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THE SUPREME COURT OF NEW HAMPSHIRE

9th Circuit Court-Nashua Probate Division
Case No. 2025-0527
Citation: In re Guardianship of T.M., 2026 N.H. 23

IN RE GUARDIANSHIP OF T.M.

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DONOVAN, J.

[¶1] The petitioner, the mother of T.M., appeals a decision of the Circuit Court (Kissinger, J.) denying her motion seeking to remove the Office of Public Guardian (OPG) as guardian of the person of her son (ward) and be appointed as his successor guardian. See RSA 464-A:39 (Supp. 2025). The mother argues that the trial court erred by, among other things, requiring her to establish that there was cause to remove OPG. We vacate and remand.

I. Facts

[¶2] The trial court found, or the record otherwise supports, the following facts. The mother served as the guardian of the person of the ward from 2010 until 2020, when the Circuit Court (Quigley, J.) removed her on an ex parte basis. The trial court appointed OPG as the ward's temporary successor guardian, and the parties later agreed to appoint OPG as the ward's guardian on an enduring basis.

[¶3] In 2021, the mother filed a motion seeking to remove OPG as the ward's guardian and be appointed as his successor guardian. Following a hearing, the Circuit Court (Kissinger, J.) denied the relief sought by the mother. The trial court determined that "there is no cause for removal of OPG" and that it was therefore not in the ward's best interests to remove OPG as guardian. The trial court also found that "it is not readily foreseeable that [the mother] would be able to carry out the duties of a guardian" and that the mother was "not an appropriate person to be appointed."

[¶4] In December 2024, the mother filed a second motion seeking the removal of OPG as the ward's guardian and to be appointed as the ward's successor guardian. The trial court held a hearing on the motion in July and August 2025 and issued an order denying the relief sought by the mother. The trial court found that the mother had failed to demonstrate by a preponderance of the evidence that OPG was not acting in the ward's best interests "or otherwise [that] there is cause to remove it as Guardian." The trial court acknowledged the mother's concerns with OPG's performance in its role as the ward's guardian but determined that those concerns were "not sufficient to show good cause for removal of OPG." The trial court also found that, although the mother had made certain improvements regarding her ability to serve as the ward's guardian, it remained "uncomfortable with the prospect of appointing" her to serve in that role.

[¶5] The mother moved for reconsideration, which the trial court denied. This appeal followed.

II. Analysis

[¶6] We first address the mother's argument that the trial court erred by requiring her to establish cause for the removal of OPG as guardian, rather than more broadly considering whether OPG's removal was in the ward's best interests. As an initial matter, OPG asserts that this argument is not preserved for appellate review because the mother did not object to the use of the same standard, requiring a showing of cause for removal of a guardian, in the trial court. The mother responds that she objected to the trial court's proposed

“‘cause’ framework” at the structuring hearing, thus preserving her argument for appellate review. We agree with the mother.

[¶7] “The purpose behind our preservation rule is to allow trial courts the opportunity to rule on issues and to correct errors before they are presented to the appellate court.” *In re J.D.*, 175 N.H. 108, 111 (2022) (quotation omitted). The record before us establishes that the trial court considered which standard to apply after the mother objected to the burden of proof at the structuring hearing. The trial court stated that “in [this] case . . . the burden would be on [the mother] to show that there’s cause to remove the [OPG] and then show that [the mother] is the appropriate successor” guardian. The mother objected to the trial court’s characterization, arguing that the burden of proof is “explicit in the New Hampshire statute”; the removal of a guardian requires prioritization of a family member over a public guardian and consideration of the “least restrictive form of intervention.” In response, OPG stated that “removal has to be in the ward’s best interest. And that also means that there has to be cause to remove the guardian.” Although the mother’s objection did not expressly challenge whether cause was required to remove a guardian, it argued for a standard that did not include cause and thereby prompted the trial court to consider the appropriate legal standard for removal of a guardian. When addressing the mother’s objection, the trial court stated that “there is no priority in the statute . . . [s]o I still think you need to prove that there’s cause to remove” OPG as guardian. We conclude that the mother’s arguments and OPG’s response provided the trial court with the opportunity to rule on the appropriate legal standard. *See id.*¹

[¶8] We therefore turn to the merits of the mother’s argument. Resolving this issue requires that we engage in statutory interpretation. Statutory interpretation presents a question of law, which we review *de novo* by applying our standard principles of statutory construction, such as examining the language of the statute and, if possible, construing that language according to its plain and ordinary meaning. *In re Guardianship of K.C.*, 177 N.H. 353, 355 (2025), 2025 N.H. 22, ¶5. Moreover, we interpret the statute as written and

¹ OPG also contends that the doctrine of res judicata procedurally bars the mother’s argument because the mother did not challenge the trial court’s application of the same standard for the removal of a guardian when it denied her prior motion to be appointed as the ward’s successor guardian. We are not persuaded. “The essence of the doctrine of res judicata is that a final judgment by a court of competent jurisdiction is conclusive upon the parties in a subsequent litigation involving the same cause of action.” *In re Juvenile 2004-637*, 152 N.H. 805, 808 (2005). Res judicata, also referred to as claim preclusion, prevents parties from relitigating claims that were litigated or could have been litigated in the prior action. *In the Matter of Hampers & Hampers*, 166 N.H. 422, 429 (2014); *see McNair v. McNair*, 151 N.H. 343, 352-53 (2004). Here, OPG does not assert that res judicata bars the mother’s claim for relief. Rather, it contends only that the mother is barred from asserting her legal argument regarding the statutory standard for removal of a guardian. Thus, OPG’s asserted application of the doctrine of res judicata to the mother’s legal argument, rather than her claim for relief, is unpersuasive.

will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id.

