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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

Conservatorship of the Person and Estate of ALFRED W. PRIESS.	B234508
GEORGE PRIESS, Petitioner and Respondent, v. ANN PRIESS FIEDLER, as Conservator, etc., Objector and Appellant.	(Los Angeles County Super. Ct. No. BP109243)

APPEAL from an order of the Superior Court of Los Angeles County. Mitchell L. Beckloff, Judge. Affirmed.

Jay L. Chavkin and Robert J. Wheeler for Objector and Appellant.

Snell & Wilmer, Keith M. Gregory for Petitioner and Respondent.

In July 2011, the probate court removed Ann Priess Fiedler from her position as conservator of the person of Alfred W. Priess, her father, after concluding she had shown a continued failure to perform the duties of conservator. The court also concluded Alfred should be returned to Mississippi to live with George Priess, Alfred's son and Ann's brother, with whom Alfred had been living since 2008.[1] On appeal, Ann contends: (1) the probate court abused its discretion by applying irrelevant or incorrect legal standards to the question of where Alfred should live; (2) the evidence did not support the court's finding that Ann failed to adequately perform her conservator duties; and (3) the court improperly failed to consider a report issued by an expert pursuant to Evidence Code section 730. We find no error and affirm the probate court's order.

FACTUAL AND PROCEDURAL BACKGROUND

In late 2007 or early 2008, Ann facilitated Alfred's move from his home in Palos Verdes to a nursing home in Newport Beach. Alfred was 83 years old. In February 2008, Alfred's two sons, George and Jeffrey Priess, took him from the nursing home without notifying Ann. They drove Alfred to Mississippi, where George lived. Ann filed a petition seeking appointment as conservator of Alfred's person. The petition alleged Alfred suffered from dementia and required assistance with the activities of daily living and medication compliance. In late February 2008, the court appointed Ann temporary conservator, and issued a temporary restraining order prohibiting George and Jeffrey from removing Alfred from California.[2]

In April 2008, Alfred's court-appointed counsel reported George had filed a petition for conservatorship in Mississippi the previous month. The Mississippi court dismissed the petition for lack of jurisdiction because the case had been filed in California first. In June 2008, the probate court appointed Ann as permanent conservator of Alfred's person. The court found Alfred lacked capacity to give informed consent to

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[1] To avoid confusion, we refer to the parties by their first names.

[2] It is unclear from the record if George and Jeffrey had already taken Alfred out of California by the time the temporary restraining order issued.

any medical treatment. The court also ordered Ann to file a care plan within 60 days. The subsequent letters of conservatorship gave Ann the exclusive authority to give consent for, and to require, Alfred to receive medical treatment.

Ann did not initiate legal proceedings in Mississippi or seek assistance from the court in getting Alfred returned to California. In February 2009, Ann petitioned to be appointed conservator of Alfred's estate. George opposed the petition. The court ordered the parties to jointly select a psychologist to conduct a neuropsychological examination of Alfred, pursuant to Evidence Code section 730. The issue to be determined was Alfred's competency, including his competence to obtain and direct legal counsel. The resulting expert report concluded Alfred suffered from profound dementia, he lacked capacity to retain or work with counsel, and he also lacked the ability to manage his financial or personal care. Eventually, the parties agreed to the appointment of a private professional fiduciary to serve as conservator of Alfred's estate.[3] In September 2009, the court appointed professional fiduciary Alexandra Matejic as conservator of Alfred's estate.

In April 2011, Ann made an unannounced trip to visit Alfred in Mississippi. According to Ann, she was alarmed at Alfred's physical condition. On the three previous occasions Ann saw Alfred between 2008 and 2010, he appeared to be in good health and well-cared for. But this time, Ann reported that Alfred was unshaven, unclean, and wore dirty clothes. He was barely able to walk and appeared to be home alone. Without notifying anyone, Ann immediately took Alfred from George's home and flew him back to California. She placed him in a board and care facility within days of his return.

