IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 18, 2023 Session

W. DAVID HALL v. ZORA HUMPHREY

Appeal from the Chancery Court for Knox County
No. 204165-2 Clarence E. Pridemore, Jr., Chancellor

No. E2022-00405-COA-R3-CV

This is a conservatorship action initiated by University of Tennessee Medical Center with respect to one of its patients. The trial court granted the hospital's petition for conservatorship based in part on a physician's affidavit and medical examination report attached to its petition. The respondent has appealed, arguing that the trial court erred by considering the physician's affidavit and report, by denying her motion for a continuance, and by finding clear and convincing evidence that she was disabled and in need of a conservator. Given that no party introduced the physician's affidavit and report into evidence, we conclude that the trial court erred by considering these documents as evidence. We further conclude that the trial court's final judgment is deficient due to its dearth of factual findings. We therefore vacate the trial court's judgment appointing a conservator for the respondent and remand for a new hearing on the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which JOHN W. MCCLARTY and KRISTI M. DAVIS, JJ., joined.

Gerald L. Gulley, Jr., Knoxville, Tennessee, for the appellant, Zora Humphrey.

William A. Reeves, Knoxville, Tennessee, for the appellee, East Tennessee Human Resource Agency.

OPINION

I. Factual and Procedural Background

On February 23, 2022, W. David Hall, the Executive Vice-President of University of Tennessee Medical Center ("UTMC"), acting on behalf of UTMC ("Petitioner"), filed

a "Petition for Limited Conservatorship" ("the Petition") in relation to Zora Humphrey in the Knox County Chancery Court ("trial court"). According to Petitioner, Ms. Humphrey recently had been hospitalized at UTMC and was unable to "appropriately make decisions regarding her treatment and medical care by reason of mental and/or physical disabilities." Petitioner explained that Ms. Humphrey had been admitted to the UTMC emergency room on February 13, 2022, due to her history of dementia, hypertension, and diabetes. She also complained of alleged abuse by her son-in-law.

Petitioner further asserted that Ms. Humphrey constituted a "person with a disability," as defined in Tennessee Code Annotated § 34-1-101(14), and that there was no less restrictive alternative to the appointment of a conservator to make decisions concerning her health and finances. Petitioner opined that Ms. Humphrey was no longer an appropriate patient for the hospital and that she required the level of care provided by a nursing home facility.

Petitioner attached to the Petition an affidavit and "Physician's Report" (collectively, "the Examination Report") completed by Ms. Humphrey's primary care physician, Dr. Taylor Wright,[1] who affirmed that he was personally familiar with Ms. Humphrey's medical history and had personally examined her within ninety days of the affidavit's execution. Dr. Wright opined that Ms. Humphrey was a "person with a disability" and was incapable of adequately understanding her medical condition or how to treat it. According to Dr. Wright's affidavit, Ms. Humphrey lacked the capacity to consent to medical care or procedures, make decisions regarding treatment plans, apply for "training and financial assistance," or consent to the disclosure of confidential information. Dr. Wright accordingly recommended that the trial court appoint a conservator for Ms. Humphrey.

The affidavit incorporated by reference and included the "Physician's Report" authored by Dr. Wright. Therein, Dr. Wright recorded that Ms. Humphrey was a seventy-year-old woman suffering from severe dementia, "diabetes with neuropathy," hypertension, nephropathy, stage one chronic kidney disease caused by diabetes and hypertension, "anxiety and depression with paradoxical vocal cord dysfunction," osteoporosis, osteoarthritis "with degenerative joints and vertebrae," and a prior breast cancer diagnosis. According to Dr. Wright, Ms. Humphrey's formerly moderate dementia symptoms had progressively worsened over the past two years. Dr. Wright also reported that Ms. Humphrey lacked any relatives willing to assist her and that Ms. Humphrey had "demonstrated an inability to live alone in the community." Dr. Wright included that Ms. Humphrey had resided temporarily with multiple family members over the preceding few months but that she had "alienated herself from her family members and any support." In

[1] The "Psychiatry Consult Note" from UTMC, attached to the guardian *ad litem*'s report, reflects that Dr. Wright had been Ms. Humphrey's primary care physician for a period of two to three years prior to the initiation of this action.

Dr. Wright's estimation, Ms. Humphrey would be unable to seek shelter at Knoxville Area Rescue Ministry or Samaritan Place due to her inability to care for herself. Dr. Wright therefore recommended that Ms. Humphrey be placed in a nursing home facility.

The trial court appointed attorney Carolyn Levy Gilliam as a guardian *ad litem* ("GAL") to represent Ms. Humphrey's best interest on February 23, 2022. On March 2, 2022, the GAL filed a motion requesting that the court appoint for Ms. Humphrey an attorney *ad litem* ("AAL"). The GAL stated in her motion that Ms. Humphrey had expressed her desire to contest the Petition. The court entered an order appointing Ms. Humphrey's AAL on the same day.

