NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE MATTER OF GENEVIEVE BUSH, AN INCAPACITATED PERSON	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: MARY BUSH	No. 1694 EDA 2013

Appeal from the Order May 14, 2013
in the Court of Common Pleas of Chester County
Orphans' Court at No.: 1509-1720

IN THE MATTER OF GENEVIEVE BUSH, AN INCAPACITATED PERSON	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: MARY BUSH	No. 1861 EDA 2013

Appeal from the Order May 24, 2013
in the Court of Common Pleas of Chester County
Orphans' Court at No.: June Term, 2013, No. 1509-1720

IN THE MATTER OF GENEVIEVE BUSH, AN INCAPACITATED PERSON	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: MARY BUSH	No. 1863 EDA 2013

Appeal from the Order May 24, 2013
in the Court of Common Pleas of Chester County
Orphans' Court at No.: June Term, 2013, No. 1509-1720

BEFORE: SHOGAN, J., STABILE, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.: **FILED JUNE 24, 2014**

In this consolidated appeal, Appellant, Mary Bush, appeals from the orders of May 14, 2013, removing her as co-guardian of the person of Genevieve Bush and appointing Elizabeth M. Srinivasan, Esq., as co-guardian of the person; May 24, 2013, ordering removal of Appellant and her personal effects from Genevieve Bush's residence within thirty days, setting up visitation, and dictating the terms by which Appellant may be used as a caretaker in the discretion of the co-guardians of the person; and May 24, 2013, finding Appellant in contempt of the trial court's order of June 8, 2012 for preventing Appellees, Joseph and Michael Bush, from entering the property to inventory the estate, and failing to maintain current email or

---

* Retired Senior Judge assigned to the Superior Court.

telephone contact information, as she had been ordered. After careful review, we affirm.

The trial court has previously set forth a thorough and complete factual history of the case, which a panel of this Court adopted in whole at ***In re Bush***, 53 A.2d 927 (Pa. Super. 2012) (unpublished memorandum). (***See*** Trial Court Opinion, 6/24/11, at 1-4). To summarize briefly, since the death of her husband, Fabian Bush, on June 25, 2004, the care of Genevieve Bush and her estate have been a matter of contention between her daughter, Appellant, and her three surviving sons, Appellees Michael, Joseph, and Justin Bush. Appellant systematically isolated Mrs. Bush from her sons and their families, prevented Appellees from entering the estate and visiting Mrs. Bush, failed to inform them of Mrs. Bush's medical problems, posted signs disparaging them on Mrs. Bush's property, and otherwise kept Mrs. Bush away from Appellees. She further persuaded Mrs. Bush to transfer the family home to her for $10.00, and thereafter pay for thousands of dollars of renovations out of the estate.

On June 24, 2011, the court found Mrs. Bush to be an incapacitated person, and appointed Appellant and Appellee Michael Bush as co-guardians of her person and Appellee Joseph Bush as guardian of the estate. Appellant appealed the decision and we affirmed. (***See In re Bush***, Nos. 2726 and 2746 EDA 2011, unpublished memorandum at *3 (Pa. Super. 2012)).

Most recently, on June 8, 2012, the trial court ordered that Appellees, with twenty-four hours' notice to Appellant, be permitted to enter the

property without Appellant present, perform an inventory of the estate, and schedule visits with Mrs. Bush under supervision of a neutral third party. The same day, as ordered, Appellees' attorney provided twenty-four-hour notice by email that they would visit the next day.

The following day, on June 9, 2012, Appellant was present when Appellees arrived at Mrs. Bush's home, prevented them from going in the house, claimed she didn't have on-site email and didn't receive notice until that afternoon (although she had been ordered to maintain a working phone line and email address), and then called the police when Appellees entered the basement to begin the property inventory. Appellees attempted to reschedule several times, but Appellant insisted on choosing the "neutral" third party, scheduled appointments with Mrs. Bush so she would not be home during planned visits, and ultimately confessed at a hearing that Mrs. Bush had been hospitalized several times and would be having surgery that she had not told the other guardians about. The inventory and visits never took place as ordered.

