No. 22-

In the
Supreme Court of the United States

ELLIZZETTE MCDONALD,

Petitioner,

v.

SHAWN MCDONALD , ADMINISTRATOR OF THE ESTATE OF JOHN W. MCDONALD, III,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

Steven J. Roeder
Ryan P. Weitendorf
Roeder Law Offices LLC
77 West Washington Street, Suite 2100
Chicago, Illinois 60602
(312) 667-6000

Robert G. Black
Counsel of Record
Law Offices of Robert G. Black, P.C.
101 North Washington Street
Naperville, Illinois 60540
(630) 527-1440
rblack@rgb-law.com

Counsel for Petitioner

317703

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Dr. John W. McDonald, III, M.D., Ph.D., was a world-renowned physician and scientist. When he married Ellizzette McDonald, John possessed all necessary competence to marry under prevailing Illinois law. Two months before they married, John's brother Shawn obtained an order of guardianship *in absentia* over John which did not address his competency to marry or specifically withdraw his constitutional right to marry.

In proceedings after John's death, the Illinois Supreme Court held that John's marriage to Ellizzette was void because any order of guardianship eliminated his right to marry. Illinois thus joined at least three states that eliminate an adult ward's fundamental right to marry without an order specifically addressing whether the right should be removed. At least twelve states hold an order of guardianship itself does not.

The court below further held that a ward's incompetency is "not because the ward lacked the mental competence to understand the nature, effect, duties, and obligations of marriage;" instead, it was because of "the ward's failure to comply with the provisions for obtaining consent" under a statute – even though no ward has the statutory ability to satisfy these conditions. Every Illinois ward's right to marry thus is now a constitutional Catch-22. As the partial dissent noted, this decision renders void not only John's and Ellizzette's marriage, but an untold number of marriages entered into by couples in Illinois who had no reason to believe their marriages were void.

The question presented is:

Whether a state statute impermissibly interferes with the fundamental rights of wards to marry under the Equal

Protection and Due Process Clauses of the Fourteenth Amendment.

PARTIES TO THE PROCEEDINGS

Petitioner Ellizzette McDonald is a natural person.

Respondent Shawn McDonald, administrator of the Estate of John W. McDonald, III, is a natural person.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the Illinois Supreme Court, the Appellate Court of Illinois, Second District, and the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois:

- *In re Est. of McDonald*, 2017-P-744, Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois. Judgment entered November 18, 2019.

- *In re Est. of McDonald,* No. 2-19-1113, Appellate Court of Illinois, Second District. Judgment entered December 22, 2020, opinion published February 1, 2021.

- *In re Est. of McDonald*, Docket 126956, Illinois Supreme Court. Judgment entered April 21, 2022, rehearing denied September 26, 2022.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS iii

STATEMENT OF RELATED PROCEEDINGS iv

TABLE OF CONTENTS. v

TABLE OF CITED AUTHORITIES vii

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2

STATEMENT OF THE CASE .3

A. Facts material to consideration of the questions presented 3

B. The Illinois Appellate Court's decision 5

C. The Illinois Supreme Court's decision 6

1. The Majority Opinion.. 6

Table of Contents

Page

2. The Partial Dissent. .9

D. Ellizzette's Petition for Rehearing 12

REASONS FOR GRANTING THE PETITION. 12

I. The states have split on whether a ward's fundamental right to marry can be eliminated without a specific order removing the right. 15

II. Whether the Illinois statute is the least restrictive way to protect wards and protect their ability to marry merits review by this Court 20

III. The high evidentiary burden imposed on the right to marry merits review by this Court. 22

IV. Whether obvious, easy alternatives exist that protect the state's interest and do not unnecessarily interfere with a ward's right to marry merits review by this Court 23

V. Whether rendering void the marriages of John, Ellizzette and all similarly situated couples without due process should be reviewed by this Court. .25

CONCLUSION 27

TABLE OF CITED AUTHORITIES

Page

CASES

Dobbs v. Jackson Women's Health Organization,
___ U.S. ___, 142 S. Ct. 2228 (2022) 26

Grayned v. City of Rockford,
408 U.S. 104 (1972) 25

Greathouse v. Vosburgh,
19 Ill.2d 555 (Ill. 1960) 9

In re Guardianship of O'Brien,
847 N.W.2d 710 (Minn. App. 2014) 17

In re the Guardianship of Mikulenec,
356 N.W.2d 683 (Minn. 1984) .16

Karbin v. Karbin,
2012 IL 112815 22

Logan v. Zimmerman Brush Co.,
455 U.S. 422 (1982) 24, 25, 26

Loving v. Virginia,
388 U.S. 1 (1967) 13, 26

M.L.B. v. S.L.J.,
519 U.S. 102 (1996) 13

Matter of Guardianship of Kindell,
2022 Ohio-3456 (Ohio App. 2022) 17

Page

Pape v. Byrd,
145 Ill.2d 13 (Ill. 1991) 17

Skinner v. Oklahoma ex rel. Williamson,
316 U.S. 535 (1942) 13

Turner v. Safley,
482 U.S. 78 (1987) 6, 12, 13, 14, 22, 23

Washington v. Glucksberg,
521 U.S. 702 (1997) 25

Zablocki v. Redhail,
434 U.S. 374 (1978) 6, 12, 13, 14, 21, 23

STATUTES AND OTHER AUTHORITIES

U.S. Const., amend. XIV 2, 13

28 U.S.C. §1257(a) 2

20 Pa. C.S.A. § 5521(d)(2) 18

755 ILCS 5/11a-17(a-5) 20, 22

755 ILCS 5/11a-17(a-10) 2, 5, 6, 9, 10, 11, 16, 20, 21, 22, 25, 27

755 ILCS 5/11a-3(b) 24

Page

755 ILCS 5/17.1(f) 18

Ala. Code § 26-2A-108(a) 19

Ala. Code § 26-2A-78(c)(5) 19

Ariz. Rev. Stat. § 14-5209(C)(5). 19

Cal. Prob. Code § 1900 18

Cal. Prob. Code § 1901(a) 18

Fla Stat. § 744.3215(2)(a) 19

Ga. Code § 29-4-21(a)(1) 19

Haw. Rev. Stat. § 560:5-315(a)(5). 19

Hurch and Applebaum, *Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters*, 38 McGeorge L. Rev. 931 (2007) 17

Ind. Code § 29-3-8-2(a)(5). 24

Ind. Code § 29-3-8-2(b). 24

Ind. Code § 29-3-8-8 24

Iowa Code § 633.635(4) 18, 24

Page

Mass. Gen. Laws ch. 190B, § 5-209(c)(4). 19

Me. Rev. Stat. tit. 18-C, § 5-310(2)(B) 18

N.D. Cent. Code § 30.1-28-05(3). .18

N.J. Stat. § 3B:12-24.1(a) 19

N.Y. Mental Hyg. Law § 81.29(a) .18

N.Y. Mental Hyg. Law § 81.29(b). 18

Pan, Oa, Liu, Xu, McDonald & Belagu, "Spinal cord organogenesis model reveals role of Flk1+ cells in self-organization of neural progenitor cells into complex spinal cord tissue," Stem Cell Research, December 2018, epublished September 6, 2018 .4

Quasius, *The Next Step in Marriage Equality: Indiana Restrictions on Marriage for Individuals under Adult Guardianship*, 31 Geo. Mason U. Civ. Rts. L.J. 135 (2021) 24

Rotunda, Nowak, Amar, Amar & Calabresi, Treatise on Constitutional Law (5th Ed.) §18.28(a). 15

S.C. Code § 62-5-304A(A)(1) 19

Uniform Guardianship, Conservatorship, and other Protective Arrangements Act, § 310(a)(4) . . .15

Page

Uniform Guardianship, Conservatorship, and other Protective Arrangements Act, § 310(b) 15

Utah Code § 75-5-301.5(2)(k) 19

Wash. Rev. Code § 11.130.310(1)(d) 19

Wis. Stat.§ 54.25 . . . . .19, 24

Wis. Stat.§ 54.44 . . . . .19, 24

Wyo. Stat. § 3-2-201(b)(vi) 19

PETITION FOR A WRIT OF CERTIORARI

This petition seeks the resolution of a critical issue concerning the fundamental rights of adult wards and those who marry them. Specifically, it asks this Court to determine whether a state may remove the fundamental right of a ward to marry solely through the entry of an order of guardianship that does not specifically remove that right.

It also asks this Court to determine whether a state can condition a ward's ability to marry on the ward's compliance with the terms of a statute with which the ward cannot comply and which impermissibly interfere with the right to marry.

Finally, it requests that this Court determine whether the statute violated due process rights when, as applied, it rendered void the marriages of couples who married without orders directing their guardians to consent to their marriages, even though the text of the statute gave no reason to know that such compliance was required.

OPINIONS BELOW

The Illinois Supreme Court's decision (Pet.App.1a-54a) is reported at 2022 IL 126956. The Illinois Appellate Court's decision (Pet.App.55a-114a) is reported at 2021 IL App (2d) 191113. The trial court's ruling (Pet.App.115a-118a) is unreported.

JURISDICTION

On April 21, 2022, the Illinois Supreme Court reversed the appellate court and entered judgment. (Pet. App.1a-54a) A timely petition for rehearing was denied on September 26, 2022. (Pet.App.119a) This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case implicates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution which provide in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It also involves 755 ILCS 5/11a-17(a-10), which provides in pertinent part:

> Upon petition by the guardian of the ward's person or estate, the court may authorize and direct a guardian of the ward's person or estate to consent, on behalf of the ward, to the ward's marriage pursuant to Part II of the Illinois Marriage and Dissolution of Marriage Act if the court finds by clear and convincing evidence that the marriage is in the ward's best interests.

STATEMENT OF THE CASE

A. Facts material to consideration of the questions presented.

John W. McDonald III, M.D., Ph.D., was associate professor of neurology at the Johns Hopkins University School of Medicine and the director of the International Center for Spinal Cord Injury at the Kennedy Krieger Institute. Shawn McDonald is John's brother.

On May 30, 2017, Shawn obtained an *in absentia* order declaring himself John's guardian contending that John suffered from bi-polar disorder and alcoholism. Pet. App.57a-58a. Although John objected to this order, no trial on John's objections to the guardianship was ever held. Pet.App.58a.

On July 11, 2017, John, then 54, married Ellizzette, then 53, whom John had known for decades. Pet.App.69a. Raymond Bement, a licensed clinical psychologist and a friend of both since 1982, when they attended college together, celebrated their marriage. Pet.App.69a, 20a.

Bement participated in John and Ellizzette's marriage preparations. Pet.App.69a. The day before their ceremony, Bement attended a Ketubah signing in John's and Ellizzette's home. Pet.App.69a-70a. Bement testified a Ketubah is "like what Christians would call a marriage license" and states what each party will bring to the relationship. *Id.*

Other witnesses testified regarding John and Ellizzette's relationship and John's capacity in the summer

of 2017. John's colleague from Johns Hopkins, Dr. Visar Belagu, first met Ellizzette in March 2004, when he went to work for John in St. Louis. Pet.App.19a. Dr. Belagu had contact with John two or three times a week in 2017 and, in his opinion, John and Ellizzette were happily married. Pet. App.69a. Dr. Belagu also traveled with John in the summer of 2017 because they were working on a project together. Pet.App.19a. They also worked on a scientific paper that was accepted for publication in a major scientific journal sometime at the end of 2017 or early 2018. *Id.*[1] Also in 2017, John was offered and accepted a position internationally commencing in 2018. *Id.*

John passed on December 11, 2017. The wrongful death complaint Shawn filed on behalf of John's estate alleges that when John presented himself at a hospital emergency room that day, he reported having suicidal thoughts for approximately three weeks. (Appellee's Motion to allow Supreme Court to Take Judicial Notice, Ex. A, Count I, ¶5.) Shawn's wrongful death complaint contends the failure of the hospital and its professionals to admit John, and their decision to release him without interviewing "collaterals," including John's wife, resulted in John's death. (*Id.*, ¶¶15, 23.) Although the wrongful death complaint does not refer to Ellizzette by name, the reference to John's wife can only refer to her.

Shortly after John's death, Shawn obtained *ex parte* orders appointing himself administrator of John's probate

1. Pan, Oa, Liu, Xu, McDonald & Belagu, "Spinal cord organogenesis model reveals role of Flk1^{+} cells in self-organization of neural progenitor cells into complex spinal cord tissue," Stem Cell Research, December 2018, epublished September 6, 2018.

estate and disinheriting Ellizzette. Pet.App.58a-59a. On the trial to determine whether she was validly married to John, Ellizzette proceeded *pro se*. Pet.App.68a. Ellizzette called Bement and Dr. Belagu as witnesses but was prevented personally from testifying regarding her marriage. Pet.App.68a-71a. At the close of her case, the trial court directed a finding against Ellizzette ruling, among other things, that she failed to show a prior order approving her marriage to John. Pet.App.118a. The trial court did not reference a specific statute in its oral ruling. *Id.*

B. The Illinois Appellate Court's decision.

On appeal, the Illinois Appellate Court rejected the various and sundry reasons the trial court gave for directing a finding against Ellizzette. The appellate court specifically rejected the argument on appeal that section 11a-17(a-10) of the Illinois Probate Act, 755 ILCS 5/11a-17(a-10), required a prior order approving the marriage before John could marry Ellizzette, holding the section did not apply:

> The plain language of this provision simply does not require prior approval by the court before a ward can marry of his or her accord. Instead, it provides a procedure to allow a guardian to petition the court for authorization to consent, on behalf of the ward, to the ward's marriage. The fact that a guardian may seek an order allowing consent from the court, however, does not mean that the ward may not marry unless and until the guardian first obtains the court's consent. We read nothing in the language of

section 11a-17(a-10) of the Probate Act which expressly declares that a marriage entered into by a ward is void in the absence of a best-interest hearing. Pet.App.112a.

C. The Illinois Supreme Court's decision.

1. The Majority Opinion.

In his reply brief before the Illinois Supreme Court, Shawn first cited *Zablocki v. Redhail*, 434 U.S. 374 (1978), for the proposition that "[r]easonable regulations that do not significantly interfere with the decisions to enter into the marital relationship may be imposed." (Appellant's Supreme Court Reply Brief, pp. 2, 8.) In his response to Ellizzette's request for cross-relief, however, Shawn also suggested that, as John's guardian, he had the right to determine whether John could exercise his fundamental, constitutional right to marry. (*Id.*, p. 17.)

In response, citing *Zablocki* and *Turner v. Safley,* 482 U.S. 78, 95 (1987), Ellizzette specifically argued that "if [the Illinois Supreme Court] were inclined to accept the argument that section 11a-17(a-10) applies to John and Ellizzette's marriage, it also must address the constitutional issues surrounding the statute's purported restrictions on the fundamental right to marry." (Appellee's Supreme Court Cross Reply Brief, pp. 11-12.)[2] Ellizzette further explained in detail why section 11a-17(a-10) did not pass constitutional muster under *Zablocki* and *Turner.* (*Id.*, pp. 11-16.) Apparently aware

2. Ellizzette's Supreme Court Cross Reply Brief is available on Westlaw.

it had no answer to Ellizzette's constitutional objections, that court did not address them.

Instead, speaking for four justices, the majority announced that "a ward who wishes to enter into a marriage may do so only with the consent of his guardian." Pet.App.30a. It cited no provision in the Probate Act which expressly prevented a ward from marrying on his or her accord unless the guardian consented, let alone one which explicitly granted to the guardian the sole authority to consent to a ward's marriage. The majority further concluded:

> if a person is adjudged a disabled person in need of a guardian under the Probate Act, that person is limited in his ability to enter into a marriage, *i.e.*, such person must obtain the guardian's consent, which is given upon the court's authorization and direction after a determination that the marriage is in the ward's best interest. Pet.App.33a.

The majority additionally held the guardian alone cannot provide this consent. Instead, "for a guardian to obtain the ability to consent, *he* must file a petition with the court." Pet.App.30a. (Emphasis added.) Since only the guardian can file such a petition, the guardian may deny the ward the right to marry by refusing to file one.

If a guardian nonetheless did petition the court, the majority held the guardian is required to prove by clear and convincing evidence that the marriage is in the ward's best interest:

> If the court finds by clear and convincing evidence that the marriage is in the ward's best interest, the court *may* then authorize and direct the guardian to consent to the ward's marriage. Pet.App.30a. (Emphasis added.)

As a result, the trial court may decline to direct the guardian to consent if "the court *believes* that the marriage would result in substantial harm to the ward's welfare or personal or financial interests." *Id.* (Emphasis added.)

As announced by the Illinois Supreme Court's majority opinion, based solely upon the entry of a guardianship order and without any specific ruling withdrawing the ward's right to marry, *no* ward in Illinois retains any right whatsoever to marry of his or her accord. This is the rule no matter the type of guardianship ordered, the evidence presented in support of the guardianship, the reasons the guardianship was ordered, and the ward's specific mental competence to understand the nature, effect, duties, and obligations of marriage. And even though it acknowledged the Probate Act mandates that "[g]uardianship shall be ordered *only to the extent* necessitated by the individual's actual mental, physical, and adaptive limitations," (Pet. App.27, (citing 755 ILCS 5/11a-3(b) (emphasis added)), the majority made no attempt to harmonize its ruling with this mandate.

Indeed, the Illinois Supreme Court held, also for the first time, that whether the ward actually has the competence to consent to the marriage is entirely *irrelevant*:

> the lack of capacity to enter into a marriage is based on the ward's failure to comply with the provisions for obtaining consent, not because the ward lacked the mental competence to understand the nature, effect, duties, and obligations of marriage. Pet.App.33a.

Under this formulation, the ward *obtains* capacity to marry only by somehow complying with section 11a-17(a-10) of the Probate Act. Since the ward has no independent ability to comply with these provisions, the Illinois Supreme Court turned every Illinois ward's fundamental right to marry into a constitutional Catch-22.

Under this ruling, a ward such as Dr. McDonald who is contesting his guardianship, whose tremendous mental ability allowed him to work on a highly specialized scientific paper, evaluate commercial technologies, and engage in business transactions – all of which fully established his capacity to marry under Illinois law[3] – and whom the uncontested trial evidence showed understood the nature, effect, duties, and obligations of marriage, had no right or legal capacity to marry.

2. The Partial Dissent.

Speaking for three justices, the partial dissent of now Chief Justice Theis first commented that "much of

3. *See Greathouse v. Vosburgh*, 19 Ill.2d 555, 567-68 (Ill. 1960) (noting that "all of such authorities agree that a person who has sufficient mental capacity to transact ordinary business has mental capacity to perform all three of the aforesaid acts," i.e., "entering into a marriage," "executing a will," and "conveying real estate by deed.")

the majority's extensive background discussion concerns matters that were neither presented at trial nor formed a basis for circuit court's order under review." Pet.App.43a-44a (Theis, J., dissenting.)

Having confirmed this discussion was unnecessary, the partial dissent noted "[t]he plain language of section 11a-17(a-10) … does not mandate prior approval by the court before a ward can marry of his or her own accord." Pet.App.48a. (Theis, J., dissenting.) Indeed, it commented that while the majority purported to base its decision on section 11a-17(a-10), the majority *never parsed the statute's text*:

> The majority acknowledges this statutory provision *but chooses to dodge the language itself.* Instead, after quoting section 11a-17 in its entirety, the majority simply concludes that, 'under the Probate Act, a ward who wishes to enter into a marriage may do so only with the consent of his guardian' and '[p]ursuant to section 11a-17(a-10), for a guardian to obtain the ability to consent, he must file a petition with the court.'" *Id*. (Emphasis added.)

The partial dissent further stated:

> The plain language of section 11a-17(a-10), as the appellate court recognized, merely provides a procedure to allow a guardian to petition the court for authorization to consent, on behalf of a ward, to the ward's marriage following a best-interest determination. Among other reasons, a guardian may seek such a court order for ease

> of meeting the requirements of the Marriage Act on behalf of his or her ward who is marrying *or to prevent a subsequent challenge* that his or her ward lacked, for purposes of the Marriage Act, the capacity to consent to the marriage. The fact that the provision *permits* a guardian to seek an order allowing consent from the court does not mean the legislature *intended* that a ward's marriage would be invalid unless the guardian first obtained the court's approval. The appellate court was correct that nothing in the plain language of section 11a-17(a-10) provides that a marriage entered into by a ward without his or her guardian's consent, or following a judicial determination of best interest, is void. Pet.App.48a-49a. (Theis, J. dissenting, emphasis added.)

The partial dissent additionally made clear the broad impact of the majority's holding:

> The majority's erroneous ruling renders void any marriage in Illinois that has been entered into since August 26, 2014, by a ward with a plenary guardian who did not first receive a court order authorizing and directing the guardian to consent to the ward's marriage. See Pub. Act 98-1107, (eff. Aug. 26, 2014) (adding 755 ILCS 5/11a-17(a-10)). The majority fails to acknowledge the very serious impact of this holding on such couples, including those who may have had a child following what they had every reason to believe was a valid marriage in Illinois. Pet.App.51a. (Theis, J., dissenting.)

D. Ellizzette's Petition for Rehearing.

Ellizzette petitioned for rehearing contending the majority overlooked that its construction of section 11a-17(a-10) impermissibly interfered with the fundamental rights of wards to marry, as she had previously argued, citing *Zablocki* and *Turner*. (Appellee's Petition for Rehearing, pp. 6-19.) Ellizzette also maintained the majority opinion should not be applied retroactively because of the tremendous prejudice that rendering void an untold number of marriages in Illinois would have on these couples and their children. *Id*., pp. 19-23.

On September 26, 2022, the Illinois Supreme Court denied rehearing. Pet.App.119a. Neither that court's majority opinion nor its order denying rehearing addressed Ellizzette's constitutional objections or the effect on couples who had every reason and right to believe they entered valid marriages.

REASONS FOR GRANTING THE PETITION

This case presents a clear opportunity for this Court to rule on an issue that has and will continue to have importance throughout the country: whether the fundamental rights of adult wards to marry can be eliminated simply by an order of guardianship, without any specific reference to withdrawing that right. It also allows this Court to address the limitations the Due Process Clause and the Equal Protection Clause impose on states' attempts to restrict the exercise of these rights.

The right to marry has long been recognized as a fundamental right protected by the Due Process and

Equal Protection Clauses of the Fourteenth Amendment. See *Loving v. Virginia,* 388 U.S. 1, 12 (1967); *M.L.B. v. S.L.J.,* 519 U.S. 102, 116 (1996); *Turner,* 482 U.S. at 95.

As this Court held in *Zablocki*, the right to marry is "one of the 'basic civil rights of man' fundamental to our very existence and survival." *Zablocki*, 434 U.S. at 398, *quoting Loving,* 388 U.S. at 12, *quoting Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 541 (1942). *Zablocki* further made clear:

> When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.

Zablocki, 434 U.S. at 388.

Thus, in *Zablocki*, this Court struck down a Wisconsin statute that rendered void marriages of fathers who owed child support payments unless the fathers obtained court orders allowing their marriages – orders that could only be obtained if the fathers proved they paid the child support arrearages or proved their children would not become public charges. *Id.* at 377-378. In holding these requirements impermissibly interfered with the constitutional right to marry, this Court held:

> Some of those in the affected class, like appellee, will never be able to obtain the necessary court order, because they either lack the financial means to meet their support

> obligations or cannot prove that their children will not become public charges. These persons are absolutely prevented from getting married. Many others, able in theory to satisfy the statute's requirements, will be sufficiently burdened by having to do so that they will in effect be coerced into forgoing their right to marry. And even those who can be persuaded to meet the statute's requirements suffer a serious intrusion into their freedom of choice in an area in which we have held such freedom to be fundamental. (*Id*. at 387.)

This Court acknowledged that the interests the Wisconsin statute sought to further may be valid. Nonetheless, because less restrictive alternatives were available, the statute impermissibly interfered with the right to marry. It noted:

> regardless of the applicant's ability or willingness to meet the statutory requirements, the State already has numerous other means for exacting compliance with support obligations, means that are at least as effective as the instant statute's, and yet do not impinge upon the right to marry. (*Id.* at 389.)