On March 7, 2022, Ms. Humphrey, through her AAL, filed an answer to the Petition. Therein, Ms. Humphrey denied that she was unable to make appropriate decisions regarding her health and finances and objected to the trial court's consideration of the "sworn medical report" attached to the Petition. Moreover, Ms. Humphrey filed a separate motion explaining her objection to the Examination Report. With reference thereto, Ms. Humphrey contended that the Examination Report constituted "testimonial hearsay" and that the court's consideration thereof violated her right to confront the witnesses against her. She also maintained that the factual averments in the Examination Report did not relate to her ability to engage in the management of her financial affairs or estate.

The GAL filed a report in the trial court on March 15, 2022, indicating that she had met with Ms. Humphrey at UTMC on February 28, 2022, and explained to her the nature of a conservatorship. According to the GAL, Ms. Humphrey adamantly opposed the appointment of a conservator for her person and property and denied the averments outlined in the Petition. The GAL further stated that Ms. Humphrey was able to relay basic facts about her family and church but that she was in "complete denial" of her cognitive concerns.

The GAL further stated that Ms. Humphrey appeared delusional during her visit. According to the GAL, Ms. Humphrey claimed that the model in a UTMC promotional poster had tried to smother her with a pillow and would try to drown her at a subsequent time. Minutes later, Ms. Humphrey purportedly indicated that she enjoyed staying at UTMC and did not wish to be discharged. The GAL reported that Ms. Humphrey telephoned her a few days following this visit but that Ms. Humphrey did not recall their prior conversation or the fact that she desired to contest the Petition. Upon reviewing Ms. Humphrey's medical records and speaking to nursing staff and a social worker, the GAL concluded that Ms. Humphrey was not competent to manage her affairs. The GAL therefore recommended that a conservator be appointed.

According to the GAL, Ms. Humphrey suffered from "Major Neurocognitive Disorder," dementia,[2] chronic obstructive pulmonary disease ("COPD"), asthma, gastroesophageal reflux disease ("GERD"), and heart failure. In addition, Ms. Humphrey scored an "8 out of 30" regarding her Montreal Cognitive Assessment ("MoCA") when she was admitted to the hospital in February 2022. Concerning Ms. Humphrey's family, the GAL reported that she did not have any family or friends to assist her. The GAL was unable to contact any of Ms. Humphrey's three adult children. Ms. Humphrey purportedly did not know their phone numbers, and the GAL was unsuccessful in achieving contact with the children despite conducting background searches relative to them. Ms. Humphrey reported serious allegations of elder abuse committed by her son-in-law. Consequently, the GAL did not recommend that a family member serve as Ms. Humphrey's conservator.

Following a hearing conducted on March 16, 2022, the trial court entered an "Order Appointing Conservator" two days later. The court noted Ms. Humphrey's objection to Dr. Wright's Examination Report and her contention that Petitioner's use and the court's consideration of the Examination Report as evidence violated her right to confront the witnesses against her pursuant to Tennessee Code Annotated § 34-3-106. The court overruled this objection. The court also considered Ms. Humphrey's motion for a continuance to afford her time to depose Dr. Wright and obtain additional medical proof. The court denied the motion. In its ruling, the court referenced the GAL's testimony presented during the hearing and determined that Petitioner had presented clear and convincing evidence that Ms. Humphrey was a "person with a disability" as defined under Tennessee Code Annotated § 34-1-101(14). The court stated that it predicated its findings on the affidavit and information provided in the Petition, the GAL's testimony, Ms. Humphrey's testimony, statements of counsel in open court, and the record as a whole. The court appointed East Tennessee Human Resource Agency as conservator ("Conservator") for Ms. Humphrey.

Ms. Humphrey timely appealed. We note that Conservator, rather than Petitioner, is proceeding as the appellee.

II. Issues Presented

Ms. Humphrey presents the following issues for this Court's review, which we have restated as follows:

1. Whether the trial court erred by permitting Petitioner to use the sworn written statement of a health care provider, not subject to cross-examination, as a basis in part for concluding that Ms. Humphrey

[2] Although Dr. Wright stated in the Examination Report that Ms. Humphrey suffered from dementia, the GAL reported that Ms. Humphrey had not been formally diagnosed with dementia.

constituted a "person with a disability" as defined by Tennessee Code Annotated § 34-1-101(14).

2. Whether the trial court erred by denying Ms. Humphrey's request for a continuance for the purpose of deposing Petitioner's medical expert regarding the necessity of establishing a conservatorship respecting Ms. Humphrey, or alternatively, to obtain testimony of an independent medical expert.

3. Whether the trial court erred by appointing a conservator over the person and property of Ms. Humphrey pursuant to the requirements of Tennessee Code Annotated § 34-1-101(14).

III. Standard of Review

As the parties acknowledge in their appellate briefs,

> Appellate courts . . . may need to apply more than one standard of review when reviewing a lower court's decision appointing a conservator. To explain, a petition for the appointment of a conservator requires the lower court to make legal, factual, and discretionary determinations. Each of these determinations require different standards of review.

Crumley v. Perdue, No. 01-A-01-9704-CH00168, 1997 WL 691532, at *2 (Tenn. Ct. App. Nov. 7, 1997). With respect to a trial court's findings of fact, Tennessee Rule of Appellate Procedure 13(d) provides in part:

> Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.

However, we review a trial court's conclusions of law "under a purely *de novo* standard of review, affording no presumption of correctness to those findings." *In re Conservatorship of Davenport*, No. E2004-01505-COA-R3-CV, 2005 WL 3533299, at *6 (Tenn. Ct. App. Dec. 27, 2005) (citing *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993)). Concerning a trial court's discretionary decisions, we utilize the following standard of review:

> Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to propriety of the decision made." *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000); *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000). A trial court abuses its

> discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999). The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001).

IV. Consideration of the Examination Report

Ms. Humphrey first challenges the trial court's appointment of a conservator over her person and property. A conservator is a person or entity appointed by a court to "exercise the decision-making rights and duties of the person with a disability in one or more areas in which the person lacks capacity as determined and required by the orders of the court." Tenn. Code Ann. § 34-1-101(4)(A) (2022). In addition, the legislature has defined "conservatorship" as follows:

> "Conservatorship" is a proceeding in which a court removes the decision-making powers and duties, in whole or in part, in a least restrictive manner, from a person with a disability who lacks capacity to make decisions in one or more important areas and places responsibility for one or more of those decisions in a conservator or co-conservators.

Tenn. Code Ann. § 34-1-101(4)(B) (2022). A "person with a disability" is in turn defined as "any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, developmental disability, or other mental or physical incapacity." Tenn. Code Ann. § 34-1-101(14) (2022).

This Court has previously elucidated the purpose of a conservatorship proceeding as follows:

> Conservatorship proceedings provide a forum for determining whether a person's ability to remain autonomous has become impaired. Even though these proceedings are intended to promote the best interests of the vulnerable elderly, they carry with them the real possibility of displacing the elderly person's ability to make even the most basic decisions for themselves and to live their lives unfettered by the control of others. Persons who are the subject of a conservatorship face a substantial loss of freedom that resembles the loss of freedom following a criminal conviction.

In re Conservatorship of Groves, 109 S.W.3d 317, 329 (Tenn. Ct. App. 2003) (internal citations omitted). The *Groves* Court further explained:

> Because of the value our society places on individual autonomy and self-determination, persons seeking the appointment of a conservator must prove by clear and convincing evidence that the person for whom a conservator is sought is a "disabled person." Tenn. Code Ann. § 34-1-126 (2001). This heightened standard of proof eliminates all serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence. *Walton v. Young*, 950 S.W.2d 956, 960 (Tenn. 1997); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001). Evidence satisfying this standard will produce in the fact-finder's mind a firm belief or conviction regarding the truth of the factual propositions sought to be established by the evidence.

Id. at 330. Thus, the petitioner in a conservatorship action must provide clear and convincing evidence: "(1) that the individual for whom the conservatorship is sought 'is fully or partially disabled,' and (2) that the individual for whom the conservatorship is sought 'is in need of assistance from the court.'" *In re Conservatorship of Davenport*, 2005 WL 3533299, at *7 (quoting Tenn. Code Ann. § 34-1-126). The court must then determine what is in the best interest of the disabled person and who is the appropriate conservator. *See Crumley*, 1997 WL 691532, at *3; Tenn. Code Ann. § 34-3-103 (2022) ("Subject to the court's determination of what is in the best interests of the person with a disability, the court shall consider the following persons in the order listed for appointment of the conservator[.]").

With these principles in mind, we will examine whether the trial court erred by considering as evidence the Examination Report attached to the Petition. Ms. Humphrey objected to the trial court's consideration of the Examination Report as evidence several times, including in her answer, in a separately filed motion, and by oral objection during the hearing. In her motion objecting to the court's consideration of the Examination Report as "competent evidence," Ms. Humphrey asserted that the Examination Report was "testimonial hearsay," the use of which would violate her right to confront the witnesses against her. In support of her postulate, Ms. Humphrey cited Tennessee Code Annotated § 34-3-106 (2022), which provides in pertinent part: "The respondent has the right to: . . . (2) Present evidence, including testimony or other evidence from a physician, psychologist or senior psychological examiner of the respondent's choosing, and confront, as a cross-examiner, witnesses." In addition, Ms. Humphrey argued that the facts averred in the Examination Report did not relate to her ability to manage her financial affairs. According to Ms. Humphrey's uncontested statement of the evidence, the AAL objected again to the court's consideration of the Examination Report at the hearing inasmuch as Dr. Wright had not been subject to cross-examination.

The trial court denied the motion during the hearing and subsequently stated in its final judgment:

> The Respondent was present and testified via Zoom regarding her objections to the Petition, and presented no countervailing medical evidence to the sworn medical affidavit. Prior to the hearing [the AAL] objected to the doctor's affidavit on the grounds that the use of such hearsay violates the Respondent's right to confront all the witnesses against her pursuant to TCA 34-3-106, and also violates the Law of the Land clause of the Tennessee Constitution by depriving her of a fundamental liberty right without being able to confront all the witnesses against her. The objection was overruled.

The court did not provide its rationale in the final judgment explaining why it denied Ms. Humphrey's motion. On appeal, Conservator agrees that "the trial court considered the sworn medical report as evidence" while acknowledging that Dr. Wright "did not testify and no party requested that the report be admitted into evidence as an exhibit." Cognizant of the significant rights at stake for Ms. Humphrey, we conclude that the trial court erred by considering the Examination Report inasmuch as Petitioner never properly offered the report as evidence.

On appeal, Conservator propounds that there is an apparent conflict between two conservatorship statutes precipitated by the legislature's 2013 amendment to Tennessee Code Annotated § 34-3-105 (2022). In 2013, the legislature amended § 34-3-105 to include subsection (d), providing that the "examiner's sworn report shall be prima facie evidence of the respondent's disability and need for the appointment of a fiduciary unless the report is contested and found to be in error." Conservator asserts that § 34-3-105(d) conflicts with Tennessee Code Annotated § 34-3-106(2), providing respondents with the right to "confront, as a cross-examiner, witnesses." As urged by Conservator, this Court has not yet squarely addressed this alleged conflict between statutes. Upon our thorough review of the respective statutes, the statutory scheme concerning conservatorships as a whole, and relevant case law, we conclude that § 34-3-105(d) does not conflict with § 34-3-106(2).

In analyzing the application of § 34-3-105(d), we adhere to the following longstanding principles of statutory construction:

> When dealing with statutory interpretation, well-defined precepts apply. Our primary objective is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002). In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, we apply the plain meaning without

> complicating the task. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). Our obligation is simply to enforce the written language. *Abels ex rel. Hunt v. Genie Indus., Inc.*, 202 S.W.3d 99, 102 (Tenn. 2006). It is only when a statute is ambiguous that we may reference the broader statutory scheme, the history of the legislation, or other sources. *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S.W.2d 677, 679 (Tenn. 1998). Further, the language of a statute cannot be considered in a vacuum, but "should be construed, if practicable, so that its component parts are consistent and reasonable." *Marsh v. Henderson*, 221 Tenn. 42, 424 S.W.2d 193, 196 (1968). Any interpretation of the statute that "would render one section of the act repugnant to another" should be avoided. *Tenn. Elec. Power Co. v. City of Chattanooga*, 172 Tenn. 505, 114 S.W.2d 441, 444 (1937). We also must presume that the General Assembly was aware of any prior enactments at the time the legislation passed. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995).

In re Estate of Tanner, 295 S.W.3d 610, 613-14 (Tenn. 2009).

"Our search for a statute's purpose begins with the words of the statute itself." *In re Conservatorship of Clayton*, 914 S.W.2d 84, 90 (Tenn. Ct. App. 1995). With respect to sworn examination reports, Tennessee Code Annotated § 34-3-105(a) states that if the respondent has been examined by a physician or, "where appropriate, a psychologist or senior psychological examiner" not more than ninety days prior to the filing of the petition and the examination is pertinent, then "the report of the examination shall be submitted with the petition" and "shall be made a part of the court record." (Emphasis added.) As previously referenced, subsection (d) provides:

> The examiner's sworn report shall be prima facie evidence of the respondent's disability and need for the appointment of a fiduciary unless the report is contested and found to be in error.

(Emphasis added.) Tennessee Code Annotated § 34-3-106 provides:

> The respondent has the right to:
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> (2) Present evidence, including testimony or other evidence from a physician, psychologist or senior psychological examiner of the respondent's choosing, and confront, as a cross-examiner, witnesses[.]

