments from both David and Carter. The probate court, therefore, did not clearly err when it found that More would be unable to serve Roberta's needs adequately. *Id.*

Randall also takes umbrage with the probate court's findings because Carter purportedly misconstrued More's testimony when Carter opined that More would not follow court orders. The probate court did not rely on this testimony when it summarized its findings of More's suitability to serve as Roberta's guardian or conservator. In any event, More's testimony did give rise to questions regarding her willingness to follow the court's orders. When asked whether the probate court's orders concerning Roberta should be followed, More said that it depended on "who we're talking about whether they get followed or not." A guardian does not get to determine whether and to what extent the probate court's orders will be followed—they must be followed even if clearly incorrect. See *Schoensee v Bennett*, 228 Mich App 305, 317; 577 NW2d 915 (1998). Therefore, to the extent that the probate court considered Carter's opinion in formulating its findings about More, we are not left with the definite and firm conviction that it erred in doing so. See *Reed Estate*, 293 Mich App at 173-174. The probate court did not clearly err when it found that More would not be a suitable guardian for Roberta and would not be competent to serve as Roberta's conservator. See *id.*

Randall failed to demonstrate that any of the probate court's findings were clearly erroneous.

D. APPLICATION OF LAW

Randall also claims that the probate court misapplied the law to its factual findings in several respects. Randall suggests at various points that the probate court erred by disregarding Roberta's request for the appointment of More as her guardian and conservator. He implies that a ward's request for a new guardian would alone be sufficient to warrant removal. A ward does have the right to the guardian of his or her own choosing, but the Legislature also provided that the right was limited to the selection procedure provided under MCL 700.5313. See MCL 700.5306a(1)(aa). The selection procedures stated under MCL 700.5313 apply to the initial appointment and appointments to fill vacancies. See *In re Gerstler Guardianship*, 324 Mich App at 508. It does not provide a ground for removal. Cf. MCL 700.5313 and MCL 700.5310; see also *In re Bontea Estate*, 137 Mich App 374, 376-377; 358 NW2d 14 (1984) (holding that the priority statute applicable to conservators under the revised probate code did not require or authorize the removal of a previously appointed conservator on the sole basis that a petition had been filed nominating a new conservator who would have priority). Accordingly, a ward's desire to have someone else be his or her guardian does not, standing alone, trigger the procedures stated under MCL 700.5313. Rather, a probate court would be justified in removing a guardian only after finding that the guardian was no longer willing to serve or was no longer suitable to serve as the ward's guardian. *In re Redd Guardianship*, 321 Mich App at 406-407, 410. Similarly, a conservator can only be removed for good cause. See MCL 700.5414. Consequently, the probate court did not misapply the law when it determined that it had to first determine whether to remove Carter or David before it could proceed to determine whether More should be appointed to replace either. See *In re Gerstler Guardianship*, 324 Mich App at 507.

In addressing the petitions to modify the guardianship and conservatorship, the probate court recognized that the petitions for modification involved a request to remove Carter as Roberta's conservator and to remove David as Roberta's guardian. The probate court also correctly determined that Randall and More bore the burden to demonstrate by a preponderance of the evidence that David was no longer a suitable guardian in order to warrant her removal and had the burden to show proper cause for Carter's removal as conservator. See *In re Redd Guardianship*, 321 Mich App at 406-407, 410. The probate court then found that Randall and More had not established any grounds for removal, which findings were not, as already discussed, clearly erroneous. As such, the probate court did not misapply the law applicable to a petition to remove a guardian or conservator.

Randall also complains that the probate court had to order that Roberta be returned to her home—presumably her home on Newcastle—because the statute addressing involuntary admissions states that an individual has the right to remain in his or her "home" pending an examination and after the completion of the examination. MCL 330.1437 provides that, "[u]nless the individual has been ordered hospitalized . . . he shall be allowed to remain in his home or other place of residence pending an ordered examination or examinations and to return to his home or other place of residence upon completion of the examination or examinations." David had the authority to establish Roberta's home or other place of residence consistent with her needs. David determined that Roberta's needs could best be met at an overflow wing of the hospital and later at the secure assisted living facility. Therefore, the probate court did not misapply MCL 330.1437, by allowing David to establish Roberta's residence at a place other than her home.

Randall next maintains that the probate court erred when it failed to properly apply the priority rules stated under MCL 700.5313, after it agreed to allow David's resignation. The probate court recognized that—assuming that Roberta actually wanted More to be her guardian—More would have priority over a professional guardian. See MCL 700.5313(2). The probate court, however, correctly understood that it could not appoint More as Roberta's guardian if it found that More was not suitable or willing to serve. See MCL 700.5313(2). The probate court found that More was not suitable and, as noted, it did not clearly err by making that finding. Consequently, the probate court could not appoint More to be Roberta's guardian. See *id.*

The probate court also did not clearly err when it found that there were no other persons presented who might be willing and suitable to serve. See *Reed Estate*, 293 Mich App at 173-174. Contrary to Randall assertion on appeal that there were "others" who could have served as Roberta's guardian, the petitions involved in the hearing at issue nominated More and another professional guardian. No other candidates were nominated. Accordingly, the probate court did not misapply the law when it determined that it could appoint a professional guardian under these circumstances. See MCL 700.5313(4).

The probate court did not misapply the law to the facts of this case.

IV. CONCLUSION

Randall has not shown that the probate court failed to adequately state its findings and conclusions of law, or that it clearly erred in making its findings. He also failed to demonstrate that the probate court misapplied the law. Accordingly, we affirm the probate court's order of October 1, 2019.

Affirmed in both dockets. As the prevailing parties, David and Carter may tax their costs. See MCR 7.219(A).

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Brock A. Swartzle