Soon thereafter, George petitioned the court to remove Ann as conservator of Alfred's person. George requested that the court appoint a temporary conservator, and allow Alfred to return to George's home in Mississippi. George submitted a declaration from Alfred's treating physician in Mississippi. The physician declared he had treated

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[3] In connection with this agreement, George resigned as trustee of the Priess Family Trust. The court ordered George to file an accounting of his actions as trustee.

Alfred since February 2008, and he had seen a "dramatic positive turn around" in Alfred. The physician further declared Ann had never contacted him to find out about Alfred's medications, or whether it was safe for Alfred to fly.

Ann opposed the petition seeking her removal as conservator. Ann contended it was necessary for her to remove Alfred from Mississippi and place him in a board and care facility. She alleged that in Mississippi, she found Alfred "uncared for, for hours at a time, wearing soiled clothing, with sores on his legs, and living in a residence that required him to negotiate stairs, which he could not do without assistance."

Alfred's court-appointed attorney concluded Ann's removal of Alfred from Mississippi was not in his best interests. The attorney reported:

> "Ann has done little if anything to try to get Alfred back to California in the approximately three years since she was appointed as conservator of Alfred's person. During this period, Ann has had limited contact with Alfred or George and had little, if any, basis to know how Alfred was doing. As conservator Ann apparently never hired anyone in Mississippi to periodically go and check in on Alfred's living and health conditions.
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> "Ann's claim that Alfred agreed to return to California is not credible and is inconsistent with Alfred's wishes, as he expressed them to me in February 2008 and on April 18, 2011. It appears that the intention of bringing Alfred back to California was to move him into a facility since, the day after coming back, Ann authorized [a doctor] to fill out the form to determine if Alfred's admission . . . into a [residential care facility for the elderly] was appropriate. I cannot agree that living in a facility with strangers is better than living with family members who were apparently taking good care of Alfred. . . . [¶] . . . [¶]
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> "I respectfully recommend that the court suspend or remove Ann as conservator of the person."

Alfred's attorney further recommended that a temporary conservator should determine the appropriateness of returning Alfred to Mississippi to live with George.

The court temporarily suspended Ann as conservator of George's person and appointed the conservator of Alfred's estate, Matejic, as temporary conservator of his person. The court set the removal petition for an evidentiary hearing, and advised the parties the court would also consider the issue of whether Alfred should reside in

Mississippi, or whether Ann should have the authority to change his residence to California.[4]

The court held a two-day hearing in June 2011. George testified he had installed handrails inside his home so that Alfred could navigate the space safely. He indicated Alfred's health had improved since 2008; at one point Alfred was walking several miles each day, but stopped in 2010 due to extreme southern heat. Alfred lived with George, George's wife, and their son. A nurse from a homecare agency visited the house once each week. A memory therapist also worked with Alfred on a regular basis. George testified that he helped Alfred with bathing and taking medicine. He changed Alfred's adult diapers, changed his clothes, and fed him breakfast each day. George had hired a neighbor to care for Alfred while he and his wife were at work. George denied that he had ever prevented Ann from calling Alfred, and denied that she had ever sent a card or letter to Alfred. According to George, on the day that Ann took Alfred away, the neighbor caring for Alfred left the house on an errand, but George's adult son was home.

In advance of the trial, Matejic filed a report with the court. She concluded that while Alfred was being well-cared for in the residential facility, he would benefit from living in a home with family members in a community rather than living with strangers.

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[4] During the proceedings at which the court set the date for a subsequent hearing on the removal petition and residence issue, the following colloquy took place:

"THE COURT: [W]e have this issue about residence. Even if Ms. Priess is no longer serving as conservator, we have an issue about his residence, and that needs to get resolved ultimately.

"[ANN'S COUNSEL]: Your Honor, if I may, and I apologize, is your intention that we file a formal petition for removal so that you can rule on it when we get to that point or are we at issue now?

"THE COURT: We have a removal petition. And you've objected. . . . I think you should file an objection to the removal. But I'm including, so everybody is on notice, this issue about where he lives. Because in the ordinary course, notice would have been given of an intent to change his residence. And then somebody could have filed an objection, and there would have been a court hearing. So it didn't exactly work that way, but we are going to have that hearing."

She noted Mississippi adult protective services had found no evidence of abuse or neglect during an investigation. At the trial, Matejic testified she had suggested that Ann hire someone to visit Alfred and check on him. She also told Ann she needed court permission to give Ann money from the estate to hire an attorney to help get Alfred returned to California. In addition, Matejic suggested that Ann communicate with Alfred's physician in Mississippi, and contact the Mississippi department of social services to have someone check on Alfred. Consistent with her report, Matejic indicated she believed it was in Alfred's best interests for him to be returned to George's home in Mississippi.

Ann testified she had seen her father four times after George took him to Mississippi, including the April 2011 visit when she took him back to California. Two of the occasions were related to legal proceedings.[5] Ann admitted she had never attempted to contact Alfred's treating physician in Mississippi. She did not know that a nurse was seeing Alfred once a week in Mississippi, and she was only vaguely aware that a speech and language pathologist was working with him. When she took Alfred in April 2011, she did not think to take his medication, cane, or hearing aids with them.

Ann also testified that when George first took Alfred to Mississippi, she attempted calling Alfred at least five times per month, but she never got a response. When she saw Alfred in 2009 and 2010, she thought he looked excellent. She called Mississippi adult protective services in 2008 and tried to get them to visit Alfred. She testified that she contacted the agency three or four times, but never heard back. She testified that she refrained from ever taking legal action in Mississippi more out of a desire not to upset Alfred than a lack of funds. When she made her unannounced April 2011 visit, she was shocked at her father's apparent physical decline, his unkempt and dirty appearance, that he had stopped walking, and that no one seemed to be home with him.

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[5] In 2008, Ann went to Mississippi to oppose George's petition for conservatorship. In 2009, Ann went to Alabama in connection with the expert neuropsychological examination of Alfred. In 2010, Ann visited Alfred at George's house.

The probate court granted the petition for removal of Ann as conservator of Alfred's person. In a lengthy written ruling, the court explained Ann "completely failed to perform any of her duties as Conservator of the Person." The court chronicled Ann's failures in this regard, noting her infrequent visits to Mississippi; her failure to communicate with George about Alfred's care with any regularity; the lack of evidence that she was aware of any of Alfred's medications or hospitalizations; and her failure to consult with any medical or service provider for Alfred when she was in Mississippi. The court noted Ann had never complied with the court order to file a care plan, and that although Alfred was receiving psychotropic medications for dementia, no one had received the requisite court approval for this treatment.

The court further explained it could not find on the record before it that Ann made active efforts to have Alfred returned to California, despite her awareness that legal avenues were available to her. Moreover, the court indicated that even if Ann had determined that obtaining Alfred's return to California would have been detrimental to him, she "still could have taken actions consistent with her role as Conservator. She could have had regular telephonic conferences with the Conservatee's doctor, daily care provider, visiting nurse, and speech and language therapist. She could have reviewed the medications he was taking and obtained the Conservatee's medical records. She also could have attempted regular telephonic reports from [George] or secured a court order for the same given that [George] had appeared before this court and submitted to its jurisdiction. Finally [Ann] could have hired her own care manager to make regular checks on the Conservatee. [¶] Based on [Ann's] complete failure to act as Conservator for the Conservatee, the court finds that her removal is in the best interests of the Conservatee and that she has consistently failed to perform her duties during the 33 months that she held that office." (Boldface omitted.)

The court additionally considered the request that it return Alfred to Mississippi. After discussing statutory principles regarding a conservatee's residence, the court concluded the evidence supported a finding that Alfred could live in a less restrictive environment than a skilled nursing facility. The court further found Ann, in her inaction

and acquiescence, allowed George's home in Mississippi to become Alfred's residence, and that this was a less restrictive alternative than an assisted living facility. The court thus concluded: "[Ann] did not meet her burden of establishing by a preponderance of the evidence that moving the Conservatee from Mississippi was appropriate. (Conversely, to the extent [George] was required to prove that a move to Mississippi was in the Conservatee's best [interests], he has done so.)" The court acknowledged George was negligent in his care of Alfred on the day Ann found Alfred alone. But the court ultimately concluded the evidence was insufficient to warrant removing Alfred from his residence in Mississippi, and that this was the least restrictive environment for him. The court ordered Matejic to facilitate Alfred's return to Mississippi, and the filing of a conservatorship equivalent in Mississippi.

Ann appealed the court's order.[6]

DISCUSSION

I. The Probate Court Did Not Abuse Its Discretion in Removing Ann as Conservator of Alfred's Person

Under Probate Code section 2650, a conservator may be removed for several reasons, including "[c]ontinued failure to perform duties or incapacity to perform duties suitably," (§ 2650, subd. (c)), and "[i]n any other case in which the court in its discretion determines that removal is in the best interests of the . . . conservatee." (§ 2650, subd. (i).)[7]

"Where a trial court has discretion to decide an issue, it will generally be reversed on appeal only where it clearly appears a prejudicial abuse of discretion in fact occurred." (*Conservatorship of Scharles* (1991) 233 Cal.App.3d 1334, 1340.) We will not find an

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[6] As Ann acknowledges, her notice of appeal referenced the court's unsigned July 11, 2011 minute order reflecting the court's ruling, rather than the formal order signed and filed on July 13, 2011. We liberally construe Ann's notice of appeal, and treat the appeal as filed from the July 13 order. (*In re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900, 906; Cal. Rules of Court, rules 8.100(a)(2), 8.104(d)(2) & (e).)

[7] All further statutory references are to the Probate Code unless otherwise noted.

abuse of discretion unless "under all the evidence, viewed most favorably in support of the trial court's action, no judge could have reasonably reached the challenged result. [Citation.] '[A]s long as there exists "a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not be . . . set aside. . . ." ' [Citation.] More specifically, a trial court's exercise of discretion will not be disturbed unless the record establishes it exceeded the bounds of reason or contravened the uncontradicted evidence [citation], failed to follow proper procedure in reaching its decision [citation], or applied the wrong legal standard to the determination." (*Ibid.*; *Estate of Howard* (1955) 133 Cal.App.2d 535, 538 [removal of guardian for reasons specified in the Probate Code rests within broad discretion of the court].)

" 'The burden is on the complaining party to establish abuse of discretion, and the showing on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion. [Citation.]' [Citation.]" (*Conservatorship of Ben C.* (2006) 137 Cal.App.4th 689, 697.)

The probate court's decision to remove Ann as conservator of Alfred's person was well within the bounds of reason. The evidence established that between 2008 and 2011, Ann did almost nothing in her role as conservator. Ann never filed a care plan as the court ordered, and indeed, it seemed she had no plan for Alfred's care. (See § 2352.5, subd. (c) [requiring conservator to file determination of appropriate level of care for conservatee with court within 60 days of appointment].) She took no legal steps to have Alfred returned to California. Although she later indicated one problem was her lack of personal funds to pay for legal counsel in Mississippi, she did not attempt to have money provided from Alfred's estate for this purpose. She received legal advice from Mississippi counsel, but never took any action in the Mississippi courts to have her conservatorship powers enforced there.

As conservator, Ann was responsible for the "care, custody, and control of" Alfred. (§ 2351, subd. (a).) Yet, she had minimal contact with Alfred. She managed to see him only once each year. Even though she had exclusive powers to consent to medical treatment for him (§ 2355), she was almost completely unaware of the medical

treatment he was receiving in Mississippi. She did not attempt to contact Alfred's treating physician in Mississippi, or any other medical professional providing care to Alfred. She went to George's house only once before April 2011, and was therefore largely uninformed about Alfred's living arrangements or the level of care he was receiving. (See § 2352.5, subds. (b), (d) [conservator is to evaluate conservatee's placement and the appropriate level of care needed].) Even if the probate court accepted Ann's testimony that she attempted to telephone Alfred but could not reach him, and tried contacting Mississippi's adult protective services agency, but never got a response, the court did not abuse its discretion in rejecting any suggestion that these unsuccessful efforts were sufficient. If Ann was being thwarted in carrying out her role as conservator, it was her responsibility to take legal measures available to her that would allow her to fulfill her duties.