This Court has previously explained that "[i]f the statute is unambiguous, we need only enforce the statute as written." *In re Conservatorship of Clayton*, 914 S.W.2d at 90. Here, we agree with Conservator that the language of § 34-3-105(d) is ambiguous insofar as it could be construed in two ways. As Conservator suggests, one possible interpretation is that an examination report attached to a petition constitutes *prima facie* evidence without further need on the part of the petitioner to introduce the examination report as evidence in accordance with the Tennessee Rules of Evidence. Another interpretation is that the legislature presupposed an examination report's proper admittance into evidence in providing that such a report constitutes *prima facie* evidence. Upon thorough review of the statutory scheme and case law, we find the latter interpretation to be the proper reading of the statute.

Prior to the legislature's 2013 amendment adding the language of subsection (d), this Court in *Davenport* addressed whether a trial court had erred by considering an attached examination report as evidence when the petitioner had not properly offered the report as evidence at the conservatorship hearing. *See In re Conservatorship of Davenport*, 2005 WL 3533299, at *9-12. In *Davenport*, the petitioner attempted to introduce a similar examination report as evidence during the conservatorship hearing. *Id.* at *9. The respondent objected to the introduction of the report as hearsay, and "the probate court and counsel for the parties debated whether the probate court could properly consider the report as evidence since it was made a part of the record pursuant to" § 34-3-105(a), which provides that an examination report attached to a petition for conservatorship "shall be made a part of the court record." *Id.* The probate court ultimately concluded that it could consider the examination report as evidence because it was part of the court record. *Id.* In addressing the propriety of the probate court's decision, this Court first considered whether the provision in § 34-3-105(a) mandating that the examination report be made part of the court record encroached on "the province of the judiciary in violation of the separation of powers doctrine." *Id.*

In addressing this constitutional question, the *Davenport* Court reasoned:

> The Tennessee Rules of Evidence "shall govern evidence rulings in all trial courts of Tennessee except as otherwise provided by statute or rules of the Supreme Court of Tennessee." Tenn. R. Evid. 101 (2005). A strict reading of section 34-3-105(a) of the Tennessee Code (*i.e.*, that it requires the admission of a physician's or psychologist's report in conservatorship cases regardless of objections based upon evidentiary rules related to hearsay, relevance, reliability of expert opinion, authentication, etc.) would seemingly place it in direct conflict with the Tennessee Rules of Evidence. "[W]hile the three branches of government are independent and co-equal, they are to a degree interdependent as well, with the functions of one branch often overlapping that of another." *State v. King*, 973 S.W.2d 586, 588 (Tenn. 1998) (citing *Underwood v. State*, 529 S.W.2d 45, 47 (Tenn. 1975)).

> Thus, we must determine whether the legislature's directive that a "physician's or psychologist's report shall be made a part of the court record" in conservatorship cases constitutes an impermissible encroachment into the province of the judiciary in violation of the separation of powers doctrine. *See Martin v. Lear Corp.*, 90 S.W.3d 626, 631 (Tenn. 2002) (noting that "the legislature has no constitutional authority to enact rules that strike at the heart of the court's exercise of judicial power").
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> We must presume that the statutory language at issue is constitutional and that the legislature did not intend to infringe upon the judicial authority of the courts of this state to control the admissibility of medical evidence in conservatorship proceedings. *See id.* We believe that the statutory language employed by the legislature in section 34-3-105(a) of the Tennessee Code is "reasonable and workable within the framework" of the Tennessee Rules of Evidence, therefore, it does not run afoul of the separation of powers doctrine. The legislature instructed that "[t]he physician's or psychologist's report shall be made a part of the court *record*." Tenn. Code Ann. § 34-3-105(a) (2003) (emphasis added). . . . Nowhere in the statute does the legislature direct that the report shall be admitted as evidence of disability and considered by the trial court without being tested by the evidentiary rules. In any given case, documents are filed with the trial court which are made a part of the *record* (*i.e.*, the complaint, the answer, motions, etc.), but they do not constitute evidence considered by the trier of fact when rendering a decision in the case.

