

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 813

September Term, 2016

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IN THE MATTER OF SUE A. WEINTRAUB  
FOR THE APPOINTMENT OF A  
GUARDIAN OF THE PROPERTY

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Meredith,  
Friedman,  
Zarnoch, Robert A.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: June 9, 2017

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Sue A. Weintraub, appellant, is an 84-year-old woman who accumulated a substantial investment portfolio after working for T. Rowe Price for many years. Ms. Weintraub's brother, John Weintraub, appellee, became concerned with her financial decision-making after she became romantically involved with a considerably younger man. Appellee filed a petition for the appointment of a guardian of Ms. Weintraub's property in the Circuit Court for Baltimore County, claiming that Ms. Weintraub's mental health was declining and that her new boyfriend was attempting to exploit her financially. The court granted a 120-day temporary guardianship and set the case in for a hearing on the guardianship petition. Ms. Weintraub opposed the temporary guardianship and filed a petition to terminate it. However, prior to the hearing on the guardianship petition, the parties signed a consent order resolving the pending issues. Three months later, Ms. Weintraub filed a motion to vacate the consent order. The motion was denied without a hearing.

Ms. Weintraub appealed, and now present one question for our review:

Did the circuit court abuse its discretion by denying her Motion to Vacate?<sup>1</sup>

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<sup>1</sup> In her brief, Ms. Weintraub phrased this question as:

Did the circuit court abuse its discretion by denying Ms. Weintraub's Motion to Vacate, filed pursuant to Rule 2-535(b): (a) despite clear and convincing evidence of irregularity surrounding the circumstances and Orders giving rise to the underlying proceedings; and (b) doing so without providing any legal analysis or inquiry into the grounds for its decision in a manner consistent with Rule 2-535(b) and its progeny.

For the following reasons, we answer no and affirm the judgment of the circuit court.

### **BACKGROUND**

Ms. Weintraub spent approximately twenty years working as an administrative and research assistant at T. Rowe Price. During that period, she made stock market investments that resulted in a portfolio valued at over \$8 million. She left T. Rowe Price in 1983 to work for her husband's company. After her husband's death, Ms. Weintraub closed the business and retired. In 2008, a few years after her husband's death, Ms. Weintraub hired an attorney, Edwin Fee, to implement financial and estate planning measures for her.

In November 2011, Ms. Weintraub, who was seventy-eight years old at the time, met a man named Dean Kupetz. Kupetz, who is forty years younger than Ms. Weintraub, soon began working as her personal assistant. After a few months, this developed into a romantic relationship. On April 5, 2016, Ms. Weintraub and Kupetz were married.

Prior to their marriage, Ms. Weintraub and Kupetz bought a house together in Towson for \$580,000. After purchasing the house, they performed extensive renovations on the property. These renovations were financed entirely by Ms. Weintraub. Appellee did not approve of his sister's relationship, and believed that Kupetz was financially exploiting her. Appellee expressed these concerns to Fee.

On November 6, 2015, appellee filed a Petition for the Appointment of a Guardian of the Property of Ms. Weintraub in the Circuit Court for Baltimore County. In his petition, appellee alleged that Ms. Weintraub's mental state was declining, she had shown

poor judgment, her financial well-being was at risk, and she had made irresponsible expenditures for Kupetz’s benefit. Appellee asked the court to appoint him as a co-guardian of Ms. Weintraub’s property, along with another attorney, Barrett King. Appellee’s petition included a certificate from Ms. Weintraub’s physician, Dr. Cometa, who diagnosed her with “moderate and progressing to severe” senile dementia. That same day, appellee also filed an emergency motion with the court for a temporary guardianship over the property. Appellee contended that this was necessary to prevent “individuals” from exercising undue influence over Ms. Weintraub for personal gain. Appellee also moved for the court to appoint counsel for Ms. Weintraub. On the same day that appellee filed these petitions, the court held an off-the-record proceeding in chambers. The court then granted the emergency motion for a temporary guardianship and the motion to appoint counsel. Appellee and King were appointed as temporary co-guardians for a period of 120 days. Mary McCarthy Campbell was appointed as counsel for Ms. Weintraub.

Ms. Weintraub claims she was not aware of the temporary guardianship until five days later when she was contacted by Campbell. On November 25, 2015, Ms. Weintraub responded by filing a petition to terminate the temporary guardianship. In her petition, Ms. Weintraub argued that she had no mental disability and was never given notice prior to the granting of the temporary guardianship. Ms. Weintraub also filed a supplement to her petition that included mental health evaluations from two doctors, Dr. Frank Wolkenberg and Dr. Melissa Fox. Dr. Wolkenberg, a psychologist, performed three

mental health tests on Ms. Weintraub from December 2015 through January 2016, and found no signs of dementia. Dr. Fox was Ms. Weintraub’s dermatologist. She performed a mini-mental health exam on her on January 20, 2016. Dr. Fox found no signs of confusion or mental decline. On December 11, 2015, appellee filed his opposition to Ms. Weintraub’s petition.

Two settlement conferences were held on the guardianship issue in chambers on February 1, 2016 and February 19, 2016. The case was set in for a two-day hearing on the guardianship petitions to begin on February 24, 2016. However, on February 23, 2016, Ms. Weintraub signed a consent order resolving all outstanding issues. The order was also signed by two of Ms. Weintraub’s attorneys. In the consent order, Ms. Weintraub agreed to the establishment of a \$4 million trust of her liquid assets, with attorneys appointed as co-trustees. The consent order also gave power of attorney for all financial matters to Ms. Weintraub’s attorney. On February 26, 2016, the circuit court signed and entered the consent order.