[¶9] Regarding the removal of a guardian, RSA 464-A:39, I, provides:

I. Any person appointed as guardian of the person or an estate or both shall serve until:

- (a) His or her resignation is accepted by the court;
- (b) He or she dies;
- (c) The court finds removal of the guardian to be in the ward's best interests; or
- (d) The guardianship is terminated pursuant to this section or RSA 464-A:40.

“[A]ny person interested in the ward's welfare may file a motion for the removal of the guardian of the person or the estate or both, if removal would be in the ward's best interests.” RSA 464-A:39, III.

[¶10] The trial court stated in its order that, to remove a guardian, it “must find that removal is in the best interest of the” ward. See RSA 464-A:39, I(c). The trial court also stated, however, that “[a]s such, the Court must be presented with evidence justifying the removal — in other words, that there is cause to do so.” By its plain language, RSA 464-A:39 does not require that a moving party establish that there is cause to remove an existing guardian. The sole inquiry prescribed by statute is that the court consider whether removing a guardian would be “in the ward's best interests.” Id.; RSA 464-A:39, III. The trial court's construction of RSA 464-A:39, as requiring a showing of cause for the removal of a guardian, adds language to the statute that the legislature did not see fit to include, contrary to our principles of statutory interpretation. See In re Guardianship of K.C., 177 N.H. at 355, 2025 N.H. 22, ¶5.

[¶11] We do not share OPG's interpretation of the trial court order as “merely set[ting] forth its understanding of the evidence required to establish that it is in the ‘best interests’ of the protected person for the incumbent guardian to be removed.” “The interpretation of a trial court order is a question of law, which we review de novo.” In re Guardianship of D.E., 173 N.H. 550, 563 (2020). In its order, the trial court “carefully considered certain instances raised by [the mother] as reasons to remove OPG for cause.” The trial court denied the mother's motion “primarily on the basis that [the mother] did not carry her burden to demonstrate by a preponderance of the evidence that OPG was not acting in [the ward's] best interest or otherwise [that] there is cause to remove it as Guardian.” It concluded that the mother's concerns with OPG's performance were “not sufficient to show good cause for removal of OPG.” While the trial court correctly considered the best interests of the ward, its

requirement that “the Court must be presented with evidence justifying the removal” of OPG was inconsistent with the standard set forth in RSA 464-A:39.

[¶12] The existence of cause for the removal of a guardian certainly may factor into a court’s determination as to whether removal is in the ward’s best interests. However, while cause for removal of a guardian may be sufficient to show that removal is in the ward’s best interests, there is no statutory requirement that a moving party establish cause for removal. Consistent with the “best interests” standard under RSA 464-A:39, I(c), a moving party may be able to establish that the removal of a guardian would be in the ward’s best interests even absent a showing that there is cause for removal of the existing guardian.

[¶13] We note that, in contrast to RSA chapter 464-A, RSA chapter 463, which governs guardianship of minors, provides that “[a]ny person appointed as guardian over the person or of an estate or both shall serve until [inter alia] removal by the court for cause.” RSA 463:14, I (2018) (emphasis added). That chapter also provides that “[a]ny person interested in the welfare of the minor may petition for the removal of the guardian of the person or of the estate or of both for cause.” RSA 463:14, IV (2018) (emphasis added). As discussed above, however, the statute applicable to removal of a guardian of the person of an adult, RSA 464-A:39, I(c), does not contain any such language specifying that removal must be for cause.

[¶14] The trial court relied upon In re Guardianship of Luong, 157 N.H. 429, 436 (2008), in its discussion of the legal standard applicable to the removal of a guardian. In Luong, we addressed whether a trial court had erred by adopting an estate plan drafted by the referee, rather than the ward’s guardians. Luong, 157 N.H. at 436. We stated that “[i]f the probate court believes that the guardians are not acting in the best interests of the ward or have a conflict of interest, it may consider whether they should continue to serve in that capacity.” Id. Nothing in Luong, however, alters the best interests standard under RSA 464-A:39, III. Nor does our discussion in that case, addressing an issue distinct from the issues presented here, stand for the proposition that a moving party must demonstrate that there is cause for removal of a guardian. See id.

[¶15] For the foregoing reasons, we conclude that RSA 464-A:39, I(c) does not require a moving party to establish that there is cause to remove a guardian. Rather, courts must more broadly consider whether removal would “be in the ward’s best interests.” RSA 464-A:39, I(c). Given our conclusion, we need not address the mother’s remaining challenges to the trial court’s findings regarding OPG’s compliance with its statutory obligations and the impact of the mother’s conduct on her suitability to be appointed as successor guardian. We likewise need not address the mother’s argument that the trial court erred by denying her request for an extension of time to file a request for findings of fact

and rulings of law following the structuring conference. Because the trial court imposed a standard not required by the statute, we vacate its order and remand for further proceedings consistent with this opinion.

Vacated and remanded.

MACDONALD, C.J., and COUNTWAY, GOULD, and WILL, JJ., concurred.