In re Conservatorship of Davenport, 2005 WL 3533299, at *9, 11 (emphasis added). Thus, this Court in *Davenport* has concluded that a statute mandating the admission of the examination report into evidence "regardless of objections based upon evidentiary rules" would "seemingly place it in direct conflict with the Tennessee Rules of Evidence." *Id.* at *9. Here, as in *Davenport*, we "must presume that the statutory language at issue is constitutional and that the legislature did not intend to infringe upon the judicial authority of the courts of this state to control the admissibility of medical evidence in conservatorship proceedings." *Id.* at *11. If we were to interpret § 34-3-105(d) to mean that an examination report is automatically available for a trial court's consideration "without having such evidence properly tested by the evidentiary rules," this statutory provision would conflict with the evidentiary rules and run afoul of the separation of powers doctrine. *Id.* at *12. Instead, we interpret the statutory provision as operating such that an examination report is *prima facie* evidence of disability and the need for a conservator if properly introduced, "tested by the evidentiary rules," and admitted into evidence by the trial court. *Id.*

Although *Davenport* was decided prior to the legislature's 2013 amendment that is at issue in this case, there is a clear parallel between *Davenport* and the present case. The *Davenport* Court considered the interpretation of statutory language providing that a "physician's or psychologist's report shall be made a part of the court record," *see* Tenn. Code Ann. § 34-3-105(a) (2003), whereas we are confronted with statutory language providing that the "examiner's sworn report shall be prima facie evidence," *see* Tenn. Code Ann. § 34-3-105(d). The trial court in *Davenport* erroneously interpreted the statute to mean that it could consider the sworn examination report as evidence inasmuch as the statute mandated that the report be made part of the court record. *See Davenport*, 2005 WL 3533299, at *9. Likewise, Conservator in this case suggests that the trial court properly considered the Examination Report in the present case given that § 34-3-105(d) provides that a sworn examination report shall be *prima facie* evidence of disability and the need for a conservatorship. Both the trial court's interpretation in *Davenport* and Conservator's interpretation of the statute at issue in this case present the question of whether the legislature intended to permit petitioners to circumvent operation of the Tennessee Rules of Evidence.

In addressing a trial court's consideration of the sworn examination report, the *Davenport* Court further explained:

> Nowhere in the statute does the legislature direct that the report shall be admitted as evidence of disability and considered by the trial court without being tested by the evidentiary rules. In any given case, documents are filed with the trial court which are made a part of the *record* (*i.e.*, the complaint, the answer, motions, etc.), but they do not constitute evidence considered by the trier of fact when rendering a decision in the case.
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> We conclude that the legislature did not intend for the reports of physicians and psychologists, which must be filed with the court in conservatorship proceedings pursuant to the statute at issue, to be admitted into evidence in contravention or in lieu of the Tennessee Rules of Evidence and section 24-7-115 of the Tennessee Code.

Id. at *11-12. We likewise conclude that the legislature did not intend for sworn examination reports to be "admitted into evidence in contravention or in lieu of the Tennessee Rules of Evidence . . . ." *Id.* at *12. Tennessee Code Annotated § 34-3-105(d) does not dispense with the proper procedure for admitting a document into evidence, particularly given § 34-4-106(2)'s provision that respondents maintain the right to "confront, as a cross-examiner, witnesses."

Conservator cites three opinions of this Court that refer to Tennessee Code Annotated § 34-3-105(d) to highlight that the apparent conflict between this statutory provision and § 34-3-106(2) has not been specifically addressed by this Court. Conservator first cites *In re Conservatorship of Stiefel*, No. W2016-02598-COA-R3-CV, 2017 WL 5067493, at *7 (Tenn. Ct. App. Nov. 3, 2017), in which this Court agreed with the respondent that the trial court had improperly considered an examination report that the petitioner did not offer as evidence. Because *Stiefel* is a memorandum opinion, we do not consider or rely upon it in our review of the present case. *See* Tenn. Ct. App. R. 10. Conservator also cites *In re Conservatorship of McQuinn*, No. E2013-02790-COA-R3-CV, 2015 WL 1517918, at *3-4 (Tenn. Ct. App. Mar. 30, 2015), in which this Court did not address the issue presented in the case at bar but did quote the trial court's order finding that the examination report submitted in that case was considered prima facie evidence "because the Report was not (a) contested or (b) found to be erroneous." Whether the trial court had erred by considering the examination report was not an issue presented before this Court in *McQuinn*, and we therefore find it to be of limited application to the instant action.

Lastly, Conservator presents *In re Williams*, No. E2017-00777-COA-R3-CV, 2018 WL 1747995, at *2 (Tenn. Ct. App. Apr. 11, 2018), in which this Court considered whether the trial court erred in finding that the respondent was fully disabled and in need of a conservator. Although this Court affirmed the trial court's establishment of a conservatorship in *Williams* based in part on the fact that the medical examination report "constituted prima facie evidence," there is no indication that the respondent contested the report. *Id.* at *4. In its recitation of facts, the *Williams* Court stated that no objection was made to the trial court's consideration of the respondent's medical records or the physician's reports. *Id.* at *2. Although the respondent in *Williams* argued on appeal that no witnesses were offered at trial to explain or interpret "the medical evidence," the respondent did not argue that the trial court had erroneously considered the examination report as evidence. *Id.* at *3. Ergo, the issue presented by Ms. Humphrey in the case at bar was neither raised by the *Williams* appellant nor considered by that Court. We therefore discern the Court's analysis in *Davenport* to be controlling relative to the issue at hand.