On July 23, 2012, Appellant filed a petition to remove Appellee Michael Bush as co-guardian of the person. On August 8, 2012, Appellees Michael and Joseph Bush filed a petition for contempt of Appellant and, on August 31, 2012, they filed a petition to remove Appellant as co-guardian of the person. On November 16, 2012, Appellant filed a petition to remove Appellee Joseph Bush as a guardian of the estate.

The trial court consolidated the petitions into one hearing, and after six days of testimony, entered the above-described orders finding Appellant in contempt, removing her as co-guardian, and ordering her to remove herself and her effects from Genevieve Bush's house. Appellant timely filed separate appeals[1] from the orders on June 11 and June 21, 2013.[2]

Appellant raises six questions for our review:

> A. Did the [trial c]ourt err in refusing to allow a treating physician to testify as a sanction in a series of off the record hearings?
>
> B. Did the [trial c]ourt err in admitting and hearing evidence regarding a complaint that was filed by [Appellant] with the disciplinary board?
>
> C. Did the [trial c]ourt err in removing [Appellant] []as a guardian of the person, when there was no evidence that any of her actions endangered the health and welfare of the incapacitated?
>
> D. Did the [trial] court err in holding [Appellant] in contempt of the June 8, 2012 order, when there was insufficient evidence that she timely received or violated the specific mandates of the order?
>
> E. Did the [trial c]ourt err in refusing to remove [Appellee] Michael Bush as co-guardian of the person?
>
> F. Did the court demonstrate a sufficient ongoing bias[] against [Appellant] sufficient that the court should have *sua sponte* recused [itself]?

---

[1] This Court consolidated the appeals *sua sponte* by order of July 31, 2013. (***See*** Per Curiam Order, 7/31/13).

[2] Pursuant to the trial court's order, Appellant filed Rule 1925(b) statements on June 28, 2013 and July 12, 2013. The trial court entered a Rule 1925(a) opinion on September 20, 2013. ***See*** Pa.R.A.P. 1925.

(Appellant's Brief, at 8-9).[3]

In her first issue, Appellant claims that "the court erred in refusing to allow Dr. [Doris] Lebischak, a treating physician, to testify as a sanction in off the record hearings[.]" (Appellant's Brief, at 28). This issue is waived.

Rule 2119 of the Pennsylvania Rules of Appellate Procedure provides, in pertinent part: "The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part—in distinctive type or in type distinctively displayed—the particular point treated therein, **followed by such discussion and citation of authorities as are deemed pertinent**." Pa.R.A.P. 2119(a) (emphasis added); ***see also Estate of Lakatosh***, 656 A.2d 1378, 1381 (Pa. Super. 1995) ("[W]e need not reach the merits of [an appellant's issues where the] argument section pertaining to these issues consists of general statements unsupported by any citation of authority. The argument portion of an appellate brief must include a pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities.") (citation omitted).

---

[3] We observe that Appellant's sixty-seven page brief fails to comply with Rule of Appellate Procedure 2135, because it exceeds thirty pages without certifying that it nonetheless complies with our limit of 14,000 words in a principal brief. ***See*** Pa.R.A.P. 2135(d) ("A principal brief that does not exceed 30 pages when produced by a word processor or typewriter shall be deemed to meet the limitations in paragraph (a)(1). . . . In all other cases, the attorney or the unrepresented filing party shall include a certification that the brief complies with the word count limits. . . .").

Here, in support of her first issue, Appellant presents twelve pages of self-serving recitation of the factual history of the case without a single citation to relevant case law or authority to support her position. (***See*** Appellant's Brief, at 28-40). Thus, she has waived this challenge. ***See Lakatosh***, ***supra*** at 1381. Moreover, it would not merit relief.

Pennsylvania's Orphans' Court Rule 3.6 provides:

> The local Orphans' Court, by general rule or special order, may prescribe the practice relating to depositions, discovery, production of documents and perpetuation of testimony. To the extent not provided for by such general rule or special order, the practice relating to such matters shall conform to the practice in the Trial or Civil Division of the local Court of Common Pleas.

In re Hyman, 811 A.2d 605, 608 (Pa. Super. 2002) (citing Pa. Orphans' Court Rule 3.6).

