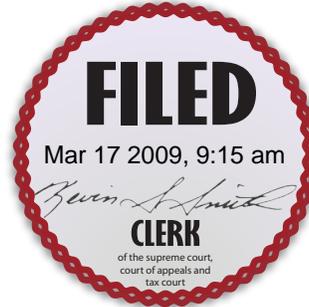


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ALISON E. CLAPP O'CALLAGHAN and)
JENNIFER M. CLAPP SPIEGEL,)

Appellants,)

vs.)

No. 64A04-0809-CV-562

IN RE TEMPORARY GUARDIANSHIP OF)
THORA M. MOULTON, an Adult,)

Appellee.)

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
Cause No. 64D01-0802-GU-1651

March 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Alison E. Clapp O'Callaghan¹ brings this pro se appeal of the trial court's order approving the guardians' final report and terminating the temporary guardianship of her late aunt, Thora M. Moulton.

We affirm.

FACTS

On February 19, 2008, Attorney Donald J. Evans filed a verified petition for the appointment of a temporary guardian over the person and estate of Thora M. Moulton, alleging that Moulton was “unable to maintain and care for her person or financial affairs” and “require[d] twenty-four hour, seven day a week care.” (App. 39). A statement from a physician attesting to the latter allegation was submitted with the petition. That same day, the trial court found “that an emergency exist[ed]” and that Moulton’s “welfare . . . require[d] immediate action.” (App. 46). It issued an order appointing Evans as temporary guardian of Moulton and her estate.

On March 7, 2008, the trial court appointed a guardian ad litem to represent Moulton. On March 20, 2008, the guardian ad litem reported to the trial court on his personal meeting with Moulton and his review of relevant circumstances. The guardian ad litem recommended that Evans be appointed guardian of her person and that 1st Source Bank (“the Bank”) be appointed guardian of her estate.²

¹ O'Callaghan states in her brief that she and her “twin sister, Jennifer M. Clapp Spiegel” are “Appellants.” Br. at 1. However, the brief contains only the original signature of O'Callaghan. Appellate rules require that the brief be signed. *See* Ind. Appellate Rule 23(E). Therefore, we consider only O'Callaghan to be the appellant in this matter.

On April 1, 2008, Evans filed a petition seeking his replacement as temporary guardian over Moulton's estate. That same day, April 1, 2008, the trial court appointed the Bank as temporary guardian of Moulton's estate.

On April 28, 2008, Moulton died. On May 22, 2008, a final report and petition to terminate the guardianship was filed by the Bank and Evans; and they served O'Callaghan therewith. Also on May 22, 2008, the trial court issued its order setting a hearing for June 27, 2008, on the guardians' final report and petition to terminate the guardianship. The trial court's order directed that the guardians' filing "be served on" O'Callaghan. (App. 139). A letter dated June 12, 2008, from the trial court to O'Callaghan advised her that "a hearing via telephone conference" was not possible and "urge[d] [her] to attend in person or by counsel." (App. 185(a)).

At the outset of the hearing on June 27, 2008, the trial court noted that "Ms. Moulton's nieces" had been "advised that they needed to be here" if they objected to the petition, and "they're not here." (App. 22). Evidence was heard, and at the conclusion of the hearing, the trial court noted the statutory provision whereby "the guardianship

² In his March 30, 2008 report, the guardian ad litem noted that he had been "informed that the nieces of [Moulton], Alison O'Callaghan and Jennifer Spiegel, possess health care power of attorney as well as financial power of attorney." (App. 83). Accordingly, the report continued, "in the event" that the nieces decide to help coordinate the move of [Moulton] to Pennsylvania, help in finding a suitable assisted living arrangement for [Moulton] in Pennsylvania, and agree to be involved in her everyday medical and personal care, if such takes place and [Moulton] is moved to Pennsylvania, then Donald Evans should be discharged as Guardian of the Person and First Source Bank of Valparaiso, Valparaiso, Indiana should be discharged as Guardian of the Estate, and the assets transferred to the nieces . . . either (a) in their capacities as her Attorneys-in-fact, or (b) as Co-Guardians of her person and estate under a guardianship created under Pennsylvania law"

Id.

terminates upon the death of the protected person.” (App. 35). *See* Ind. Code § 29-3-12-1(b)(2).

On August 11, 2008, the trial court issued an order approving the guardians’ final report and terminating the temporary guardianship. The order expressly stated that “notice of the” June 27, 2008, hearing had been “given to . . . O’Callaghan,” who did not “appear[] in person or by counsel.” (App. 13).

DECISION

Indiana law provides that the trial court’s actions in guardianship proceedings are exercised within the court’s discretion. *See* Ind. Code 29-3-2-4(a). Accordingly, we apply an abuse of discretion standard when reviewing the trial court’s action in this matter. *See In re Guardianship of Hollenga*, 852 N.E.2d 933, 936-37 (Ind. Ct. App. 2006). We find an abuse of discretion only when the decision of the trial court is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.* at 937.

O’Callaghan frames her first issue as follows: “Is Indiana Code [section] 29-3-3-4 [providing for the appointment of a temporary guardian] unconstitutional in any manner?” Br. at 1. As we stated in *In re Estate of Carnes*, 866 N.E.2d 260, 264 (Ind. Ct. App. 2007), “pro se litigants are held to the same standard as licensed lawyers.” O’Callaghan puts forth no cogent argument on any legal theory as to how the statute fails to pass constitutional muster. *See* Ind. Appellate Rule 46(A)(8)(a). Some of her rhetoric in this portion of her brief challenges the initial (February 18, 2008) order appointing a temporary guardian. She did not timely appeal that order, and she offers no authority for

the proposition that such is a proper subject for review subsequent to the termination of the guardianship.

“A statute is presumed constitutional,” *Smith v. Indiana Dep’t of Correction*, 883 N.E.2d 802, 804 (Ind. 2009), and an appellant challenging the constitutionality of a statute “must rebut this presumption.” *McManus v. State*, 814 N.E.2d 253 (Ind. 2004), *cert. denied* 546 U.S. 831. Further, a cardinal rule of appellate review is that the appellant bears the burden of showing reversible error. *See Marion-Adams School Corp. v. Boone*, 840 N.E.2d 462, 468 (Ind. Ct. App. 2006); *In re K.H.*, 838 N.E.2d 477, 480 (Ind. Ct. App. 2005). O’Callaghan’s open-ended assertion that the statute may be unconstitutional fails both to satisfy her burden and to rebut the presumption of constitutionality.

O’Callaghan next asserts that she had “request[ed] that the [trial] Court enter an order that direct[ed] equitable compromise of credit card and other debts” in her May 30, 2008 “statement”³ sent to the trial court. Br. at 18. She asserts that in her May 30, 2008, statement, she “proposed to accept trusteeship over the estate of Thora Moulton in lieu and stead of” Evans and the Bank. *Id.* She argues that this request was “reasonable and should be granted upon this appeal.” *Id.* Such constitutes the entirety of her argument, and she offers no authority.

On May 30, 2008, when O’Callaghan made her informal “request,” she had neither filed a pro se appearance nor obtained counsel to appear for her. Further,

³ O’Callaghan sent seven statements to the trial court. The first statement, dated February 29, 2008, was “subscribed and sworn before” a notary; none of the other six were. None expressly “affirm[ed] under the penalties for perjury, that the foregoing representation(s) [we]re true.” Ind. Trial Rule 11(B).

Moulton had died more than a month earlier. Finally, the guardians' petition for approval of their final report and to terminate the guardianship had already been filed with the trial court. O'Callaghan proffers no authority for the proposition that it was error for the trial court to decline her "request," and we find none. As her purported argument is supported by neither cogent reasoning nor authority, we find it waived. *See Liberty Mut. Ins. Co. v. OSI Industries*, 831 N.E.2d 192, 198 (Ind. Ct. App. 2005), *trans. denied*.⁴

The order appealed is the trial court's order approving the guardians' final report and terminating the guardianship. O'Callaghan has not met her burden of showing that the order constitutes an abuse of the trial court's discretion.

Affirmed.

RILEY, J., and VAIDIK, J., concur.

⁴ We find to be waived O'Callaghan's asserted issue that "direction for guardian ad litem appointment [should] provide for psychological and/or medical involvement," Br. at 1, because she has failed to present an argument in support as to "why the trial court . . . committed reversible error" in this regard. Ind. App. R. 46(A)(8).