The evidence clearly supported a finding that Ann failed to carry out her duties to exercise care, custody, and control of Alfred during the three years she served as conservator. The probate court did not abuse its discretion in removing Ann as conservator of Alfred's person. (*Guardianship of Howard* (1933) 218 Cal. 607, 610 [court did not abuse its discretion in finding continued failure to perform duties under Probate Code former section 1580 where guardian left ward without the care of anyone legally authorized to supervise him for seven months]; *Guardianship of Whittaker* (1937) 19 Cal.App.2d 373, 375.)[8]

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[8] Ann is not entirely correct in her assertion that the issue of "continued failure to perform duties" is one of first impression under California law. Conservatorship is a relatively recent statutory creation; it first became available in 1957. Prior to that time, the law of guardianship covered "incompetent" adults as well as minors. (14 Witkin, Summary of Cal. Law (10th ed. 2005) Wills and Probate, § 901, p. 998.) Under Probate Code former section 1580, and other related former statutes such as Civil Code former section 253, guardians could be removed for "continued failure to perform duties." There are cases applying these former statutes, including the ones we cite above, which we continue to find relevant. (See also *Guardianship of the Swifts* (1874) 47 Cal. 629, 630; *Guardianship of Sherman* (1940) 42 Cal.App.2d 251, 253; *In re Tilton* (1911) 15 Cal.App. 244, 249 [Civ. Code, former § 253].)

II. The Probate Court Did Not Err in Its Ruling on Alfred's Residence

On appeal, Ann contends the probate court did not have the legal authority to order that Alfred be returned to Mississippi; the court improperly considered concepts set forth in sections 2352 and 2352.5 in making its decision; and the court erred in concluding George's home in Mississippi had become Alfred's residence. We find no merit in her contentions.[9]

A. Relevant Statutory Principles

We begin our analysis with several relevant principles in the Probate Code's conservatorship provisions. Section 1800 indicates that through the conservatorship provisions, the Legislature intended to, among other things, "[p]rovide that the health and psychosocial needs of the proposed conservatee are met," "[p]rovide that community-based services are used to the greatest extent in order to allow the conservatee to remain as independent and in the least restrictive setting as possible," and to "[p]rovide that the periodic review of the conservatorship by the court investigator shall consider the best interests of the conservatee." (§ 1800, subds. (c)-(e).) Under section 1850, the court is required to conduct periodic reviews of the conservatorship. In addition to mandatory reviews at six months and one year after the conservatorship is established, the court may also, on its own motion, or upon request by any interested person, "take appropriate

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[9] George contends Ann's arguments regarding the court order authorizing Alfred's return to Mississippi are "essentially moot" because Alfred's condition has deteriorated, he is currently in hospice care and, as a result, George acknowledges he should not be removed from the board and care facility. We cannot agree that these circumstances render the issue moot on appeal. There is no information in the record regarding Alfred's current condition. We assume there is at least a possibility he may recover sufficiently to return to Mississippi. While George asserts he is no longer seeking to have Alfred moved back to Mississippi, it is not clear that this representation has been made in any form except as a statement in George's appellate brief, or that this would still be George's position if Alfred's health improves or stabilizes. (*Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 144 [despite mootness court would review issue likely to recur between the parties].)

action" including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing. (§ 1850, subd. (b).) Under section 2102, a "conservator is subject to the regulation and control of the court in the performance of the duties of the office."

With respect to the residence of a conservatee, the conservatorship provisions attempt to ensure that the conservatee will remain in the least restrictive living situation possible. Once appointed, the conservator is required to determine the appropriate level of care for the conservatee, including "an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence." (§ 2352.5, subd. (b)(1).) Under section 2352.5, subdivision (a), it is presumed that the "personal residence" of the conservatee at the time of commencement of conservatorship proceedings is the least restrictive appropriate residence.[10]

If the conservatee is not living at his or her personal residence, the conservator's determination under section 2352.5, subdivision (b) must "include a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions" on returning the conservatee to the personal residence in the "foreseeable future." (§ 2352.5, subd. (b)(2).) The conservator's determination must be in writing, signed under penalty of perjury, and submitted to the court within 60 days of the conservator's appointment. (§ 2352.5, subd. (c).) The conservator also has an ongoing duty to evaluate the conservatee's placement in the event of a material change of

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10 Under California Rules of Court, rule 7.1063(b): "(1) The 'conservatee's personal residence' . . . is the residence the conservatee understands or believes, or reasonably appears to understand or believe, to be his or her permanent residence on the date the first petition for appointment of a conservator was filed in the proceeding, whether or not the conservatee is living in that residence on that date. A residential care facility, including a board and care, intermediate care, skilled nursing, or secured perimeter facility, may be the conservatee's personal residence under this rule. [¶] (2) If the conservatee cannot form or communicate an understanding or belief concerning his or her permanent residence on the date the first petition for appointment of a conservator was filed in the proceeding, his or her personal residence under this rule is the residence he or she last previously understood or believed, or appeared to understand or believe, to be his or her permanent residence."

circumstances affecting the conservatee's needs for placement and care. (§ 2352.5, subd. (d).) In "any hearing to determine if removal of the conservatee from his or her personal residence is appropriate," the presumption that the personal residence is the least restrictive appropriate residence "may be overcome by a preponderance of the evidence." (§ 2352.5, subd. (a).)

The conservator may establish the conservatee's residence in California without court permission. However, she must "select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee." (§ 2352, subd. (b).) If the conservator changes the conservatee's residence, she is required to notify the court and designated persons within 30 days of the date of the change, and must also include a declaration indicating the change of residence is consistent with the least restrictive appropriate residence and best interests standard set forth in section 2352, subdivision (b). (§ 2352, subd. (e)(1), (2).) If the conservator intends to move the conservatee from his or her personal residence, advance notice to the court and designated persons is required. (§ 2352, subd. (e)(3).)

The conservator may also establish the conservatee's residence outside of California, but only with court permission. (§ 2352, subd. (c).) An order allowing the conservator to establish the conservatee's residence out of state must "require the . . . conservator either to return the . . . conservatee to this state, or to cause a . . . conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the . . . conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order." (§ 2352, subd. (d).)

B. The Probate Court Had the Authority to Consider Where Alfred Should Reside and to Review Ann's Placement of Alfred in California

We reject Ann's assertion that as conservator, only she could decide what the least restrictive appropriate residence was for Alfred, and, because she was not seeking to move him out of state, her determination of his residence was beyond challenge or probate court review. Under both the provisions regarding the court's periodic review of

conservatorships (§ 1850, subd. (b)), and the general power afforded the court by section 2102, the court had the authority to review the parties' opposing contentions about Alfred's residence. This is particularly true in light of the court's determination that Ann failed to perform her duties as conservator. Indeed, prior to the July 2011 decision, the probate court had suspended Ann's powers as conservator and temporarily appointed Matejic in the role. Matejic's suggestion to the court was that Alfred be returned to Mississippi. Pursuant to section 2352, subdivisions (b) and (c), the court properly considered this recommendation to fix Alfred's residence out of state.

It was more than appropriate for the court to assess whether Alfred's most recent living situation was in his best interests. Ann had moved Alfred without providing any pre- or post-move notice; an interested party, George, objected and asserted the move was not in Alfred's best interests; the move was from a family home to a board and care facility; Alfred's counsel disagreed with the move; and the temporary conservator of Alfred's person recommended that he be allowed to live in George's home in Mississippi. The probate court had the authority to consider the question of where Alfred should live, and the least restrictive appropriate option available to him. (*Guardianship of Reynolds* (1943) 60 Cal.App.2d 669, 679 [jurisdiction of the probate court in guardianship is "broad, comprehensive and plenary," continues throughout the life of the guardianship and "may be invoked whenever the circumstances presented make necessary a modification of the original decree"].)

C. The Probate Court Properly Applied the Relevant Statutory Principles

The probate court properly applied the priorities expressed in the statute as to a conservatee's residence. Specifically, the court appropriately considered what would be Alfred's least restrictive appropriate residence. Under section 2352, subdivision (b), this is what the conservator is supposed to seek in choosing the conservatee's residence, and this standard is consistent with the Legislature's intent set forth in section 1800, subdivision (d).