Here, Appellant attempts to challenge the preclusion of the testimony of psychiatrist Doris Lebischak, MD, who issued a report to support Appellant's petition to remove Appellee Michael Bush as co-guardian of the person of Genevieve Bush. (***See*** Appellant's Brief, at 29). In the interest of fairness, the court permitted Appellees to retain an expert, Susan Rushing, JD MD, to examine Mrs. Bush as well. (***See*** Trial Ct. Op., 6/24/11, at 5). However, in violation of the court's February 12, 2013 order, Appellant prevented Appellees' expert from seeing Mrs. Bush at least twice, costing them over $5,000.00 with no evaluation performed. (***See*** N.T. Hearing, 3/20/13, at 23, 25). Therefore, the court precluded Appellant's expert report, since she had prevented Michael and Joseph from acquiring a report

of their own through "obdurate conduct." (Trial Ct. Op., 9/20/13, at 5). Where the court was acting within its discretion to "prescribe the practice relating to depositions, discovery, production of documents and perpetuation of testimony," ***Hyman***, ***supra*** at 608, we discern no abuse of discretion. Appellant's first issue would not merit relief.

In her second claim, Appellant alleges that "the court erred in admitting as evidence and hearing testimony regarding a complaint that was filed by [Appellant] with the disciplinary board." (Appellant's Brief, at 40). She argues that the limited admission of a redacted disciplinary complaint she filed against Appellees' counsel and others "put [her] in a terrible light with the [c]ourt without any recourse other than to attempt to prove that her allegations with the Disciplinary Board were true, something that the [c]ourt would not allow." (***Id.*** at 43). We disagree.

> Our standard of review of a trial court's decision to admit or exclude evidence is well-settled:
>
> > When we review a trial court ruling on admission of evidence, we must acknowledge that decisions on admissibility are within the sound discretion of the trial court and will not be overturned absent an abuse of discretion or misapplication of law. In addition, for a ruling on evidence to constitute reversible error, it must have been harmful or prejudicial to the complaining party.
> >
> > An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused.

Phillips v. Lock, 86 A.3d 906, 920 (Pa. Super. 2014) (citation omitted).

> Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Pa.R.E. 401. "All relevant evidence is admissible, except as otherwise provided by law." Pa.R.E. 402. "Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Pa.R.E. 403.

Brady v. Urbas, 80 A.3d 480, 483-84 (Pa. Super. 2013).

Appellant cherry-picks citations to Pennsylvania Disciplinary Board Rule 89.5 and Rule of Disciplinary Enforcement 209, both regarding immunity, and baldly concludes "[t]here appears to be no case law that supports the proposition . . . that evidence submitted to the Disciplinary Board can be used in a hearing by the accused counsel to impeach a witness' testimony." (Appellant's Brief, at 42).

Here, in response to Appellant's claim that "[Appellees were] the one[s] filing petition after petition, contempt after contempt . . . manipulating people, [and] doing whatever you got to do to keep this litigation going[,]" Appellees sought to impeach her testimony with a redacted complaint filed by Appellant with the Pennsylvania Disciplinary Board against counsel for Appellees. (N.T. Hearing, 2/27/13, at 149; ***see id.*** at 150-51). After hearing argument on the issue, the court determined that a highly-redacted version of the complaint was admissible for the specific purpose of "whether or not [the disciplinary complaint] was filed and

whether or not there was a good-faith basis for doing so." (N.T Hearing, 2/28/13, at 13-14; ***see*** N.T. Hearing, 2/27/13, at 155-56).

It is well-settled that "[a] party may impeach the credibility of an adverse witness by introducing evidence that the witness has made one or more statements inconsistent with [her] testimony." ***Rissi v. Cappella***, 918 A.2d 131, 139 (Pa. Super. 2007) (citations omitted). Thus, the existence of Appellant's complaints to the Disciplinary Board against Appellees' counsel was relevant to impeach her credibility in light of her claims that Appellees were responsible for the protracted litigation in this case, in order "to show that the voluminous litigation has not been one sided. [The court] admitted a redacted version of the disciplinary complaint to protect the identity of others named in the complaint. The exhibit was relevant for that purpose, and therefore admissible." (Trial Ct. Op., 9/20/13, at 8); ***see also Phillips***, ***supra*** at 920; ***Brady***, ***supra*** at 483-84. Appellant's issue does not merit relief.[4]

---

[4] We further observe that, pursuant to Disciplinary Rule 402(k), "[i]f a formal proceeding results in the imposition of private discipline or dismissal of all the charges, the proceeding shall cease to be open to the public when the decision to impose private discipline or dismiss the charges becomes final, unless the respondent-attorney requests that the record of the proceeding remain open to the public." Pa.R.D.E. 402(k). Here, counsel for Appellees offered "a letter from the disciplinary board that reflects that the complaint [against him] has been dismissed." (N.T. Hearing, 2/28/13, at 12). Thus, to the extent that Appellant claims a "confidentiality issue," (***id.*** at 11), the right to confidentiality or publicity of a disciplinary hearing clearly rests with counsel for Appellees, not Appellant.