In *Turner*, this Court expanded upon *Zablocki* and ruled that prison restrictions impermissibly restricted inmates' rights to marry when they required proof of a "compelling reason" to allow a prisoner's marriage. *Turner*, 482 U.S. at 98-99. The "compelling reason" exception was particularly problematic since there were "obvious, easy alternatives … that accommodate the right to marry" that could still implement those objectives. *Id.*

I. The states have split on whether a ward's fundamental right to marry can be eliminated without a specific order removing the right.

Recognized standards of due process and equal protection require particularized findings before a state may totally restrict the exercise of a fundamental right. "Since marriage is a fundamental right, the state could not restrict the right to marry for less than compelling reasons." Rotunda, Nowak, Amar, Amar & Calabresi, Treatise on Constitutional Law (5th Ed.) §18.28(a). Additionally, "the Court will subject laws that restrict individual choice regarding marriage or divorce to 'strict scrutiny' under the due process or equal protection clauses." *Id.*

Recognizing these standards, section 310(a)(4) of the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act requires that an order of guardianship:

> state whether the adult subject to guardianship retains the right to marry and, if the adult does not retain the right to marry, include findings that support removing that right.

Uniform Guardianship, Conservatorship, and other Protective Arrangements Act, §310(a)(4). Section 310(b) provides that "[a]n adult subject to guardianship retains the right to marry unless the order under subsection (a) includes the findings required by subsection (a)(4)." The Comment to section 310 further notes "the right to vote and the right to marry are fundamental rights and should not be removed without a compelling reason." *Id.*

While the drafters of the Uniform Act recognize the ward should retain the right to marry unless an appropriate order specifically withdrawing that right is entered, no decision from this Court has so held directly. As a result, whether a state may remove the fundamental right of a ward to marry solely upon the entry of an order of guardianship, without a specific order withdrawing the right, is also not uniform.

Some states have held that a specific determination that the ward is incapacitated regarding his or her ability to marry is required *before* a guardian may be granted the right to determine who the ward may marry. In *In re the Guardianship of Mikulenec*, 356 N.W.2d 683 (Minn. 1984), for example, the Minnesota Supreme Court held the right could be withdrawn and granted to the guardian only upon satisfactory proof that the ward was "clearly incapacitated with respect to choosing a spouse." It noted:

> Freedom to choose a spouse is one of those personal freedoms which may, under proper circumstances, be restricted. *In certain rare cases*, such as this case, where a person *clearly is incapacitated* with respect to choosing a spouse, a court may appoint a conservator of the person to approve or disapprove of a marriage.
> *Id.* at 688. (Emphasis added.)

Unlike section 11a-17(a-10), the statute before the Minnesota Supreme Court did not interfere with marriage on its face. But even it if it did, "only those found 'incapacitated with respect to choosing a spouse' could have conservators appointed for them." *Id.* at 689. "Once that determination was made the guardian could only be

given the limited powers necessary to protect the ward." *Id.* As a result, "[t]the statute would not violate the 14th Amendment, even if subject to strict scrutiny test." *Id. See also Matter of Guardianship of Kindell,* 2022 Ohio-3456, ¶34 (Ohio App. 2022) ("In the context of marriage, an adjudication of incompetency prior to marriage is not necessarily conclusive proof of the person's incapacity to enter a valid marriage."); *In re Guardianship of O'Brien*, 847 N.W.2d 710, 715 (Minn. App. 2014) (fundamental right to marry not withdrawn by guardianship order; guardian bore the burden of showing ward lacked capacity to marry).

Indeed, before the Illinois Supreme Court ruled in the case below, it agreed with Minnesota and Ohio that an order of guardianship alone did not withdraw the right to marry. In *Pape v. Byrd,* 145 Ill.2d 13, 22 (Ill. 1991), the court held that "the appointment of a guardian of a person is not sufficient, in and of itself, to show that the person was incompetent to have consented to a marriage." While the court below attempted to distinguish its earlier ruling by noting that, although a guardianship had been entered in *Pape*, the prior guardian had resigned when the ward married so no consent or best interest hearing was at issue, it made no attempt to reconcile its ruling with *Pape*'s actual holding. Pet.App.33a-34a.[4]

4. In contrast to the elimination of the ward's right to marry, a ward in Illinois retains the fundamental right to vote. *See* Hurch and Applebaum, *Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters*, 38 McGeorge L. Rev. 931, 958-59 (2007) (noting Illinois wards retain the right to vote); https://ova.elections.il.gov/ (listing requirements for voting in Illinois). The ward also retains the fundamental right to procreate and specifically to withhold consent to a guardian's request for the

At least 12 states agree that an order of guardianship alone does *not* eliminate the ward's fundamental right to marry.[5] Other states withdraw the right to marry,

ward's sterilization. *See* 755 ILCS 5/17.1(f) ("The ward shall not be deemed to lack such capacity solely on the basis of the adjudication of disability and appointment of a guardian" and if court finds the ward has the ability to consent and withholds consent to sterilization it "shall enter an order consistent with the ward's objection or consent and the proceedings on the verified motion shall be terminated.")

5. *See e.g.,* Cal. Prob. Code §1900 ("[t]he appointment of a conservator of the person or the estate or both does not affect the capacity of the conservatee to marry" and §1901(a) ('[t]he court may by order determine whether the conservatee has the capacity to enter into a valid marriage"); Iowa Code § 633.635(4) (court shall "state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the protected person. The court may make a finding that the protected person lacks the capacity to contract a valid marriage" but absent specific order withdrawing the ward's ability to marry, the ward retains that right); Me. Rev. Stat. tit. 18-C, § 5-310(2)(B) ("An adult subject to guardianship retains the following rights:...[t]he right to marry, unless the court orders otherwise. A court order removing the right to marry or placing conditions on the right to marry must include findings that support the removal of the right to marry or support conditions on the right to marry."); N.Y. Mental Hyg. Law §81.29(a)-(b) ("incapacitated person for whom guardian is appointed retains all powers and rights except those powers and rights which the guardian is granted…" and "[s]ubject to subdivision (a) … the appointment of a guardian shall not be conclusive evidence that the person lacks capacity for any other purpose,…"); N.D. Cent. Code § 30.1-28-05(3) ("Letters of guardianship must contain... [s]pecification of limitations by the court upon the rights and privileges of the ward in matters not governed by powers of the guardian, such as voting, marriage, and driving."); 20 Pa. C.S.A. § 5521(d)(2) ("Unless specifically included in the guardianship order after specific findings of fact or otherwise ordered after a subsequent hearing with specific

without a specific finding.[6] Still other states provide that the "guardian may consent to the marriage" of the ward.[7]

The split in authority, exacerbated by the Illinois Supreme Court's ruling, confirms the need for this Court

findings of fact, a guardian or emergency guardian shall not have the power and duty to...[p]rohibit the marriage or consent to the divorce of the incapacitated person."); S.C. Code § 62-5-304A(A)(1) ("[t]he court shall set forth the rights and powers removed from the ward. To the extent rights are not removed, they are retained by the ward. Such rights and powers include the rights and powers to...marry or divorce."); Utah Code § 75-5-301.5(2)(k) ("[e]xcept as otherwise provided by this chapter or any other law, a person alleged to be incapacitated has the right to...(k) engage in any activity that the court has not expressly reserved for the guardian, including marriage or domestic partnership, traveling, working, or having a driver license."); Wash. Rev. Code § 11.130.310(1)(d) ("[a] court order appointing a guardian for an adult must...[s]tate whether the adult subject to guardianship retains the right to marry and, if the adult does not retain the right to marry, include findings that support removing that right."); Wis. Stat.§§ 54.25; 54.44 (order of guardianship may declare ward lacks capacity "to consent to marriage" but the finding supporting removing the right "must be based on based on clear and convincing evidence. In the absence of such a finding, the right is retained by the individual.")

6. *See e.g.,* Fla Stat. §744.3215(2)(a) (if the right to contract is removed, the right to marry is also removed); Ga. Code §29-4-21(a)(1) ("Unless the court's order specifies that one or more of the following powers are to be retained by the ward, the appointment of guardian shall remove from the ward the power to …contract marriage…."); N.J. Stat. §3B:12-24.1(a) ("guardian shall exercise all rights and powers of incapacitated person.").

7. *See e.g.,* Ariz. Rev. Stat. §14-5209(C)(5) ("guardian may … consent to the marriage or adoption of the ward"); Ala. Code § 26-2A-108(a); §26-2A-78(c)(5) ("guardian may … consent to the marriage or adoption of the ward"); Haw. Rev. Stat. § 560:5-315(a)(5); Mass. Gen. Laws ch. 190B, § 5-209(c)(4); Wyo. Stat. § 3-2-201(b)(vi).

to settle the issue of whether a state can remove a ward's fundamental right to marry without an order specifically removing that right, supported by compelling reasons.

II. Whether the Illinois statute is the least restrictive way to protect wards and protect their ability to marry merits review by this Court.

Section 11a-17(a-10), as now construed by the Illinois Supreme Court, prevents a ward from marrying of his or her accord. Because obvious, less restrictive methods exist to protect the ward and the ward's ability to exercise his or her right to marry, this Court should grant *certiorari* to determine if their existence confirms that the statute impermissibly interferes with these rights.

A less restrictive method to protect the ward and his or her right to marry is to follow the statutory procedure the Illinois legislature actually enacted: recognize a ward has the right to marry of his or her accord subject to the guardian's ability "to file a petition for … declaration of invalidity of marriage under the Illinois Marriage and Dissolution of Marriage Act on behalf of the ward if the court finds by clear and convincing evidence that the relief sought is in the ward's best interests." 755 ILCS 5/11a-17(a-5). Another less restrictive method is to follow the Uniform Guardianship Act and require the entry of an order that specifically withdraws the ward's right to marry, based on compelling evidence, before the ward's right may be withdrawn.

The rule announced by the Illinois Supreme Court, however, ignores these obvious and less restrictive alternatives. Indeed, even without considering the effect

of delegating to the guardian the decision of whether the ward can marry, the requirement of a best interest hearing itself requires resources that not all wards and their guardianship estates may have. Using language from *Zablocki*, "[s]ome of those in the affected class … will never be able to obtain the necessary court order, because their [guardianship estates] lack the financial means" to fund the preparation of the petition and the presentation of evidence necessary to meet this demanding standard of proof. *Zablocki*, 434 U.S. at 387. If the guardianship estate cannot fund this litigation, including paying for qualified experts to meet this standard, "[t]hese persons are absolutely prevented from getting married." (*Id.*) In other instances, the guardian may simply refuse to spend the money to obtain the order, which may be influenced by the impact of the estate proceeds that the guardian may receive later. These expenses effectively close the door for many wards to marry.

Additionally, section 11a-17(a-10)'s language does not compel a guardian to file a petition for an order directing him or her to consent to the marriage, even when the ward is completely able to understand the nature, effect, duties, and obligations of marriage and the marriage is in the ward's best interest. Nor does the statute allow the ward to compel the filing of a petition. Additionally, any guardian could contend, for example, that he or she "believed" a marriage was not in the ward's interests. Indeed, to the extent a spouse will be entitled to a portion of the ward's property, one could argue that marriage will almost always not be in the ward's economic interest.

Guardians also may have financial incentives and conflicts of interest that interfere with their decisions to

file petitions. Here, for example, John's guardian Shawn is disinherited if the ward married.

III. The high evidentiary burden imposed on the right to marry merits review by this Court.

In addition to the restrictions imposed by cost of filing and prosecuting the petition, this Court should review whether the high *evidentiary burden* of section 11a-17(a-10) improperly interferes with the fundamental rights of wards to marry. This Court has already made clear this type of burden impermissibly restricted prisoners' rights to marry. See *Turner*, 482 U.S. at 96-97 (regulation that required proof of a "compelling reason" to *allow* the marriage is particularly problematic and impermissibly restricted prisoners' right to marry.) And while the *removal* of a ward's fundamental right to marry should require extraordinary proof, the *exercise* of that right by the ward should not.

To be sure, a clear and convincing evidentiary burden makes sense when a guardian totally supplants the ward and seeks to consent to a marriage to which the ward has no physical or mental capacity to consent. Ellizzette argued below that the intent of section 11a-17(a-10) was to provide a mechanism to allow a guardian to consent to a marriage when the ward lacked the actual ability to do so personally. Indeed, section 11a-17(a-10) is the mirror image of section 11a-17(a-5), which grants a guardian standing to prosecute a *divorce* action on behalf of a ward.[8] Additionally, as the partial dissent noted, "a

---

8. In *Karbin v. Karbin*, 2012 IL 112815, the case that prompted the enactment of section 11a-17(a-5), a catastrophically injured and abandoned spouse could not consent to the divorce

guardian may seek such a court order for ease of meeting the requirements of the Marriage Act on behalf of his or her ward who is marrying or to prevent a subsequent challenge that his or her ward lacked, for purposes of the Marriage Act, the capacity to consent to the marriage." Pet.App.48a-49a.

When, however, this high evidentiary burden is used to restrict rather than to assist a ward's right to marriage, this Court should determine, as it did in *Turner* and *Zablocki,* whether it impermissibly interferes with the fundamental right of the ward to marry.

IV. Whether obvious, easy alternatives exist that protect the state's interest and do not unnecessarily interfere with a ward's right to marry merits review by this Court.

When obvious, easy alternatives to protect the state's interest exist and do not unnecessarily interfere with the right to marry, this Court has struck down statutory restrictions that do substantially interfere with this right. *Turner*, 482 U.S. at 98.

Aware of these constitutional obligations, many states require an individualized assessment of a ward's ability

---

action, but the court ruled the guardian could initiate the proceeding anyway. Similarly, a fiancé who suffered a catastrophic injury, *e.g.,* while deployed in combat serving in the armed services, may no longer be able to consent to the marriage he or she agreed to before the injury. In such an instance, the guardian may seek an order directing him to consent "on behalf of the ward" to the marriage upon a clear and convincing proof the ward would have agreed to, had he or she been able to consent, and is in the ward's best interests.

to marry *before* the ward's fundamental right can be revoked, including states surrounding Illinois. Wisconsin, for example, requires an individualized assessment and a specific finding, based on clear and convincing evidence, before the ward's right to consent to marriage can be removed. Wis. Stat.§§ 54.25; 54.44. Absent such an order, the ward retains that right. *Id.*

Iowa requires the trial court to "state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the protected person." Iowa Code Ann. § 633.635(4). Iowa also confirms "[t]he court may make a finding that the protected person lacks the capacity to contract a valid marriage." *Id.* As in Wisconsin, absent a specific order withdrawing the ward's ability to marry, the ward *retains* that right. *Id.* Indiana's statute, on the other hand, provides the guardian "may consent" to the ward's marriage. Ind. Code §§ 29-3-8-2(a)(5), (b). Since Indiana also prevents a court clerk from issuing a marriage license to any person adjudged "mentally incompetent," Ind. Code § 29-3-8-8, it removes the rights of all wards to marry.[9]

Illinois' Probate Act, like guardianship statutes around the country, provide that "[g]uardianship shall be ordered *only to the extent* necessitated by the individual's actual mental, physical, and adaptive limitations," 755 ILCS 5/11a-3(b) (emphasis added). As a result, each ward has a legitimate property interest protected by state law to expect that such an order would be entered. *See Logan*

---

9. *See* Quasius, *The Next Step in Marriage Equality: Indiana Restrictions on Marriage for Individuals under Adult Guardianship*, 31 Geo.Mason U.Civ.Rts.L.J. 135, 148-49. (2021) (concluding that Indiana's guardianship statutory scheme is unconstitutional).

v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982) (noting that property "is an individual entitlement grounded in state law'").

This Court should review whether requiring a specific determination, based on compelling evidence, is a sufficiently obvious alternative that protects the ward and the ward's right to marry before the right can be withdrawn.

V. Whether rendering void the marriages of John, Ellizzette and all similarly situated couples without due process should be reviewed by this Court.

A law should provide fair warning of what it requires, providing a "person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

There is simply no notice in section 11a-17(a-10) to persons of ordinary intelligence that a marriage entered into by a ward without a prior court order directing the guardian to consent to the marriage, after presenting clear and convincing evidence that the marriage is in the ward's best interests, is void *ab initio*. Until the Illinois Supreme Court's decision, no reported case law in Illinois provided any such notice. Similarly, no notice was provided by any other Illinois statute.

Interests in marriage are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). All parties to these marriages, including Ellizzette, have liberty interests in their

marriages. They also have property interests in their marriages. *See, e.g. Logan*, 455 U.S. at 430. All such liberty and property interests have been eliminated by a statute that renders their marriages void without any further proceedings – even though the text of the statute plainly does not require this result. *See Loving v. Virginia*, 388 U.S. 1, 12 (1967) (statute that held marriages void without decree violated due process).

And even if "the Due Process Clause at most guarantees *process*," *Dobbs v. Jackson Women's Health Organization*, ___ U.S. ___, 142 S. Ct. 2228, 2301 (2022) (Thomas, J., concurring, emphasis in original), the individuals whose marriages are now rendered void, as well as their children, were not even given that. Indeed, the majority opinion did not even parse the statute to explain the textual source of its ruling.

The prejudice to these individuals is great. Those who wish to continue their "marriages" must obtain the consent of the wards' guardians, who can only provide such consent after running the gauntlet of section 11a-17(a-10). Husbands or wives who opportunistically no longer wish to remain "married" may decide that the complication and expense of divorce proceedings are no longer necessary. Instead, relying on the ruling that their marriages are and have always been void, they may simply walk away from them. The fate of surviving "spouses" to such "marriages," as well as the legal status of their children, especially in the event one of them passes, is also uncertain.

Neither guardians nor wards are required to be clairvoyant. They are not required to anticipate an unprecedented construction of a statute that is not moored

in its text. This Court is the only one that can give back these marriages. It should therefore grant review to determine whether section 11a-17(a-10), as applied by the Illinois Supreme Court, violates due process.

CONCLUSION

The Court should grant the petition.

Respectfully Submitted,

Steven J. Roeder
Ryan P. Weitendorf
Roeder Law Offices LLC
77 West Washington Street,
Suite 2100
Chicago, Illinois 60602
(312) 667-6000

Robert G. Black
Counsel of Record
Law Offices of
Robert G. Black, P.C.
101 North Washington Street
Naperville, Illinois 60540
(630) 527-1440
rblack@rgb-law.com

Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — OPINION OF THE SUPREME COURT OF THE STATE OF ILLINOIS, FILED APRIL 21, 2022 . . . . .1a

APPENDIX B — OPINION OF THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, FILED FEBRUARY 1, 2021 . . . . .55a

APPENDIX C — EXCERPT OF TRANSCRIPT OF THE STATE OF ILLINOIS, COUNTY OF KANE, DATED NOVEMBER 18, 2019. . . . .115a

APPENDIX D — DENIAL OF REHEARING FOR THE SUPREME COURT OF ILLINOIS, DATED SEPTEMBER 26, 2022 . . . . .119a

APPENDIX A — OPINION OF THE SUPREME COURT OF THE STATE OF ILLINOIS, FILED APRIL 21, 2022

IN THE SUPREME COURT OF ILLINOIS

Docket No. 126956

IN RE ESTATE OF JOHN W. MCDONALD III,

Deceased.

SHAWN MCDONALD,

Appellant,

v.

ELLIZZETTE MCDONALD,

Appellee.

April 21, 2022, Opinion Filed

CHIEF JUSTICE ANNE M. BURKE delivered the judgment of the court, with opinion.

Justices Garman, Neville, and Michael J. Burke concurred in the judgment and opinion.

Justice Theis concurred in part and dissented in part, with opinion, joined by Justices Overstreet and Carter.

OPINION

The issue in this appeal is whether Ellizzette McDonald, also known as Ellizzette Duvall Minnicelli (Ellizzette), sufficiently established that she is the surviving spouse of John W. McDonald III (John) and, as such, the sole heir of his estate.

On November 18, 2019, trial was held in Kane County circuit court on Ellizzette's claim of heirship. Ellizzette, *pro se*, presented the testimony of three witnesses in an effort to establish that, on July 11, 2017, she entered into a legally valid marriage with John, who died intestate, on December 11, 2017. At the conclusion of Ellizzette's case, Shawn McDonald (Shawn), as the appointed administrator of John's estate, moved for a directed finding, which the circuit court granted. The court held that Ellizzette failed to present a *prima facie* case establishing the validity of her marriage to John.

Ellizzette appealed, and the Appellate Court, Second District, affirmed in part, reversed in part, and remanded for further proceedings. 2020 IL App (2d) 191113-U. The appellate court held that a new trial was necessary because the circuit court erred when it barred Ellizzette from testifying based on the Dead Man's Act. 735 ILCS 5/8-201 (West 2016).

Shawn filed a petition for leave to appeal in this court, which we granted. For the reasons that follow, we now reverse the appellate court judgment and affirm the circuit court's judgment.

BACKGROUND

On December 15, 2017, Shawn McDonald filed a petition in the circuit court of Kane County, seeking letters of administration for the estate of his deceased brother, John W. McDonald III, who died intestate on December 11, 2017, in Paris, Illinois. Attached to the petition was an affidavit of heirship, in which Shawn averred that John's estate consisted of approximately $225,000 in personal property and that John's only heirs were his parents, John W. McDonald Jr. and Brenda K. McDonald, and his siblings, Heather Ladue (sister), Shawn McDonald (brother), and Brett McDonald (brother). Shawn further averred that on May 30, 2017, he had been appointed plenary guardian over John's person and estate by the circuit court of Kane County and that thereafter, on July 11, 2017, without the prior knowledge or consent of his guardian or the court, John participated in a purported wedding ceremony with a person who identified herself as Ellizzette Duvall Minnicelli. Shawn alleged that this marriage was without legal effect and void *ab initio* because John, as a ward, lacked the legal capacity to consent to the marriage without a judicial finding that the marriage was in John's best interest. On December 19, 2017, the circuit court entered orders appointing Shawn administrator and declaring John's heirs to be John Jr., Brenda, Heather, Shawn, and Brett.

On December 22, 2017, Shawn filed a petition for declaration of invalidity of marriage pursuant to section 301(1) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act), which provides:

> "The court shall enter its judgment declaring the invalidity of a marriage (formerly known as annulment) entered into under the following circumstances:
>
> > (1) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage[.]" 750 ILCS 5/301(1) (West 2016).

In support of his petition, Shawn attached an affidavit in which he averred that on May 30, 2017, he had been appointed by the circuit court of Kane County to serve as plenary guardian of John's person and estate. Shawn further averred that during a contested guardianship hearing on November 16, 2017, he learned for the first time that John had participated in a purported marriage ceremony on July 11, 2017, and that John entered into this marriage without the prior knowledge or consent of his guardian (Shawn) or the court.

Attached to Shawn's affidavit were various documents considered by the guardianship court, including a physician's report from Dr. Ramon A. Gonzales. Dr. Gonzales reported that John had been diagnosed with

"bipolar disorder with manic and depressive episodes" and that John suffered from "alcohol use disorder (severe)." According to Dr. Gonzales, John's bipolar disorder, which "by its own nature impair[ed] his ability to make reasonable and safe decisions," coupled with John's refusal to comply with prescribed treatment, meant that John was "at a high risk of being hurt by others due to his behavior, or to hurt himself, besides not being able to manage his financial affairs at this time."

Shawn also provided a report from Fred J. Beer, who served as John's guardian *ad litem* (GAL) in the 2017 guardianship proceedings, which the guardianship court also considered. Beer reported that, based on his conversations with John and several members of John's family, John had been a neurologist but he had not practiced for the last four years. Beer also reported that John suffered from bipolar disorder, alcoholism, and drug addiction; that John had been in rehabilitation at least three times, each completed unsuccessfully; and that John had twice attempted suicide by taking pills and alcohol. Beer noted that John, when in a manic state, spent money recklessly and irrationally. For example, Beer reported that John had a habit of purchasing expensive jewelry and gifts only to give them away to total strangers. In the three years prior to the guardianship hearings, John had frivolously spent approximately $600,000. John's family members described John as "out of control" and a "king manipulator." Based on his investigation, Beer advised the court that he concurred with the doctor's recommendation that guardianship was in John's best interest.

Based on the above information, the guardianship court found that John was a disabled person in need of guardianship, as defined in the Probate Act of 1975 (Probate Act) (755 ILCS 5/1-1 *et seq.* (West 2016)), and appointed Shawn as John's plenary guardian. The record indicates that, after Shawn's appointment, John filed a motion to vacate the guardianship order. Although the court denied John's motion at a hearing on July 6, 2017, the court appointed independent counsel for John, to assist him in seeking the termination of Shawn's guardianship. In addition, the court ordered John to appear at Alexian Brothers Hospital on Monday, July 10, 2017, for further evaluation. Subsequently, John, through his counsel, filed a petition to terminate Shawn's guardianship. Proceedings on this petition were ongoing until John's death on December 11, 2017.