Three months later, on May 27, 2016, Ms. Weintraub hired new counsel and filed a motion to vacate the consent order under Rule 2-535(b). Ms. Weintraub claimed that she only signed the consent order because she felt it was the only way to end appellee’s effort to have a guardianship over her. She contended that the consent order should be vacated for “profound” irregularity. On June 13, 2016, appellee filed his response, asserting that there were no irregularities and no justification for revision under 2-535(b).

On June 20, 2016, the circuit court denied the motion to vacate. On June 24, 2016, Ms. Weintraub filed her notice of appeal.

### **STANDARD OF REVIEW**

In order to disturb an enrolled judgment pursuant to Rule 2-535(b), the circuit court must find fraud, mistake, or irregularity by clear and convincing evidence. *See* Md. Rule 2-535(b); *Davis v. Attorney Gen.*, 187 Md. App. 110, 123 (2009). The circuit court’s refusal to revise or vacate a judgment is reviewed under the abuse of discretion standard. *J.T. Masonry Co. v. Oxford Const. Servs., Inc.*, 74 Md. App. 598, 607 (1988). Abuse of discretion occurs “where no reasonable person would take the view adopted by the trial court.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (citations and internal quotation marks omitted).

### **DISCUSSION**

This appeal is taken from the circuit court’s denial of Ms. Weintraub’s motion to vacate the consent order. Accordingly, Ms. Weintraub can only challenge the validity of the consent order that she signed on February 23, 2016. To warrant vacating the order, Ms. Weintraub must show irregularity by clear and convincing evidence.<sup>2</sup> *See* Md. Rule 2-535(b). “When determining whether an irregularity occurred, a trial court must consider the totality of the circumstances.” *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998).

In both her brief and at oral argument, Ms. Weintraub focuses her arguments on

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<sup>2</sup> Ms. Weintraub has made no allegations of fraud or mistake.

the temporary guardianship that the court granted to appellee on November 6, 2015. She argues that it was the result of improper procedures. Despite Ms. Weintraub’s contentions to the contrary, Maryland law does authorize the appointment of a temporary guardian of the property of an alleged disabled person. A temporary guardian is “a person who has been authorized to preserve and apply the property of a minor or alleged disabled person pending a hearing on a petition for guardianship.” Md. Rule 10-103(i)(2). The Maryland Code provides that “[w]hile a petition for appointment of a guardian or other protective order is pending, the court may preserve and apply the property of the alleged disabled person or minor as may be required.” Md. Code (1974, 2011 Repl. Vol.), Estates & Trusts Article (“ET”) § 13-203(a). The court may grant a temporary guardianship of the property if “it appears from specific facts shown by affidavit that immediate, substantial, and irreparable injury will result to the applicant or to the minor or disabled person before an adversary hearing can be held.” ET § 13-203(b). That is precisely what occurred in the instant case.

Ms. Weintraub makes a variety of arguments on appeal regarding supposed irregularities that occurred in the process of the court granting the temporary guardianship.<sup>3</sup> However, even if we were to acknowledge that there were procedural

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<sup>3</sup> Specifically, Ms. Weintraub claims that the court failed to provide proper notice of the temporary guardianship, that the temporary guardianship exceeded the maximum time period allowed for temporary guardianships, that the doctor’s certificate used in appellee’s petition for the temporary guardianship was stale, and that these irregularities violated her due process rights. Ms. Weintraub does not directly attack the doctor’s certificate as defective because it was only signed by one doctor, instead of two.

errors made with regard to the temporary guardianship, they would be irrelevant to the instant appeal. The merits of the temporary guardianship are not up for review by this Court, because Ms. Weintraub did not take her appeal from the temporary guardianship order. Instead, she has appealed the circuit court’s denial of her motion to vacate the consent order that she signed. “[A]n appeal from the denial of a motion to vacate an enrolled judgment is limited in scope [and] does not serve the normal functions of an appeal from the original judgment.” *First Federated Commodity Trust Corp. v. Comm’r of Sec. for Maryland*, 272 Md. 329, 333 (1974).

Ms. Weintraub has not made any allegations of irregularity with regard to the consent order itself. The temporary guardianship was granted on November 6, 2015. Ms. Weintraub signed the consent order on February 23, 2016. Two of Ms. Weintraub’s attorneys signed the order as well. At the time, the temporary guardianship had already been in place for approximately three and a half months. Thus, the 120-day temporary guardianship was about to expire at the time the consent order was signed. Moreover, a two-day hearing on the merits of the guardianship petition was set to start the next day. Ms. Weintraub contends that she signed the consent order “because she felt it was the only way to end any effort by her brother to have a guardianship over her, plus stop what she felt was his interference into her relationship with Mr. Kupetz.” We fail to see how Ms. Weintraub had no other choice when the temporary guardianship was about to expire and a hearing on the merits of the guardianship petition was about to be held. No permanent decisions regarding the guardianship of her property had been made at that



point. At the hearing, Ms. Weintraub would have had the chance to make all the arguments she is attempting to make now regarding the validity of the guardianship. The consent order resolved the issues that Ms. Weintraub is attempting to re-litigate here, and her only explanation for signing the consent order was that she felt she did not have any other choice. That is not an irregularity, and it is certainly not enough to warrant vacating the order.

Furthermore, Ms. Weintraub also argues that she had no signs of dementia or mental disability and therefore was not in need of a guardian. There is evidence that might support this claim in the form of doctors' evaluations that Ms. Weintraub submitted to the circuit court. However, while such an argument would have been helpful at the merits hearing on the guardianship, it has no bearing on the validity of the consent order. On the contrary, it supports the fact that she was of sound mind at the time and knowingly agreed to the consent order.

Because there is no evidence of irregularity with regard to the consent order, the court properly denied the motion to vacate.

**JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**