Third, Appellant claims that "[t]he court erred in removing [her] as a guardian of the person[.]" (Appellant's Brief, at 43). She argues that "animosity *per se*, absent any showing of any adverse effect on the estate or rights of any beneficiary by reason of such animosity, does not constitute grounds for removal." (***Id.*** at 44). We disagree.

Our standard of review in guardianship matters is well-settled: "The selection of a guardian for a person adjudicated incapacitated lies within the discretion of the trial court whose decision will not be reversed absent an abuse of discretion." ***Estate of Haertsch***, 649 A.2d 719, 720 (Pa. Super. 1994) (citation omitted).

> Pennsylvania law defines a guardian as a person lawfully invested with the power, and charged with the duty, of taking care of the person and/or managing the property and rights of another person, who, for defect of age, understanding or self-control is considered incapable of administering his own affairs. Two classes of guardians have long been recognized at law: (1) guardian of the person being invested with the care of the person of the [incapacitated person], and (2) guardian of the estate being entrusted with the control of the property of the [incapacitated person]. The spheres of authority of a guardian of the person and of a guardian of the estate are distinct and mutually exclusive.
>
> The guardian of the [incapacitated person]'s person is the person having primary physical responsibility for the care and custody of the [incapacitated person]. However, natural guardianship confers no inherent right to intermeddle with the property of the [incapacitated person], and the natural guardian has no inherent authority to demand or power to receive, hold or manage the [incapacitated person]'s property unless the natural guardian has also been appointed as guardian of the [incapacitated person]'s estate.

Rock v. Pyle, 720 A.2d 137, 141 (Pa. Super. 1998) (citations omitted).

Here, the evidence presented at the hearings establishes that Appellant has failed to act in the best interests of Mrs. Bush's person and estate. She has a history of violating the court's orders to the detriment of Mrs. Bush's relationship with the rest of her family, and preventing her brothers and their families from seeing Mrs. Bush. (***See*** N.T. Hearing, 2/27/13, at 213, 219; N.T. Hearing, 2/28/13, at 14, 38-39, 213-14). Appellees established that she refused to work with the Family Services therapist or suspend her litigation against Appellees, which was funded by Mrs. Bush's estate. (***See*** N.T. Hearing, 2/27/13, at 117; N.T. Hearing, 2/28/13, at 41-42). She withheld information about Mrs. Bush's health from the other guardians, including several significant injuries and hospitalizations, and failed to maintain valid email and telephone numbers. (***See*** N.T. Hearing, 2/28/13, at 42, 79-80, 108, 124, 161-67; N.T. Hearing, 3/20/13, at 5-7). She has acted violently toward the other guardians on several occasions. (***See*** N.T. Hearing, 2/27/13, at 214, 232; N.T. Hearing, 2/28/13, at 43, 58, 83-84).

In contravention of the court's orders, Appellant was present at the house on June 9, 2012, during Appellees' on-site visit, and repeatedly prevented Appellees from conducting the inventory of the estate by imposing restrictions on their access and calling the police. (***See*** N.T. Hearing, 2/27/13, at 132, 136, 142; N.T. Hearing, 2/28/13, at 51-52, 64-68, 71-72). Further, she claimed she "didn't see the need" to account for known assets in the estate such as coins and tools in her own inventory, in violation of the

requirement to account as holder of the power of attorney over Mrs. Bush. (***See*** N.T. Hearing, 2/27/13, at 140-41; N.T. Hearing, 2/28/13, at 86).