In addition to presuming that the statutory language is constitutional, we must also avoid, if possible, any interpretation of the statute that "would render one section of the act repugnant to another." *See Tenn. Elec. Power Co. v. City of Chattanooga*, 114 S.W.2d 441, 444 (Tenn. 1937). To read § 34-3-105(d) as authorizing trial courts to consider examination reports untested by the evidentiary rules would in fact contradict § 34-3-106(2)'s guarantee that respondents maintain the right to confront the witnesses against them. Thus, the only way to construe § 34-3-105(d) in harmony with § 34-3-106(2) is to interpret the former as meaning that the examination report shall be *prima facie* evidence of disability and the need for a conservatorship provided that the petitioner has offered the report as evidence and the trial court has properly admitted the report into evidence in accordance with the Tennessee Rules of Evidence.

To reiterate, the fact that the Examination Report was merely attached to the Petition does not render it evidence without further action on the part of Petitioner. The *Davenport* Court made clear that the petitioners never called the physician as a witness but rather "simply attempted to admit his report at trial as conclusive evidence of [the respondent's] disability without having such evidence properly tested by the evidentiary rules." *Davenport*, 2005 WL 3533299, at *12 (emphasis added). Here, Petitioner did not present the Examination Report to be tested by the evidentiary rules because Petitioner failed to introduce the Examination Report as an exhibit or call Dr. Wright to testify concerning his opinion stated therein. Thus, the trial court had no evidentiary basis by which it could consider the Examination Report. The trial court therefore erred by considering the Examination Report when determining that Ms. Humphrey was disabled and in need of a conservator.[3]

However, our inquiry does not end with this conclusion. We must now determine whether the trial court's error was harmless. *See* Tenn. R. App. P. 36(b) ("A final judgment from which relief is available and otherwise appropriate shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process."). Upon our review, we are unable to conclude that the trial court's error was harmless, particularly in light of the trial court's deficient judgment.

Tennessee Rule of Civil Procedure 52.01 provides: "In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment." This Court has held that the requirement of making findings of fact and conclusions of law is "not a mere technicality." *Paul v. Watson*, No. W2011-00687-COA-R3-CV, 2012 WL 344705, at *5 (Tenn. Ct. App. Feb. 2, 2012) (quoting *In re K.H.*, No. W2008-01144-COA-R3-PT, 2009

[3] Conservator posits that Tennessee Rule of Evidence 803(6) "could allow the consideration by the Court of the sworn medical report, if the report could be considered 'certified' because it is required by statute, and its required contents are specifically listed at T.C.A. § 34-3-105(c)." Conservator does not expand on this argument beyond this point. Even if Rule 803(6) were an avenue for the trial court's consideration of the Examination Report without requiring Dr. Wright to testify, Petitioner never proffered the Examination Report as evidence during the hearing. Moreover, Dr. Wright's report was prepared for the sole purpose of seeking a conservatorship for Ms. Humphrey—not "in the course of a regularly conducted business activity." Tenn. R. Evid. 803(6); *see Arias v. Duro Standard Prods. Co.*, 303 S.W.3d 256, 263 (Tenn. 2010) ("An extraordinary report prepared for an irregular purpose, particularly when prepared with litigation in mind, may not be made in the regular course of business and may be inadmissible as a business record under Rule 803(6)." (quoting Neil P. Cohen, et al., *Tennessee Law of Evidence* § 8.11[6] at p. 8-113 (5th ed. 2005)). Conservator also cites Tennessee Code Annotated § 34-1-121(a), contending that the trial court could have waived the "specific requirements of the conservatorship statutes, if such waiver would be in the best interest of the respondent, and particularly where strict compliance would be too costly." There is no indication in the record that the trial court considered the Examination Report on the basis of Tennessee Code Annotated § 34-1-121(a). We therefore find Conservator's position unpersuasive.

WL 1362314, at *8 (Tenn. Ct. App. May 15, 2009)). In addition, "[s]imply stating the trial court's decision, without more, does not fulfill this mandate." *Barnes v. Barnes*, No. M2011-01824-COA-R3-CV, 2012 WL 5266382, at *8 (Tenn. Ct. App. Oct. 24, 2012). If a trial court fails to make findings of fact and conclusions of law, this Court is "left to wonder on what basis the court reached its ultimate decision." *Paul*, 2012 WL 344705, at *5 (quoting *In re K.H.*, No. W2008-01144-COA-R3-PT, 2009 WL 1362314, at *8 (Tenn. Ct. App. May 15, 2009)). Therefore, when a trial court "does not explain the basis of its ruling, we are hampered in performing our reviewing function, and we may remand the case with instructions to make requisite findings of fact and conclusions of law and enter judgment accordingly." *Owens v. May*, No. E2020-01322-COA-R3-JV, 2021 WL 3671097, at *3 (Tenn. Ct. App. Aug. 19, 2021).