Ann asserts the probate court erred in considering what Alfred's "personal residence" was. However, it does not appear that the court reached any conclusion as to Alfred's "personal residence." Instead, the court's ultimate conclusion described the least restrictive alternative and Alfred's best interests. The court did *not* conclude George's home in Mississippi was, or ever had been, Alfred's "personal residence."

We disagree with Ann's suggestion that because she never sought court permission for Alfred to live in Mississippi under section 2352, subdivision (c), the court was required to ignore the reality that Alfred had actually lived in Mississippi for the past three years as it considered what the least restrictive appropriate residence would be for him moving forward. We note the evidence supported the court's finding that Ann acquiesced in George's home in Mississippi becoming Alfred's residence.[11] But, irrespective of whether Alfred's "legal residence" was California or Mississippi between February 2008 and April 2011, the issue before the court in July 2011 was the least restrictive appropriate residence available and necessary to meet Alfred's needs and that was in his best interests, and Matejic's indication that allowing Alfred to reside in Mississippi was in his best interests. The court properly and reasonably considered the evidence admitted on this issue and made a decision well within the bounds of its legal discretion.

We need not necessarily consider or agree with every step of the probate court's analysis. We review a lower court's ruling, not its reasons. (*Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1201.) The evidence supported the probate court's conclusion that George's home in Mississippi provided the least restrictive appropriate residence available to him, and returning him there would be in his best interests. The court did not abuse its discretion in ordering Matejic to facilitate Alfred's return to Mississippi.

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11 Under California Rules of Court, rule 7.1063(c), the conservator must provide notice of a change of the conservatee's residence within 30 days of the date of the change. Rule 7.1063(d) defines the "conservatee's residence" as "the conservatee's residence at any time after appointment of a conservator."

We further disagree that the probate court's analysis was tainted by an improper allocation of the burden of proof. The probate court suggested that whether Ann or George bore the burden of proof on the least restrictive appropriate residence question, it would reach the same conclusion. The evidence was largely undisputed that while Alfred would receive appropriate care at both the residential care facility in California and at George's home in Mississippi, George's home, where Alfred could live among family, was a less restrictive setting. Even if the court erred in its allocation of the burden of proof, Ann has failed to articulate any possible prejudice given the state of the evidence. (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 738 [error in allocating burden of proof must be prejudicial in order to constitute reversible error].)

III. No Error in Connection With the Evidence Code Section 730 Report

Finally, the probate court did not err by failing to consider the report issued pursuant to Evidence Code section 730 in connection with the July 2011 ruling. The record does not establish the court did not consider the report. When the expert first issued the report in 2009, the court told the parties it had not had a chance to review the report at the first court hearing that followed. But the report was subsequently admitted as an exhibit at the June 2011 evidentiary hearing. The court noted in its July 2011 written ruling that it reviewed "extensive documents . . . admitted into evidence." It is the probate court's role to examine the evidence, and we presume the court performed its duty. (§ 664; *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1324.)

Further, even if the court did not review the expert report in connection with the July 2011 ruling, we would find no prejudicial error. The court ordered the evaluation in 2009 to provide an expert psychological opinion on whether Alfred was competent. The court was concerned about Alfred's capacity to retain counsel, and whether a conservator of his estate was necessary. The resulting report reflected a focus on these issues. The court did not seek an expert opinion in connection with the question of whether Ann should be removed as conservator of Alfred's person under section 2650, or what the least restrictive appropriate residence would be for Alfred in 2011.

We have reviewed the report in question and note that the expert offered opinions beyond what the court requested. For example, the expert opined George had exerted "undue influence" over Alfred, as that term is defined by Civil Code section 1575. He also opined on Ann's performance and suitability as conservator of Alfred's person. However, the expert was a forensic psychiatrist. It is not clear he was qualified to offer opinions on these issues, which, in any event, were primarily determinations for the court to make. In addition, the report was issued in 2009, almost two full years before the court's July 2011 decision. Thus, for several reasons, the report had limited, if any, value with respect to the issues before the court in July 2011. Even if the court failed to review it, Ann has shown no prejudicial error.

DISPOSITION

The probate court order is affirmed. Respondent shall recover his costs on appeal.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.