

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re H.A., a protected person

No. 23-333 (ICA 22-ICA-40)

MEMORANDUM DECISION

Petitioner H.A. appeals the April 10, 2023, memorandum decision of the Intermediate Court of Appeals (“ICA”) that affirmed the July 22, 2022, order of the Circuit Court of McDowell County. *See In re: H.A.*, No. 22-ICA-40, 2023 WL 2863296 (W. Va. Ct. App. Apr. 10, 2023) (memorandum decision).¹ The circuit court’s order denied H.A.’s petition to modify or terminate a prior order appointing her a guardian and a conservator. The guardian placed H.A. in an assisted living facility, but H.A. argues that the evidence shows she can live outside of the facility and thus the circuit court erred in denying her petition. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the ICA’s memorandum decision is appropriate. *See W. Va. R. App. P. 21(c)*.

The circuit court appointed a guardian and a conservator for H.A. in 2016 after a psychiatrist determined that H.A. suffers from a psychotic disorder and lacks insight into her illness, resulting in noncompliance with her medication regimen.² H.A. unsuccessfully challenged the guardianship and conservatorship in the past, and she initiated the current challenge in 2022.³

¹ Petitioner H.A. is represented by counsel Chantel R. Kidd. Respondent McDowell County Sheriff’s Department is represented by Brittany R. Puckett. Respondent West Virginia Department of Human Services (“DHS”) is represented by Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. We use initials where necessary to protect the identities of those involved in this case. *See W. Va. R. App. P. 40(e)*.

² On December 15, 2016, the circuit court appointed the West Virginia Department of Health and Human Resources, which is now the DHS, as H.A.’s guardian and appointed the McDowell County Sheriff’s Office as H.A.’s conservator.

³ Upon the petition of the protected person, West Virginia Code § 44A-4-6(b) permits a circuit court to modify or terminate a guardianship and/or conservatorship for reasons including that the protected person is no longer in need of this assistance or protection; the extent of the previously ordered assistance or protection is excessive when considering the current need; the protected person’s understanding or capacity has changed; no suitable guardian/conservator can be secured; or termination/modification is otherwise in the protected person’s best interests.

To assess the ongoing need for these appointments, the mental hygiene commissioner granted H.A.'s motion for an evaluation by Dr. Timothy Saar and the Saar Psychological Group. In his report and testimony, Dr. Saar opined that because of H.A.'s behavioral history and her symptoms related to schizophrenia and psychosis, she requires the continued appointment of a guardian and conservator and placement in a secure environment with regular monitoring. On her own behalf, H.A. testified denying that she suffers any mental health condition and denying that she needs medication or assisted living. She also presented testimony from three witnesses about her ability to engage in daily self-care.

After considering the testimony and evidence, the mental hygiene commissioner filed a report with the circuit court that included detailed findings of fact and recommended the denial of H.A.'s petition to terminate or modify the guardianship and conservatorship. The circuit court adopted the commissioner's findings and recommendations and denied the petition in its July 22, 2022, order. The circuit court concluded that H.A. failed to present new evidence to contradict the medical evaluations in the record, and that she continued to be a protected person who required a guardian and conservator. H.A. appealed to the ICA. After reviewing the record on appeal, the ICA concluded that the testimony of H.A.'s three factual witnesses was not sufficient to establish new evidence because their testimony did not contradict or contest the medical evaluations of record, and those witnesses only interacted with H.A. in a structured setting. In addition, the ICA concluded that the circuit court properly considered the full expert opinion of Dr. Saar. Accordingly, the ICA affirmed the circuit court's order.

Like the ICA,⁴ we review circuit court orders involving adult guardianship and conservatorship as follows:

“This Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed de novo.” Syl. Pt. 4, *Burgess v. Porterfield*, 196 W. Va. 178, 469 S.E.2d 114 (1996).

Syl. Pt. 6, *In re Donald M.*, 233 W. Va. 416, 758 S.E.2d 769 (2014).

Having reviewed the record on appeal and the ICA's memorandum decision, we find no error in the ICA analysis. *See In re H.A.*, 2023 WL 2863296, at *4-5. We agree with the ICA that the circuit court did not err or abuse its discretion in denying H.A.'s petition for modification or termination of her existing guardianship and conservatorship. Accordingly, we affirm.

⁴ This Court reviews appeals of ICA decisions by considering the relevant circuit or family court order under our well-settled standards of review. *See, e.g.*, Syl. Pt. 3, *Christopher P. v. Amanda C.*, 250 W. Va. 53, 902 S.E.2d 185 (2024) (on appeal from the ICA, reviewing family court order for clear error and abuse of discretion); Syl. Pt. 1, *Folse v. Rollyson*, 251 W. Va. 566, 915 S.E.2d 344 (2025) (on appeal from the ICA, applying de novo review to circuit court order granting motion to dismiss); Syl. Pt. 1, *Moorhead v. W. Virginia Army Nat'l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025) (on appeal from the ICA, applying de novo review to circuit court's entry of summary judgment).

Affirmed.

ISSUED: October 21, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison