

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 21-0569

IN THE MATTER OF G.M.P.,

An Alleged Incapacitated Person.

On appeal from the Sixteenth Judicial District Court, State of Montana, in and for
the County of Rosebud, Cause No. DG 2020-05,
Hon. Nickolas C. Murnion, Presiding Judge

BRIEF OF G.M.P., PROTECTED PERSON

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In accordance with Rule 12(2), Mont. R. App. P., G.M.P. (“G.M.P.”), by and through counsel, submits this Brief.

INTRODUCTION

This is an appeal of *Findings of Fact, Conclusions of Law, and Order Appointing Guardian and Conservator* in Rosebud County DG 2020-05 (“Order”) that granted permanent full guardianship and conservatorship of G.M.P. to her son, A.D.R. (“A.D.R.”). The district court correctly appointed A.D.R. as the permanent full guardian and conservator for G.M.P. Its decision was supported by ample evidence at the hearing. Unsatisfied with the district court’s decision, T.L.R. (“T.L.R.”) is requesting that this Court overturn the Order. The reversal of the district court’s Order would be detrimental to G.M.P.

T.L.R. has alleged violations of due process on behalf of G.M.P. and herself. Appellant’s Br., p. 2-4, 9. She claims that the Court erred in appointing A.D.R. as G.M.P.’s permanent full guardian and conservator. *Id.* at p. 1. She also claims the district court erred in its administration of the trial. *Id.* at p. 6, 8-9. However, the district court made appropriate rulings that are supported by the law and the evidence presented at the hearing. G.M.P., by and through counsel, respectfully requests that the district court’s Order be affirmed in all respects.

STATEMENT OF THE ISSUES

1. Whether T.L.R.'s grievances related to the temporary guardianship and conservatorship are time-barred pursuant to Rule 4(5)(a)(i), Mont. R. App. P. and Rule 6(4)(a), Mont. R. App. P.
2. Whether G.M.P.'s due process rights under U.S.C.A. Const. Amend. 14; Mont. Const. Art. II, § 17 were violated by the guardianship and conservatorship proceeding.
3. Whether T.L.R.'s due process rights under U.S.C.A. Const. Amend. 14; Mont. Const. Art. II, § 17 were violated by the Order.
4. Whether A.D.R. is the proper person to serve as the permanent full guardian and conservator for G.M.P. pursuant to §§ 72-5-312, 72-5-410, MCA.¹
5. Whether the district court abused its discretion by failing to admit into evidence certain exhibits offered by T.L.R. at the hearing.

STATEMENT OF CASE

G.M.P. is an 88 year old woman residing in Sheridan, Wyoming. (CR 58, ¶¶ 2, 9). She is a widow with three living children: A.D.R., T.L.R., and G.R. ("G.R."). (CR 1, ¶ 1). She executed a series of powers of attorney during her lifetime. (CR

¹ Counsel acknowledges that T.L.R.'s single statement of the issue identifies the appointment of Appellee as the only issue on appeal. T.L.R. Br., p. 1. However, G.M.P. has liberally construed the issues raised in *T.L.R.'s Opening Brief* because T.L.R. is *pro se*. The issues reasonably raised by the T.L.R. are addressed in this brief.

4, ¶ 6). The first power of attorney is dated March 7, 2014 and appoints A.D.R. as her true and lawful attorney-in-fact. (*Id.*) On August 2, 2017, she executed a second power of attorney that nominated A.D.R. and T.L.R. as co-agents and revoked all prior powers of attorney. (*Id.*) On July 28, 2020, G.M.P. executed a third power of attorney naming T.L.R. as her sole agent and revoked any prior powers of attorney (“2020 POA”). (*Id.*)

A.D.R. filed a *Petition for Appointment of a Guardian and Conservator of an Alleged Incapacitated Person* on November 25, 2020 (the “Petition”). (CR 1). The Petition requests that A.D.R. be appointed as the temporary and permanent full guardian and conservator for G.M.P. (CR 1, ¶¶ 4-5). The district court entered an *Order Fixing Time & Place of Hearing on Petition for Appointment of Guardian and Conservator* on December 1, 2020, and appointed A.D.R. as the temporary full guardian and conservator. (CR 2).

T.L.R. filed an *Objection to Petition for Appointment of Guardian and Conservator* (the “Objection”) wherein she requested that the district court appoint her as the permanent full guardian and conservator. (CR 4, p. 6-7).

T.L.R.’s counsel of record moved to withdraw. (CR 17, 19, 20). T.L.R.’s request was granted. (CR 21). T.L.R. filed a *Motion to Continue* the hearing on September 24, 2021. (CR 19). At the hearing, T.L.R. appeared *pro se* and

requested a two week continuance to retain new counsel. (CR 23). That request was granted and the hearing was moved to October 28, 2021. (CR 24).

T.L.R. filed a *Pre-Trial Brief* as required by the district court's scheduling order. (CR 39).

G.M.P., by and through counsel, made two motions in limine to exclude testimony from G.M.P.'s attorney, James Carr, and Beth Wiedeman the adult protective services employee. (CR 30, Tr. 23:6-32:21). T.L.R. filed a *Response to Protected Person's Motion in Limine to Exclude Testimony from James Carr aka Jim Carr and Request for a Certified Geriatric Medical Evaluation to be Conducted by a Board Certified, Third Party Geriatrician*. (CR 32). The motions in limine were granted and the request for examination by a geriatrician was denied. (CR 45, Tr. 31:17-33:21).

The parties proceeded with a hearing on October 28, 2021. (CR 55). T.L.R. appeared at the hearing *pro se*. *Id.* She called witnesses on her behalf, presented evidence, and cross-examined A.D.R.'s witnesses at the hearing. (CR 53, 55; *see, e.g.*, Tr. 190:12-196:24; 201:4-208:1).

On November 2, 2021, the district court entered the Order appointing A.D.R. as the permanent full guardian and conservator for G.M.P., from which T.L.R. appeals. (CR 58).

STATEMENT OF FACTS

G.M.P. has not lived independently since 2016. (Tr. 244:8-16; Tr. 217:20-25). From June 2019 - December 2020, she resided with her daughter, T.L.R., in Colstrip, Montana. (Tr. 217:20-25). On or about November 10, 2020, G.M.P. contracted COVID-19 while in T.L.R.'s care. (CR 5, ¶ 7). G.M.P. was soaked in urine when the ambulance arrived to transport G.M.P. to Rosebud Health Care Center. (Tr. 103:6-104:2; 127:1-11). G.M.P. was discharged back into T.L.R.'s care on November 23, 2020. (CR 4, ¶ 7).

On November 25, 2020, A.D.R. filed the Petition. (CR 1, ¶ 4). The Court entered an Order appointing A.D.R. as the temporary guardian and conservator. (CR 2).

After A.D.R.'s appointment, he removed G.M.P. from T.L.R.'s care on or about December 4, 2020. (Tr. 122:3-8). G.M.P. expressed significant anxiety about being left alone to A.D.R. and her caregiver; she was left alone while in T.L.R.'s care. (Tr. 65:18-22). The A.D.R. thought G.M.P. was weak and "stunk" when he assumed her care. (Tr. 144:12-22; 148:21-149:24). Dr. Sylar described her as "deconditioned" and "malnourished". Tr., Ex. H1. T.L.R. had ingrown toe and finger nails that were indicative of elder abuse or neglect. (Tr. 146:12-147:5; Ex. Q6). She also had sustained a head trauma while in T.L.R.'s care that was untreated. (Tr. 64:18-65:22; 132:6-134:2; 136:19- 137:2, Ex. H1,Q6). A.D.R. also

discovered that G.M.P.'s medical appointments for her eye sight were cancelled and not rescheduled. (Tr. 139: 1-11). A.D.R. arranged for her to receive comprehensive medical care and treatment, including an evaluation of her head trauma and trimming her toe and finger nails. (Tr. 136: - 141:16; 145:13-146:6; 146:12-148:19).

After A.D.R. was appointed as the temporary conservator, he identified a number of transactions that appeared to benefit T.L.R. and not G.M.P. (Tr. 111:1-112:20; 175:7-12;176:8-15; 259:3-260:14; Ex. E, O). T.L.R. purchased a new Jeep with a loan at the highest rate of interest and collateralized by G.M.P.'s certificate of deposit. (Tr. 162:21- 166:3). This purchase occurred when G.M.P. could no longer drive. (Tr. 163:25-164:1; 261:22-262:10). T.L.R.'s name is on the title for the Jeep. (Tr. 112:21-25). There were other questionable expenses that A.D.R. identified, including checks on rental properties, payments to Waple Enterprises (T.L.R.'s company), utilities on other properties, and a check to T.L.R.'s personal attorney, Afton Ball. (Tr. Tr. 111:1-112:20; 175:7-12;176:8-15; 259:3-260:14; Ex. E,O). T.L.R. also changed the beneficiary designations on G.M.P.'s accounts to name herself as the beneficiary. (Tr.109:1-11; 172:24-173:10).

G.M.P. had been in A.D.R.'s care for almost a year at the time of the hearing. (*See*, Tr. 130: 2-6; CR 55). G.M.P.'s medical records show her dementia has slowly progressed since 2016. (*See*, Tr. 91:5-93:3; 93:16-95:24; 96:2-97:16).

This condition has progressively worsened. (*See*, Tr. 93:16-95:24). As a result of that diagnosis, A.D.R. has attended classes to learn about dementia. (Tr. 153:11-154:23). He has enrolled G.M.P. in a dementia daycare program in Sheridan, Wyoming. (Tr. 151:23-152:25). It is supervised by trained medical care professionals and provides G.M.P. an opportunity to socialize with other elderly individuals and play games in a safe environment. (Tr. 152:7-25). G.M.P. looks forward to it every day; she calls it “school.” (Tr. 187:7-14). He has established regular care for her, including occupational therapy, physical therapy, medical care, and in-home health. (Tr. 67: 4-16; 136: - 141:16; 145:13-146:6; 146:12-148:19; 154:24-156:6) G.M.P. is thriving physically and mentally. (Tr. 67:17-68:5; 69:13-19; 69:20-70:10).

At the hearing, T.L.R. made several critical admissions that are worthy of this Court’s attention. T.L.R. admitted that she is unfamiliar with G.M.P.’s current care needs and has not asked A.D.R. about G.M.P.’s current care needs. (Tr. 278:12-279:1). T.L.R. also conceded that she has not arranged for home health for G.M.P. if G.M.P. were returned to her care. (Tr. 280:1-16). G.M.P. would also lose the opportunity to go to the adult daycare program for dementia patients. Instead, her socialization would come from T.L.R., T.L.R.’s husband, and perhaps a visit to the Senior Citizens Center in Colstrip, Montana. (Tr. 280:21- 281:10).

SUMMARY OF ARGUMENT

The district court properly administered the trial and did not violate T.L.R. or G.M.P.'s due process rights. The district court did not abuse its discretion in failing to admit certain evidence offered by T.L.R. Substantial evidence supports the district court's appointment of A.D.R. as the permanent full guardian and conservator.

ARGUMENT

1. T.L.R. Waived Her Right to Object to A.D.R.'s Appointment as Temporary Guardian and Conservator.

T.L.R. alleges that the district court improperly granted temporary guardianship and conservatorship to A.D.R. Appellant's Br., p. 1. T.L.R. complains that the appointment was made without notice and contrary to the T.L.R.'s nomination as a guardian and conservator in the 2020 POA. Appellant's Br., p. 4-5. T.L.R.'s concerns, however, are in contravention of Montana law and waived by her failure to timely appeal.

Montana law expressly permits the appointment of a temporary guardian and conservator without notice. §§ 72-5-317(2), 72-5-421(1), MCA. Rule 6(4)(a), Mont. R. App. P., provides in a guardianship, an order granting letters of guardianship is immediately appealable, and failure to appeal will result in a waiver of right of appeal. This Court has also previously held that an order

granting temporary guardianship under § 72-5-317, MCA, is a final order subject to appeal. *Matter of Klos* (1997), 284 Mont. 197, 202, 943 P.2d 1277, 1279.

Montana's conservatorship statutes have a procedure similar to guardianships. A temporary conservatorship is a proceeding appointing another to manage a protected person's estate. § 72-5-401, MCA. Similar to a temporary guardianship proceeding, a proceeding to appoint a temporary conservator is separate from a permanent conservatorship proceeding. § 72-5-421, MCA; *see also Klos*, 284 Mont. at 201, 943 P.2d at 1279. Failure to appeal the order appointing a temporary conservator is a waiver of the right to appeal. *See* Rule 6(4)(a), Mont. R. App. P.

Here, T.L.R. was not entitled to any notice of the appointment of a temporary guardian and conservator pursuant to §§ 72-5-317(2), 72-5-421(1), MCA. She admits, however, receiving actual notice of the temporary guardianship and conservatorship on or about December 4, 2020 when G.M.P. was removed from her care. Appellant's Br., p. 4. She did not appeal the appointment of the temporary guardian and conservator, even though it was a final order, within 30 days. Rule 5(a)(i), Mont. R. App. P. Thus, any objection that T.L.R. may raise on appeal now is waived pursuant to Rule 6(4)(a), Mont. R. App. P.

2. G.M.P.’s Due Process Rights Were Not Violated.

T.L.R. lacks any standing to assert G.M.P.’s constitutional rights. *In re Guardianship of A.M.M.*, 2016 MT 213, ¶ 12, 384 Mont. 413, 418, 380 P.3d 736, 739. On that basis alone, T.L.R.’s appeal fails to provide sufficient justification to reverse the district court’s Order.

Notwithstanding the standing issue, the Court addressed the interplay between U.S.C.A. Const. Amend. 14; Mont. Const. Art. II, § 17 and the guardianship and conservatorship statutes codified at § 72-5-101, MCA, *et. seq.* in *Klos*, 284 Mont. 197 at 205, 943 P.2d at 1281. “The fundamental requirements of due process are ‘notice and opportunity for hearing appropriate to the nature of the case.’” *Id.*

In the context of a guardianship and conservatorship proceeding, there are multiple procedural safeguards that are designed to satisfy due process. §§ 72-5-315(2), 72-5-408(2), MCA, requires that the alleged incapacitated person (“AIP”) be represented by court appointed counsel. §§ 72-5-315, 72-5-408(2), MCA. The attorney is tasked with ensuring that the AIG participates, to the extent possible, in the proceeding.

Within a guardianship proceeding, and routinely within conservatorship proceedings, a physician and a visitor are appointed. §§ 72-5-315(2), 72-5-408(2),

MCA². The physician is directed to examine the AIG and provide a report to the court. §§ 72-5-315(2), 72-5-408(2), MCA. The visitor is directed to interview the AIG, the petitioner, the person nominated to serve as guardian, visit the AIG's place of abode, the place the AIG is expected to reside, and provide a report to the court. §§ 72-5-315(2), 72-5-408(2), MCA. The visitor is, among other things, in guardianship proceedings, someone trained in medical care and is an appointee of the court with no personal interest in the proceedings. § 72-5-313, MCA.

Collectively, the appointment of an attorney, physician, and visitor are intended to safe guard the AIG's right to due process.

Here, the parties adhered to all the procedural safeguards necessary to protect G.M.P.'s due process rights. (CR 51, Exs. A; H1). G.M.P. was and continues to be represented by court-appointed counsel. (CR 2). The court-appointed counsel appeared and participated in the hearings on G.M.P.'s behalf. (CR 55). A visitor was appointed by the Court. (CR 25, 26). The visitor prepared a report, testified at the hearing, and was cross-examined by T.L.R. and G.M.P.'s counsel. (CR 51, Ex. A; 55). G.M.P. was examined by a physician and his report was admitted into evidence. (CR 51, Ex. H1). Her medical records were also

² § 72-5-408, MCA, provides that the Court may appoint a physician or visitor in a conservatorship proceeding. In contrast, the guardianship statutes states that the court shall appoint a physician and visitor. § 72-5-315(2), MCA. "May" means "to be permitted to" or "to be a possibility." *Black's Law Dictionary* 1068 (Bryan A. Garner ed., 9th ed., West 2009). In contrast, "shall" means "has a duty to" or "required." *Id.* at 1499. Thus, the appointment of a physician and visitor in a conservatorship proceeding is permissive whereas it is required in a guardianship proceeding.

admitted at the hearing. (CR 51, Ex. H1). These actions demonstrate that G.M.P. received substantial notice and opportunity to be heard in these proceedings. G.M.P., by and through counsel, has actively participated in this case. (*See*, CR 55). Accordingly, G.M.P.'s due process rights have not been violated during the guardianship and conservatorship proceeding. The district court's Order can be affirmed on this basis.

3. T.L.R.'s Due Process Rights, to the Extent She Has Any, Were Not Violated.

T.L.R. alleges the district court denied her due process of law during these proceedings. (Appellant's Br., p. 5). § 72-5-403, MCA, does not require that a child be provided notice of a conservatorship proceeding involving a parent. § 72-5-321, MCA, does require that an adult child receive notice of a guardianship proceeding involving a parent. However, this Court has previously held that a child does not have a constitutional right to due process simply because the proceeding involves a parent. *Conservatorship of H.D.K.*, 2021 MT 254, ¶ 21, 405 Mont. 479, 489, 497 P.3d 1171, 1178, reh'g denied (Nov. 9, 2021). The focus of a guardianship and conservatorship proceeding is on the protected person³ and promoting their best interests and the effective management of his or her affairs.

³ Within a guardianship, the AIG is referred to as the "ward." § 72-5-101(5), MCA. A "protected person" is the name of the AIG within a conservatorship proceeding. § 72-5-101(2), MCA. For simplicity purposes, counsel has referred to the AIG in a guardianship and conservatorship proceeding simply as the protected person for purposes of this brief.

§§ 72-5-306, 72-5-401, MCA, *Conservatorship of H.D.K.*, ¶ 21; see also *In re Guardianship and Conservatorship of A.M.M.*, ¶ 13. It is not an adversarial proceeding. *Conservatorship of H.D.K.*, ¶ 21; *Guardianship and Conservatorship of A.M.M.*, ¶ 13.

Due process has both procedural and substantive components. *Klos*, ¶ 20. Procedural due process requires notice and opportunity to be heard. *Id.* “This Court has previously concluded that the phrase ‘due process’ cannot be precisely defined but that the ‘phrase expresses the requirements of ‘fundamental fairness’.” *In re A.R.*, 2004 MT 22, ¶ 11, 319 Mont. 340, 343, 83 P.3d 1287, 1290.

To the extent she has any constitutional right to due process, T.L.R. has had ample notice and opportunity to be heard. She has actively participated in every stage of this proceeding. T.L.R.’s participation can be summarized by the following actions:

1. T.L.R. filed an *Objection*;
2. T.L.R. filed a *Pre-Trial Brief*;
3. T.L.R. filed a *Response to G.M.P.’s Motion in Limine to Exclude the Testimony of James Carr a/k/a Jim Carr and Request for a Certified Geriatric Medical Evaluation to Be Conducted by a Board Certified, Third-Party Geriatrician*;
4. T.L.R. served subpoenas for her witnesses;
5. T.L.R. personally appeared at the hearing;
6. T.L.R. testified on her own behalf;
7. T.L.R. called witnesses in her case-in-chief;
8. T.L.R. cross-examined witnesses called by A.D.R.;
9. T.L.R. submitted proposed findings of fact and conclusions of law.

(CR 4, 39, 32, 40, 41, 42, 43, 44, 51, 55, 56). T.L.R. presented her arguments to the district court in support of her request to serve as the permanent full guardian and conservator. (CR 39; Tr. 200:25-214:6; 227:11- 306: 7-15). T.L.R.’s participation proves she received notice at every stage of this proceeding, notwithstanding her lack of counsel. Accordingly, T.L.R.’s rights to due process, if any, were not violated and the district court’s Order can be affirmed.

4. The District Court Acted Appropriately in Appointing A.D.R. as the Guardian and Conservator.

The district court’s decision to appoint A.D.R. as the permanent full guardian and conservator for G.M.P. was not clearly erroneous. The district court correctly interpreted the statutes applicable to appointment proceedings. Substantial evidence demonstrated that it was in G.M.P.’s best interests, and the best interests of her affairs, to appoint A.D.R. as G.M.P.’s permanent full guardian and conservator.

“This Court reviews a district court's appointment of a guardian and determination of the scope of the guardian's responsibilities for an abuse of discretion.” *Matter of Est. of M.D.*, 2017 MT 22, ¶ 9, 386 Mont. 234, 237, 388 P.3d 954, 956. This Court applies a de novo review to determine if the statutes were correctly interpreted and applied by the district court. *Id.* A district court’s ruling will not be reversed unless they are clearly erroneous. *In re Guardianship & Conservatorship of Gilroy*, 2004 MT 267, ¶ 16, 323 Mont. 149, 99 P.3d 205.

§ 72-5-312, 72-5-410, MCA, establishes the priorities for appointment of a guardian and conservator. §§ 72-5-312(2)(a), 72-5-410(1)(b), MCA, provides that a person nominated by the protected person at a time when they had sufficient mental capacity to make the choice is entitled to priority above all others. The priorities enumerated in §§ 72-5-312, 72-5-410, MCA, are not binding on the court. §§ 72-5-312(3), 72-5-410(3), MCA. The court shall select the person best qualified and willing to serve as guardian. § 72-5-312(3), MCA. The court may, for good cause, pass over a person with priority and appoint someone with less or no priority as conservator. § 72-5-410(2), MCA. The district court must consider factual evidence to determine the best qualified and willing person to serve as guardian, or whether good cause exists to appoint someone with less or no priority as conservator.

This Court reviews the district court's findings of fact to determine if they are clearly erroneous. *Matter of Conservatorship of H.D.K.*, ¶ 17. If the court's findings are not supported by substantial evidence, the court misapprehended the effect of the evidence, or this Court is convinced that the district court made a mistake upon review of the record, then the findings are clearly erroneous. *Id.* When evaluating the evidence, this Court views the evidence in the light most favorable to the prevailing party. *Roberts v. Mission Valley Concrete* (1986), 222 Mont. 268, 271 P.2d 355, 357.

The district court correctly applied the standards of § 72-5-312(3), MCA, when it determined that A.D.R. was the best qualified and willing to serve as guardian. The district court considered the following: (i) G.M.P.'s condition while in T.L.R.'s care; (ii) the care plan established by A.D.R., which includes G.M.P.'s enrollment in an adult dementia daycare program, home health visitation for caregiving, modifications to his home, physical therapy and occupational therapy for G.M.P., and dental care; and (iii) T.L.R.'s lack of a comprehensive care plan for G.M.P. or awareness regarding G.M.P.'s current care needs. (CR 58, ¶¶ 16, 23). The court-appointed visitor, G.M.P.'s counsel, and G.M.P.'s other son, G.R., collectively testified or informed the court that A.D.R. was best qualified to serve as the court-appointed guardian for G.M.P. (Tr. 23:20-24:5; 68:12-16; 221:13-222:20). The foregoing facts reflect that the district court's findings were not clearly erroneous or unsupported by substantial evidence.

The district court also correctly applied the standards of § 72-5-410(3), MCA, when it determined that good cause existed to appoint A.D.R. as the permanent full conservator. Testimony at the hearing revealed that G.M.P. was not driving in 2019. Notwithstanding her inability to drive, T.L.R. caused her to purchase a new Jeep with a high interest loan that is collateralized by her certificate of deposit. (Tr. 162:21- 166:3). T.L.R., also through the 2020 POA, made modifications to G.M.P.'s beneficiary designations to name herself as the

beneficiary. (Tr.109:1-11; 172:24-173:10). There are also a series of questionable expenses that personally benefitted T.L.R. to the detriment of G.M.P. These transactions are substantial evidence that T.L.R., when acting in a fiduciary capacity, cannot effectively manage G.M.P.'s affairs in a manner that promotes and protects G.M.P.'s best interests. (Tr. 111:1-112:20; 175:7-12;176:8-15; 259:3-260:14; Ex. E,O). Thus, the district court's conclusion that good cause existed to appoint A.D.R. as the permanent full conservator is not clearly erroneous.