Accordingly, the record supports the trial court's conclusion that Appellant's actions extended beyond mere animosity with her brothers, and constituted "a serious breach of the duty to assert the best interests of Mrs. Bush." (Trial Ct. Op., 9/20/13, at 6). Her actions as guardian of the person have isolated Mrs. Bush from her own family and have intermeddled with her estate. ***See Rock***, ***supra*** at 141. Thus, the trial court did not abuse its discretion in removing Appellant as guardian of the person of Genevieve Bush. ***See Haertsch***, ***supra*** at 720. This issue does not merit relief.

Fourth, Appellant claims that "the court erred in holding [her] in contempt of [its] order of June 8, 2012[.]" (Appellant's Brief, at 50). Specifically, she argues that "there is no evidence whatsoever that [she] had actual notice of the order before June 9, 2012[]" and that "[t]here is virtually no evidence of [her] intent to violate the order." (***Id.*** at 50, 55). We disagree.

> When considering an appeal from an [o]rder holding a party in contempt for failure to comply with a court [o]rder, our scope of review is narrow: we will reverse only upon a showing the court abused its discretion. We also must consider that:
>
> > Each court is the exclusive judge of contempts against its process. The contempt power is essential to the preservation of the court's authority and prevents the administration of justice from falling into disrepute. When reviewing an appeal from a contempt order, the appellate court must place great reliance upon the discretion of the trial judge.

> The court abuses its discretion if it misapplies the law or exercises its discretion in a manner lacking reason. Additionally, [i]n proceedings for civil contempt of court, the general rule is that the burden of proof rests with the complaining party to demonstrate, by [a] preponderance of the evidence that the defendant is in noncompliance with a court order. However, a mere showing of noncompliance with a court order, or even misconduct, is never sufficient alone to prove civil contempt. Moreover, we recognize that:
>
> > To sustain a finding of civil contempt, the complainant must prove certain distinct elements: (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent.

Habjan v. Habjan, 73 A.3d 630, 637 (Pa. Super. 2013) (citations and quotation marks omitted).

"The notice requirement may be fulfilled when the contemnor has actual knowledge of the order, despite never having been personally served with the order." ***Marian Shop v. Baird***, 670 A.2d 671, 673 (Pa. Super. 1996) (citation omitted); ***see also Fenstamaker v. Fenstamaker***, 487 A.2d 11, 15 (Pa. Super. 1985) (finding contemnor required "personal knowledge sufficient to place her on notice of personal responsibility to comply"). "The inquiry must be whether the person's knowledge was such that a contempt citation for disobedience to the order could not be said to constitute unfair surprise." ***Commonwealth v. Fladger***, 378 A.2d 440, 443 (Pa. Super. 1977); ***cf. Godfrey v. Godfrey***, 894 A.2d 776, 781 (Pa. Super. 2006) (holding that, where appellant failed to inform the court of change of

address, appellant's argument that "lack of due diligence" in effecting service resulted in insufficient notice did not preclude contempt finding).

First, Appellant claims that she did not have twenty-four-hour notice of the June 8, 2012 order. (***See*** Appellant's Brief, at 50). The order provides, in relevant part:

> Joseph Bush, as Guardian of the Estate, may have access to the property at 1628 Glenside Road, West Chester, Pennsylvania, at any reasonable time he elects, providing at least 24 hours notice to Mary Bush by email[a], so that she can unlock or otherwise provide access to the property.
>
> [a] Mary Bush shall provide Joseph and Michael Bush with working phone number and email address. Failure to do so is grounds for sanctions.

(Order, 6/08/12, at 2 ¶ 5). At 3:12 p.m. on June 8, 2012, counsel for Appellees sent an email to counsel for Appellant and Mrs. Bush's counsel attaching the order and providing notice of Appellee Joseph Bush's intent to visit the property at 4:00 p.m. on June 9 to conduct the ordered inventory. Appellee Joseph Bush also emailed Appellant directly himself. (***See*** Order, 5/24/13, at 2 n.1).

Although Appellant was required to supply Appellees and the court "functioning or valid phone or email," she had a history of disconnecting the phone "any time [Appellees] scheduled to visit[.]" (N.T. Hearing, 2/28/13, at 108). Appellant herself concedes that she received an email and a phone message about the order and Appellees' intent to provide notice of their visit, and then "went to the state police" to obtain a copy of the order itself. (N.T. Hearing, 2/27/13, at 164). She maintains that she didn't have regular

internet access and only checked her email "every three to four days[.]" (***Id.*** at 167).

Therefore, Appellees provided notice to Appellant and her counsel as required by the order. Although Appellant claimed she did not receive a copy of the order until she went to the state police, she had personal knowledge of its contents and cannot claim she was unfairly surprised. ***See Marian Shop***, ***supra*** at 673; ***Fladger***, ***supra*** at 443. Furthermore, her claim that she did not have at least twenty-four hours' notice between receiving Appellees' email and their visit, in light of Appellant's failure, despite the court's orders, to check her email regularly or maintain a working phone line at Mrs. Bush's house, does not preclude the court's contempt determination. ***See Godfrey***, ***supra*** at 781. This argument does not merit relief.

Second, Appellant argues that she did not intend to violate the order but instead "was being hyperbolically technical about the terms of the order and refused to comply with the demands of her brothers that were not explicitly approved by the [c]ourt." (Appellant's Brief, at 52). Specifically, she claims that the order only permitted Joseph Bush to enter the estate for an inventory, and Michael Bush's presence during the attempted June 9, 2012 visit violated the order and justified her actions in refusing to leave the property, calling the police, and preventing the inventory from occurring. (***See id.*** at 52-54).

Appellant cites no authority for her claim that another party's alleged disobedience of the order's terms precludes a finding of contempt against her. ***See*** Pa.R.A.P. 2119(a). Furthermore, the court found Appellant in contempt for violating multiple aspects of the June 8, 2012 order. (***See*** Order, 5/24/13, at 1-3 n.1).

For example, she was at the estate on June 9, 2012, and prevented the inventory from occurring that day. (***Compare*** Order, 6/08/12, at 2 ¶ 5(b) ("[Appellant] and Genevieve Bush will not be present for any portion of that on-site visit."), ***with*** N.T. Hearing, 2/27/13, at 131-32). As of the May 24, 2013 contempt order, she had prevented any inventory from taking place as ordered. (***See*** Order, 5/24/13, at 3 n.1 (finding that Appellant "never permitted Joseph to conduct the inventory pursuant to the June 8, 2012 Order")). She failed to maintain current email and telephone lines. (***Compare*** Order, 6/08/12, at 2 n.1, ***with*** N.T. Hearing, 2/27/13, at 164). She refused to cooperate with Appellees' attempts to identify a neutral third-party caregiver to attend Appellees' visits with Mrs. Bush, and thus the court-ordered visits never occurred. (***Compare*** Order, 6/08/12, at 2-3 ¶ 6, ***with*** N.T. 2/28/13, at 120-24). She removed Mrs. Bush from the estate or refused to answer the door at times when Appellees had scheduled visits. (***See*** Order, 5/24/13, at 3 n.1 (describing Appellant's interference with Appellees' scheduled luncheons and subsequent visits); N.T. 2/28/13, at 64-67). She has posted and refused to remove handwritten signs on Mrs.

Bush's estate disparaging her brothers. (***Compare*** Order, 6/08/12, at 3 ¶¶ 6, 7, ***with*** N.T. 2/28/13, at 81-82).

For all these reasons, the trial court determined that she "repeatedly failed to comply with the terms of the June 8, 2012 Order." (Order, 5/24/13, at 3 n.1). The trial court did not abuse its discretion in finding Appellant in contempt. ***See Habjan***, ***supra*** at 637. Appellant's issue lacks merit.

Fifth, Appellant argues that the court "erred in failing to remove Michael Bush when he was described as violating the criminal law of Pennsylvania and admitted that he had sexually assaulted his mother in the past." (Appellant's Brief, at 55). She claims that Appellee Michael Bush violated the Wiretap Act by recording a conversation with Chester County Family Services counselor Kurt Walser and that he was unfit to be a guardian of Mrs. Bush because he "sexually assaulted" her "at some point in the past." (***Id.*** at 56, 60; ***see id.*** at 57-58). We disagree.

As previously discussed, "[t]he selection of a guardian for a person adjudicated incapacitated lies within the discretion of the trial court whose decision will not be reversed absent an abuse of discretion." ***Haertsch***, ***supra*** at 720.