In its final judgment, the trial court merely provided a general statement that it based its determination upon "the affidavit and information in the Petition, testimony of the Guardian ad litem and Respondent Zora Humphrey, statements of counsel in open court, and the record as a whole." The court's only specific finding is as follows:

> The guardian ad litem testified that when she had met with the Respondent, the Respondent told her that the model in a hospital promotional poster had been trying to smother her with a pillow. The Respondent told the guardian ad litem that the model in the poster would try to drown her next time. The guardian ad litem recommended the appointment of a conservator of the Respondent's person and assets.

The trial court's reference to the GAL's testimony concerning Ms. Humphrey's apparent hallucination is the only finding the court provided to support its conclusion that Ms. Humphrey was disabled and in need of a conservator. However, the court does not explain how this single reported instance renders Ms. Humphrey unable to manage her affairs.

There is simply no "meaningful discussion" of Ms. Humphrey's functional or decision-making capacity in the trial court's final judgment. *See In re Conservatorship for Ayers*, No. M2014-01522-COA-R3-CV, 2015 WL 3899406, at *4 (Tenn. Ct. App. June 24, 2015) (vacating a trial court's order appointing a conservator because the order contained "virtually no discussion as to why a conservator [was] needed" and "no meaningful discussion of [the respondent's] functional or decision-making capacity."). Here, the trial court did not detail whether Ms. Humphrey suffers from an illness or condition or how her illness or condition affects her capacity. *See Groves*, 109 S.W.3d at 331 ("[W]hile identification of the disabling illness, injury, or condition is an important part of a conservatorship proceeding, the pivotal inquiry involves not merely the diagnosis but also the effect that the illness, injury, or condition has had on the capacity of the person for whom a conservator is sought."). Without factual findings beyond a single instance of purported hallucination during Ms. Humphrey's stay in the hospital, particularly without any findings related to her condition and its effect on her capacity, we cannot determine

whether Petitioner presented clear and convincing evidence that Ms. Humphrey was disabled and in need of a conservator.

Moreover, the trial court provided no findings related to Ms. Humphrey's best interest. Tennessee Code Annotated § 34-3-103 provides that the trial court shall consider a list of persons for the appointment of conservator "[s]ubject to the court's determination of what is in the best interests of the disabled person." *See Todd v. Justice*, No. E2009-02346-COA-R3-CV, 2010 WL 2350568, at *10 (Tenn. Ct. App. June 14, 2010) ("Consequently, the appointment of a conservator is '[s]ubject to the court's determination of what is in the best interests of the disabled person.'" (quoting Tenn. Code Ann. § 34-3-103)). This Court has previously explained that a trial court addressing a petition for a conservatorship "must make an independent best interest determination . . . ." *Id.*; *see also In re Lawton*, 384 S.W.3d 754, 761 (Tenn. Ct. App. 2012) ("Once the petitioner meets his burden of proving that the respondent is fully or partially disabled and in need of assistance from the court, the trial court is then charged with responsibility for determining whether the appointment is in the respondent's best interest."); *Ayers*, 2015 WL 3899406, at *4 ("Because the trial court's . . . order does not contain the proper findings . . . or contain any discussion of [the respondent's] best interest, . . . we are unable to properly review the trial court's actions with regard to the conservatorship imposed."). We therefore are unable to fully review the trial court's appointment of a conservator regarding Ms. Humphrey and are constrained to vacate the court's judgment.

We remand for the trial court to hold a new hearing on the Petition with instructions that the court is not to consider the Examination Report as evidence unless these documents are properly introduced and admitted by the court into evidence in accordance with the Tennessee Rules of Evidence. Inasmuch as we have determined that this action must be remanded to the trial court for a new hearing, we conclude that Ms. Humphrey's issue concerning the court's denial of her motion for a continuance is pretermitted as moot.

V. Conclusion

For the foregoing reasons, we vacate the trial court's judgment appointing a conservator over Ms. Humphrey. We remand to the trial court for a new hearing to consider the Petition with the instruction that the trial court is not to consider the physician's affidavit and report unless properly introduced and admitted into evidence in accordance with the Tennessee Rules of Evidence. Costs on appeal are assessed to the appellee, East Tennessee Human Resource Agency.

s/ Thomas R. Frierson, II
THOMAS R. FRIERSON, II, JUDGE