In addition to the above documents and court orders, Shawn attached, to his petition to declare the marriage invalid, a photocopy of what purported to be a certified marriage certificate for John Wood McDonald III and Ellizzette Duvall Minnicelli, issued on July 17, 2017. It indicated that the marriage took place in Paris, Illinois, on July 11, 2017, with Raymond Carl Bement as the officiant. No witnesses were listed on the certificate.

On January 3, 2018, Shawn filed a petition to recover assets, seeking an order requiring Ellizzette to turn over to the estate John's cremains,[1] as well as various personal items including John's cell phone and laptop computer. It

1. More than a year later, at a hearing on May 1, 2019, Ellizzette testified that she scattered John's ashes in Lake Michigan and that no one accompanied her to witness this event.

was alleged that, shortly after John's death and without the knowledge of John's family, Ellizzette took possession of John's body and authorized its cremation "in order to prevent any further investigation into the cause of [John's] death."[2]

In response to Shawn's petition, counsel entered an appearance on behalf of "Ellizzette McDonald" on January 4, 2018, and moved for a substitution of judge as a matter of right. That motion was granted, and on January 17, 2018, Ellizzette filed a motion to vacate the court's orders appointing Shawn administrator of John's estate and declaring heirship. Ellizzette asserted that she was John's surviving spouse and, as such, his sole heir. Ellizzette further asserted that Shawn, having been aware that she was John's surviving spouse, had obtained letters of administration under false pretenses. Ellizzette maintained that the orders granting Shawn letters of administration and declaring heirship were void for want of personal jurisdiction because Shawn failed to comply with the mandatory requirements of sections 9-4 and 9-5(a) of the Probate Act (*id.* §§ 9-4, 9-5(a)), failed to include a necessary party (her), and wrongfully excluded her as John's heir. In the alternative, Ellizzette also filed a motion to reconsider and modify the orders.

---

2. On January 31, Shawn also sought a court order to require MNS Labs to turn over to the estate a sample of John's blood that was in its possession. According to the motion, the blood sample had been taken following John's death and remained in storage at MNS Labs after testing. It was alleged that the sample would advance the estate's investigation into John's death, which Ellizzette had concealed from John's family. That motion was later granted over Ellizzette's objection.

On February 1, 2018, Ellizzette filed a response to Shawn's petition for declaration of invalidity of marriage, denying that John lacked the capacity to marry. Ellizzette offered no evidence to support her claim that the marriage was legally valid. Rather, she asserted that Shawn had engaged in a "years-long extensive, improper and unjustified pattern and practice of attempting to wrongfully seize control of John's assets and otherwise harass John and Ellizzette," as evidenced by Shawn's "unwarranted and unjustified procurement of guardianship over John."

On March 7, 2018, Shawn voluntarily withdrew his petition for declaration of invalidity of marriage. On the same day, Shawn filed his response to Ellizzette's motion to vacate his appointment as administrator, asserting that, although Ellizzette may have participated in a marriage ceremony with John, John lacked the capacity to enter into a legally valid marriage contract because he was a ward subject to plenary guardianship. In support of this position, Shawn cited sections 11a-17(a-10) and 11a-22(b) of the Probate Act (*id.* §§ 11a-17(a-10), 11a-22(b)). Section 11a-22(b) provides that

> "[e]very note, bill, bond or other contract by any person for whom a plenary guardian has been appointed or who is adjudged to be unable to so contract is void against that person and his estate, but a person making a contract with the person so adjudged is bound thereby." *Id.* § 11a-22(b).

Shawn asserted that marriage is a contract and, pursuant to section 11a-22(b), the marriage contract entered into by John and Ellizzette on July 11, 2017, was void and the marriage invalid, affording Ellizzette no rights regarding the estate.

Ellizzette replied, asserting that section 11a-22(b) of the Probate Act was inapplicable to a marriage contract. She contended that the validity of a marriage is governed by section 301 of the Marriage Act (750 ILCS 5/301 (West 2016)). Further, she argued that a challenge could not be made to the validity of the marriage since John was deceased and section 302(b) of the Marriage Act provides: "In no event may a declaration of invalidity of marriage be sought after the death of either party to the marriage under subsections (1), (2) and (3) of Section 301." *Id.* § 302(b).

On March 20, 2018, counsel for Shawn issued a "Notice of Deposition to Ellizzette McDonald ('Ellizzette')" and on April 19, 2018, Shawn filed a petition for a citation to discover and recover information and/or assets under section 16-1 of the Probate Act. 755 ILCS 5/16-1 (2016).

After a hearing on April 18, 2018, the court denied Ellizzette's motion to vacate the order appointing Shawn administrator but granted her leave to file a petition seeking letters of administration and an affidavit of heirship based on her assertion that she is John's surviving spouse and sole heir. Ellizzette filed that petition on May 1, 2018.

On May 17, 2018, Shawn filed a response to Ellizzette's petition, along with a "Request to Admit Facts and Genuineness of Documents" in which Shawn sought documentation from Ellizzette regarding her identity, including birth records, marriage and divorce records, documentation of any official name changes, and an admission that a birth certificate for Lisa Anne Blaydes was, in fact, her birth certificate.

Ellizzette did not appear for a deposition, nor did she respond to any of the requests to admit facts and provide discovery. As a result, on June 5, 2018, Shawn filed a motion to compel discovery. Two days later, on June 7, 2018, Ellizzette filed a motion for judgment on the pleadings regarding her petition for letters of administration. In addition, Ellizzette sought a protective order to stay discovery pending the resolution of her motion for judgment on the pleadings. The motion to stay discovery was denied on June 13, 2018, and the court ordered Ellizzette's counsel to respond to Shawn's request to admit facts and to produce Ellizzette for deposition. Nevertheless, Ellizzette failed to appear for two scheduled depositions—on July 19 and 25, 2018. Under threat of sanctions, Ellizzette appeared for a deposition on August 22, 2018.

At the deposition, Ellizzette was shown copies of a marriage license application, marriage license, and marriage certificate, each listing Ellizzette Duvall Minnicelli as the bride. In addition, each of these documents indicated that Ellizzette Duvall Minnicelli was born in Lyon, France, on March 21, 1964, and that

she was a "physician scientist." Throughout discovery and at the deposition, Ellizzette failed to produce any documents to verify the information contained in these documents, nor did she establish her identity as Ellizzette Duvall Minnicelli. When Ellizzette was shown a birth certificate and other documents suggesting that Ellizzette was born Lisa Anne Blaydes on March 21, 1963 (one year earlier than stated in the marriage documents), in Maine Township, Cook County, Illinois, she refused to acknowledge that this was her birth certificate. She admitted that she had been known by other names and produced the following: an employment verification letter indicating that Lisa Blaydes-Zollner (SS# ***-**-1769) worked as a student employee at the University of Illinois at Chicago for various periods between 1985 and 1993; two United States passports, one issued November 23, 1999/expiring November 22, 2009, and a second one issued April 11, 2013/expiring July 10, 2013, as well as an undated Social Security card (***-**-1769), and an Australian driver's license (expiration date June 25, 2012), all issued in the name Ellizzette Blaydes Duvall; a social security card (***-**-1769) issued August 2, 2010, in the name Ellizzette Anne Mareen Minnicelli; an "interim Medicare card" expiring July 24, 2013, issued in the name Ellizzette B. Minnicelli; a passport issued July 3, 2013/expiring July 2, 2023, in the name Ellizzette Duvall; an Illinois driver's license dated April 25, 2013/expiring March 21, 2018, issued in the name Ellizzette Duvall Minnicelli; an undated Social Security card (***-**-1769) issued to and signed by Ellizzette A.M. Duvall; an Illinois driver's license dated July 18, 2017/expiring March 21, 2018, issued in the name Ellizzette Duvall McDonald; and

a Social Security card dated September 8, 2017, issued in the name Ellizzette Anne Mareen McDonald. No evidence of marriages, divorces, or applications for name changes were provided.

After deposing Ellizzette, Shawn filed a response to the motion for judgment on the pleadings on August 28, 2018. He argued that there were disputed issues of fact. In support, Shawn attached portions of the deposition transcripts of Anthony Scifo and Ellizzette. Scifo, who had been the attorney representing John in the contested guardianship proceedings, testified that he advised John that he could not marry because he had been declared a ward of the court. In addition, Scifo testified that he had discussed, with both John and Ellizzette, the probability that any marriage, if it took place, would be found invalid. Ellizzette confirmed in her deposition that Scifo had advised both her and John, prior to their wedding, that their marriage might not be valid.

On September 6, 2018, Shawn petitioned the court for an order requiring Ellizzette to submit to fingerprinting so her identity could be established. In support, Shawn alleged that, at her deposition, Ellizzette admitted she had used many names yet provided no explanation for the various name changes. In addition, when shown a copy of the birth certificate for Lisa Ann Blaydes, who was born in Illinois and not Lyon, France, Ellizzette claimed she "didn't know" if it was her birth certificate but produced no birth certificate for "Ellizzette Duvall Minnicelli."

After a hearing on September 10, 2018, the court denied Ellizzette's motion for judgment on the pleadings. Also, following a hearing on September 18, 2018, the court ruled that Ellizzette would be required to submit to fingerprinting if she continued to pursue her petition to be named administrator of the estate. The court held that, if Ellizzette amended her petition to seek the appointment of someone other than herself as administrator, she need not submit to fingerprinting.

On October 2, 2018, Shawn filed a motion asking the court to take judicial notice of John and Ellizzette's certificate of marriage, marriage license, and application for marriage license. In these documents, Ellizzette attested that her name was Ellizzette Duvall Minnicelli, that her last name on her birth certificate was "Duvall," that she was born in Lyon, France, that she had one prior marriage, and that her occupation was "physician scientist." On November 6, 2018, Ellizzette objected to Shawn's motion, stating that the documents contained "assertions of purported fact which may be subject to reasonable dispute at trial."

Prior to a ruling on that motion, on October 22, 2018, Ellizzette moved the court to enter "a Rule 218 Scheduling Order to set deadlines for discovery and dispositive motion deadlines, as well as a trial date on [her] Petition for Letters, to bring the central controversy in this matter to a final adjudication." Shawn responded on October 24, stating, "by Ellizzette filing her Motion for Supreme Court Rule 218 Scheduling Order, she has made clear that she wishes to pursue her petition to have herself appointed

as administrator pursuant to the Probate Act of 1975. 755 ILCS 5/28-1, *et seq.*" As a result, Shawn moved the court to require Ellizzette to submit to fingerprinting.

On November 30, 2018, the court, *inter alia*, granted Shawn's motion to take judicial notice of the marriage documents over Ellizzette's objection and set a case management schedule, requiring that all discovery be completed by September 30, 2019. The court also ordered Ellizzette to present herself at the Kane County Sheriff's Office within 60 days for fingerprinting. The record shows that, after three attempts to obtain Ellizzette's fingerprints, no usable prints were ever acquired.

Subsequently, on January 29, 2019, the court ruled that certain answers by Ellizzette to Shawn's request to admit facts would be deemed admitted without qualification and ordered Ellizzette to amend other answers found to be nonresponsive. The court also ordered Ellizzette to turn over John's iPhone and laptop to the estate within 14 days and issued a protective order to preserve the electronically stored information (ESI) on these devices. The court granted Ellizzette's combined motion for subpoenas to obtain John's medical records and a qualified order pursuant to the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of Titles 18, 26, 29, and 42 of the United States Code)), subject to *in camera* review by the court.

On February 11, 2019, Ellizzette's counsel moved for leave to withdraw as Ellizzette's counsel, which the court

granted on February 15, 2019. Ellizzette was allowed 21 days to find a new attorney and substitute appearance.

In the interim, on February 13, 2019, Shawn filed a request that the court take judicial notice of a Doximity[3] file on an account for Ellizzette Duvall, who represented herself as an academic neurosurgeon affiliated with New York-Presbyterian Hospital's department of neurosurgery. The file contained information regarding an investigation Doximity conducted into Ellizzette's account. According to Doximity's findings, Ellizzette's professional profile could not be substantiated and, therefore, her account was deemed a fake. Notably, in response to a request from Doximity for verification of her credentials, Ellizzette provided a picture identification card for "Ellizzette Duvall" from two medical institutions in New York. Ellizzette's only other response was an assertion that Shawn had instigated the inquiry into her professional credentials and that she had sought an order of protection from Shawn on November 17, 2017, in Edgar County, Illinois. Ellizzette attached an unsigned copy of an emergency order of protection against Shawn on behalf of Ellizzette and John. In the petition for an order of protection, Ellizzette alleged that Shawn took marital property from certain storage units and sold it; harassed her and John by contacting businesses, hospitals, and their colleagues; and "assumed John's identity" to change passwords, redirect John's mail, and stop bank cards. Ellizzette also contended that Shawn physically abused

3. Doximity is an online networking service for medical professionals.

and stalked her and John and that Shawn made repeated calls to the police for "health checks" on John, alleging that John was an alcoholic and dangerous. It appears from the record that on March 19, 2019, the court deferred ruling on this motion to take judicial notice. However, there is no further discussion or ruling on the motion found in the record.

On March 18, 2019, Ellizzette filed her appearance *pro se*, along with a motion to extend time for filing responses, which the court granted. Then, on April 10, 2019, Ellizzette's previous counsel filed a new appearance on her behalf, only to file another motion to withdraw five months later, on September 12, 2019. The court granted the second motion to withdraw on September 18, 2019.

In August 2019, Shawn moved the court to take judicial notice of court records indicating that, on November 26, 2001, felony charges were brought against Ellizzette Duvall, also known as Lisa Blaydes, in New York state for falsifying business records, unauthorized use of professional title, and forgery, based on Ellizzette misrepresenting herself as a doctor between September 12 and September 15, 2001, in the New York State Army National Guard Volunteer Registration Log. Ellizzette pled guilty to misdemeanor forgery and was sentenced to three years' probation. At a hearing on October 23, 2019, the court granted the motion, taking judicial notice of the New York state court documents, subject to their relevance at trial.

On October 16, 2019, Shawn filed a motion *in limine* to bar Ellizzette from testifying regarding the existence of a marital relationship, alleging that such testimony was barred by the Dead Man's Act (735 ILCS 5/8-201 (West 2016)). On October 23, 2019, Ellizzette filed an appearance on her own behalf, and a week later, on October 30, 2019, Ellizzette filed a response to Shawn's motion *in limine*, arguing that the plain text of section 8-201(d) of the Dead Man's Act provides that "[n]o person shall be barred from testifying as to any fact relating to the heirship of a decedent." *Id.* § 8-201(d). Ellizzette also attached an affidavit by Raymond Bement, who was named on the marriage certificate as the officiant. On November 4, 2019, Shawn filed a reply to Ellizzette's response along with a motion to strike Bement's affidavit, contending that the affidavit was in direct conflict with testimony Bement gave at his deposition. On November 13, 2019, the trial court entered an order granting Shawn's motion *in limine* and barring Ellizzette from testifying at trial.

On the day of trial, Monday, November 18, 2019, Ellizzette appeared in court and requested a continuance. She sought to postpone the trial to "December 3, 2019, or later," explaining that on the previous Friday she had unsuccessfully attempted to contact the judge's chambers. She stated that she spoke with someone from the clerk's office who advised her that she would have to come to court to request a continuance. Accordingly, Ellizzette submitted her motion for a continuance in court.

In the motion, Ellizzette alleged that she had good cause for requesting an extension, because (1) her father

had been hospitalized in Arizona and declared "end of life," (2) her mother, whom she categorized as a "key witness," would be unable to attend the trial due to the status of Ellizzette's father, (3) Ellizzette's attorneys withdrew from the case due to the "high outstanding balance" of attorney fees that Ellizzette was unable to pay because she was involved in an automobile accident that resulted in significant out-of-pocket medical expenses but that she now had resolved, hoping they would be allowed to reenter the case, and (4) she was unable to subpoena two "key witnesses." Shawn objected to the motion, arguing that it had been a year since the matter was first set for trial.

In response to questioning by the court, Ellizzette explained that the two "key witnesses" were both paraplegics who lived in Colorado and, due to their disability, could not be required to travel to Illinois to testify. Ellizzette did not make an offer of proof as to what their testimony would be but admitted that they were not witnesses to the marriage ceremony.

The court denied Ellizzette's motion for a continuance, finding *inter alia* that Ellizzette failed to show that the unavailable witnesses' testimony would be material to the issues in the case. The bench trial commenced with Ellizzette proceeding *pro se*. Prior to hearing evidence, the court asked for clarification on what issues were currently before it. Shawn's attorney responded that Ellizzette had abandoned her petition for letters of administration and the only matter before the court was Ellizzette's claim that she was John's surviving spouse and sole heir. Ellizzette made no assertions to the contrary, and the trial then proceeded on the matter of heirship.

Ellizzette called three witnesses. The first witness was Diane Boyer, who testified that she had known John and Ellizzette for about three years but that her main interaction with John occurred in November or December of 2017, when John lived with her for two weeks due to a protective order issued by the guardianship court that physically separated John and Ellizzette temporarily. Boyer testified that, on one occasion, she went to a court hearing in the contested guardianship case to verify that John and Ellizzette had recently married and, in her opinion, should not be kept apart. However, Boyer also testified that she did not witness the marriage ceremony, though she was involved in preparations for the marriage and took John and Ellizzette out to a "wedding dinner" three or four days after the wedding to celebrate.

Ellizzette next called Dr. Visar Belegu, who testified that he was a scientist residing in Baltimore, Maryland. Belegu also testified that he first met Ellizzette in 2004, when he initially began working with John in St. Louis. It is unclear how long his initial affiliation with John lasted; however, Belegu testified that he phoned or texted John at least once each week in 2017 and that he traveled with John in the summer of 2017, because they were working on a project together. Belegu also testified that a research paper he and John had been working on "for quite a while" was submitted and accepted for publication in a major scientific journal sometime at the end of 2017 or early 2018, and it was Belegu's understanding that John had accepted a position that was to begin in 2018, working "on an international level."

Belegu testified that he did not attend John and Ellizzette's wedding but knew they were engaged and learned, on September 11, 2017, that they married. In response to questions by Ellizzette, Belegu testified that he was aware that John had been involved in guardianship proceedings in July 2017. On cross-examination Belegu testified that he did not know the exact date that the guardianship order was entered but believed it was sometime in July 2017. Belegu also admitted that he never attended any of the guardianship proceedings and did not know the contents of any reports prepared by the examining physicians, though he knew that John was upset about what the doctors said about him.

Ellizzette's final witness was Raymond C. Bement. On direct examination, Bement testified that he first met John and Ellizzette (whom he knew as Lisa) when they were all in college together in 1982 and was aware that she and John had a relationship in the mid-1980s. Bement further testified that he reconnected with Ellizzette in 2015, but he was not sure whether she was in a relationship with John at that time. In 2017, he learned that John and Ellizzette were engaged when John told him. He then helped them prepare for the marriage ceremony, which he officiated.

Bement further testified that there were actually two wedding ceremonies. He said he performed the "legal ceremony" on July 11, 2017, in John and Ellizzette's Paris, Illinois, home and then signed the marriage certificate at their kitchen table. After that ceremony, the three of them went to Allerton Park in Monticello (Piatt County) for the "secular" portion of the ceremony. It is unclear what

Bement meant by "secular ceremony." During Ellizzette's questioning of Bement, she referred to the ceremony in Paris as the "interfaith" ceremony and the ceremony in Monticello as the "religious" ceremony. Neither of the ceremonies was described in detail, and there were no witnesses at either location.

On cross-examination, it was established that Bement was employed as a licensed clinical social worker and that he had very little contact with either John or Ellizzette from 2000 to 2016. There was some suggestion that Bement may have known John in his professional capacity while John was receiving mental health services, but that was not definitively established.

Bement was questioned extensively about the affidavit he provided to Ellizzette, which was notarized in New York. Initially, Bement refused to say why the affidavit was notarized in New York, but he later claimed he had traveled to New York on a "date" and took the affidavit with him. He did not explain how he found a notary in New York, nor could he explain why the notary's certification was dated 2026.

Bement further testified on cross-examination that he offered to be the officiant for John and Ellizzette's marriage when he learned, sometime in 2017, that John and Ellizzette were engaged. To that end, he obtained an online certification from Universal Life Church Ministry, a process that took him about 5 to 10 minutes. When asked about the marriage certificate he had signed, Bement admitted that he did not realize it listed Ellizzette's name

as Ellizzette Duval Minnicelli and admitted he never knew her by that name. When asked if he was aware that Ellizzette claimed to be born in Lyon, France, he responded, "That's news to me."

During redirect examination, Ellizzette attempted to clarify Bement's testimony; however, nearly every question she asked was objected to on grounds of "leading," "not relevant," or "beyond the scope." In fact, throughout the trial, Ellizzette, as a self-represented litigant, failed to frame her questions appropriately, opening her up to constant objections from opposing counsel. Though the court tried to assist her by explaining its rulings, answering her questions, and instructing her to "rephrase," Ellizzette would typically engage in a long explanation, telling the court what she was "trying to establish."

When Ellizzette completed her questioning of Bement, she informed the court that she had no further witnesses. Shawn then moved for a directed finding, which the trial court granted. In so ruling, the court stated that the issue was the "validity of the marriage, the ceremony, the contract, and whether such a marriage—if it was conducted according to Illinois law or could have been conducted under the Probate Act when it happened—if it happened." The court then stated that the minimum relevant evidence necessary to establish a *prima facie* case of a valid marriage was "a valid application for a marriage license, a ceremony performed in Edgar County and witnessed by two witnesses." The court then concluded that, as a matter of law, Ellizzette did not present a *prima*

facie case of a valid marriage. Specifically, the court held that the marriage was not properly witnessed nor licensed and that no best-interest determination was made by the probate court. The court entered an order granting a directed finding in Shawn's favor and included Rule 304(a) language. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Ellizzette filed her notice of appeal on December 18, 2019.

On appeal, Ellizzette raised five issues. First, she argued that the trial court erred when it appointed Shawn as the administrator of decedent's estate because she was not provided with statutorily required notice. Second, she maintained that the trial court erred in denying her motion for a continuance on the day of trial. Third, she argued that the trial court erred in denying her motion for judgment on the pleadings. Fourth, she claimed that the trial court committed reversible error in barring her from testifying regarding her marriage and heirship. Finally, she contended that the trial court erred in granting Shawn's motion for a directed finding.

The appellate court affirmed in part, reversed in part, and remanded for further proceedings. 2020 IL App (2d) 191113-U. In sum, the appellate court affirmed the trial court's denial of Ellizzette's motion to vacate the order granting Shawn letters of administration, affirmed the denial of Ellizzette's motion for continuance, and affirmed the denial of Ellizzette's motion for judgment on the pleadings. However, the appellate court reversed the trial court's ruling on Shawn's motion *in limine* that barred Ellizzette from testifying and reversed the grant of a directed finding in favor of Shawn. *Id.* ¶ 106.

The matter was remanded for further proceedings, and Shawn filed a petition for leave to appeal in this court, which we granted.

ANALYSIS

On appeal to this court, Shawn, in his capacity as administrator of John's estate, raises three issues. First, he contends that the appellate court erred when it reversed the circuit court's grant of a directed finding on the ground that a best interest determination was not required prior to John marrying Ellizzette. Second, Shawn argues that the appellate court erred when it reversed the circuit court's grant of a directed finding, because Ellizzette failed to establish her actual identity. And last, Shawn contends that the appellate court erred when it found that the Dead Man's Act did not bar Ellizzette from testifying and that she was substantially prejudiced by her inability to testify.

In her reply brief, Ellizzette seeks cross-relief, arguing that the trial court erred when it granted Shawn's petition for letters of administration and declaration of heirship and that the appellate court erred when it declined to review those orders.

