

**FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and PADGETT, JJ.**

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August 25, 2026

In the Court of Appeals of Georgia

A26A1627. IN RE MAYNOR.

MCFADDEN, Presiding Judge.

Phyllis Moyer Maynor appeals from a probate court order dismissing her petition for termination of a guardianship. Because the petition was not supported by an affidavit as required by OCGA § 29-4-42 (b), we affirm the trial court's ruling.

1. Facts and procedural posture

In December 2022, the probate court appointed a guardian for Maynor based on clear and convincing evidence that she “lack[ed] sufficient capacity to make or communicate significant responsible decisions concerning her health or safety.” In August 2025, Maynor and her friend Grace Linda Sharpe filed a verified petition for termination of the guardianship, claiming that Maynor was no longer in need of a

guardian because “at the time she was originally appointed a guardian, she was suffering from a UTI and said infection caused her to present erratic and dementia like symptoms that she is no longer suffering from.” They further alleged in the petition that it was supported by attached letters from medical care providers and by “an affidavit as required[.]” But no affidavit was attached to the petition. A form entitled “AFFIDAVIT OF PHYSICIAN, PSYCHOLOGIST, OR LICENSED CLINICAL SOCIAL WORKER” was attached to the petition, but it was left blank and unsigned. Four purported letters of medical personnel were attached to the petition, but none of them were notarized or made under oath.

The probate court entered an order denying the petition to terminate the guardianship, citing the requirement of OCGA § 29-4-42 (b) that the petition be supported by an affidavit and finding, among other things, that no such affidavit was attached to the petition. Maynor appeals from that order.

2. OCGA § 29-4-42

Maynor enumerates that the probate court violated OCGA § 29-4-42 by dismissing the petition without a hearing. We disagree.

OCGA § 29-4-42 (a) provides that “[u]pon the petition of any interested person, including the ward, . . . and upon a proper showing that the need for a guardianship is ended, the court may terminate the guardianship and restore all personal and property rights to the ward.” Subsection (b) of that code section mandates that such a petition be supported by an affidavit of certain licensed professionals or by the affidavits of two persons who know the ward.

A petition for termination *must be supported* either by the affidavits of two persons who have knowledge of the ward, one of whom may be the petitioner, or of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, a physician assistant licensed under Chapter 34 of Title 43, a nurse practitioner or clinical nurse specialist in psychiatric/mental health licensed or registered under Chapter 26 of Title 43, a professional counselor licensed under Chapter 10A of Title 43, or a licensed clinical social worker, setting forth the supporting facts and determinations. If, after reviewing the petition *and the affidavits*, the court determines that there is no probable cause to believe that the guardianship should be terminated, the court shall dismiss the petition.

OCGA § 29-4-42 (b) (emphasis added). See also *In re Loftus*, 331 Ga. App. 329 (771 SE2d 38) (2015) (the court may order an evaluation of the ward only if “the petition *and its supporting affidavits* give rise to probable cause that the guardianship . . . should be terminated”) (emphasis added).

As recounted above, the petition in the instant case was not supported by any affidavit as required by OCGA § 29-4-42 (b). The purported letters from medical personnel did not constitute affidavits because none of them were sworn statements made under oath. See *Sambor v. Kelley*, 271 Ga. 133, 134 (1) (518 SE2d 120) (1999) (“an affidavit is a statement under oath taken before a person having authority to administer such oath”) (citation and punctuation omitted). And while the petition itself was verified, the plain language of OCGA § 24-4-42 (b) does not provide that such a petition satisfies the statute’s express affidavit requirement.

In construing any statute, we must afford the text its plain and ordinary meaning. . . . [I]f our General Assembly wished to permit multiple means of complying with the statute’s express [affidavit] requirement, [such as allowing a verified complaint to satisfy that requirement,] it knew how to do so, and we must presume its failure to do so here was a matter of considered choice. Moreover, reading the statute in this manner adheres to the longstanding tenets of statutory construction: *expressio unius est exclusio alterius* (expression of one thing implies exclusion of another) and *expressum facit cessare tacitum* (if some things are expressly mentioned, the inference is stronger that those not mentioned were intended to be excluded). Accordingly, [Maynor’s] failure to provide an affidavit demonstrating [facts and determinations supporting the petition] constituted a failure to . . . comply with OCGA § [29-4-42 (b)].

Shuler v. Akpan, 362 Ga. App. 810, 816-817 (870 SE2d 235) (2022) (citations and punctuation omitted) (construing the affidavit requirement of OCGA § 9-11-4 (f) (1)

(A) as the sole statutory method of showing due diligence, as compared to that statute's further provision that either an affidavit or a verified complaint may be used to demonstrate that a claim exists against a defendant to be served by publication).

As for Maynor's argument that the probate court should have held a hearing before dismissing her petition, no such hearing was required. Under OCGA § 24-9-42 (b), prior to any hearing, if the petition and its supporting affidavits do not show probable cause to believe that the guardianship should be terminated, "the court shall dismiss the petition." A hearing is only required if the court has not dismissed the petition because the petitioner made the initial probable cause showing and a subsequent court-ordered evaluation of the ward also demonstrated such probable cause. See OCGA § 24-9-42 (b). Here, by failing to comply with the statute's affidavit requirement, Maynor necessarily failed to make the probable cause showing that is a prerequisite for a court-ordered evaluation and a subsequent hearing. The trial court therefore did not err in dismissing her deficient petition without a hearing.

3. Remaining enumerations

Given our holding above, we need not address Maynor's additional enumerations of error.

Judgment affirmed. Watkins and Padgett, JJ., concur.