Filed 1/24/13 Conservatorship of Wagner CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 CLAY WAGNER.	B229125
LES WAGNER et al., Petitioners and Appellants, v. DRU HARRIS, as Conservator, etc.; Objector; CLAY WAGNER, Respondent.	(Los Angeles County Super. Ct. No. BP120000)

APPEAL from an order of the Superior Court of Los Angeles County. Reva G. Goetz, Judge. Affirmed.

Law Offices of Pardeep Joshi and Pardeep Joshi for Petitioners and Appellants.

Orren & Orren and Tyna Thall Orren for Respondent.

Childhood surgery to remove a brain tumor left respondent Clay Wagner (Clay), 45 years old at the time of the relevant proceedings, with memory problems and a seizure disorder. For all of his adult life, various family members have acted as Clay's conservator.[1] Dru Harris is Clay's sister and current conservator. Appellants James Wagner and Les Wagner are Clay's father and sister, respectively. Appellants challenge the September 28, 2010 order denying their petition to remove Dru as Clay's conservator and have themselves appointed in her place. Appellants contend: (1) notice of trial on their petitions was insufficient; (2) it was an abuse of discretion to deny their request for a continuance of the trial; (3) they were denied due process by certain ex parte communications; (4) evidence of Clay's wishes was inadmissible; (5) the denial of their petitions was an abuse of discretion; and (6) the trial court's failure to issue a written statement of decision was reversible error. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Proceedings in Ventura and Nevada Counties

Clay was 12 years old in 1977 when he had the surgery that resulted in his deficits. Conservatorship proceedings began in Ventura County in 1983 when that court appointed Clay's mother Mary and sisters Valerie and Dale coconservators of Clay's person and estate pursuant to the Probate Code.[2] At the time, Clay's sisters Dru and Les lived together in Los Angeles. Valerie and Dale became coconservators after Mary died in 1985. In 1988, Clay moved with Valerie to Truckee in Nevada County, California and in 1995, the probate matter was transferred from Ventura to Nevada County.

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[1] To avoid confusion, we refer to Clay, his father (appellant James) and four sisters (Valerie, Dale, appellant Les and Dru) by their first names. Valerie and Clay's only brother (Mark) are now deceased.

[2] See *People v. Karriker* (2007) 149 Cal.App.4th 763, 774, for an explanation of the difference between a Probate Code section 1800 et seq. conservatorship and a Welfare and Institutions Code section 5000 et seq. conservatorship.

In 1999, Valerie and Dale resigned and Dru, who by then lived in Venice, California with her husband, Robert Harris, was appointed Clay's temporary conservator. Clay remained in Truckee with caregivers for nine years until September 2008, when Dru moved Clay to Venice to live with her and Harris. Harris became Clay's In-home Social Services (IHSS) worker.[3]

In December 2008, James petitioned the Nevada County court to have Dru removed as Clay's conservator. In January 2009, appellants jointly petitioned to be appointed Clay's successor coconservators. An attorney from the probate volunteer panel (PVP) was appointed to represent Clay and private professional fiduciary Carol Desepio was appointed to supervise visits between Clay and appellants. In April 2009, psychologist Stephen Read, an evaluator appointed by the court under Evidence Code section 730, submitted a report. On June 2, 2009, the court made certain visitation orders for appellants. Appellants' petitions were still unresolved in November 2009, when the matter was transferred from Nevada County to Los Angeles County, where Clay was then living with Dru and Harris.

B. Los Angeles County Proceedings

Appellants' petitions came on for hearing in the Los Angeles County court on February 19, 2010. PVP attorney Jeffrey Marvan was appointed to represent Clay. For the continued hearing on March 2, Marvan reported that, based on his review of Dr. Read's report and interviews with Clay, James, Les, Dru, Wilkerson, Desepio and various people in Truckee, Marvan had concluded that it was difficult to ascertain what Clay wanted because Clay liked to please people, was easily influenced and was intimidated by authority figures. Following the hearing that day, the court made a new visitation order. On April 29, Dr. Aida Saldivar was appointed as an Evidence Code section 730

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3 IHSS (Welf. & Inst. Code, § 12300 et seq.) is a state and federally funded program through which caregivers are compensated for providing services that allow disabled persons to remain safely in their own homes. The caregivers are often family members. (See, e.g., *Basden v. Wagner* (2010) 181 Cal.App.4th 929, 931 [mother was IHHS worker for two adult children].)

evaluator charged with assessing, among other things, Clay's susceptibility to undue influence, his relationship with Dru and Harris and their ability to unduly influence Clay, and Clay's relationship with appellants.[4] Hearing on the petitions was continued to May 25.