STANDARD OF REVIEW

The parties agree that the trial court's grant of a directed finding, based on its determination that Ellizzette failed to present a *prima facie* case on the validity of the marriage, is a matter to be reviewed by this court *de novo*. See *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275, 786 N.E.2d 139, 271 Ill. Dec. 881 (2003). As to

the trial court's ruling on the motion *in limine* based on its finding that the Dead Man's Act barred Ellizzette from testifying, Shawn contends that our review is for an abuse of discretion (*People v. $5,608 United States Currency*, 359 Ill. App. 3d 891, 835 N.E.2d 920, 296 Ill. Dec. 567 (2005)) and that the ruling should not be reversed unless the error was substantially prejudicial and affected the trial's outcome (*In re Estate of Goffinet*, 318 Ill. App. 3d 152, 156, 742 N.E.2d 874, 252 Ill. Dec. 336 (2001)).

While acknowledging that a ruling on a motion *in limine* is generally reviewed for an abuse of discretion, Ellizzette argues that the issue presented here concerns the trial court's interpretation of the Dead Man's Act, which is a question of law subject to *de novo* review.

Having considered the positions of both parties, we find that the applicable standard for our review of the matters presented in this appeal is *de novo*.

I. Legal Capacity to Marry—Necessity of a Best Interest Hearing

In his first issue, Shawn argues that the appellate court erred when it rejected the trial court's finding that, pursuant to section 11a-17(a-10) of the Probate Act (755 ILCS 5/11a-17(a-10) (West 2016)), John, as a ward subject to plenary guardianship, lacked the capacity to marry without first seeking a judicial finding that the marriage was in John's best interest. In addressing this issue, we look first to the provisions of the Probate Act concerning wards who have been found to be disabled and in need of plenary guardianship.

Article XIa of the Probate Act (*id.* art. XIa) sets forth the rules and requirements governing the appointment of guardians for adults with disabilities, as well as the duties of the guardian so appointed. In section 11a-2, the Probate Act defines a "'[p]erson with a disability'" as follows:

> "'Person with a disability' means a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering, or (d) is diagnosed with fetal alcohol syndrome or fetal alcohol effects." *Id.* § 11a-2.

A guardian may be appointed for an adult with disabilities pursuant to section 11a-3 of the Probate Act, which at that time stated, in pertinent part:

> "(a) Upon the filing of a petition by a reputable person ***, the court may adjudge a person to be a person with a disability, but only if it has been demonstrated by clear and convincing evidence that the person is a person with a disability as defined in Section 11a-2. If the court adjudges a person to be a person with a

> disability, the court may appoint (1) a guardian of his person, if it has been demonstrated by clear and convincing evidence that because of his disability he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person, or (2) a guardian of his estate, if it has been demonstrated by clear and convincing evidence that because of his disability he is unable to manage his estate or financial affairs, or (3) a guardian of his person and of his estate.
>
> (b) Guardianship shall be utilized only as is necessary to promote the wellbeing of the person with a disability, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical, and adaptive limitations." *Id.* § 11a-3.

In the version of section 11a-17 in effect at the time, the Probate Act described the duties of a guardian, stating in pertinent part:

> "(a) To the extent ordered by the court and under the direction of the court, the guardian of the person shall have custody of the ward ***. ***

(a-5) If the ward filed a petition for dissolution of marriage under the Illinois Marriage and Dissolution of Marriage Act before the ward was adjudicated a person with a disability under this Article, the guardian of the ward's person and estate may maintain that action for dissolution of marriage on behalf of the ward. Upon petition by the guardian of the ward's person or estate, *the court may authorize and direct a guardian of the ward's person or estate* to file a petition for dissolution of marriage or to file a petition for legal separation or declaration of invalidity of marriage under the Illinois Marriage and Dissolution of Marriage Act on behalf of the ward if the court finds by clear and convincing evidence that the relief sought is in the ward's best interests. In making its determination, the court shall consider the standards set forth in subsection (e) of this Section.

(a-10) Upon petition by the guardian of the ward's person or estate, *the court may authorize and direct a guardian of the ward's person or estate to consent, on behalf of the ward, to the ward's marriage pursuant to Part II of the Illinois Marriage and Dissolution of Marriage Act if the court finds by clear and convincing evidence that the marriage is in the ward's best interests*. In making its determination, the court shall consider the standards set forth in subsection (e) of this Section. Upon presentation

of a court order authorizing and directing a guardian of the ward's person and estate to consent to the ward's marriage, the county clerk shall accept the guardian's application, appearance, and signature on behalf of the ward for purposes of issuing a license to marry under Section 203 of the Illinois Marriage and Dissolution of Marriage Act.

* * *

(e) Decisions made by a guardian on behalf of a ward shall be made in accordance with the following standards for decision making. Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the ward's personal, philosophical, religious and moral beliefs, and ethical values relative to the decision to be made by the guardian. Where possible, the guardian shall determine how the ward would have made a decision based on the ward's previously expressed preferences, and make decisions in accordance with preferences of the ward. If the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, *the decision shall be made on the basis of the ward's best interests as determined by the guardian*." (Emphases added.) *Id.* § 11a-17(a), (a-5), (a-10), (e).

Reading these provisions as a whole and giving them consistent, harmonious, and sensible effect, we conclude that, under the Probate Act, a ward who wishes to enter into a marriage may do so only with the consent of his guardian. Pursuant to section 11a-17(a-10) (*id.* § 11a-17(a-10)), for a guardian to obtain the ability to consent, he must file a petition with the court. If the court finds by clear and convincing evidence that the marriage is in the ward's best interest, the court may then authorize and direct the guardian to consent to the ward's marriage. When making its best interest determination, the court must follow the standards set forth in subsection (e), which means that the court must rule in conformity with the ward's preferences unless the court believes that the marriage would result in substantial harm to the ward's welfare or personal or financial interests.

We believe this interpretation of the above-cited provisions of the Probate Act is in keeping with our decision in *Karbin v. Karbin*, 2012 IL 112815, ¶ 45, 977 N.E.2d 154, 364 Ill. Dec. 665, wherein we held that it is the policy of this state that, once a person is found to be "disabled" under our Probate Act, he or she is viewed as """a favored person in the eyes of the law" and is entitled to vigilant protection"' (quoting *In re Mark W.*, 228 Ill. 2d 365, 374-75, 888 N.E.2d 15, 320 Ill. Dec. 798 (2008), quoting *In re Estate of Wellman*, 174 Ill. 2d 335, 348, 673 N.E.2d 272, 220 Ill. Dec. 360 (1996)). This policy is fulfilled through the creation of a guardianship, which will "promote the well-being of the person with a disability, [and] to protect him from neglect, exploitation, or abuse." 755 ILCS 5/11a-3(b) (West 2016).

Ellizzette argues, and the appellate court held, that the plain language of the Probate Act does not require a best interest hearing before a ward may marry. Moreover, Ellizzette contends that the validity of a marriage is governed by section 301 of the Marriage Act, which provides:

> "The court shall enter its judgment declaring the invalidity of a marriage (formerly known as annulment) entered into under the following circumstances:
>
>> (1) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage[.]" 750 ILCS 5/301(1) (West 2016).

Further, Ellizzette contends that this court has consistently held that "the appointment of a guardian of a person is not sufficient, in and of itself, to show that the person was incompetent to have consented to marriage," citing *Pape v. Byrd*, 145 Ill. 2d 13, 582 N.E.2d 164, 163 Ill. Dec. 898 (1991). We reject Ellizzette's arguments and find her reliance on *Pape* to be misplaced.

In *Pape*, we held:

> "We agree *** that the appointment of a guardian of a person is not sufficient, in and of itself, to show that the person was incompetent to have consented to a marriage. In this regard, we note that section 11a-3 of the Probate Act of 1975 provides, *inter alia*, that a court may adjudge a person disabled and may appoint a guardian of his person if, because of his disability, he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person. In contrast, section 301 of the Marriage Act provides that a declaration of invalidity of a marriage may be obtained where a party, *inter alia*, lacked the capacity to consent to the marriage because of, *inter alia*, mental incapacity or infirmity. (Ill. Rev. Stat. 1989, ch. 40, par. 301.) Moreover, a person lacks capacity to consent to a marriage where he is unable to understand the nature, effect, duties and obligations of marriage. (*Larson v. Larson* (1963), 42 Ill. App. 2d 467, 473, 192 N.E.2d 594.) It is thus clear that the test of incapacity in each of the foregoing provisions is limited and does not speak to the incapacity required for purposes of the other provision. Moreover, Illinois case law recognizes the difference between the types of incapacity involved in each provision." *Id.* at 21-22.

As recognized in *Pape*, the Probate Act identifies various types of disabilities that could give rise to the need for the appointment of a guardian, who has control over the disabled adult's person and estate. Accordingly, if a person is adjudged a disabled person in need of a guardian under the Probate Act, that person is limited in his ability to enter into a marriage, *i.e.*, such person must obtain the guardian's consent, which is given upon the court's authorization and direction after a determination that the marriage is in the ward's best interest. Under the Probate Act, the lack of capacity to enter into a marriage is based on the ward's failure to comply with the provisions for obtaining consent, not because the ward lacked the mental competence to understand the nature, effect, duties, and obligations of marriage.

Pape is factually distinguishable from the case at bar. In *Pape*, Jean A. Pape, as plenary guardian of Simpson Driskell Jr., a disabled adult, filed a petition to declare invalid the purported marriage between Driskell and Wilma Louise Byrd. *Id.* at 15-16. Byrd then filed a petition in probate court to have Pape removed as Driskell's guardian. *Id.* at 16. Pape's petition to declare the marriage void was found to be untimely. *Id.* at 25. However, Pape was permitted to challenge the validity of the marriage in response to Byrd's petition to remove Pape as guardian. *Id.* at 28-29. After hearing the evidence, the trial court held that the marriage was invalid because Driskell lacked the mental capacity to enter into the marriage and that decision was affirmed on appeal. *Id.* at 19.

The appellate court noted that medical evidence showed that Driskell was diagnosed with "organic brain syndrome," schizophrenia, and Alzheimer's disease. *In re Driskell*, 197 Ill. App. 3d 836, 845, 555 N.E.2d 428, 144 Ill. Dec. 309 (1990). In addition, Driskell, who had numerous physical impairments, was found to have an IQ of 38 and was described as being "unable to know what he was doing." *Id.* Several nurses who had attended Driskell at hospitals or nursing homes around the time of the marriage testified that Driskell was difficult to work with, unable to dress or clean himself, and often required restraint. *Id.* Under these circumstances, the court held that the applicable test to determine whether Driskell was competent to marry was whether he had the ability to understand the nature, effect, duties, and obligations of marriage. The court then found Driskell was not competent to enter into the marriage. *Id.* at 846. Significantly, Pape was appointed Driskell's guardian *after* the purported marriage ceremony took place. See *Pape*, 145 Ill. 2d at 17. Consequently, the question of whether consent of the guardian and a best interest hearing were required prior to the marriage was not at issue.

Larson v. Larson, 42 Ill. App. 2d 467, 192 N.E.2d 594 (1963), cited by *Pape* regarding the test for determining competency, is also factually distinguishable. In *Larson*, the husband, Sydney, filed a petition in 1956 to annul his marriage to Myrtle, which took place six years earlier in 1950. *Id.* at 468. Sydney contended that the marriage was invalid because Myrtle was insane at the time of the marriage and, therefore, incapable of contracting marriage pursuant to section 2 of the Marriage Act as it existed in the 1950s (Ill. Rev. Stat. 1953, ch. 89, ¶ 2).

The *Larson* court ruled that, while

> "there is no clear dividing line between competency and incompetency, and each case must be judged by its own peculiar facts; the parties must have sufficient mental capacity to enter into the status, but proof of lack of mental capacity must be clear and definite; if the party possesses sufficient mental capacity to understand the nature, effect, duties, and obligations of the marriage contract into which he or she is entering, the marriage contract is binding, as long as they are otherwise legally competent to enter into the relation." *Larson*, 42 Ill. App. 2d at 473.

In *Larson*, no guardian was involved. Prior to the marriage, Myrtle was not determined to be a disabled adult under the Probate Act, and she was never appointed a plenary guardian to oversee her person or estate.

Based on the above, we reject Ellizzette's argument that John's competency to marry is governed by section 301 of the Marriage Act and that, to prove the validity of the marriage it was only necessary to show that John understood the nature, effect, duties, and obligations of the marriage contract into which he entered.

In the case at bar, Ellizzette brought suit, seeking to be named the sole heir of John's estate as John's surviving spouse. Therefore, it was Ellizzette's burden to prove her status as heir by proving that she and John entered

into a valid marriage. The validity of the marriage was challenged by Shawn, as administrator of John's estate, based on the contention that John was a ward under the plenary guardianship of Shawn and, as such, John lacked the capacity to enter into a valid marriage without the authorization and consent of his guardian granted by the court after a finding that the marriage was in John's best interest. We agree.

Under the facts of this case, we find that John's capacity to marry is governed by the Probate Act. Applying our interpretation of the provisions of the Probate Act, we further find that, for John to have the legal capacity to enter into a valid marriage, he had to obtain the consent of his guardian, Shawn, given upon the authorization and direction of the court after a best interest determination. Thus, for Ellizzette to meet her burden of proving a valid marriage to John, she would have to show that, prior to the marriage, the court authorized and directed Shawn to consent to the marriage upon a finding that the marriage was in John's best interest.

Turning to the record, we must review the evidence Ellizzette presented at trial to determine whether she met her burden of proving that her marriage to John was valid. First, however, we must determine whether the trial court erred when it granted Shawn's motion *in limine* and barred Ellizzette from testifying, and whether, as the appellate court held, the trial court's ruling substantially prejudiced Ellizzette's ability to present her case.

II. The Dead Man's Act

In this case, the trial court granted Shawn's motion *in limine* and barred Ellizzette from testifying at trial regarding her marriage and heirship, based on its finding that section 8-201 of the Code of Civil Procedure, commonly referred to as the Dead Man's Act (735 ILCS 5/8-201 (West 2016)), precluded such testimony. In so ruling, the trial court relied on our decision in *Laurence v. Laurence*, 164 Ill. 367, 45 N.E. 1071 (1896). On appeal, the appellate court reversed the trial court's ruling, finding, *inter alia*, that *Laurence* is no longer good law. 2020 IL App (2d) 191113-U, ¶ 83.

Before this court, Shawn argues that the appellate court erred when it found that *Laurence* was no longer good law. Shawn directs our attention to Illinois Rule of Evidence 101 (eff. Jan. 6, 2015), which states: "A statutory rule of evidence is effective unless in conflict with a rule or a decision of the Illinois Supreme Court." Shawn then contends that, because the Dead Man's Act is a statutory rule of evidence that is "in conflict" with our decision in *Laurence, Laurence* still controls. We disagree.

When *Laurence* was decided, the Dead Man's Act provided:

> "No party to any civil action, suit or proceeding, or person directly interested in the event thereof, shall be allowed to testify therein of his own motion or in his own behalf, by virtue of the foregoing section, when any adverse party sues

> or defends as the *** heir *** of any deceased person, *** unless when called as a witness by such adverse party so suing or defending ***." Ill. Rev. Stat. 1895, ch. 51, ¶ 2.

Our decision in *Laurence* was based on our interpretation and application of the Dead Man's Act as it then existed. Subsequently, however, in 1973, the Dead Man's Act was repealed and replaced. The successor act now reads, in pertinent part:

> "In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability, except in the following instances:
>
> * * *
>
> (d) No person shall be barred from testifying as to any fact relating to the heirship of a decedent." 735 ILCS 5/8-201(d) (West 2016).

No conflict exists between this statutory rule of evidence and our decision in *Laurence* because we were not interpreting this new language of the Dead Man's Act when we decided *Laurence*. In *In re Estate of Babcock*,

105 Ill. 2d 267, 272-73, 473 N.E.2d 1316, 85 Ill. Dec. 511 (1985), we applied the successor act and observed that the legislature had made it "less restrictive" by adding language that "no longer bar[red] all testimony by interested persons." See also *In re Estate of Bailey*, 97 Ill. App. 3d 781, 784, 423 N.E.2d 488, 53 Ill. Dec. 104 (1981) (section 2(4) of the Dead Man's Act (Ill. Rev. Stat. 1979, ch. 51, ¶ 2(4)) was "intended to change the rule of *Laurence*"); *In re Estate of Hutchins*, 120 Ill. App. 3d 1084, 458 N.E.2d 1356, 76 Ill. Dec. 556 (1984). Based on the above, we are compelled to agree with the appellate court below that the trial court erred when it granted Shawn's motion *in limine* and barred Ellizzette from testifying.

Although we find that the trial court erred, our inquiry is not over. Shawn argues here, as he did in the appellate court, that even if it was error for the trial court to have barred Ellizzette from testifying, the error was not properly preserved for review. Shawn contends that an adequate offer of proof, which informs the trial court, opposing counsel, and the reviewing court of the exact nature and substance of the evidence sought to be introduced, is necessary to preserve a trial court's alleged error in excluding evidence. *Colella v. JMS Trucking Co. of Illinois*, 403 Ill. App. 3d 82, 93, 932 N.E.2d 1163, 342 Ill. Dec. 702 (2010); see also *Snelson v. Kamm*, 204 Ill. 2d 1, 23, 787 N.E.2d 796, 2003 Ill. LEXIS 456, 272 Ill. Dec. 610 (2003). Because Ellizzette failed to make any offer of proof, Shawn maintains that she failed to preserve for review the trial court's error in granting the motion *in limine* that barred her from testifying.

The appellate court, while acknowledging that no offer of proof was made by Ellizzette, held that an offer of proof is not required where it was apparent that the trial court clearly understood the nature and character of the evidence sought to be introduced. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495, 771 N.E.2d 357, 264 Ill. Dec. 653 (2002). The court then rejected Shawn's claim that the trial court's error was not preserved for review, stating, "[g]iven this record, *** the trial court understood that Ellizzette would testify as to her purported marriage to decedent." 2020 IL App (2d) 191113-U, ¶ 85. The court then went on to conclude that Ellizzette was substantially prejudiced by her inability to testify and, therefore, remand for a new trial was required. *Id.* ¶ 86. We disagree.

It is certainly true that an offer of proof need not be made if it is clear that the trial court understood the nature and character of the evidence that would have been offered had Ellizzette been allowed to testify. However, we do not find it clear from the record in this case what Ellizzette's exact testimony "as to her purported marriage to decedent" would be. Moreover, the issue in this case was not simply whether a marriage ceremony took place but whether the marriage was legally valid. Shawn alleged, and we have now determined, that the validity of the marriage and John's capacity to enter into the marriage are dependent upon proof that a court determined, based on clear and convincing evidence, that the marriage was in John's best interest. We find nothing to indicate that Ellizzette intended to present testimony to dispute Shawn's allegations, nor does it appear that Ellizzette could have presented testimony that would have

established the validity of the marriage. Thus, we find that, not only did Ellizzette fail to preserve the error by failing to make an offer of proof, but any testimony that Ellizzette might have offered could not have established John's capacity to enter into a valid marriage.

Ellizzette was aware at the time the marriage took place that, as a result of guardianship proceedings, John was under the plenary guardianship of Shawn and, for that reason, the marriage might not be valid. It is also clear from the record that no best interest finding was ever sought or made. In light of our holding in this opinion that a disabled person lacks the capacity to marry unless a court authorizes and directs that person's guardian to consent to the marriage after a best interest finding, Ellizzette could not have provided any testimony that would have been sufficient to prove the validity of the marriage. Consequently, Ellizzette could not have been prejudiced by her inability to testify regarding the marriage.

Thus, we reverse the appellate court's finding that Ellizzette was substantially prejudiced by her inability to testify. The error occasioned by the trial court's ruling that barred Ellizzette from testifying was harmless. Accordingly, remand for a new trial is not necessary.

III. Directed Finding

As noted above, the trial court granted Shawn's motion for a directed finding after ruling that Ellizzette failed to present a *prima facia* case regarding the validity of her marriage to John. The trial court so ruled based,

in part, on the ground that, pursuant to the Probate Act, a best interest hearing was required before John could marry.

The appellate court reversed the directed finding in Shawn's favor, finding *inter alia* that a *prima facie* case had been presented. The appellate court concluded that the trial court erred in granting a directed verdict in favor of Shawn on the grounds it set forth. *Id.* ¶ 90. The appellate court found that Ellizzette had presented some evidence that a ceremony was performed in Edgar County through Bement's testimony and that the trial court erred when it held that section 11a-17(a-10) of the Probate Act required a prior best interest hearing or the court's consent before John could validly marry. *Id.* ¶ 102.

Because we have found that a best interest hearing was required before John could validly marry, we reverse the appellate court's holding and affirm the trial court's grant of a directed verdict in favor of Shawn.

CONCLUSION

Based on our findings above, we reverse the appellate court judgment and affirm the circuit court's grant of a directed finding in favor of Shawn McDonald, as representative of the estate of John W. McDonald III.

Appellate court judgment reversed.

Circuit court judgment affirmed.

JUSTICE THEIS, concurring in part and dissenting in part:

In this heirship proceeding, we are tasked with reviewing the circuit court's order granting Shawn McDonald's motion for a directed finding because Ellizzette McDonald failed to present a *prima facie* case that her marriage to John McDonald was valid. The majority holds that she failed to do so because the lack of a judicial determination that the marriage was in John's best interest rendered the marriage void under section 11a-17(a-10) of the Probate Act of 1975 (Probate Act) (755 ILCS 5/11a-17(a-10) (West 2016)). I disagree with that holding because it conflicts with the plain language of section 11a-17(a-10) and is in contravention of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 *et seq.* (West 2016)). Additionally, while I agree with the majority's holding that the circuit court erred in denying Ellizzette the right to testify regarding the existence of her marital relationship under section 8-201 of the Code of Civil Procedure (735 ILCS 5/8-201 (West 2016)), I disagree with their conclusion that she failed to preserve the error because she did not make an offer of proof. No offer of proof was necessary because it was clear that she would be testifying regarding the circumstances surrounding her purported marriage. For these reasons, I concur in part and dissent in part.

Before addressing the merits of this case, I note that much of the majority's extensive background discussion concerns matters that were neither presented at trial nor formed a basis for the circuit court's order under

review. See *supra* ¶¶ 6-51. In the process, the majority has highlighted certain allegations against Ellizzette. To the extent that these claims were even relevant to the issue at trial, she did not testify or present evidence regarding them. Although Shawn argues before this court that the circuit court's grant of a directed finding was proper because Ellizzette failed to establish her actual identity, the circuit court did not make that factual determination, and it was not a basis for its ruling.

Rather, the facts necessary to resolve this appeal are limited. On May 30, 2017, Shawn was appointed John's plenary guardian. On December 11, 2017, John died intestate. Ellizzette subsequently filed a petition for letters of administration, an affidavit of heirship, and a motion for judgment on the pleadings. She asserted that, as John's surviving spouse, she was his sole heir because he had no children. Prior to trial, the court granted Shawn's request to take judicial notice of three certified documents: John and Ellizzette's application for a marriage license in Edgar County, the marriage license, and a certificate of marriage.

In November 2019, the matter proceeded to a bench trial on Ellizzette's petition. The evidence centered on the validity of her purported marriage to John on July 11, 2017. Pursuant to the circuit court's pretrial order, Ellizzette was barred from testifying regarding the circumstances of her relationship with John and the existence of any marital relationship between them.

Ellizzette, proceeding *pro se*, called three witnesses. Diane Boyer testified regarding her involvement in the preparations for the wedding. Dr. Visar Belegu, one of John's colleagues, testified that he had frequent weekly contact with John in 2017 and thought that John and Ellizzette were happily married. Raymond Bement, a licensed clinical social worker, testified that he participated in preparations for and performed a marriage ceremony between Ellizzette and John in their home in Edgar County on July 11, 2017. Later that day, the three of them went to a park in Monticello, Illinois, for a second ceremony.

At the close of Ellizzette's case-in-chief, the circuit court granted Shawn's motion for a directed finding on the validity of the marriage. The circuit court found that Ellizzette had not made a *prima facie* case of a valid marriage because (1) she presented no evidence that the purported marriage was properly licensed, (2) there was no evidence of two witnesses to the marriage, and (3) there was no best-interest hearing to determine John's competency to marry.

The appellate court methodically rejected each of these findings; it remanded for further proceedings because genuine issues of fact existed as to whether Ellizzette was decedent's surviving spouse and sole heir. 2020 IL App (2d) 191113-U.