5. The District Court Did Not Abuse its Discretion When it Excluded T.L.R.'s Evidence.

T.L.R. alleges that the district court erred by failing to allow her to admit her Complaint to the U.S. Department of Justice, as well as the Montana Board of Medical Supervisors, and to ask "highly pertinent questions" of the witnesses. Appellant's Br., p. 6.

A district court retains broad discretion in determining issues related to trial administration. *Fink v. Williams*, 2012 MT 304, ¶ 18, 367 Mont. 431, 291 P.3d 1140. This Court reviews evidentiary rulings, rulings regarding discovery, and control of pretrial and trial proceedings for an abuse of discretion. *City of Missoula v. Mountain Water Co.*, 2016 MT 183, ¶ 18, 384 Mont. 193, 378 P.3d 1113. In order to establish an abuse of discretion, the T.L.R. must show "the district court acted arbitrarily without conscientious judgment or exceeded the bounds of reason." *City of Missoula*, ¶ 18 (citations and quotations omitted).

Here, the Honorable Nickolas C. Murnion did not abuse his discretion in excluding the Complaint to the U.S. Department of Justice (“DOJ Complaint”) and the Montana Board of Medical Examiners. (Tr. 275:3-277:1). T.L.R. sought to admit these documents into evidence to prove that G.M.P. was not legally blind. (Tr. 276:2-10). Whether G.M.P. is legally blind does not make it more or less probable that G.M.P. was incapacitated within the meaning of § 72-5-101(1), MCA, or has a mental deficiency or advanced age within the meaning of § 72-5-409(2)(a), MCA. Certainly, a person can have limited vision but still be deemed incapacitated or suffer a mental deficiency. The DOJ Complaint was not relevant to the critical issues before the district court in this guardianship and conservatorship proceeding. Thus, the district court did not exceed its bounds or act arbitrarily without conscientious judgment in excluding the DOJ Complaint.

Notwithstanding the lack of relevancy of the DOJ Complaint, the district court provided T.L.R. an opportunity to testify as to the contents of the complaint and her observations about G.M.P.’s eyesight. (Tr. 276:11-22). T.L.R. chose, however, to conclude her testimony. (Tr. 276: 22-277:1).

Finally, T.L.R. alleges the district court abused its discretion in sustaining objections to testimony by opposing counsel at the hearing. The hearing was subject to Mont. R. Evid. While T.L.R. as a *pro se* litigant is entitled to latitude, she is not entitled to so much latitude that it prejudices the other parties. *State v.*

Ferre, 2014 MT 96, ¶ 16, 374 Mont. 428, 322 P.3D 1047. While T.L.R. was entitled to latitude as a *pro se* litigant during her direct and cross-examination of witnesses, she was also obligated to abide by the Mont. R. Evid. The objections sustained by the district court were appropriate under Mont. R. Evid. and did not exceed the bounds of judgment. The district court did not abuse its discretion, and as such, G.M.P. respectfully requests that this Court deny T.L.R.’s appeal on this basis.

CONCLUSION

G.M.P., by and through counsel, respectfully requests that this Court affirm the district court’s Order in its entirety. This outcome will permit G.M.P. continue to thrive under her current care plan in Wyoming and cease any further depletion of her assets from this litigation.

DATED this 25th day of March, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4) of the Montana Rules of Appellate Procedure, I certify the foregoing Appellee's Brief is printed with a proportionally spaced Times New Roman text typeface of 14 points, is double spaced; and the word count is calculated by Microsoft Word is 4230 words, excluding the certificate of service and certificate of compliance

DATED this 25th day of March, 2022.

PATTEN, PETERMAN,
BEKKEDAH & GREEN, PLLC

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CERTIFICATE OF SERVICE

I, Molly S. Considine, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-25-2022:

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