1. May 25, 2010

Dru and Dale testified at the May 25 hearing regarding an order to show cause (OSC) for contempt brought by appellants against Dru.[5] Lynne Brady, Clay's IHHS worker from Truckee, also testified and it was agreed that her testimony could be considered for purposes of the petitions as well as the OSC. At the conclusion of the contempt proceedings, the court addressed the petitions. PVP attorney Marvan recommended a continuance so that he could investigate various short-term placement options for Clay for the purpose of removing him from all potential sources of undue influence and in that way ascertain what Clay truly wanted for his future. For the continued hearing, Marvan proposed having "a list of recommendations as to possible placements at which point we'd facilitate Clay's active participation in choosing the specific placement." Although there had previously been concerns that the stress of coming to court might cause Clay to have a seizure, Marvan stated that, based on discussions with Dr. Saldivar, he now believed Clay could safely be brought to court.

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[4] Dr. Saldivar never completed her evaluation of Clay. In her report for the May 25 hearing, Dr. Saldivar requested until June 29 to review more of Clay's medical records, interview nonfamily members and interpret the neurological testing already done. At the hearing, the court expressed doubt that "pursuing the report with Dr. Saldivar is going to give us what we need so much. Maybe that money would be better spent -- we've already spent money toward Dr. Saldivar. I don't think it was the wrong decision. Right now I don't think it's the right direction to move in." Appellants' counsel stated that appellants did not have the funds for a further report from Dr. Saldivar. The court directed Marvan to tell Dr. Saldivar that her further participation in the case was "deferred."

[5] The record includes a reporter's transcript of that day's afternoon hearing. It appears that there was also a morning hearing, but there is no reporter's transcript of it in the record.

Marvan was ordered to look into short-term placement options and the matter was continued to July 13.

2. July 13, 2010

Several witnesses testified at the July 13 hearing in support of appellants' position that Clay's best interest would be served by removing Dru and appointing appellants, who would return Clay to Truckee. James Hoyt testified that he worked with Clay for five years at the Safeway in Truckee.[6] Clay was well loved by the employees and customers. Hoyt would see Clay around town, but he did not socialize with Clay outside of work. Robert E. Kleidosty, Jr., was the store manager at the Safeway where Clay worked. Clay was an excellent employee and Kleidosty would hire him back if Clay returned to Truckee. Like Hoyt, Kleidosty did not socialize with Clay outside of work. Deborah Franklin also worked with Clay at the Safeway in Truckee. She would also run into him at church and at town functions. Clay would have no trouble finding a place to live if he returned to Truckee because Franklin would let him live at her home.

In support of Dru's opposition to the petitions, Brady, Clay's former IHHS worker, testified that Clay often became upset after interactions with appellants, and whenever anything upset Clay, he called Dru to calm himself down. Dru's friend, Jennifer Irwin, testified that Clay seemed happy living with Dru and Harris. Clay's sister and former coconservator, Dale, testified that she is a licensed marriage and family therapist living in Camarillo. She became Clay's conservator in 1983 because James did not want to do it. Appellants had not been involved in Clay's life since Clay was a child. Clay told Dale that he gets upset around appellants. Dale sees Clay about once a month and feels very close to him and to Dru, whom she considers her best friend. She has never seen Clay happier than since he has been living with Dru. Clay told Dale "he loves

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[6] In addition to the substantive issues relevant to the petitions, the court also heard testimony from Les, James, Dru and Harris regarding the OSC for contempt of the visitation orders.

his job, he loves going to the beach, he loves going to church, he loves going bowling. The fact that [Dru] care[s] for him, make[s] sure that he gets his medication taken on time and that [Harris] takes him fishing and [has] friends that involve him in activities. He has never been happier."