Here, Appellant first claims that Appellee Michael Bush violated the Wiretap Act, 18 Pa.C.S.A. § 5703, because he recorded a meeting with counselor Kurt Walser. She cites only to general case law regarding the Wiretap Act, and summarily concludes that "it's a crime to record people in

Pennsylvania without telling them[.]" (Appellant's Brief, at 57-58); ***see also*** Pa.R.A.P. 2119(a). Furthermore, this allegation is completely contradicted by the record. At the hearings, Counselor Walser testified:

> Q. During the session with Michael and Mary, did there come a time when Mary accused Michael of recording the session?
>
> A. Well, there was the first session, Michael and Joe wanted to record it, and I said, well, I was kind of surprised, and I thought no one ever recorded my session. And then they felt—well, now I understand why they wanted to record it, because it's so, you know, who is lying, that you need evidence of facts. So the first session, they forgot recording, because we talked about recording and what other issues were.
>
> Q. The first session was just with Michael and Joseph?
>
> A. Michael and Joseph. . . .
>
> * * *
>
> Q. Did there come a time when you actually allowed them to record a session with just them?
>
> A. Yeah, Michael, when Michael and I had a session, he says, Kurt, can I record it. I says go ahead, I don't have any objection. And then when we had a joint session, Mary noticed that Michael wanted to record it, and I didn't pay close attention because I didn't know if it was a cell phone or not. Then I said, well, it's not a good idea to record it, because it sets a negative tone, because we see, we [are] exploring is there any good faith left. Then Michael says okay, I'm not going to record it. And then Mary wanted to make sure it's not on, and so we made sure that it's not on.

(N.T. Hearing, 2/27/13, at 63-65). Thus, the record does not support Appellant's claim that Appellee Michael Bush recorded sessions without permission in violation of the Wiretap Act. Nor does she develop any argument as to how recording counseling sessions would make Michael unfit

as a guardian for Mrs. Bush. (***See*** Appellant's Brief, at 55-57). This claim does not merit relief.

Second, Appellant concocts an allegation of sexual abuse against Appellee Michael Bush. Taking a statement entirely out of context, she claims that his remark that he "had [a] hand in [his] mother's pants before to clean her" "were about an inappropriate sexual assault." (***Id.*** at 58). Once again, this claim is entirely contradicted by counselor Kurt Walser's hearing testimony, elicited by Appellant's own counsel:

> Q. Now, during this session, did Mr. Michael Bush tell you that he was a trained and licensed EMT?
>
> A. He didn't say trained, licensed, he just said he was an EMT in the past.
>
> Q. And that was his way to justify that he could take care of his mother; is that correct?
>
> A. Well, that was one, another reason[] why he would be able to take care of mother in addition to other things that he, that he had time.
>
> Q. And do you think it would be appropriate for him to take care of his mother's personal needs?
>
> A. Well—
>
> [Counsel for Appellees]: Objection, your Honor.
>
> THE COURT: Sustained.
>
> [Counsel for Appellant]:
>
> Q. In your report, you say that Michael used the words, I had my hands in my mother's pants before to clean her.
>
> A. Well, that was a big issue because, you know, the issue came up, you know, taking care of mother's, you know, bathing her and physical aspect of she had diapers. And he used that word. And [Appellant] read that as this was a perverse way of

> seeing mother. What I understood Michael was saying, his words using it, he was able to, he would be comfortable cleaning mother. So I felt his intent was he would be capable of taking the physical needs, I mean, of mother. And we didn't further get into it, whether mother wanted to have that, or would it be appropriate. We didn't explore that. But that caused quite strong reactions in [Appellant], and the emotional level got up, and that they worded into other stuff. But I did not see that that would be a perverse way.

(N.T. Hearing, 2/27/13, at 67-69). Thus, the record demonstrates that this comment was in regard to Appellee Michael Bush's capacity to provide physical aspects of care to Mrs. Bush as a guardian of the person, which would, in fact, weigh in his favor. ***See Rock***, ***supra*** at 141. On review, we agree with the trial court that the comment "is evidence of [Appellant's] tendency to overreach to an offhand comment instead of focusing on ensuring that Mrs. Bush's best interests are met[,]" (Trial Ct. Op., 9/20/13, at 10), and conclude that the suggestion of "inappropriate sexual assault" was contrived by Appellant. (Appellant's Brief, at 58). Thus, the court did not err or abuse its discretion in declining to remove Appellee Michael Bush as guardian of the person. ***See Haertsch***, ***supra*** at 720. This issue lacks merit.