As a threshold matter, although Shawn was appointed John's plenary guardian in May 2017, this case does not concern John's protection under the guardianship.

The Probate Act directs that a guardianship "shall be utilized only as is necessary to promote the well-being of the person with a disability, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence." 755 ILCS 5/11a-3(b) (West 2016). It is well settled that in all instances, the guardian is to act in the ward's "best interests." *Id.* § 11a-17(e); see also *Karbin v. Karbin*, 2012 IL 112815, ¶ 21, 977 N.E.2d 154, 364 Ill. Dec. 665. Under the Probate Act, however, the guardianship ended upon John's death. See 755 ILCS 5/24-12 (West 2016). Thus, rather than relating to John's protections under the guardianship, this case concerns the proper distribution of John's assets because he died intestate. Additionally, Shawn is a party in this case not as John's guardian but, rather, as a potential heir along with his parents and siblings.

The central issue in this appeal is whether the circuit court erred in holding that Ellizzette had failed to make a *prima facie* case of a valid marriage because, under section 11a-17(a-10) of the Probate Act, a best-interest determination is required before an individual subject to a plenary guardianship is permitted to marry.

Our framework is a familiar one. The fundamental rule of statutory interpretation is to ascertain and give effect to the intent of the legislature. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11, 958 N.E.2d 1021, 354 Ill. Dec. 825. The most reliable indicator of that intent is the language of the statute itself. *Id.* If the statutory language is clear and unambiguous, it must be applied

as written, without resorting to further aids of statutory interpretation. *Id.* A court may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions that are not consistent with the express legislative intent. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38, 923 N.E.2d 718, 337 Ill. Dec. 867 (2009).

Section 11a-17(a-10) of the Probate Act provides:

> "Upon petition by the guardian of the ward's person or estate, the court may authorize and direct a guardian of the ward's person or estate to consent, on behalf of the ward, to the ward's marriage pursuant to Part II of the Illinois Marriage and Dissolution of Marriage Act if the court finds by clear and convincing evidence that the marriage is in the ward's best interests. In making its determination, the court shall consider the standards set forth in subsection (e) of this Section. Upon presentation of a court order authorizing and directing a guardian of the ward's person and estate to consent to the ward's marriage, the county clerk shall accept the guardian's application, appearance, and signature on behalf of the ward for purposes of issuing a license to marry under Section 203 of the Illinois Marriage and Dissolution of Marriage Act." 755 ILCS 5/11a-17(a-10) (West 2016).

The majority acknowledges this statutory provision but chooses to dodge the language itself. Instead, after quoting section 11a-17 in its entirety, the majority simply concludes that, "under the Probate Act, a ward who wishes to enter into a marriage may do so only with the consent of his guardian" and "[p]ursuant to section 11a-17(a-10) [(755 ILCS 5/11a-17(a-10) West 2016))], for a guardian to obtain the ability to consent, he must file a petition with the court." *Supra* ¶ 64.

The plain language of section 11a-17(a-10), however, does not mandate prior approval by the court before a ward can marry of his or her own accord. The provision begins "[u]pon petition by the guardian" and then provides that "the court may authorize and direct a guardian *** to consent, on behalf of the ward, to the ward's marriage *** if the court finds *** that the marriage is in the ward's best interests." 755 ILCS 5/11a-17(a-10) (West 2016). Thereafter, the section states that, "[u]pon presentation of a court order authorizing and directing a guardian of the ward's person and estate to consent to the ward's marriage, the county clerk shall accept the guardian's application." *Id.*

The plain language of section 11a-17(a-10), as the appellate court recognized, merely provides a procedure to allow a guardian to petition the court for authorization to consent, on behalf of a ward, to the ward's marriage following a best-interest determination. Among other reasons, a guardian may seek such a court order for ease of meeting the requirements of the Marriage Act on behalf of his or her ward who is marrying or to prevent a subsequent

challenge that his or her ward lacked, for purposes of the Marriage Act, the capacity to consent to the marriage. The fact that the provision permits a guardian to seek an order allowing consent from the court does not mean the legislature intended that a ward's marriage would be invalid unless the guardian first obtained the court's approval. The appellate court was correct that nothing in the plain language of section 11a-17(a-10) provides that a marriage entered into by a ward without his or her guardian's consent, or following a judicial determination of best interest, is void.

The majority extraordinarily holds that the Marriage Act does not govern in a case centered on whether a couple was legally married in Illinois. See *supra* ¶ 76. The majority ignores the obvious; the Marriage Act specifically addresses the requirements and formalities that a couple must fulfill to be legally married in Illinois. See 750 ILCS 5/101 *et seq.* (West 2016). None of those requirements reference section 11a-17(a-10) of the Probate Act or suggest that a ward must have the consent of his or her guardian after a court hearing on best interest to enter into a valid marriage in Illinois.

The Marriage Act does, however, provide a clear process by which a court may declare a marriage invalid when it is shown, *prior to a ward's death*, that he or she lacked the capacity to consent to the marriage because of mental incapacity or infirmity.

Section 301 of the Marriage Act provides, in pertinent part:

> "Declaration of invalidity—Grounds. The court shall enter its judgment declaring the invalidity of a marriage (formerly known as annulment) entered into under the following circumstances:
>
> > (1) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage[.]" *Id.* § 301.

Section 302 of the Marriage Act then specifies, in pertinent part:

> "Time of commencement. (a) A declaration of invalidity under paragraph[ ] (1) *** of Section 301 may be sought by any of the following persons and must be commenced within the times specified:
>
> > (1) for any of the reasons set forth in paragraph (1) of Section 301, by either party or by the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the described condition;

* * *

> (b) *In no event* may a declaration of invalidity of marriage be sought *after the death of either party to the marriage* under subsection[ ] (1) *** of Section 301." (Emphases added.) *Id.* § 302.

The Marriage Act unambiguously requires that any challenge by a guardian to his or her ward's competency to consent to marriage because of mental incapacity or infirmity occur no later than 90 days after the guardian obtained knowledge and "in no event" after the ward's death. By reading language into section 11a-17(a-10) of the Probate Act and in complete contravention of the Marriage Act, the majority is allowing a marriage to be declared invalid after the death of a party to the marriage; the majority is doing indirectly what the Marriage Act clearly prohibits. See *Accettura v. Vacationland, Inc.*, 2019 IL 124285, ¶ 11, 440 Ill. Dec. 636, 155 N.E.3d 406 (a court may not alter the plain meaning of a statute's language by reading into it exceptions, limitations, or conditions not expressed by the legislature). The majority's erroneous ruling renders void any marriage in Illinois that has been entered into since August 26, 2014, by a ward with a plenary guardian who did not first receive a court order authorizing and directing the guardian to consent to the ward's marriage. See Pub. Act 98-1107, § 5 (eff. Aug. 26, 2014) (adding 755 ILCS 5/11a-17(a-10)). The majority fails to acknowledge the very serious impact of this holding on such couples, including those who may have had a child following what they had every reason to believe was a valid marriage in Illinois.

While not addressed by the majority, the circuit court provided two additional reasons for granting Shawn's motion for a directed verdict that were also erroneous. First, the court erroneously found there was no evidence that the purported marriage was properly licensed. Second, the court erroneously found that two witnesses to the marriage were required for it to be valid.

Section 2-1110 of the Code of Civil Procedure provides that, in all cases tried without a jury, a defendant may, at the close of the plaintiff's case, move for a finding or judgment in his favor. 735 ILCS 5/2-1110 (West 2016). In ruling on such a motion for a directed verdict, the trial court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case. *Kokinis v. Kotrich*, 81 Ill. 2d 151, 154-55, 407 N.E.2d 43, 40 Ill. Dec. 812 (1980). A plaintiff establishes a *prima facie* case by proffering at least some evidence on every element essential to the underlying cause of action. *Id.* at 154.

As previously recognized, to legally marry in Illinois, a couple must fulfill the requirements and formalities set out in the Marriage Act. See 750 ILCS 5/101 *et seq.* (West 2016). Section 201 of the Marriage Act provides that "[a] marriage between 2 persons licensed, solemnized and registered as provided in this Act is valid in this State." *Id.* § 201. The parties must apply for a marriage license from the county clerk's office of the county in which they intend to marry. *Id.* §§ 203, 207. The parties must then appear before a duly authorized officiant and, after consenting to marry, must file the marriage certificate with the county clerk's office within 10 days after the marriage is solemnized. *Id.* § 209.

The circuit court found that Ellizzette, a self-represented litigant, failed to present a *prima facie* case of a valid marriage, in part, because there was no evidence that her purported marriage was properly licensed. In doing so, the court stated,

"It would have been simple to present the evidence of a marriage license and certificate and application and have some witnesses testify about that, but that was not done."

This finding overlooked the fact that the court already had evidence of a marriage application, license, and certificate because it had previously granted Shawn's motion to take judicial notice of these certified documents. Because the circuit court had taken judicial notice of these three documents for purposes of the trial, there was no need for Ellizzette to reintroduce them. Consequently, the circuit court erred in holding that there was no evidence that the purported marriage was properly licensed.

Similarly, the circuit court erred by holding that Ellizzette had not made a *prima facie* case based on a lack of evidence of two witnesses to the marriage ceremony of which Raymond Bement testified he officiated at the couple's home in Edgar County. Simply put, no provision in the Marriage Act requires the presence of two witnesses for a marriage to be valid in Illinois, so that rationale could not form a basis either for granting Shawn's motion for a directed finding.

Finally, I agree with the majority that the circuit court erred when it granted Shawn's motion *in limine*, barring Ellizzette from testifying regarding the marriage and

heirship. The circuit court's erroneous ruling was based on its conclusion that section 8-201 of the Code of Civil Procedure (735 ILCS 5/8-201 (West 2016)), commonly referred to as the Dead Man's Act, precluded her testimony. As the majority finds, section 8-201(d) specifically provides that "[n]o person shall be barred from testifying as to any fact relating to the heirship of a decedent." *Id.*

I disagree, however, with the majority's conclusion that Ellizzette failed to preserve the error by not making an offer of proof. "The purpose of an offer of proof is to inform the trial court, opposing counsel, and a reviewing court of the nature and substance of the evidence sought to be introduced." *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495, 771 N.E.2d 357, 264 Ill. Dec. 653 (2002). This court has long held that "an offer of proof is not required where it is apparent that the trial court clearly understood the nature and character of the evidence sought to be introduced." *Id.* (citing *People v. Peeples*, 155 Ill. 2d 422, 457-58, 616 N.E.2d 294, 186 Ill. Dec. 341 (1993), *In re A.M.*, 274 Ill. App. 3d 702, 709, 653 N.E.2d 1294, 210 Ill. Dec. 832 (1995), and Michael H. Graham, Cleary and Graham's Handbook of Illinois Evidence § 103.7, at 23-24 (7th ed. 1999)). Here, an offer of proof was not necessary because it was clear that Ellizzette would be testifying regarding the circumstances surrounding her purported marriage to John, which was the core issue at trial.

For the reasons stated, the circuit court erred in barring Ellizzette from testifying and in granting Shawn's motion for a directed finding, and I would remand this matter to the circuit court for further proceedings. Accordingly, I respectfully concur in part and dissent in part.

JUSTICES OVERSTREET and CARTER join in this partial concurrence, partial dissent.

APPENDIX B — OPINION OF THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, FILED FEBRUARY 1, 2021

IN THE APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

No. 2-19-1113

IN RE ESTATE OF JOHN W. MCDONALD III,

Deceased.

SHAWN MCDONALD,

Petitioner and Counterrespondent-Appellee,

v.

ELLIZZETTE MCDONALD,

Respondent and Counterpetitioner-Appellant.

February 1, 2021, Opinion Filed

Appeal from the Circuit Court of Kane County
No. 17-P-744
Honorable James R. Murphy, Judge, Presiding

JUSTICE HUDSON delivered the judgment of the court, with opinion.

Justices Schostok and Birkett concurred in the judgment and opinion.

OPINION

I. INTRODUCTION

This appeal concerns the estate of decedent, John W. McDonald III. Decedent died intestate on December 11, 2017. Four days later, petitioner, Shawn McDonald (Shawn), decedent's brother, filed in the circuit court of Kane County a petition for letters of administration and an affidavit of heirship. The trial court appointed Shawn as the administrator of decedent's estate and declared decedent's parents—John W. McDonald Jr. and Brenda K. McDonald—and siblings—Shawn, Heather Ladue, and Brett McDonald—as his only heirs. Respondent, Ellizzette McDonald (Ellizzette), purporting to be decedent's surviving spouse, sought to vacate the order appointing Shawn as the administrator of decedent's estate and the order of heirship. The trial court denied Ellizzette's motion but granted her leave to proceed pursuant to section 9-7 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/9-7 (West 2016)). Ellizzette then filed a petition for letters of administration, an affidavit of heirship, and a motion for judgment on the pleadings with regard to her petition for letters of administration. After the trial court denied Ellizzette's motion for judgment on the pleadings, the matter proceeded to a bench trial. Shawn moved for a directed finding at the close of Ellizzette's case. The trial court granted Shawn's motion, concluding that Ellizzette failed to present a *prima facie* case on the validity of her marriage to decedent. Ellizzette then filed a notice of appeal.

On appeal, Ellizzette raises five principal issues. First, she argues that the trial court erred when it appointed Shawn as the administrator of decedent's estate, because she was not provided with the statutorily required notice. Second, she asserts that the trial court erred in denying her motion for judgment on the pleadings. Third, she contends that the trial court erred in granting Shawn's motion for a directed finding. Fourth, she argues that the trial court committed reversible error in barring her from testifying, at the trial on her petition, regarding her marriage and heirship. Finally, she maintains that the trial court erred in denying her motion for a continuance. For the reasons set forth below, we affirm in part, reverse in part, and remand this matter for further proceedings.

II. BACKGROUND

Decedent died intestate on December 11, 2017, in Paris, Illinois. As noted, Shawn is decedent's brother and Ellizzette purports to be decedent's surviving spouse.

A. Guardianship

On March 7, 2017, Shawn filed in the circuit court of Kane County a petition for the appointment of a guardian for a disabled person. In support of the guardianship petition, Shawn submitted a physician's report stating that decedent suffered from "bipolar disorder with manic and depressive episodes" as well as "alcohol use disorder (severe)." On May 30, 2017, the trial court entered an order declaring decedent a disabled person who "is totally without capacity" as specified in section 11a-3

of the Probate Act (755 ILCS 5/11a-3 (West 2016)) and appointing Shawn as the plenary guardian of decedent's person and estate. The record suggests that decedent did not participate in the guardianship proceedings. When made aware of the proceedings, decedent obtained counsel and objected to the order appointing Shawn as his guardian. However, the record does not show that a trial was conducted on whether the guardianship should have been entered.

B. Petition for Letters of Administration and Affidavit of Heirship

On December 15, 2017, four days after decedent's death, Shawn filed in the circuit court of Kane County (1) a petition for letters of administration and (2) an affidavit of heirship. In his affidavit of heirship, Shawn asserted that decedent had been married "once and only once and then to Debbie Greene McDonald," with said marriage ending in divorce sometime prior to 2012. Shawn stated that on July 11, 2017, decedent "participated in a wedding ceremony with Ellizzette Duvall Minnicelli." Shawn claimed, however, that the marriage was void *ab initio* because decedent lacked the capacity to consent to the marriage. Therefore, Shawn requested that decedent's parents and his three siblings be declared as decedent's heirs at law. The matter was assigned to Judge John A. Noverini. In an order bearing the handwritten date of December 18, 2017, but file-stamped December 19, 2017, Judge Noverini appointed Shawn as the administrator of decedent's estate. Judge Noverini also entered an order declaring heirship, listing decedent's parents and his

three siblings as his only heirs. On December 21, 2017, the clerk of the circuit court issued letters of office advising of Shawn's appointment as the independent administrator of decedent's estate pursuant to the order entered by the trial court.

C. Petition for Declaration of Invalidity of Marriage

On December 22, 2017, Shawn filed a verified "Petition for Declaration of Invalidity of a Marriage," pursuant to section 301(1) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/301(1) (West 2016)). The petition asserted as follows. On July 11, 2017, decedent participated in a marriage ceremony with an individual named "Ellizzette Duvall Minnicelli" in Edgar County, Illinois. Shawn first learned of the marriage ceremony when it was disclosed to him in open court on November 16, 2017, during a hearing in the guardianship case. Because decedent's person and estate were under plenary guardianship when he participated in the marriage ceremony, decedent lacked the legal capacity to consent to the marriage. At the time the marriage ceremony was performed, decedent had actual knowledge of the existence of the guardianship and was actively participating in litigation in the guardianship case. Further, at the time the marriage ceremony was performed, "Ellizzette Duvall Minnicelli" had actual knowledge of the existence of the guardianship and was actively assisting decedent in pursuing then-ongoing litigation in the guardianship case. Shawn prayed for the entry of an order "declaring the invalidity of the marriage

of the Decedent *** to Ellizzette Duvall Minnicelli and further declaring the said marriage to be void *ab initio*." Attached to the petition was a copy of a "Certification of Marriage" issued by the clerk of Edgar County, Illinois. Shawn voluntarily withdrew this pleading without prejudice on March 7, 2018.

D. Ellizzette's Motion to Vacate

Meanwhile, on January 4, 2018, counsel entered an appearance on Ellizzette's behalf. That same day, Ellizzette filed a motion for substitution of judge as a matter of right. Ellizzette's motion was granted, and the matter was transferred to Judge James R. Murphy.

On January 17, 2018, Ellizzette filed a "Motion to Vacate Order Appointing Administration and Order of Heirship."[1] Ellizzette's motion asserted that the order appointing Shawn as the administrator of decedent's estate and the order of heirship should be vacated because Shawn obtained letters of administration and assumed control of decedent's estate under false pretenses. Specifically, Ellizzette contended that, (1) as decedent's surviving spouse, she is decedent's sole heir and has a superior right to act as decedent's administrator and (2) Shawn intentionally failed to provide her notice of his petition for letters.

1. On the same date, Ellizzette filed a "Motion to Reconsider Order Appointing Administration and Order of Heirship." The motion to reconsider was substantively identical to the motion to vacate.

On March 7, 2018, Shawn filed his response to Ellizzette's motion to vacate. Shawn asserted that, although Ellizzette participated in a "marriage ceremony" with decedent, decedent lacked the capacity to enter into a "marriage contract," because of the guardianship. In support of his position, Shawn cited section 11a-22(b) of the Probate Act (755 ILCS 5/11a-22(b) (West 2016)). Section 11a-22(b) provides that "[e]very note, bill, bond or other contract by any person for whom a plenary guardian has been appointed or who is adjudged to be unable to so contract is void against that person and his estate, but a person making a contract with the person so adjudged is bound thereby." 755 ILCS 5/11a-22(b) (West 2016). Shawn asserted that marriage is a contract. Hence, pursuant to section 11a-22(b), the "marriage contract" entered into on July 11, 2017, between decedent and Ellizzette is void. Since the marriage is void, decedent was not married at the time of his death and his only heirs at law are his parents and his siblings. Shawn did not dispute that Ellizzette was not provided notice of his petition for letters of administration. He asserted, however, that notice is required to be served on only a decedent's heirs. Since Ellizzette is not an heir, there was no need to serve notice on her.

In her reply to Shawn's response, Ellizzette argued that section 11a-22(b) of the Probate Act does not address the validity of a marriage but, rather, is intended to address transactional contracts entered into by a ward. Ellizzette further asserted that her marriage to decedent enjoys a strong presumption of validity under Illinois law (see *Larson v. Larson*, 42 Ill. App. 2d 467, 472, 192

N.E.2d 594 (1963) ("When the celebration of marriage is shown, the contract of marriage, the capacity of the parties, and, in fact, everything necessary to the validity of the marriage, in the absence of proof to the contrary, will be presumed ***.")) and that the guardianship over decedent did not compel the conclusion that he was unable to consent to marriage, because the appointment of a guardian is not sufficient, in and of itself, to show that the person was incompetent to have consented to a marriage (see *Pape v. Byrd*, 145 Ill. 2d 13, 21, 582 N.E.2d 164, 163 Ill. Dec. 898 (1991)). Ellizzette added that questions regarding the validity of her marriage are governed by the Marriage Act (750 ILCS 5/101 *et seq.* (West 2016)). Further, section 302(b) of the Marriage Act prohibits any attempt to invalidate a marriage after the death of either party to the marriage on the basis of one party's incapacity to consent. 750 ILCS 5/302(b) (West 2016) ("In no event may a declaration of invalidity of marriage be sought after the death of either party to the marriage under subsections (1), (2), and (3) of Section 301."); see also 750 ILCS 5/301(1) (West 2016) ("The court shall enter its judgment declaring the invalidity of a marriage *** entered into under the following circumstances: (1) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage[.]"). Despite his knowledge of Ellizzette's and decedent's marriage, Shawn failed to challenge the marriage during decedent's lifetime and was therefore time-barred from

attempting to invalidate the marriage. See 750 ILCS 5/301, 302(b) (West 2016). Thus, Ellizzette reasoned, the marriage was valid as a matter of law and she is decedent's surviving spouse and sole heir at law.

On April 18, 2018, the trial court denied Ellizzette's "motion to vacate."[2] In the same order, the court granted Ellizzette leave to file a petition for the appointment of an administrator and an affidavit of heirship pursuant to section 9-7 of the Probate Act (755 ILCS 5/9-7 (West 2016)). The court directed Ellizzette to file the documents by May 2, 2018.

E. Ellizzette's Petition for Letters of Administration and Shawn's Response

On May 1, 2018, Ellizzette filed her petition for letters of administration and affidavit of heirship. In the filings, Ellizzette stated that she is decedent's surviving spouse. She further asserted that, since decedent had no children, she is decedent's sole heir.

On May 25, 2018, Shawn filed his response to Ellizzette's petition for letters of administration and affidavit of heirship. In his response, Shawn argued that, pursuant to section 9-7 of the Probate Act (755 ILCS 5/9-7 (West 2016)), Ellizzette had three months after the issuance of letters of administration to him to file her own

2. Although the trial court's April 18, 2018, order references only the denial of Ellizzette's motion to vacate, we conclude that it also dispensed with the motion to reconsider, which was nearly identical to and raised the same substantive arguments as the motion to vacate.

petition for letters of administration. Shawn argued that Ellizzette's petition for letters of administration, which was filed on May 1, 2018, was untimely because it was filed more than three months after letters of administration were issued to him. Shawn further asserted that nothing in the statute allows the court to grant an extension to file a petition for letters of administration outside the three-month window. Therefore, he argued, the court lacked jurisdiction to consider Ellizzette's petition.

F. Ellizzette's Motion for Judgment on the Pleadings

On June 7, 2018, Ellizzette filed a motion for judgment on the pleadings. Initially, Ellizzette argued that the trial court was empowered to extend the filing window for a pleading under section 9-7 of the Probate Act (755 ILCS 5/9-7 (West 2016)) beyond the three-month window, because the language of the statute is permissive and controlling law makes clear that a party seeking to challenge an order declaring heirship is free to do so at any time during the administration of the estate or after the estate has been closed. Ellizzette also contended that, since Shawn failed to deny her verified factual allegations, including that she is decedent's surviving spouse, these allegations were deemed admitted. See 735 ILCS 5/2-610 (West 2016). Alternatively, Ellizzette argued that the only basis to challenge the validity of a marriage after the death of one of the parties to the marriage is "the narrow bar against 'prohibited marriages' under the [Marriage Act]." See 750 ILCS 5/301(4), 212 (West 2016). Ellizzette requested full judgment on the pleadings in her favor or,

alternatively, "partial judgment on the pleadings in [her] favor *** limiting discovery and hearing on the Petition to the narrow issue of whether the Decedent's marriage to [her] constitutes a 'prohibited marriage' under the [Marriage Act]."

On July 3, 2018, Shawn filed a response to Ellizzette's motion for judgment on the pleadings. Shawn reiterated his position that section 11a-22(b) of the Probate Act (755 ILCS 5/11a-22(b) (West 2016)) bars any contract, including one for marriage, entered into by someone such as decedent, for whom a plenary guardian had been appointed. Thus, he concluded, any marriage contract between Ellizzette and decedent was void. Shawn further contended that judgment on the pleadings was inappropriate because there remained a factual issue regarding whether the alleged marriage between Ellizzette and decedent was valid. See *In re Estate of Davis*, 225 Ill. App. 3d 998, 1000, 589 N.E.2d 154, 168 Ill. Dec. 40 (1992).