Probate investigator Carla Cavalier-Bowdin testified that Clay consistently stated that he did not want to go back to Truckee. Clay wanted visits with Les, but did not want to be alone with James. Bowdin believed that if Clay were kept away from both Les and Dru for a significant amount of time, he would be able to express his own desires. PVP attorney Marvan agreed that Clay's temporary placement in a neutral setting was essential to determine his conservator going forward.

In response to Dru's request that the court speak to Clay privately, in chambers, the court said that it would do so only after Clay spent some time in a neutral setting. The parties agreed, and the court ordered, Clay to be placed in Franklin's home in Truckee from approximately July 17 through August 3. Clay was to have no contact with any family members during that time. On August 3, Clay was to return from Truckee to Los Angeles and go directly to court to be interviewed by the court.

3. August 3, 2010

In the two weeks prior to the August 3 hearing, Clay had no contact with any of his family. At the beginning of the hearing, the court met in chambers with Clay and his counsel; probate investigator Bowdin was also present. The parties and their counsel were not present. Immediately afterwards, the court reported on the content of the meeting to the parties. The court explained that Clay said he wanted to continue living with Dru and her husband.

The court continued the matter to September 28. Pending that hearing, it ordered weekly visits for James and Les, on different days. To accommodate Les's plans to spend a month in Spain, the court ordered visits for Les on the ensuing Friday evening and Sunday afternoon; and regular weekly visits upon her return from Spain.

4. September 28, 2010

For the hearing on September 28, Dale submitted a declaration in which she stated that Clay is irritable and upset when he returns from visits with appellants. In other declarations, counsel for appellants and Les accused PVP attorney Marvan of being biased against appellants. James's declaration stated that Clay told him he does not like living in Venice, does not "feel comfortable around the blacks and Mexicans, and that he has no friends." Marvan reported that while he was in Truckee, Clay left a voice mail message for Marvan stating that he (Clay) wanted to move back to the mountains. On September 14, Clay called Marvan and said he did not want to see his father anymore. Marvan received an incomplete substitution of attorney form, which appeared to be signed by Clay. Marvan asked the court to speak with Clay in chambers regarding Clay's current desires on visitation and substitution of attorney.

Clay appeared with Marvan at the hearing. In response to the court's inquiry, Clay stated that he would be more comfortable talking to the court in a separate room. Without objection from the parties, the court went into chambers with Clay, Marvan, appellants' attorney and the Probate Investigator Frank Cowan (Investigator Bowin was not available); Dru, who was representing herself, was not represented in the meeting. Clay said he did not want to change attorneys. Given a choice between Truckee and Venice, he wanted to live in Venice. Clay liked living in Southern California because he liked doing things with Dru and Harris. Clay preferred Dru over Les as his conservator; he did not want Les to be his conservator, or his coconservator. The person Clay most enjoyed spending time with was Harris. Clay wanted to visit with Les and his father. Clay reluctantly agreed that James could join the meeting in chambers on the condition that there was someone to protect Clay if James "gets up and wants to swing a fist or anything like that." In James's presence, the court asked Clay once again whether he wanted to live in Truckee or Venice near the beach. Clay responded, "By the beach." When James asked Clay whether he wanted to go up to Truckee, Clay responded, "I like living down here." Clay repeated, "Just to answer the question. I like living down here."

James and Clay engaged in the following colloquy: "[JAMES]: . . . Who would you rather be with? [¶] [CLAY]: I like being with Dru. I like being with Dru. That was your statement to your question which you answered, and I gave you the answer to your statement. [¶] . . . [¶] [JAMES]: My question is would you rather be with Les or Dru the rest of your life? [¶] [CLAY]: Dru. [¶] [JAMES]: You rather be with Dru? [¶] [CLAY]: Dru. [¶] [JAMES]: Okay. Fine."

Back in open court, the court made the following order orally on the record: "I think there is more than sufficient evidence for the court to make the appropriate findings and make this conservatorship permanent. If there was any influence that was exerted on Clay today, it was by [James]. Nobody else exerted any pressure on him, and that would be not only in chambers but also in the courtroom. So I'm wholly satisfied that what Clay has expressed are his true desires and I don't believe he's being influenced by anybody to say what he said in court. If anything, [James] was offering him a significant sum of money to move back to Truckee. He did that in chambers, and he repeated it. It wasn't once. It wasn't just the one time that he made that comment, and there were other things he was offering as well. [¶] Clay became agitated and clearly was becoming visibly upset when he said 'I want to stay with Dru' and I think it's time for us to make Clay feel safe, make Clay feel comfortable, that that's not going to change at this point and I want to continue the visitation." The court added, "I just think that we need to make this conservatorship permanent and not have the specter of a possibility of change looming ahead." The court denied without prejudice appellants' petitions to have Dru removed and themselves appointed Clay's coconservators. It granted Dru's petition to modify visitation. Minute orders reflecting the court's orders were filed that day. Appellants timely appealed.

DISCUSSION

A. Notice of Trial Was Sufficient

Appellants contend they did not receive the statutorily mandated 15 days notice of the September 28 trial on the petitions. They argue that the matter was set for a status hearing on September 28, not a trial. The record is to the contrary.

The petitions for removal and appointment of appellants as coconservators came on for hearing on August 3. The court initially expressed optimism that it could resolve everything that day. After discussing a new visitation schedule, the court stated that it would put the matter over until September 28 "just for review to see how the visits are going and that will give us time for [Les] to get back . . . and get some of her visits in, and I'll find out how it's going. And if we need to make any changes, tweak it some way and make it more workable, we can talk about it then." The court later stated that appellants' petitions were continued to September 28. On September 1, appellants' counsel signed an Order After Hearing, drafted by PVP attorney Marvan, which states that on August 3 "the Petitions for Removal of Conservator and for Appointment of Successor Conservator are continued to September 28, 2010 . . . ."[7] At the hearing on September 28, the court stated, "We're here for trial. What are we going to do?" Appellants' counsel did not object to the matter proceeding to trial. The trial court made several similar statements throughout the hearing all without objection from appellants.

This record shows that appellants had notice that their petitions were going to be heard on September 28. Even assuming that on August 3 appellants believed that September 28 would be nothing more than a status conference to review how visitations were going, they did not object to a written order that stated their petitions would be heard on September 28, and they did not object on September 28 to the matter proceeding as a hearing on those petitions. As such, they waived the issue on appeal. (See *In re Gonzales* (1966) 246 Cal.App.2d 296, 302 [presence and participation in trial constitutes a waiver of written notice of the time and place of trial].)

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[7] The order was not signed by the court or filed until October 26.

B. Denial of the Request to Continue the September 28 Hearing Was Not an Abuse of Discretion

Appellants contend the trial court's denial of their request to continue the September 28 hearing so that Les could be present was an abuse of discretion. We disagree.

Les was present at the hearing on August 3, 2010, when the court stated that it had planned to set a review hearing in 30 days, but would instead set it in 60 days, on October 6, to accommodate Les's planned trip to Spain. In response to James's request for an earlier hearing date to accommodate his own travel plans, the court selected September 28. Appellants did not object to that date. Nor did appellants object when the court said that the hearing on their petitions was continued to September 28, or to the written order signed by appellants' counsel on September 1. James and appellants' counsel appeared at the hearing on September 28; Les did not. Before the in-chambers interview with Clay, appellants did not request a continuance. After speaking to Clay in chambers, the parties reassembled in the courtroom. Only then, in response to the trial court's inquiry as to whether appellants had any more evidence to present, appellants' counsel stated, "We did want to have Les Wagner present, and she is not here. I had a few questions for [the probate investigator]." Appellants requested at the hearing a 45- or 60-day continuance before the court made a permanent order. The trial court denied the request for continuance, observing that at the last hearing (at which Les was present), the court stated its intention to resolve the issue.

Under these circumstances, the trial court did not abuse its discretion in denying the request for a continuance. Appellants had multiple opportunities before the hearing to request a continuance on the grounds that Les would not be available. By not doing so, appellants waived Les's appearance at the hearing.

C. The Court's Ex Parte Communications Did Not Deny Appellants Due Process

Appellants contend they were denied due process as a result of three ex parte communications with the court: (1) on July 13, 2010, PVP attorney Marvan filed a "Confidential" report that was not served on appellants; (2) on August 3, 2010, the trial court interviewed Clay in chambers, outside the presence of the parties and their attorneys, but in the presence of Marvan and Probate Investigator Bowin; and (3) on September 28, 2010, the court spoke briefly to Clay in chambers, outside the presence of the parties and their attorneys, but in the presence of the Marvan and Probate Investigator Cowan. We find no error.

We begin with the standard of review. In conservatorship proceedings, ex parte communications are governed by Probate Code section 1051, which generally precludes such communications. Whether the trial court properly applied section 1051 to the facts of this case is a mixed question of law and fact. Because resolution of the issue requires a "critical consideration, in a factual context, of legal principles and their underlying values, the question is predominantly legal and its determination is reviewed independently." (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.)

In proceedings under the Probate Code, California Rules of Court, rule 7.10(a)(6) defines an "[e]x parte communication" as a "communication between any party, attorney, or person in a proceeding under the Probate Code . . . and the court outside the presence of all parties and attorneys, including written communications sent to the court without copies having been provided to other interested persons."[8] Probate Code section 1051's exclusionary rule has two exceptions. The first exception is by stipulation. (§ 1051, subd. (a); rule 7.10(b)(1).) The second exception is set forth in subdivision (b) of section 1051, which allows the court to "refer to the court investigator or take other appropriate action in response to an ex parte communication regarding" a person who is the subject of a conservatorship. Rule 7.10(c)(2) explains that the court may consider ex

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8 All future undesignated rule references are to the California Rules of Court.

parte communication about a conservator's performance of his or her duties. "Any action by the court pursuant to [section 1051, subdivision (b)] shall be consistent with due process and the requirements of this code. The court shall disclose the ex parte communication to all parties and counsel. The court may, for good cause, dispense with the disclosure if necessary to protect the . . . conservatee from harm." (§ 1051, subd. (b); rule 7.10(c)(3) [court must fully disclose ex parte communication and any response made by the court to all parties and their attorneys except for good cause].)

Here, for the July 13, 2010 hearing, Marvan filed a letter from the Westside Regional Center attached to a caption sheet marked "Confidential." The letter stated that the Hope Adult Care residential facility in Hawthorne, California had accepted Clay for the period beginning July 13 and ending October 13, 2010, and it described the services that would be available to Clay at this facility. Because the letter was not served on the parties, it was an ex parte communication. However, the fact that Clay had been accepted into a residential facility for a 60- to 90-day period and whether that or some other "neutral setting" was better to accomplish the goal of removing Clay from all possible sources of undue influence, was the focus of much of the July 13 hearing. Thus, the court complied with the section 1051, subdivision (b) requirement that it "disclose the ex parte communication to all parties and counsel."

We also find no merit in appellants challenge to the court's interviews with Clay on August 3, 2010, and September 28 – also an ex parte communication. As demonstrated by the following, on July 13 appellants stipulated to this procedure: "THE COURT: Could we arrange for [Clay] to go to Truckee for a couple weeks? [¶] . . . [¶] . . . My order is that no family members have any contact with him. Mr. Marvan, what would you think about that? [¶] [MARVAN]: That is perfectly fine with me. The only coordination issue would be how he would come to court from there. [¶] THE COURT: Maybe Miss Franklin [(the person with whom Clay was going to stay while in Truckee)] would be willing to -- a Greyhound bus. [¶] [LES]: She would be more than willing. [¶] [MARVAN]: That is fine. I would ask -- I don't know how we are going to get independent other than just having Clay come in and testify. [¶] THE

COURT: I am okay with that. That is what I would do, is I would meet with [Marvan and Clay] in chambers, if that is agreeable with everybody else. [James]? [¶] [JAMES]: Will my attorney be with you? [¶] THE COURT: No. It will be me and Mr. Marvan. Is that okay with you? [¶] [APPELLANTS' COUNSEL]: No problem, Your Honor. [¶] THE COURT: [Les]? [¶] [LES]: Yes, that is fine. [¶] THE COURT: [Appellants' counsel]? [¶] [APPELLANTS' COUNSEL]: Yes, Your Honor. [¶] THE COURT: [Dru]? [¶] [DRU]: Certainly I prefer it just be you. [¶] THE COURT: . . . I would require Mr. Marvan to be part of it, and he is Clay's attorney. Any objection to that? [¶] [DRU]: No." Because appellants' stipulated to the ex parte communication on July 13, section 1051, subdivision (a) was satisfied. Moreover, immediately following that interview, the court disclosed the substance of the meeting to the parties in open court in compliance with section 1051, subdivision (b). Likewise, following its ex parte communication with Clay on September 28, the court disclosed the substance of that interview: "[T]he reason that I had a brief meeting with Clay, Mr. Cowan and Mr. Marvan before this [meeting in the presence of appellants' counsel] was just to get Clay acclimated, to introduce him to Mr. Cowan, and to get him comfortable with the environment. And then we talked a little about changes, preferences for what he likes to do and who he spends time with, and then we invited [appellants' counsel] in." This, too, satisfied section 1051, subdivision (b).

D. The Trial Court Did Not Err in Admitting Evidence of Clay's Desire for Dru to Remain His Conservator

As we understand appellants' contention, it is that the trial court erred in admitting evidence of Clay's stated preference for Dru to remain his conservator for two reasons: (1) Clay was so susceptible to undue influence as to make his stated preference irrelevant; and (2) Clay was not placed under oath before he spoke to the court in chambers. We find no merit in either contention.

1. Clay's Wishes Are Relevant

We begin with the standard of review. Determination of whether evidence is relevant is left to the "sound discretion of the trial court, and the exercise of that discretion will not be reversed absent a showing of abuse. [Citations.] That discretion is only abused where there is a clear showing the trial court exceeded the bounds of reason, all of the circumstances being considered." (*People v. DeJesus* (1995) 38 Cal.App.4th 1, 32.)

Relevant evidence is evidence having "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Only relevant evidence is admissible. (§ 350.) Except as provided by statute, all relevant evidence is admissible. (§ 351.)

The court's selection of a conservator must be guided by "what appears to be for the best interests of the proposed conservatee." (Prob. Code, § 1812, subd. (a).) It is hard to imagine how the conservatee's wishes are not a relevant consideration to the determination of his or her best interests. That this is so is implicit in several statutes. For example, section 1810 provides that, if the conservatee has nominated a conservator in a signed writing, the court "shall appoint the nominee as conservator unless the court finds that the appointment is not in the best interests of the proposed conservatee." (See *Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 403 [appointment of professional conservator was not in convervatee's best interest where there was evidence she nominated her son].) Even without a signed writing, the Probate Code makes clear that the conservatee's wishes matter. For example, section 1826, subdivision (f) directs the court-appointed investigator to determine whether the conservatee objects to the proposed conservator or prefers another person to be appointed conservator. And section 1828, subdivision (b)(2) provides that the court must consult the conservatee to determine his or her opinion concerning the appointment of the proposed conservator. Clay's susceptibility to undue influence goes to the weight of that evidence, not its admissibility.

2. Appellants Waived Any Objection That Clay Was Not Placed Under Oath

Evidence Code section 710 reads: "Every witness before testifying shall take an oath . . . except that a . . . dependent person with a substantial cognitive impairment, in the court's discretion, may be required only to promise to tell the truth." Absent evidence in the record that a witness has been sworn, we must assume that the court officer performed his or her duty and that the witness was sworn. On appeal, it is the appellant's burden to prove that the witness was not sworn. Moreover, absent a timely objection to the lack of administration of the oath, the issue is waived on appeal. (*People v. Carreon* (1984) 151 Cal.App.3d 559, 579-580.) Here, even assuming Clay was neither sworn nor did he promise to tell the truth when interviewed by the court, appellants' failure to timely object on this ground constitutes a waiver of the issue on appeal.