Finally, Appellant claims that "the court demonstrated an ongoing bias against [her] and should have *sua sponte* recused [it]self." (Appellant's Brief, at 60). This issue is waived.

Preliminarily, we observe that Appellant concedes that "[t]he court below in responding to counsel's [Rule] 1925(b) statement indicated that as no recusal motion had ever been made, and therefore this issue had been

waived [sic]." (***Id.*** at 61; ***see also*** Trial Ct. Op., 9/20/13, at 7 ("At no time during the proceedings was a recusal motion made, thus this issue should be treated as waived.")). Appellant contends, however, that the trial court demonstrated a fixed bias and that her failure to preserve this issue on appeal should "be excused . . . when a strong public interest outweighs the need to protect the judicial system from improperly preserved issues." (Appellants' Brief, at 61). This argument does not merit relief.

> [A] party seeking recusal or disqualification must raise the objection at the earliest possible moment, or that party will suffer the consequence of being time barred.
>
> > When circumstances arise during the course of a trial raising questions of a trial judge's bias or impartiality, it is still the duty of the party, who asserts that a judge should be disqualified, to allege by petition the bias, prejudice or unfairness necessitating recusal. A failure to produce a sufficient plea will result in a denial of the recusal motion.
>
> Failure to request recusal before the trial judge has ruled on the substantive matter before him or her precludes the right to have a judge disqualified. Judicial bias may not be raised for the first time during post-trial proceedings.

Crawford v. Crawford, 633 A.2d 155, 159-60 (Pa. Super. 1993) (citations and quotation marks omitted).

Here, Appellant did not file a motion to recuse with the trial court. (***See*** Appellant's Brief, at 61). Thus, she has concededly failed to "raise the objection at the earliest possible moment" with the trial court or preserve the issue on appeal. ***Crawford***, ***supra*** at 159. Therefore, her claim is waived.

Moreover, even if Appellant moved for the trial court's recusal at the appropriate juncture, there would be no basis for the trial court's recusal. "The party who asserts a trial judge must be disqualified bears the burden of producing evidence establishing bias, prejudice, or unfairness necessitating recusal, and the decision by a judge against whom a plea of prejudice is made will not be disturbed except for an abuse of discretion." ***Commonwealth v. Whitmore***, 912 A.2d 827, 834 (Pa. 2006) (citation and quotation marks omitted). Furthermore, it is well-settled that a court's adverse rulings against a party are not "a *per se* indication of the judge's partiality." ***Chadwick v. Caulfield***, 834 A.2d 562, 571 (Pa. Super. 2003), *appeal denied*, 853 A.2d 359 (Pa. 2004), *cert. denied*, 543 U.S. 875 (2004).

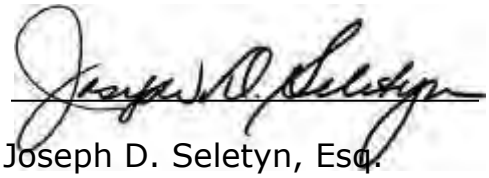
Here, Appellant claims that the court has a fixed bias against her and has "denigrate[d]" her throughout the litigation by, for example, "giving credence to testimony from [third parties] that had not seen Mrs. Bush in years . . . ." (Appellant's Brief, at 64). Our own review of the record, however, shows that the trial judge has proven herself a fair and patient jurist throughout the long history and multiple hearings for this case, regardless of Appellant's unhappiness with the result. ***See Chadwick***, ***supra*** at 571.

"[T]he trial court, as the finder of fact, is the sole determiner of the credibility of witnesses and all conflicts in testimony are to be resolved by finder of fact." ***In re Adoption of A.C.H.***, 803 A.2d 224, 228 (Pa. Super. 2002) (citation omitted). We will not substitute our judgment for the trial

court regarding determinations of credibility. Thus, we would conclude that, even if Appellant had moved for recusal, she has failed to "produc[e] evidence establishing bias, prejudice, or unfairness necessitating recusal" and thus, the trial court would not have abused its discretion by refusing to recuse itself. ***Whitmore***, ***supra*** at 834. Appellant's final claim is waived and would not merit relief.

Orders affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/24/2014