On September 10, 2018, the trial court denied Ellizzette's motion for judgment on the pleadings as "premature."

G. Shawn's Motion for Judicial Notice

On October 2, 2018, Shawn filed a motion requesting the trial court to take judicial notice of the "Certified Copy of Edgar County, Illinois[,] Marriage Application and Record of [decedent] and Ellizzette Duvall Minicelli [*sic*]." Shawn attached three documents to his motion: (1) a certified copy of a "Certification of Marriage" between

decedent and "Ellizzette Duvall Minnicelli" issued by the clerk of Edgar County, Illinois; (2) a certified copy of a "Marriage License" for decedent and "Ellizzette Duvall Minnicelli" issued by the clerk of Edgar County, Illinois; and (3) a certified copy of a "Marriage Application and Record" issued by the clerk of Edgar County, Illinois. On November 30, 2018, the trial court entered an order granting Shawn's motion for judicial notice.

On April 15, 2019, the trial court entered an order setting the matter for trial over several dates beginning on November 18, 2019.

H. Ellizzette's Counsel's Motion to Withdraw

On September 12, 2019, Ellizzette's counsel moved to withdraw. The trial court granted counsel's motion in an order dated September 18, 2019. The same order further provided that (1) Ellizzette would have 21 days "to find other counsel and/or file a [s]ubstitute [a]ppearance," (2) the scheduled November 18, 2019, trial date would stand, and (3) all pending motions and status of counsel would be continued to October 23, 2019.

I. Shawn's Motion *In Limine*

On October 16, 2019, Shawn filed a "Motion *In Limine*" seeking to bar Ellizzette from testifying or presenting any evidence as to any marital relationship she had with decedent. Citing *Laurence v. Laurence*, 164 Ill. 367, 45 N.E. 1071 (1896), *In re Estate of Diak*, 70 Ill. App. 2d 1, 217 N.E.2d 106 (1966), and *In re Estate of Enoch*, 52 Ill.

App. 2d 39, 201 N.E.2d 682 (1964), Shawn alleged that the admission of such testimony would violate the Dead Man's Act (735 ILCS 5/8-201 (West 2016)).

On October 23, 2019, Ellizzette filed an appearance on her own behalf. A week later, Ellizzette filed a response to Shawn's motion *in limine*. Ellizzette argued, *inter alia*, that the "plain text" of section 8-201(d) of the Dead Man's Act provides that "[n]o person shall be barred from testifying as to any fact relating to the heirship of a decedent." 735 ILCS 5/8-201(d) (West 2016). Ellizzette contended that, because her testimony would "relate to facts surrounding the heirship of [decedent], this testimony falls precisely within the exception carved out within the Dead Man's Act itself." Ellizzette therefore contended that her testimony as to her marriage to decedent, which would directly relate to heirship, should not be barred.

On November 13, 2019, following oral argument by the parties, the trial court granted Shawn's motion *in limine*. The court explained that "Illinois law says that the spouse cannot testify as to heirship, and there's cases cited, and they weren't responded to." That same day, the trial court entered a written order in accordance with its oral finding, granting Shawn's motion *in limine* and barring Ellizzette from "testifying regarding her putative marriage to the decedent or regarding the decedent's heirship."

J. Ellizzette's Motion for Continuance

At the hearing on November 13, 2019, the court asked Ellizzette if she would be ready for trial on November 18,

2019. Ellizzette responded that she would not be ready but stated that she was aware that "that's the date" and that she was "not looking to *** waste the Court's time." She further informed the court that she would be present on November 18 "if [she is] expected to be [in court]."

At 3:49 a.m. on November 18, 2019, Ellizzette filed a "Motion for Continuance" seeking to continue the trial to December 3, 2019, or later. In the motion, Ellizzette alleged that she had good cause for requesting an extension, because (1) her father had been hospitalized in Arizona and declared "end of life"; (2) her mother, whom she categorized as a "key witness," would be unable to attend the trial due to the status of Ellizzette's father; (3) Ellizzette's attorneys withdrew from the case due to the "high outstanding balance" of attorney fees that Ellizzette was unable to pay, because she was involved in an automobile accident that resulted in significant out-of-pocket medical expenses; and (4) Ellizzette was unable to obtain the testimony of two key witnesses. Ellizzette also asserted that she had paid the outstanding balance owed to her prior attorneys and requested that they be allowed to reenter an appearance on her behalf. The trial court denied the motion for a continuance.

K. Trial

The matter proceeded to trial on Ellizzette's petition, with the evidence centered on the validity of Ellizzette's marriage to decedent. In accordance with the trial court's ruling on Shawn's motion *in limine*, Ellizzette did not testify. However, Ellizzette called three witnesses in her

case-in-chief: Diane Boyer, Dr. Visar Belegu, and Ray Bement.

Boyer testified that she was involved in the preparations for Ellizzette's and decedent's marriage and observed Ellizzette and decedent interacting with each other every week in 2017. Boyer also opined that Ellizzette and decedent were happily living together.

Dr. Belegu, a colleague of decedent, testified that he was aware that Ellizzette and decedent had married. Dr. Belegu further testified that he had contact with decedent two or three times a week in 2017. In Dr. Belegu's opinion, decedent was happily married. On cross-examination, Dr. Belegu testified that he was not present at any marriage ceremony between Ellizzette and decedent and that he was not aware of any witnesses to the marriage.

Bement testified that he met Ellizzette and decedent in 1982. In 2017, Bement learned that Ellizzette and decedent were engaged. Bement participated in preparations for a marriage ceremony between Ellizzette and decedent. To that end, on July 11, 2017, Bement performed Ellizzette's and decedent's marriage ceremony in the participants' home in Paris, Edgar County, Illinois. Bement further testified that he signed the marriage certificate in the kitchen of Ellizzette's and decedent's home in Paris. After Bement signed the marriage certificate, he, Ellizzette, and decedent went to Allerton Park in Monticello (Piatt County) for an additional "more secular" ceremony. Bement also stated that he attended a Ketubah signing on July 10, 2017, at Ellizzette and decedent's home in

Paris. Bement explained that a Ketubah is "like what Christians would call a marriage license" and states what each party will bring to the relationship. Following the marriage, Bement interacted with Ellizzette and decedent on professional and personal bases.

On cross-examination, Bement testified that it was his idea to be the officiant at Ellizzette and decedent's marriage ceremony. He obtained a certificate to become an officiant from an online ministry in a process that took between 5 and 10 minutes. The following exchange then ensued between Shawn's counsel, Bement, Ellizzette, and the trial court:

> "Q. And the marriage ceremony, as you testified on direct, the secular marriage ceremony was conducted in Piatt County; is that a fair statement?
>
> A. Yes.
>
> * * *
>
> [Ellizzette]: Objection, Your Honor. Mr. Bement also testified earlier that he performed a marriage ceremony at our home in Paris.
>
> [Shawn's counsel]: His testimony according to my notes was that the secular part of the marriage was conducted in Piatt County. That's what he testified to.

> THE COURT: All right. You'll be able to redirect questions, so overruled."

Bement further testified that the only people present for the Piatt County ceremony were decedent and Ellizzette.

On redirect examination, Bement reiterated that he signed the marriage certificate in the kitchen of Ellizzette and decedent's house in Paris, Edgar County, Illinois.

Following Bement's testimony, Ellizzette stated that she had no other witnesses. Shawn's counsel then orally moved for a directed finding on the issue of the validity of the marriage. Counsel advanced several grounds for his position. First, he asserted that the best evidence of the existence of a marriage is the marriage certificate itself but that "[t]hey haven't produced any documents with respect to that." Second, counsel asserted that "[t]he case law in Illinois" requires two witnesses to a marriage but that Bement "conducted a secular proceeding in Piatt County apparently with no witnesses." Third, counsel posited that, before a marriage where one of the participants is a ward of the court, the Probate Act requires the court to conduct a best-interest hearing. Counsel noted that, although decedent was a ward of the court, no hearing was ever held to determine if the marriage was in decedent's best interest. Fourth, counsel maintained that marriage is a "civil contract" and the Probate Act prohibits a ward of the court from entering into a contract with any other person. Accordingly, Shawn requested that the trial court dismiss Ellizzette's claim that she is decedent's heir.

Ellizzette responded that she and decedent "followed the rules according to the Edgar County circuit clerk." Specifically, they "produced the documentation [they] were required to produce," "filled out the application," and "waited for [the circuit clerk] to contact [them] and tell [them] that [their] marriage application for a license had been granted." Subsequently, Ellizzette and decedent "had an interfaith marriage ceremony in Edgar County, Illinois, in Paris, in [her] home" and "a religious celebration in Monticello."

In reply, Shawn's counsel asserted that Ellizzette did not refute any of the arguments he previously made with respect to the validity of the marriage. Counsel further stated that, if Ellizzette wanted to prove the validity of her purported marriage to decedent,

> "all [she] had to do is prove the marriage certificate, and the reason [she] didn't is because [she] know[s] [she] can't. [She] didn't bring the marriage certificate in here. [She] didn't bring the application. [She] didn't bring the license in here. You should ask yourself why [she] didn't do that."

Ellizzette responded that, prior to Shawn's counsel's involvement in the case, her attorney produced a marriage license application and a marriage certificate and an individual "came to the Court to represent that she had issued the marriage certificate license in Edgar County."

L. Trial Court's Ruling on the Motion for a Directed Finding

The trial court granted Shawn's motion for a directed finding. The court ruled that to present a *prima facie* case on the validity of her marriage to decedent, Ellizzette had to present a valid application for a marriage license and evidence of a ceremony performed in Edgar County and witnessed by two individuals. The court found, as a matter of law, that Ellizzette "did not present a *prima facie* case of a valid marriage ceremony under the circumstances such as would be sufficient to meet her burden of proof on all of the elements." The court stated that "[i]t would have been simple to present the evidence of a marriage license and certificate and application and have some witness testify about that, but that was not done." In ruling, the court further stated:

> "And while it is not as clear as [Shawn's counsel] presents as to the case law precedents—and in that I'm referring to the arguments that [Ellizzette] had when she was represented by counsel during motion practice on a motion for judgment on the pleadings—it is clear that there was an order finding and adjudicating Decedent as a disabled person and in immediate need of a plenary guardianship and that there was no best-interest hearing held; that the punitive [*sic*] marriage was not known to the Administrator until November 2017; and that the marriage was not properly witnessed or licensed or subject to a best-interest determination by the probate court."

The trial court made a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that there was no just reason to delay appeal. On December 18, 2019, Ellizzette filed a notice of appeal.

II. ANALYSIS

On appeal, Ellizzette raises five principal issues, which we address as follows. First, she argues that the trial court erred when it appointed Shawn as the administrator of decedent's estate, because she was not provided with the statutorily required notice. Second, she maintains that the trial court erred in denying her motion for a continuance. Third, she asserts that the trial court erred in denying her motion for judgment on the pleadings. Fourth, she argues that the trial court committed reversible error in barring her from testifying regarding her marriage and heirship. Finally, she contends that the trial court erred in granting Shawn's motion for a directed finding.

A. Notice

As her initial assignment of error, Ellizzette contends that the trial court erred "when it granted Shawn's petition [for letters of administration] without any notice to [her], declared that [she] is not [decedent's] heir, and thus necessarily declared their marriage invalid." Ellizzette has failed to provide an adequate record to address this claim.

As noted above, on December 19, 2017, the trial court entered orders appointing Shawn as the administrator

of decedent's estate and declaring heirship. The order appointing Shawn as the administrator of decedent's estate states that "due notice has been given to all parties according to law." On January 17, 2018, Ellizzette filed her motion to vacate the order appointing Shawn as the administrator of the estate and the order of heirship. The arguments in Ellizzette's motion and her reply to Shawn's responses thereto are nearly identical to the arguments she now raises on appeal and are grounded on the premise that she was not provided the statutorily required notice. Shawn did not dispute that Ellizzette was not provided notice of his petition for letters of administration, but he argued that notice to Ellizzette was not required because she was not decedent's heir. The trial court held a hearing on the motion on April 18, 2018, and denied it the same day.

Although not captioned as such, Ellizzette's argument on appeal is essentially a challenge to the trial court's denial of her motion to vacate the order appointing Shawn as the administrator of the estate and the order of heirship. However, our ability to review this issue for error is hampered by the lack of either a transcript from the April 18, 2018, hearing on Ellizzette's motion or an acceptable substitute. See Ill. S. Ct. R. 323 (eff. July 1, 2017) (allowing for a bystander's report or an agreed statement of facts). As the appellant, Ellizzette has the burden to present this court with a sufficiently complete record on appeal. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 334 Ill. Dec. 566 (2009); *Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 255 Ill. Dec. 476 (2001). As our supreme court has stated, "[a]n issue relating to a circuit court's factual findings and basis for

its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." (Internal quotation marks omitted.) *In re Marriage of Gulla*, 234 Ill. 2d at 422; see also *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156, 839 N.E.2d 524, 298 Ill. Dec. 201 (2005) (stating that any issue relating to the court's factual findings and the basis for its legal conclusions cannot be reviewed without a record of that proceeding). Accordingly, absent an adequate record preserving the claimed error, a reviewing court must presume that the circuit court's action had a sufficient factual basis and that it conformed with the law. *In re Marriage of Gulla*, 234 Ill. 2d at 422; *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 76 Ill. Dec. 823 (1984). Accordingly, we presume that the trial court's ruling on the motion to vacate conformed with the law.

We also observe that, despite the trial court's decision to deny Ellizzette's motion to vacate, it entered an order allowing her to file a petition for letters of administration and an affidavit of heirship pursuant to section 9-7 of the Probate Act (755 ILCS 5/9-7 (West 2016)). In fact, Ellizzette filed a petition for letters of administration and an affidavit of heirship, asserting that she is decedent's surviving spouse and sole heir. The trial court held a hearing on Ellizzette's pleadings. Thus, Ellizzette was given an opportunity to address her claim that she is decedent's sole surviving spouse and only heir. Given these circumstances, we fail to see how Ellizzette was prejudiced by any lack of notice.

B. Continuance

Ellizzette also claims that the trial court erred in denying her motion for a continuance, made on the day of trial. To place Ellizzette's argument in context, we briefly review the circumstances surrounding the motion.

On April 15, 2019, the trial court entered an order setting the matter for trial on November 18, 2019. On September 12, 2019, Ellizzette's counsel moved to withdraw. The trial court granted counsel's motion in an order dated September 18, 2019. The September 18, 2019, order also (1) granted Ellizzette 21 days "to find other counsel and/or file a Substitute Appearance," (2) provided that the November 18, 2019, trial date would stand, and (3) continued the matter to October 23, 2019, on all pending motions and status of counsel. At the hearing on October 23, 2019, Ellizzette filed an appearance on her own behalf. During that hearing, the matter was continued to November 13, 2019.

At the hearing on November 13, 2019, Ellizzette informed the court that she intended to call several witnesses at the trial on November 18, including her mother, Patrick Rummerfield, Dr. Belegu, Eric Westacott, and Bement. Ellizzette stated that she would not be calling her father "because of his illness." She also stated that "[t]hree days ago," *i.e.*, November 10, 2019, her father had been declared "end of life" and that he "could die at any day now per the doctors." Prior to the conclusion of the hearing on November 13, the following colloquy took place between the trial court and Ellizzette:

> "THE COURT: Are we ready to go? Are you ready to go then on Monday morning [November 18] at 9:00 with your witnesses?
>
> [Ellizzette]: Um, I would—to answer your question right now, no. I'm not ready at this moment, Your Honor. I'm telling you the truth. I'm not ready at this moment because of some of those things. I don't want to—but I do know that's the date, and I'm not looking to—again, I'm not looking to, um waste the Court's time.
>
> THE COURT: But you are going to be here on Monday then—
>
> [Ellizzette]: Yes, sir.
>
> THE COURT:—to proceed?
>
> [Ellizzette]: Oh, I will be here if I'm expected to be here, Your Honor."

At 3:49 a.m. on November 18, 2019, Ellizzette filed a "Motion for Continuance" seeking to continue the trial to December 3, 2019, or later. In the motion, Ellizzette alleged that she had good cause for requesting an extension because (1) her father had been hospitalized in Arizona and declared " 'end of life' Saturday, December 16, 2019 [*sic*]";[3] (2) her mother, whom Ellizzette described

---

3. In her November 18, 2019, motion, Ellizzette represented that her father had been declared " 'end of life' Saturday, December 16, 2019." We presume that Ellizzette meant to state that her father

as a "key witness," would be unable to attend the trial due to the health status of Ellizzette's father; (3) her attorneys withdrew from the case due to the "high outstanding balance" of fees that Ellizzette was unable to pay, because she was involved in an automobile accident that resulted in significant out-of-pocket medical expenses; (4) she was unable to obtain the testimony of two "primary witnesses," Rummerfield and Westacott; and (5) she was unable to "liaise with her Counsel and take up *Pro Se* representation within the 60-day trial window," given "the substantial health limitations over the past several months." Ellizzette also represented that she had reconciled the outstanding balance owed to her prior attorneys and requested that they be allowed to reenter an appearance on her behalf.

At a hearing on Ellizzette's motion for a continuance on November 18, 2019, the trial court, after hearing argument from the parties, denied the motion. The court cited (1) a lack of due diligence on Ellizzette's part in presenting the motion or obtaining the testimony of Rummerfield and Westacott and (2) Ellizzette's failure to show that the testimony of the witnesses referenced in her motion would be material to the issues in the case. In response to Ellizzette's concern regarding her father's health, the court stated, "If you have another reason for a continuance during the trial, then you'll bring it up at that point." The court then asked Ellizzette if she were prepared to proceed. Ellizzette responded that she "would like to proceed with the provision that, God

---

was declared "end of life" on Saturday, November 16, 2019, and not on some future date.

forbid something happens, the court would consider an emergency."

A litigant does not have an absolute right to a continuance. *In re Marriage of LaRocque*, 2018 IL App (2d) 160973, ¶ 94, 424 Ill. Dec. 36. Continuances are within the sound discretion of the trial court. *Doe v. Parrillo*, 2020 IL App (1st) 191286, ¶ 39; see also 735 ILCS 5/2-1007 (West 2016) (providing that "[o]n good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of any act or the taking of any step or proceeding prior to judgment"). A critical factor in the review of such rulings is whether the moving party has exercised due diligence in proceeding with the case. *Somers v. Quinn*, 373 Ill. App. 3d 87, 96, 867 N.E.2d 539, 310 Ill. Dec. 848 (2007). Moreover, once a cause has proceeded to trial, a motion for a continuance should show sufficient excuse for the delay, and the movant should present especially grave reasons to support his or her request. Ill. S. Ct. R. 231(f) (eff. Jan. 1, 1970) ("No motion for the continuance of a cause made after the cause has been reached for trial shall be heard, unless a sufficient excuse is shown for the delay."); *Teitelbaum v. Reliable Welding Co.*, 106 Ill. App. 3d 651, 656, 435 N.E.2d 852, 62 Ill. Dec. 54 (1982) ("The moving party must give especially grave reasons for continuance once a case has reached the trial stage because of the potential inconvenience to the witnesses, the parties and to the court."). The decision to grant or deny a trial continuance will not be disturbed on appeal "unless it has resulted in a palpable injustice or constitutes a manifest abuse of discretion." (Internal quotation marks omitted.) *Doe*, 2020 IL App (1st) 191286,

¶ 39. An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would agree with the position taken by the trial court. *Control Solutions, LLC v. Elecsys*, 2014 IL App (2d) 120251, ¶ 38, 382 Ill. Dec. 889, 13 N.E.3d 302.

Ellizzette argues that the trial court erred when it denied her motion for a continuance, made on the day of trial. In her motion, Ellizzette cited five principal reasons for requesting a continuance. On appeal, however, Ellizzette focuses on just two of those reasons—her father's illness and her attorneys' withdrawal. Ellizzette's failure to argue the three remaining grounds set forth in her motion results in the forfeiture of those bases on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (providing that points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing); *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 23, 379 Ill. Dec. 85, 6 N.E.3d 162 (holding that an appellant's failure to argue a point in the opening brief results in forfeiture). Moreover, after reviewing the record, we find nothing that would justify a conclusion that the trial court abused its discretion in denying her motion for a continuance on either of the two bases she advances in this appeal.

With respect to her father's illness, Ellizzette asserted at the hearing on her motion that her father had been hospitalized and declared "end of life" on November 16, 2019, just two days earlier. However, this statement is contradicted by an affirmation Ellizzette previously made to the trial court. Notably, at the hearing on November

13, 2019, Ellizzette told the court that three days prior, *i.e.*, November 10, 2019, her father had been declared "end of life" and that he "could die at any day now per the doctors." Ellizzette could have moved for a continuance at that time but did not. To the contrary, she informed the trial court at the November 13, 2019, hearing that she did not want to waste the court's time and that she would be present for the trial on November 18, 2019. She then waited until 3:49 a.m. on the day of trial to inform the court that she had changed her mind and wanted to have the trial postponed. Given these circumstances, the trial court could reasonably conclude that Ellizzette did not show due diligence in waiting until the day of trial to file her motion for a continuance. Therefore, the trial court did not abuse its discretion in rejecting this basis for the motion.

Ellizzette also argues that the withdrawal of her attorneys before trial "placed her in a difficult position, which she sought to remedy by obtaining counsel who *** could have refuted the fundamentally flawed legal arguments Shawn presented." In addressing this issue, *Thomas v. Thomas*, 23 Ill. App. 3d 936, 321 N.E.2d 159 (1974), is instructive. In that case, the plaintiff's attorney moved to withdraw from the case, serving notice of his intention on July 5, 1973. The plaintiff appeared at a hearing on July 12, at which the trial court advised her that she should obtain counsel for the trial scheduled for July 17 but that she could file for a continuance if she felt that she would need more time. The plaintiff indicated that she would have counsel for trial, and no continuance was requested. On July 17, for the first time, the plaintiff

moved for a continuance because she lacked counsel. The trial court denied the motion. In affirming, the reviewing court observed that the absence of counsel is one factor to consider in deciding a motion to continue but that "it does not entitle a party to a continuance as a matter of right." *Thomas*, 23 Ill. App. 3d at 940-41 (citing *Adcock v. Adcock*, 339 Ill. App. 543, 548, 91 N.E.2d 99 (1950)). The court determined that the lack of counsel "could have been avoided by [the plaintiff's] own diligence in either securing a lawyer for trial, or requesting a continuance prior to the day of trial." *Thomas*, 23 Ill. App. 3d at 940. The court further determined that the 12 days between when counsel served notice of his intent to withdraw and the date of the trial provided the plaintiff with "ample opportunity to extend the time for trial in order to obtain counsel." *Thomas*, 23 Ill. App. 3d at 940-41. Accordingly, the court concluded that the trial court properly exercised its judicial discretion in denying the motion for a continuance. *Thomas*, 23 Ill. App. 3d at 941.

In the present case, Ellizzette had substantially more time to request a continuance to obtain substitute counsel than the plaintiff had in *Thomas*. In this regard, we note that Ellizzette's counsel moved to withdraw on September 12, 2019. The motion indicates that Ellizzette was notified by both e-mail and certified mail to her last known addresses. The trial court entered an order on September 18, 2019, granting the motion to withdraw, providing Ellizzette with 21 days to find other counsel and file a substitute appearance, and confirming the scheduled trial date of November 18, 2019. Ellizzette was provided notice of the order granting the withdrawal by

certified mail at the same addresses to which the motion to withdraw was sent. The record reflects that Ellizzette did not take any action until October 23, 2019, when she filed an appearance on her own behalf. Further, at no time between October 23 and November 18, 2019, did Ellizzette move the court to retain substitute counsel. In other words, Ellizzette had 68 days between when counsel served notice of their intent to withdraw and the date of the trial to secure substitute counsel or request a continuance. Yet, she did not take any action until the day of trial. Given these circumstances, the trial court could reasonably conclude that Ellizzette did not show due diligence in waiting until the day of trial to file her motion for a continuance. Therefore, the trial court did not abuse its discretion in rejecting this basis for the motion.

In short, there was sufficient time for Ellizzette to appear before the court to present a motion for a continuance prior to the date of the trial. Ellizzette, however, waited until the day of trial to move for a continuance. Under these circumstances, the trial court could have reasonably concluded that Ellizzette failed to show due diligence in pursuing her motion for a continuance. Accordingly, the trial court did not abuse its discretion in denying Ellizzette's motion for a continuance, filed on the day of trial.

C. Judgment on the Pleadings

Next, Ellizzette argues that the trial court erred when it denied her motion for judgment on the pleadings. Section 2-615(e) of the Code of Civil Procedure (Code) (735

ILCS 5/2-615(e) (West 2016)) provides that "[a]ny party may seasonably move for judgment on the pleadings." A motion for judgment on the pleadings is like a motion for summary judgment but is limited to the pleadings. *Perry v. Fidelity National Title Insurance Co.*, 2015 IL App (2d) 150168, ¶ 9, 400 Ill. Dec. 728, 48 N.E.3d 1168. Thus, a judgment on the pleadings is proper only when the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385, 830 N.E.2d 575, 294 Ill. Dec. 163 (2005); *St. Paul Fire & Marine Insurance Co. v. City of Waukegan*, 2017 IL App (2d) 160381, ¶ 25, 415 Ill. Dec. 619, 82 N.E.3d 823. In ruling on a motion for judgment on the pleadings, the court considers only those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record. *Gillen*, 215 Ill. 2d at 385; *St. Paul Fire & Marine Insurance Co.*, 2017 IL App (2d) 160381, ¶ 25, 415 Ill. Dec. 619, 82 N.E.3d 823. A party moving for judgment on the pleadings concedes the truth of the well-pled facts in the nonmovant's pleadings. *Allstate Property & Casualty Insurance Co. v. Trujillo*, 2014 IL App (1st) 123419, ¶ 16, 379 Ill. Dec. 684, 7 N.E.3d 110. The court deciding the motion must take all reasonable inferences from those facts as true, disregard all conclusory allegations and surplusage, and construe the evidence strictly against the movant. *Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 442, 940 N.E.2d 215, 346 Ill. Dec. 215 (2010). We review *de novo* a trial court's ruling on a motion for judgment on the pleadings. *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, ¶ 65, 984 N.E.2d 449, 368 Ill. Dec. 503.

Ellizzette contends that the facts apparent from the face of the pleadings and the judicial admissions of Shawn establish that she was entitled to judgment on the pleadings without the need for a trial. Specifically, Ellizzette asserts that, in her petition for letters of administration and affidavit of heirship, she pleaded that she is decedent's surviving spouse and his sole heir. Ellizzette further asserts that Shawn failed to deny these allegations in his response to her pleadings and that, as a result, the allegations in her pleadings must be taken as true. See 735 ILCS 5/2-610(b) (West 2016) ("Every allegation *** not explicitly denied [in an answer] is admitted ***."). As additional support for her position, Ellizzette asserts that Shawn, in his verified petition for declaration of invalidity of marriage, admitted that she and decedent "participated in a marriage ceremony" on July 11, 2017, and that he attached thereto a copy of the certification of marriage. Ellizzette acknowledges that Shawn later filed a notice that he was voluntarily withdrawing his petition for declaration of invalidity of marriage but contends that Shawn remained bound thereby, because he did not allege that these "judicial admissions *** were the result [of] mistake or inadvertence." See *In re Marriage of O'Brien*, 247 Ill. App. 3d 745, 749, 617 N.E.2d 873, 187 Ill. Dec. 416 (1993). Ellizzette concludes that, because Shawn's response to her petition for letters of administration and affidavit of heirship "did not set up a defense that would entitle him to a merits hearing," the trial court erred when it denied her motion for judgment on the pleadings. We disagree.

As noted above, in ruling on a motion for judgment on the pleadings, the court considers the facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record. *Gillen*, 215 Ill. 2d at 385; *St. Paul Fire & Marine Insurance Co.*, 2017 IL App (2d) 160381, ¶ 25, 415 Ill. Dec. 619, 82 N.E.3d 823. Illinois courts recognize that documents containing readily verifiable facts from sources of indisputable accuracy may be judicially noticed. *People v. Davis*, 65 Ill. 2d 157, 165, 357 N.E.2d 792, 2 Ill. Dec. 572 (1976); *Centeno v. Illinois Workers' Compensation Comm'n*, 2020 IL App (2d) 180815WC, ¶ 39, 440 Ill. Dec. 47, 149 N.E.3d 1160; *City of Centralia v. Garland*, 2019 IL App (5th) 180439, ¶ 10, 434 Ill. Dec. 106, 134 N.E.3d 992. Public documents that are included in the records of courts and administrative tribunals are subject to judicial notice. *People v. Ernest*, 141 Ill. 2d 412, 428, 566 N.E.2d 231, 152 Ill. Dec. 544 (1990); *Centeno*, 2020 IL App (2d) 180815WC, ¶ 39; *Palos Bank & Trust Co. v. Illinois Property Tax Appeal Board*, 2015 IL App (1st) 143324, ¶ 11 n.2, 397 Ill. Dec. 414, 42 N.E.3d 40.; *People v. Rubalcava*, 2013 IL App (2d) 120396, ¶ 31, 997 N.E.2d 809, 375 Ill. Dec. 498; *Curtis v. Lofy*, 394 Ill. App. 3d 170, 172, 914 N.E.2d 248, 333 Ill. Dec. 41 (2009); *NBD Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d 512, 520-21, 622 N.E.2d 123, 190 Ill. Dec. 713 (1993); *In re McDonald*, 144 Ill. App. 3d 1082, 1085, 495 N.E.2d 78, 99 Ill. Dec. 13 (1986).

Ellizzette's position ignores that the trial court was entitled to take judicial notice of its own files and records. See *Palos Bank & Trust Co.*, 2015 IL App (1st) 143324, ¶ 11 n.2, 397 Ill. Dec. 414, 42 N.E.3d 40. Likewise, this court

may take judicial notice of the trial court's file. *People v. Fields*, 2020 IL App (1st) 151735, ¶ 58; *People v. Alvarez-Garcia*, 395 Ill. App. 3d 719, 726-27, 936 N.E.2d 588, 344 Ill. Dec. 59 (2009). In this case, the trial court's file demonstrates that in December 2017 Shawn filed a petition for letters of administration and affidavit of heirship. In the affidavit of heirship, Shawn stated as follows. He was appointed the plenary guardian of the person and estate of decedent on May 30, 2017. Decedent was survived by his parents and his three siblings. Decedent had been married "once and only once and then to Debbie Greene McDonald," with said marriage ending in divorce sometime prior to 2012. Although decedent "participated in a wedding ceremony with Ellizzette Duvall Minnicelli" on July 11, 2017, the marriage was void *ab initio* because decedent lacked the capacity to consent to the marriage. The trial court's file further demonstrates that on December 19, 2017, the trial court entered (1) an order appointing Shawn as the independent administrator of decedent's estate and (2) an order declaring heirship, which designated decedent's parents and his three siblings as his only heirs. The facts that decedent's parents and his three siblings were *named* as his only heirs and that Shawn was appointed as the independent administrator of decedent's estate were subject to judicial notice, as they were readily verifiable. See *In re Linda B.*, 2017 IL 119392, ¶ 31 n.7, 418 Ill. Dec. 853, 91 N.E.3d 813 ("Public documents, such as those included in the records of other courts and administrative tribunals, fall within the category of 'readily verifiable' facts capable of instant and unquestionable demonstration of which a court may take judicial notice."); *Centeno*, 2020 IL App (2d) 180851WC,

¶ 39 (holding that the Illinois Workers' Compensation Commission properly considered arbitrator decision and transcript from another case, as such information was "readily verifiable and aided in the efficient disposition of the case"). Accordingly, considering the facts apparent from the face of the pleadings, matters subject to judicial notice, and any judicial admissions, the record shows that there remained a genuine issue of material fact as to Ellizzette's status as decedent's surviving spouse and sole heir. See *In re Estate of Davis*, 225 Ill. App. 3d at 1000 ("On a motion for judgment on the pleadings, if the pleadings put in issue one or more material facts, evidence must be taken to resolve such issues, and judgment may not be entered on the pleadings."). In light of the foregoing, we therefore conclude that the trial court did not err in denying Ellizzette's motion for judgment on the pleadings.

D. Dead Man's Act

Ellizzette next argues that the trial court committed reversible error in granting Shawn's motion *in limine*, which barred her from testifying, under the Dead Man's Act (735 ILCS 5/8-201 (West 2016)), as to her marriage and heirship.

As noted above, Shawn filed a motion *in limine* seeking to bar Ellizzette from testifying or presenting any evidence as to any marital relationship she allegedly had with decedent. Citing *Laurence*, 164 Ill. 367, 45 N.E. 1071, *In re Estate of Diak*, 70 Ill. App. 2d 1, 217 N.E.2d 106, and *In re Estate of Enoch*, 52 Ill. App. 2d 39, 201 N.E.2d 682, Shawn alleged that such testimony would violate the Dead

Man's Act (735 ILCS 5/8-201 (West 2016)). In her response to Shawn's motion, Ellizzette argued, *inter alia*, that the "plain text" of subsection (d) of the Dead Man's Act provides that "[n]o person shall be barred from testifying as to any fact relating to the heirship of a decedent." 735 ILCS 5/8-201(d) (West 2016). Ellizzette contended that, because her testimony would "relate to facts surrounding the heirship of [decedent], this testimony falls precisely within the exception carved out within the Dead Man's Act itself." Therefore, Ellizzette urged the trial court to deny Shawn's motion. Following the parties' argument on the motion, the trial court granted Shawn's motion. The court reasoned that "Illinois law says that the spouse cannot testify as to heirship, and there's cases cited, and they weren't responded to." Thereafter, the trial court entered a written order in accordance with its oral finding, barring Ellizzette from "testifying regarding her putative marriage to the decedent or regarding the decedent's heirship."

On appeal, Ellizzette, relying principally on *In re Estate of Bailey*, 97 Ill. App. 3d 781, 423 N.E.2d 488, 53 Ill. Dec. 104 (1981), argues that the legislature expressly enacted subsection (d) of the Dead Man's Act (735 ILCS 5/8-201(d) (West 2016)) to overrule the authority Shawn cited in his motion *in limine*. She therefore contends that the trial court committed reversible error in barring her from testifying about her marriage and heirship. Shawn responds that the trial court's decision to grant his motion *in limine* was proper because it relied on Illinois Supreme Court precedent, *Laurence*, 164 Ill. 367, 45 N.E. 1071, which he claims remains good law and prohibits a spouse

from testifying in an heirship proceeding. Further, Shawn maintains that, even if it was improper for the trial court to bar Ellizzette from testifying, she failed to preserve the issue for review by making an offer of proof as to her testimony. We review evidentiary rulings for an abuse of discretion but interpretations of statutes *de novo*. See *Gunn v. Sobucki*, 216 Ill. 2d 602, 609, 837 N.E.2d 865, 297 Ill. Dec. 414 (2005). Additionally, a trial court's ruling on an issue involving the Dead Man's Act will not be reversed unless the error was substantially prejudicial and affected the outcome of the trial. *People v. $5,608 United States Currency*, 359 Ill. App. 3d 891, 895, 835 N.E.2d 920, 296 Ill. Dec. 567 (2005).

We begin our analysis with a review of *Laurence*, 164 Ill. 367, 45 N.E. 1071. In that case, the decedent died intestate. The plaintiff, the decedent's putative wife, petitioned the court for half of the decedent's estate. The trial court allowed the plaintiff to testify at trial as to her alleged marriage to the decedent. After considering the evidence presented at the trial, the court concluded that the plaintiff was the lawful widow of the decedent and was therefore entitled to share in his estate. On appeal, the defendants argued that the trial court erred in permitting the plaintiff to testify on her own behalf. In support of their position, the defendants relied on section 2 of the Evidence and Depositions Act (Ill. Ann. Stat., ch. 51, ¶ 2 (Starr & Curtis 1896)), commonly referred to as the Dead Man's Act (see Adrienne D. Whitehead, *New Life to the Dead Man's Act in Illinois*, 5 Loy. U. Chi. L.J. 428 (1974)). At the time of the *Laurence* decision, the statute provided:

> "'[N]o party to any civil action, suit or proceeding, or person directly interested in the event thereof, should be allowed to testify therein of his own motion or in his own behalf, by virtue of the foregoing section, when any adverse party sues or defends as the *** heir *** of any deceased person, *** unless when called as a witness by such adverse party so suing or defending.'" *Laurence*, 164 Ill. at 372 (quoting Ill. Ann. Stat., ch. 51, ¶ 2 (Starr & Curtis 1896)).

The supreme court reversed and remanded the matter, holding that the plaintiff's testimony should have been excluded. *Laurence*, 164 Ill. at 373. The court explained that the plaintiff "was not an heir until she established the marriage which she alleged and which was denied by the heirs, and until such marriage was established by proof or conceded she was a stranger to the estate and incompetent to testify, and the court erred in permitting her to do so." *Laurence*, 164 Ill. at 373.

In 1973, the Dead Man's Act as it then existed was repealed and replaced. *In re Estate of Babcock*, 105 Ill. 2d 267, 272, 473 N.E.2d 1316, 85 Ill. Dec. 511 (1985); Whitehead, *supra*, at 428. In its current form, the Dead Man's Act reads in pertinent part as follows:

> "In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in

> the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability, except in the following instances:
>
> * * *
>
> (d) No person shall be barred from testifying as to any fact relating to the heirship of a decedent." 735 ILCS 5/8-201 (West 2016).

As the *Babcock* court noted, the successor version of the Dead Man's Act is less restrictive than the prior version of the statute. *In re Estate of Babcock*, 105 Ill. 2d at 272. The *Babcock* court explained:

> "The successor act *** no longer bars all testimony by interested persons. Unlike the previous statute, the Act now disqualifies the testimony by interested persons only to the extent that the testimony would be to a 'conversation with the deceased [or person under legal disability]' or an 'event which took place in the presence of the deceased [or person with a legal disability].'" *In re Estate of Babcock*, 105 Ill. 2d at 273 (quoting Ill. Rev. Stat. 1981, ch. 110, ¶ 8-201).

We also observe that the successor statute provides several exceptions to its applicability, including subsection

(d) (735 ILCS 5/8-201(d) (West 2016)), which is at issue in this case.

In *In re Estate of Bailey*, 97 Ill. App. 3d 781, 423 N.E.2d 488, 53 Ill. Dec. 104, the court had an opportunity to consider the effect of subsection (d). In that case, the petitioner, the putative wife of the decedent, brought an action to vacate the respondent's appointment as the administrator of the decedent's estate. At the trial on the matter, the respondent objected to the petitioner testifying about her marriage to the decedent. The respondent asserted that such testimony was barred by the Dead Man's Act since the petitioner's testimony was adverse to the admitted heirs. The trial court sustained the objection, ruling that heirship must be proved by disinterested witnesses. On appeal, the petitioner argued that the trial court erred in barring her testimony. The reviewing court agreed. *In re Estate of Bailey*, 97 Ill. App. 3d at 783-84. In so holding, the court stated that the enactment by the legislature of subsection (d) in 1973 was "intended to change the rule of *Laurence*," which the court termed "harsh." *In re Estate of Bailey*, 97 Ill. App. 3d at 783-84. The court elaborated:

> "The language of the amendment is reasonably clear, and no other purpose can be discerned in enacting the amendment. Respondent's interpretation would read the general rule, that interested parties may not testify as to transactions which took place in the presence of decedent, into the exception contained in [subsection (d)]. Such an interpretation would

> render [subsection (d)] a nullity." *In re Estate of Bailey*, 97 Ill. App. 3d at 784.

Further, the *Bailey* court "question[ed] whether a proceeding to establish the proper administrator of an estate is within the scope of the [Dead Man's] Act." *In re Estate of Bailey*, 97 Ill. App. 3d at 784. The court explained:

> "Such a proceeding does not directly reduce or impair the decedent's estate. Application of the testimonial bar of the [Dead Man's] Act to situations such as this leads to a race to the court house to be appointed or nominate an administrator. Once the appointment is made, any party wrongfully omitted from the selection must shoulder the onerous burden of proving heirship without the benefit of his own testimony." *In re Estate of Bailey*, 97 Ill. App. 3d at 784.

As such, the reviewing court held that the petitioner should have been allowed to testify as to her marriage to the decedent. *In re Estate of Bailey*, 97 Ill. App. 3d at 783-84.

Three years after *Bailey* was decided, the court in *Estate of Hutchins*, 120 Ill. App. 3d 1084, 458 N.E.2d 1356, 76 Ill. Dec. 556 (1984), also had occasion to consider the effect of subsection (d). At issue in *Hutchins* was whether certain purported heirs of the decedent were competent under the Dead Man's Act to testify to their heirship of the

decedent. The plaintiff argued that the trial court erred in allowing testimony from the purported illegitimate children of the decedent on the issue of the heirship of the decedent. Citing *Laurence*, the plaintiff asserted that, under the Dead Man's Act, an heir is competent to testify in a proceeding to establish the heirship of his or her ancestor only where the proceedings are not contested and the establishment of the heirship is routine. The reviewing court disagreed. *In re Estate of Hutchins*, 120 Ill. App. 3d at 1086. Relying on the reasoning in *Bailey*, the court held that the trial court properly admitted the purported heirs' testimony on the issue of the heirship of the decedent, pursuant to subsection (d) of the Dead Man's Act. *In re Estate of Hutchins*, 120 Ill. App. 3d at 1087.

Turning to the facts in this case, we agree with the rationale set forth in *Bailey* and hold that the trial court abused its discretion in granting Shawn's motion *in limine*, which sought to bar Ellizzette from testifying or presenting any evidence as to any marital relationship she had with decedent. Quite simply, pursuant to the plain language of subsection (d) (735 ILCS 5/8-201(d) (West 2016)), the Dead Man's Act no longer prohibits interested parties from testifying "as to any fact relating to the heirship of a decedent." See *Spencer v. Strenger Wayne*, 2017 IL App (2d) 160801, ¶ 16, 414 Ill. Dec. 621, 80 N.E.3d 764 (noting that the fundamental objective of statutory construction is to ascertain and give effect to the intent of the legislature, the best indicator of which is the plain language of the statute itself). Thus, the trial court should have permitted Ellizzette to testify as to her marriage to decedent, as it directly relates to heirship. In so holding,

we observe that the court's rationale for its finding, *i.e.*, that Ellizzette did not respond to the authority cited by Shawn, is not supported by the record. While it is true that Ellizzette did not cite any case law in her response to the motion *in limine* or at the hearing on the same, she clearly referenced subsection (d) in her response and asserted that the statute allowed her to testify as to her relationship with decedent. However, the trial court never addressed the impact of subsection (d) in ruling on Shawn's motion *in limine*.

Additionally, we reject Shawn's claim that *Laurence*, 164 Ill. 367, 45 N.E. 1071, remains good law. Shawn claims that *Laurence* is still valid precedent because the Illinois Supreme Court "never overruled or modified [the] decision *** in the twelve plus decades following its opinion." Shawn's position completely ignores the fact that the legislature altered the version of the Dead Man's Act interpreted in *Laurence* to provide that "[n]o person shall be barred from testifying as to any fact relating to the heirship of a decedent." 735 ILCS 5/8-201(d) (West 2016). This action by the legislature effectively overruled the holdings in *Laurence* and its progeny. *In re Estate of Bailey*, 97 Ill. App. 3d at 784 ("[W]e believe that by enacting [subsection (d)] the legislature intended to change the rule of *Laurence* which applied the [Dead Man's] Act to proceedings to establish heirship."); see also *In re Estate of Hutchins*, 120 Ill. App. 3d at 1087 (agreeing with the *Bailey* court that the language of subsection (d) was clearly intended by the legislature to change the holding in *Laurence*); Whitehead, *supra*, at 437 (opining that the addition of subsection (d) "will undoubtedly be a boon

to [putative spouses] who invariably failed under the old statute to establish heirship" and referring to *Laurence*). When the legislature changes the law in response to a ruling by the supreme court, that precedent is overruled when the statute is enacted. See *Roth v. Yackley*, 77 Ill. 2d 423, 429, 396 N.E.2d 520, 33 Ill. Dec. 131 (1979) (recognizing that the General Assembly has the authority to draft legislation and to amend statutes prospectively if it believes that a judicial interpretation was at odds with its intent). This is exactly what occurred here. Shawn does not even discuss subsection (d) in his brief.

Shawn also maintains that Ellizzette forfeited this issue by failing to make an offer of proof. "An offer of proof informs the trial court, opposing counsel, and the reviewing court of the nature and substance of the evidence sought to be introduced." *Colella v. JMS Trucking Co. of Illinois*, 403 Ill. App. 3d 82, 93, 932 N.E.2d 1163, 342 Ill. Dec. 702 (2010). "When a motion *in limine* is granted, the key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court." *Snelson v. Kamm*, 204 Ill. 2d 1, 23, 787 N.E.2d 796, 272 Ill. Dec. 610 (2003). "However, an offer of proof is not required where it is apparent that the trial court clearly understood the nature and character of the evidence sought to be introduced." *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495, 771 N.E.2d 357, 264 Ill. Dec. 653 (2002); see also *LaSalle Bank, N.A. v. C/HCA Development Corp.*, 384 Ill. App. 3d 806, 823-24, 893 N.E.2d 949, 323 Ill. Dec. 475 (2008).

Here, Shawn's motion *in limine* specifically stated that he "expected that *** Ellizzette *** will attempt to testify that she is the surviving spouse of [decedent]." More significantly, the trial court, in ruling on the motion, stated, "to the extent that the spouse is going to testify as to the purported marriage *** I would have to grant the motion *in limine* based on the law that [Ellizzette] can't testify." The court later told Ellizzette:

> "[H]aving ruled as to your ability to testify, that makes it difficult for you to prove the validity of the marriage. The marriage may have happened. It may have been valid in your eyes, but we're proceeding under statutes, law, cases, precedent, and rulings on those laws as applied to the facts. So I'm not saying you didn't have a ceremony, but I may—that may be the effect as it pertains to heirship. It depends what you are able to prove without testifying."

Given this record, we conclude that an offer of proof was not required because the trial court understood that Ellizzette would testify as to her purported marriage to decedent. See *Dillon*, 199 Ill. 2d at 495 (holding that an offer of proof was not required because the trial court understood that the witness would testify as to the medical standard of care); *LaSalle Bank, N.A.*, 384 Ill. App. 3d at 824 (holding that an offer of proof was not required because the trial court knew both the identity of the proposed witness and the subject matter of his proposed testimony); *First National Bank of Mount Prospect v. Village of Mount Prospect*, 197 Ill. App. 3d 855, 864-65,

557 N.E.2d 1257, 146 Ill. Dec. 70 (1990) (holding that an offer of proof was not necessary where expert's opinion testimony was obvious).

In short, based upon the 1973 amendment to the Dead Man's Act, we are compelled to conclude that the trial court abused its discretion in granting Shawn's motion *in limine* and barring Ellizzette from testifying or presenting any evidence as to any marital relationship she had with decedent. As the trial court's erroneous ruling precluded Ellizzette from presenting her case-in-chief, it substantially prejudiced her. See *$5,608 United States Currency*, 359 Ill. App. 3d at 896. Accordingly, we reverse the trial court's decision to grant a directed finding in Shawn's favor on this basis, and we remand the matter for a new trial. However, because additional issues related to the reasons the trial court cited in support of its grant of a directed finding in Shawn's favor might arise on remand, we address those issues now.

E. Directed Finding

Ellizzette challenges the grounds the trial court cited in support of its decision to direct a finding in Shawn's favor at the close of her case-in-chief. Section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2016)) permits a defendant to move for a directed finding at the close of the plaintiff's case in a bench trial. In ruling on such a motion, the trial court engages in a two-step analysis. *Minch v. George*, 395 Ill. App. 3d 390, 398, 917 N.E.2d 1169, 335 Ill. Dec. 105 (2009). Initially, the court must determine whether the plaintiff presented a *prima facie* case as a matter of law.

Edward Atkins, M.D., S.C. v. Robbins, Salomon & Patt, Ltd., 2018 IL App (1st) 161961, ¶ 53, 420 Ill. Dec. 636, 97 N.E.3d 210. If the court finds that the plaintiff presented a *prima facie* case, it proceeds to the second step and weighs the evidence to determine whether the *prima facie* case survives. *Minch*, 395 Ill. App. 3d at 398. Where, as here, the trial court did not proceed beyond the first stage, we review *de novo* its determination. *In re Petition to Disconnect Certain Territory Commonly Known as Foxfield Subdivision (In re Foxfield Subdivision)*, 396 Ill. App. 3d 989, 992, 920 N.E.2d 1102, 336 Ill. Dec. 512 (2009).