E. Denial of Appellants' Petitions to Remove Dru and Have Themselves Appointed Clay's Coconservators Was Not an Abuse of Discretion

Appellants contend the order that Dru continue as Clay's conservator was not supported by substantial evidence. They argue that the trial court did not give sufficient weight to the fact that Dru was twice found in contempt or Dr. Read's Evidence Code section 730 report, and did not determine whether Clay was competent to testify. We find no error.

We begin with the standard of review. In a conservatorship case, like in any other, the weight to be given to any evidence is for the trier of fact to decide. (See, e.g., *Conservatorship of McKeown* (1994) 25 Cal.App.4th 502, 509 (*McKeown*) [trier of fact may reject even uncontradicted testimony of an expert witness].) However, the ultimate selection of a conservator is in the discretion of the court, which must be guided by "what appears to be for the best interests of the proposed conservatee." (Prob. Code, § 1812, subd. (a).) Accordingly, we are ultimated guided by the abuse of discretion standard, not the substantial evidence standard urged by appellants. But under either standard, we would find no error.

First, as to the weight given to the contempt finding, Probate Code section 2655, subdivision (a) allows the court to remove a conservator upon a finding that he or she is in contempt for violating a court order, but the statute does not require the court to do so. Here, the same trial judge found Dru in contempt of two visitation orders and subsequently denied the petition to remove Dru and appoint appellants Clay's coconservators. It would be metaphysically impossible for that judge to not have reasonably considered its prior order in deciding the petitions. To the extent appellants challenge the weight the judge gave to its prior orders, such was for the trier of fact, here the trial court, to decide.

Second, as with other evidence, the weight to be given an Evidence Code section 730 evaluation is for the trier of fact to decide. (*McKeown, supra,* 25 Cal.App.4th at p. 509.) In this case, the trial court was not required to find decisive Dr. Read's opinion that Clay's expressed desires should not be credited because Clay was so easily influenced. Rather, it was simply one piece of evidence for the court to consider. The weight to be given that piece of evidence was for the court to decide.

Finally, appellants do not explain what they mean by "competent to testify." According to Penal Code section 1367, a criminal defendant "is mentally incompetent . . . if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." Nothing in the record suggests that Clay was unable to comprehend that the issue in the conservatorship proceedings was where and with whom he would live going forward. Moreover, appellants never challenged Clay's competence.

F. Appellants' Request for a Statement of Decision Was Not Adequate

Appellants contend the judgment must be reversed because the trial court did not issue a statement of decision as they requested pursuant to Code of Civil Procedure section 632. We disagree.

Except to the extent that the Probate Code provides applicable rules, the rules of practice applicable to all civil actions apply to proceedings under the Probate Code.

(Prob. Code, § 1000.) This includes Code of Civil Procedure section 632, which provides: "The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. . . . [¶] . . . [W]hen the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties." (See, e.g., *Estate of Exterstein* (1934) 2 Cal.2d 13, 15-16; see also *Estate of Fowler* (1942) 56 Cal.App.2d 451, 456.)

But absent a request that states with specificity the issues on which the party is requesting a statement of decision, the trial court has no duty to issue such a statement. For example, in *Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, the petitioner made the following written request for a statement of decision: "[Petitioner] requests a statement of decision upon each of the principal controverted issues at trial on the above-captioned proceeding. Such issues whose decisions are asked to be stated include any propositions of fact or law set forth in any of the pleadings or trial briefs in this proceeding, as well as any issues that are raised by any other means at any time through trial." (*Id*. at p. 1394, fn. 15.) The appellate court found the request did not identify with sufficient specificity the issues the petitioner wanted addressed. (*Id*. at p. 1394; see also *In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 981-982.)

Here, appellants' purported request for a statement of decision appears in paragraph 31 of appellants' counsel's declaration filed the day before the September 28 hearing. It reads: "Petitioners request this Court make its Statement of Decision under CA Code of Court Procedure Sec. 632, as to all controverted issues in this matter." This request does not have the specificity required by Code of Civil Procedure section 632. Accordingly, the trial court had no duty to issue a section 632 statement of decision.

DISPOSITION

The September 28, 2010 order is affirmed. Clay shall recover his costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.