To establish a *prima facie* case, a plaintiff must proffer at least some evidence on every essential element of the cause of action. *In re Foxfield Subdivision*, 396 Ill. App. 3d at 992. To legally marry in Illinois, a couple must fulfill the requirements and formalities set out in the Marriage Act (750 ILCS 5/101 *et seq.* (West 2016)). Section 201 of the Marriage Act (750 ILCS 5/201 (West 2016)) provides that "[a] marriage between 2 persons licensed, solemnized and registered as provided in this Act is valid in this State." Thus, the parties must apply for a marriage license from the county clerk's office of the county in which they intend to marry. 750 ILCS 5/202, 203, 207 (West 2016); *In re Estate of Crockett*, 312 Ill. App. 3d 1167, 1171, 728 N.E.2d 765, 245 Ill. Dec. 683 (2000). Both parties must be present before the county clerk or one of his deputies, pay the required fee, and sign the license application. 750 ILCS 5/203 (West 2016); *In re Estate of Crockett*, 312 Ill. App. 3d at 1171. The parties must then appear before a duly authorized officiant and, after consenting to marry, must file the marriage certificate with the county clerk's office

within 10 days of the ceremony. 750 ILCS 5/209 (West 2016); *In re Estate of Crockett*, 312 Ill. App. 3d at 1171. We observe, however, that Illinois courts have conferred "spouse" status upon individuals even when one of the directory requirements of the Marriage Act has not been satisfied. See, *e.g., Haderaski v. Haderaski*, 415 Ill. 118, 119-22, 112 N.E.2d 714 (1953) (concluding that the lack of a license in an otherwise lawful marriage did not invalidate the marriage, as the statute requiring a license was directory rather than mandatory); *In re Estate of Bailey*, 97 Ill. App. 3d at 786 (noting that, with the exception of the lack of a marriage license, the evidence established that the couple was legally married).

In this case, the trial court ruled that Ellizzette did not present a *prima facie* case of a valid marriage as a matter of law. The court ruled that, to present a *prima facie* case on the validity of her marriage to decedent, Ellizzette had to present a valid application for a marriage license and a ceremony performed in Edgar County witnessed by two individuals. The court found, as a matter of law, that Ellizzette "did not present a *prima facie* case of a valid marriage ceremony under the circumstances such as would be sufficient to meet her burden of proof on all of the elements." The court stated that "[i]t would have been simple to present the evidence of a marriage license and certificate and application and have some witness testify about that, but that was not done." In ruling, the court further stated:

> "And while it is not as clear as [Shawn's counsel] presents as to the case law precedents—and

> in that I'm referring to the arguments that [Ellizzette] had when she was represented by counsel during motion practice on a motion for judgment on the pleadings—it is clear that there was an order finding and adjudicating Decedent as a disabled person and in immediate need of a plenary guardianship and that there was no best-interest hearing held; that the punitive [*sic*] marriage was not known to the Administrator until November 2017; and that the marriage was not properly witnessed or licensed or subject to a bestinterest determination by the probate court."

Thus, in concluding that Ellizzette did not establish a *prima facie* case of a valid marriage, the trial court determined that there was no evidence that the purported marriage was properly licensed, there was no evidence of a valid marriage ceremony in Edgar County, there was no evidence of two witnesses to the marriage, and there was no best-interest hearing to determine decedent's competency to marry. Applying *de novo* review, we conclude that the trial court erred in granting Shawn's motion for a directed finding on the four grounds cited in its ruling.

1. License

First, the trial court erred in ruling that there was no evidence that the purported marriage was properly licensed. As noted above, in ruling that Ellizzette failed to present a *prima facie* case of a valid marriage, the

trial court stated, "[i]t would have been simple to present the evidence of a marriage license and certificate and application and have some witness testify about that, but that was not done." But this finding by the trial court ignores the fact that on November 30, 2018, almost a year before the trial, the court granted Shawn's motion requesting that it take judicial notice of these very documents. The purpose of judicial notice is to dispense with the normal method of producing evidence. See *State Farm Mutual Automobile Insurance Co. v. Grebner*, 132 Ill. App. 2d 234, 237, 269 N.E.2d 337 (1971); see also Black's Law Dictionary (11th ed. 2019) (defining "judicial notice" as "[a] court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact"); *City of Centralia*, 2019 IL App (5th) 180439, ¶ 10, 434 Ill. Dec. 106, 134 N.E.3d 992 (noting that a court may take judicial notice of "matters that are readily verifiable from sources of indisputable accuracy, such as public records"). "The theory and effective application of judicial notice of adjudicative facts not only renders the formal introduction of evidence before the trier of fact unnecessary, *Secrist v. Petty*, 109 Ill. 188 (1883); *People v. One 1999 Lexus*, 367 Ill. App. 3d 687, *** but also precludes the introduction of evidence of contrary tenor ***." Michael H. Graham, Cleary and Graham's Handbook of Illinois Evidence § 202.3 (9th ed. 2009). Hence, by order of the court, evidence of a marriage application, license, and certificate were before the court pursuant to its ruling on Shawn's motion. Since the court had already taken judicial notice of these documents for purposes of the trial, there was no need for Ellizzette to reintroduce them.

Shawn argues that the purpose behind his motion was "to highlight every falsehood [Ellizzette] promoted on the Edgar County Clerk, as well as [decedent], a disabled person in need of protection from neglect, exploitation and abuse." However, this purpose is not set forth in his motion or in the record. In this regard, we observe that the body of Shawn's motion consisted of one page. In the motion, Shawn simply asked the trial court to take judicial notice, "[p]ursuant to the terms of *** trial," of the "Certified Copy of Edgar County, Illinois[,] Marriage Application and Record of John Wood McDonald, III and Ellizzette Duvall Minicelli [*sic*]." Attached to the motion were certified copies of (1) a "Marriage Application and Record" of "John Wood McDonald III" and "Ellizzette Duvall Minnicelli," (2) a Marriage License of "John Wood McDonald III" and "Ellizzette Duvall Minnicelli" issued by the Edgar County Clerk, signed by Bement as the officiant, and indicating that the marriage ceremony occurred in Paris, Illinois on July 11, 2017, and (3) a "Certification of Marriage" of "John Wood McDonald, III" and "Ellizzette Duvall Minnicelli." No court reporter was present for the argument on this motion, and no basis for or limitations on the trial court's order appears in the record. The order granting Shawn's motion simply states that "The Motion for Judicial Notice is granted and the Court hereby takes judicial notice of the exhibits attached thereto." Since there was no limitation on the purpose for which the exhibits were admitted at trial, we find that Shawn's position lacks merit.

2. Ceremony

Second, the trial court erred when it ruled that Ellizzette did not present some evidence of "a ceremony performed in Edgar County." Bement testified that he performed a marriage ceremony between Ellizzette and decedent on July 11, 2017, in the parties' home in Paris, Edgar County, Illinois. The "Certification of Marriage" issued by the clerk of Edgar County, of which the trial court took judicial notice, lists the wedding ceremony as taking place on July 11, 2017, in Paris, Illinois, with Bement as the officiant. In addition, we may take judicial notice that Paris is the county seat of Edgar County (see *About*, Edgar County, https://edgarcountyillinois.com/about/ (last visited Jan 25, 2021) [https://perma.cc/JB2C-9YQ4]). See *People v. Mata*, 217 Ill. 2d 535, 539-40, 842 N.E.2d 686, 299 Ill. Dec. 649 (2005) (noting that a reviewing court can take judicial notice "of matters that are readily verifiable from sources of indisputable accuracy"); *Trannel v. Prairie Ridge Media, Inc.*, 2013 IL App (2d) 120725, ¶ 20, 987 N.E.2d 923, 370 Ill. Dec. 157 (taking judicial notice of the population of a county); *People v. Clark*, 406 Ill. App. 3d 622, 632, 940 N.E.2d 755, 346 Ill. Dec. 386 (2010) (taking judicial notice of park's location). Indeed, Shawn's counsel admitted in arguing the motion for a directed finding that a marriage ceremony was performed, stating, "there's no evidence that there is a valid marriage *other than what Mr. Bement said, and Mr. Bement said he conducted a ceremony*." The trial court's ruling that Ellizzette failed to present some evidence of a ceremony performed in Edgar County is simply not supported by the record.

3. Witnesses

Third, the trial court erred when it ruled that Ellizzette did not present a *prima facie* case, because she failed to introduce evidence of two witnesses to the marriage ceremony. Neither Shawn nor the trial court cited any statutory provision requiring the presence of two witnesses for a marriage to be valid in Illinois. Indeed, our research reveals that, while many states have a witness requirement, Illinois is not one of them. See, *e.g.*, Alaska Stat. Ann. § 25.05.301 (West 2016) ("In the solemnization of marriage no particular form is required except that the parties shall assent or declare in the presence of each other and the person solemnizing the marriage and in the presence of at least two competent witnesses that they take each other to be husband and wife."); Cal. Family Code § 359(d) (West 2016) ("The person solemnizing the marriage shall complete the solemnization sections on the marriage license, and shall cause to be entered on the marriage license the printed name, signature, and mailing address of at least one, and no more than two, witnesses to the marriage ceremony."); Del. Code Ann. tit. 13, § 106(a)(4) (West 2016) ("Marriages shall be solemnized in the presence of at least 2 reputable witnesses who are at least 18 years of age and who shall sign the certificate of marriage ***."); La. Stat. Ann. § 9:244 (2016) (requiring marriage ceremony to be "performed in the presence of two competent witnesses of full age"); Kan. Stat. Ann. § 23-2504(a) (West 2016) (providing that a marriage may be validly solemnized "[b]y the mutual declarations of the two parties to be joined in marriage, made before an authorized officiating person and in the presence of at

least two competent witnesses over 18 years of age, other than the officiating person, that they take each other as husband and wife"); Mich. Comp. Laws Ann. § 551.9 (West 2016) ("In the solemnization of marriage *** there shall be at least 2 witnesses, besides the person solemnizing the marriage, present at the ceremony."); Minn. Stat. Ann. § 517.09 (West 2016) ("No particular form is required to solemnize a civil marriage, except: the parties shall declare in the presence of a person authorized to solemnize civil marriages and two attending witnesses that each takes the other as husband, wife, or spouse ***."); Neb. Rev. Stat. Ann. § 42-109 (West 2016) (requiring "at least two witnesses, besides the minister or magistrate" to be present at the ceremony where the marriage is solemnized); Nev. Rev. Stat. Ann. § 122.110 (West 2016) ("In every case, there shall be at least one witness present besides the person performing the [marriage] ceremony."); N.Y. Dom. Rel. Law § 12 (McKinney 2016) (requiring "at least one witness beside the clergyman or magistrate" to be present at the ceremony where the marriage is solemnized); N.D. Cent. Code Ann. § 14-03-20 (West 2016) ("Every certificate of marriage must contain the full name of each party before and after the marriage and be signed by two witnesses to the marriage in addition to the signature of the person who solemnized the marriage."); Okla. Stat. Ann. tit. 43, § 7 (West 2016) ("All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses ***."); 15 R.I. Gen. Laws Ann. § 15-3-8 (West 2016) ("The solemnization of marriage shall be in the presence of at least two (2) witnesses besides the minister, elder, justice, or warden officiating.");

Wis. Stat. Ann. § 765.16 (West 2016) ("Marriage may be validly solemnized and contracted in this state only after a marriage license has been issued therefor, and only by the mutual declarations of the 2 parties to be joined in marriage that they take each other as husband and wife, made before an authorized officiating person and in the presence of at least 2 competent adult witnesses other than the officiating person."); Wyo. Stat. Ann. § 20-1-106(b) (West 2016) ("In the solemnization of marriage no particular form is required, except that the parties shall solemnly declare in the presence of the person performing the ceremony and at least two (2) attending witnesses that they take each other as husband and wife.").

Nevertheless, citing *Pike v. Pike*, 112 Ill. App. 243 (1904), Shawn insists that "[p]roviding the names of two witnesses is the public policy in Illinois." At the outset, we note that *Pike* is not controlling, as it was decided in 1904 and appellate decisions filed prior to 1935 have no binding authority. See *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 32 n.4, 980 N.E.2d 58, 366 Ill. Dec. 258 (noting that appellate court decisions filed prior to 1935 have no binding authority and can be considered only persuasive). This technicality aside, we find *Pike* factually inapposite. *Pike* involved a common-law, "secret" marriage that was neither witnessed by anyone nor publicly acknowledged by the participants. At the time of the events in *Pike*, common-law marriages were recognized in Illinois. *Pike*, 112 Ill. App. at 260. However, one of the parties denied that he had married. *Pike*, 112 Ill. App. at 252. Under these circumstances, the reviewing court "regretted that a marriage, such as is claimed in

this case, contracted secretly between the parties, no third person being present, is legally permissible." *Pike*, 112 Ill. App. at 260. The present case does not involve the type of marriage at issue in *Pike*. Indeed, common-law marriages were eliminated by statute in Illinois in 1905. 750 ILCS 5/214 (West 2016); *Hewitt v. Hewitt*, 77 Ill. 2d 49, 62, 394 N.E.2d 1204, 31 Ill. Dec. 827 (1979). *Pike* is simply not persuasive authority for the proposition that a valid marriage under Illinois law requires the presence of two witnesses at the ceremony.

Shawn notes that one of the forms issued by the Edgar County clerk includes a space to provide the names of witnesses to a marriage. Shawn therefore insists that, if the two-witness requirement did not remain the policy in Illinois, "the Edgar County Clerk's instruction to marriage applicants to provide the names of such witnesses would be meaningless." We find no such instruction in the documents submitted. And while the document referenced by Shawn does contain lines where the names of witnesses may be provided, there is no indication that this is a requirement to obtain a valid marriage license. Indeed, even though no witnesses are listed, the Edgar County clerk issued a marriage license to decedent and "Ellizzette Duvall Minnicelli," thereby suggesting that witnesses are *not* required under Illinois law. Given the lack of authority substantiating a two-witness requirement for marriages in Illinois, the trial court erred when it ruled that Ellizzette was required to present some evidence that there were two witnesses to her officiated marriage to decedent.

4. Best-Interest Hearing

Fourth, the trial court indicated that, pursuant to the Probate Act, a best-interest hearing was required before decedent could marry. Although not directly cited in the trial court's ruling, this was apparently a reference to section 11a-17(a-10) of the Probate Act (755 ILCS 5/11a-17(a-10) (West 2016)), which states in pertinent part as follows:

> "Upon petition by the guardian of the ward's person or estate, the court may authorize and direct a guardian of the ward's person or estate to consent, on behalf of the ward, to the ward's marriage pursuant to Part II of the Illinois Marriage and Dissolution of Marriage Act if the court finds by clear and convincing evidence that the marriage is in the ward's best interests."

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *State Bank of Cherry*, 2013 IL 113836, ¶ 56, 984 N.E.2d 449, 368 Ill. Dec. 503. The most reliable indicator of legislative intent is the language of the statute itself, given its plain and ordinary meaning. *State Bank of Cherry*, 2013 IL 113836, ¶ 56, 984 N.E.2d 449, 368 Ill. Dec. 503. If the statutory language is clear and unambiguous, it must be applied as written, without resorting to further aids of statutory construction. *State Bank of Cherry*, 2013 IL 113836, ¶ 56, 984 N.E.2d 449, 368 Ill. Dec. 503. Moreover, a court may not depart from the plain language of the statute and read into it exceptions, limitations,

or conditions that are not consistent with the express legislative intent. *State Bank of Cherry*, 2013 IL 113836, ¶ 56, 984 N.E.2d 449, 368 Ill. Dec. 503.

The plain language of this provision simply does not require prior approval by the court before a ward can marry of his or her own accord. Instead, it provides a procedure to allow a guardian to petition the court for authorization to consent, on behalf of the ward, to the ward's marriage. The fact that a guardian may seek from the court an order authorizing consent, however, does not mean that the ward may not marry unless and until the guardian first obtains the court's consent. We read nothing in the language of section 11a-17(a-10) of the Probate Act that expressly declares that a marriage entered into by a ward is void in the absence of a best-interest hearing.

Indeed, this is consistent with *Pape*, 145 Ill. 2d 13, 582 N.E.2d 164, 163 Ill. Dec. 898, in which the supreme court held that the appointment under the Probate Act of a guardian of a person is not sufficient, in and of itself, to show that the person was incompetent to consent to marriage. In reaching this result the court explained:

> "In this regard, we note that section 11a-3 of the Probate Act of 1975 provides, *inter alia*, that a court may adjudge a person disabled[ ] and may appoint a guardian of his person if, because of his disability, he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person. In contrast, section 301 of the Marriage Act provides that a declaration of invalidity of

> a marriage may be obtained where a party, *inter alia*, lacked the capacity to consent to the marriage because of, *inter alia*, mental incapacity or infirmity. (Ill. Rev. Stat. 1989, ch. 40, par. 301.) Moreover, a person lacks capacity to consent to a marriage where he is unable to understand the nature, effect, duties and obligations of marriage." *Pape*, 145 Ill. 2d at 21-22.

Based on the foregoing, the court concluded that the test of incapacity under the above-referenced provisions of the Probate Act and the Marriage Act "is limited and does not speak to the incapacity required for purposes of the other provision." *Pape*, 145 Ill. 2d at 22. In this case, decedent was adjudged a ward of the court pursuant to section 11a-3 of the Probate Act (755 ILCS 5/11a-3 (West 2016)). Pursuant to *Pape*, however, this fact is insufficient, in and of itself, to require a best-interest hearing prior to decedent marrying. As such, we conclude that the trial court erred in ruling that the lack of a best-interest hearing provided a basis to grant Shawn's motion for a directed finding at the close of Ellizzette's case.

Shawn suggests that, to the extent that *Pape* constituted persuasive authority, it no longer does because the legislature added the language in section 11a-17(a-10) to the Probate Act *after* the supreme court decided *Pape*. We disagree. Shawn's argument overlooks the plain language of section 11a-17(a-10), which does not prohibit a ward from marrying on his or her own accord in the absence of a best-interest hearing. Moreover, nothing in section 11a-17(a-10) expressly declares a marriage

entered into by a ward, without his or her guardian's consent or a best-interest hearing, to be a nullity. Shawn also maintains that such a holding ignores a recent case decided by the supreme court, *Karbin v. Karbin*, 2012 IL 112815, 977 N.E.2d 154, 364 Ill. Dec. 665. In *Karbin*, the supreme court held that a guardian has standing to institute marital dissolution proceedings on behalf of a ward. *Karbin*, 2012 IL 112815, ¶ 52, 977 N.E.2d 154, 364 Ill. Dec. 665. We read nothing in *Karbin* that prohibits a ward from getting married in the absence of a best-interest hearing. Accordingly, we find Shawn's reliance on *Karbin* misplaced.

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's rulings denying Ellizzette's motion to vacate the order appointing Shawn as the administrator of decedent's estate and the order of heirship. We also affirm the trial court's decision to deny Ellizzette's motion for a continuance of trial and her motion for judgment on the pleadings. We find, however, that the trial court erred in barring Ellizzette from testifying regarding her marriage and heirship. Further, the trial court erred in granting Shawn's motion for a directed finding on the four grounds set forth in its oral ruling. The judgment of the circuit court of Kane County is therefore affirmed in part and reversed in part. We remand for further proceedings consistent with this disposition.

Affirmed in part and reversed in part.

Cause remanded with directions.

APPENDIX C — EXCERPT OF TRANSCRIPT OF THE STATE OF ILLINOIS, COUNTY OF KANE, DATED NOVEMBER 18, 2019

STATE OF ILLINOIS
COUNTY OF KANE

SS:

IN THE CIRCUIT COURT OF THE
16TH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

No. 17 P 744

IN THE MATTER OF THE ESTATE OF:

JOHN W. MC DONALD, III, Deceased,

REPORT OF PROCEEDINGS had and testimony taken at the trial of the above-entitled cause before the Hon. James R. Murphy, Judge of said Court, commencing on Monday, November 18, 2019, at 9:00 a.m., at the Kane County Courthouse, Geneva, Illinois.

***

[146]THE COURT: Okay. You may be seated.

Okay. We are currently deciding a motion for a directed finding at the close of the Petitioner's case in chief. And the issue that this hearing is about is the validity of the marriage, the ceremony, the contract, and whether such a

marriage, if it was in fact conducted according to Illinois law or could have been conducted under the Probate Act when it happened -- if it happened.

The punitive spouse, Ellizzette, is challenging the heirship claimed by the Administrator that is on file with the Court, and she has attempted to establish the validity of the marriage. We heard from three witnesses, Diane [147]Boyer from Paris, Illinois, Dr. Visar Belegu of Baltimore, and Ray Bement of Champaign, Illinois. The Petitioner, Ellizzette, attempted to elicit testimony from each of the three witnesses regarding the longstanding relationship between the Decedent and the Petitioner and the witnesses' respective views and beliefs, whether they had a close relationship and that everybody knew about that close relationship and they lived together as husband and wife after the wedding ceremony. Petitioner also tried to elicit testimony regarding the Decedent's capacity and mental acuity in that he was still working on projects with Dr. Belegu and still sharp on issues he was working on.

Neither the longstanding relationship nor the alleged competence of the Decedent at the time of the purported marriage are relevant to whether the marriage was valid or void; and if it was valid, the Petitioner would then become the spouse with preference to nominate an administrator and also, under intestate law of Illinois, she would become the sole heir of the Decedent.

This was the hearing to present the [148]relevant evidence to establish the validity of the marriage; i.e., to present a prima facie case of a valid application for a

marriage license, a ceremony performed in Edgar County and witnessed by two witnesses. That would establish, at a minimum, the prima facie case to present Petitioner as the spouse this proceeding, which would ultimately be which is ultimately about heirship. If she had presented a prima facie case, then we would go on to hear testimony of the witnesses for the Administrator as to other issues -- or the issues of the validity of the marriage. We would have heard from those witnesses as well.

The repeated questioning of the witnesses, only one of whom was present at the purported signing of the license, about issues of how close the Decedent and the Petitioner were or how sharp the Decedent was do not convert the lack evidence on the main issue into a more convincing argument for the Court to consider or credit. There no evidence of a -- there was no evidence presented on those issues, which are necessary to a prima facie case.

As a matter of law, Petitioner did [149]not present a prima facie case of a valid marriage ceremony under the circumstances such as would be sufficient to meet her burden of proof on all of the elements. In doing so, the Court has considered all of the evidence presented. The Court does not consider incompetent evidence. In other words, incompetent evidence being attempted testimony by the Petitioner herself when she was subject to a motion in limine to not testify in this proceeding. It would have been simple to present the evidence of a marriage license and certificate and application and have some witness testify about that, but that was not done.

So even considering the evidence in its aspect most favorable to the Petitioner, the case comes up short on presenting. The motion is going to be granted. The Court makes a finding of judgment in favor of the Administrator -- or a finding or judgment in favor of the Administrator. And while it is not as clear as Mr. Kinnally presents as to the case law precedents -- and in that I'm referring to the arguments that Petitioner had when she was represented by counsel during motion practice on a motion for judgment on the [150]pleadings -- it is clear that there was an order finding and adjudicating Decedent as a disabled person and in immediate need of a plenary guardianship and that there was no best-interest hearing held; that the punitive marriage was not known to the Administrator until November 2017; and that the marriage was not properly witnessed or licensed or subject to a best-interest determination by the probate court.

Therefore, the motion for directed finding is granted.

****

APPENDIX D — DENIAL OF REHEARING FOR THE SUPREME COURT OF ILLINOIS, DATED SEPTEMBER 26, 2022

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

In re: MCDONALD v. MCDONALD
126956

September 26, 2022

CYNTHIA A. GRANT
Clerk of the Court

Dear Steven Joseph Roeder:

The Supreme Court today entered the following order in the above-entitled cause:

Petition for rehearing denied.

The mandate of this Court will issue to the Appellate Court and/or Circuit Court or other agency on 10/31/2022.

Very truly yours,

/s/ Cynthia A. Grant
Clerk of the Supreme Court