

**THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.**

**NOTICE: Motions for reconsideration must be received no later than 4:30 pm on the 10th day after the decision was issued to be deemed timely filed.
<https://www.gaappeals.gov/rules>**

October 26, 2026

In the Court of Appeals of Georgia

A26A1178. IN RE: DIXON, PROPOSED WARD.

GOBEIL, Judge.

In this case, brothers James (“Jim”) and Merritt (“Sandy”) Dixon (collectively, “Appellants”) appeal from the probate court’s final order appointing their sister, Elizabeth (“Lysa”) Dixon McCullough as the guardian and conservator for their mother, Janet Dixon (the “Ward”). On appeal, Appellants assert that the probate court abused its discretion in appointing Lysa guardian, despite a statutory preference for either Jim or Sandy. They also challenge the probate court’s admission and consideration of illegally recorded video evidence. Because the record supports the probate court’s decision in this case, we affirm.

The record here shows that the Ward, Janet Dixon, is a 95-year old woman with advanced dementia.¹ She has three adult children: Jim, Sandy, and Lysa. On June 17, 2025, Lysa filed a petition asking the probate court to appoint her as the Ward's emergency guardian and conservator. Jim objected to Lysa's petition, and he filed his own petition for permanent guardianship over the Ward. In these documents, Jim explained that the Ward has lived in a residence located on his property since 2018. Lysa moved into the Ward's residence and served as her full time care giver from July 2024 until December 2024, when Jim hired a professional to take over the Ward's care. Jim described a volatile relationship between Lysa and the Ward's new care giver and admitted to calling law enforcement on his sister. At the time Lysa filed her emergency motion for guardianship, Lysa had taken the Ward from her residence on Jim's property to another house nearby. Jim noted that the Ward had executed a series of documents prior to her dementia diagnosis that named Jim as her preference for

¹ The parties all agree that the Ward lacks the capacity to make responsible decisions for herself and requires a guardian.

guardian and conservator.² He admitted to having moved substantial amounts of the Ward's assets into trust as her attorney-in-fact under her power of attorney.

After a hearing, the probate court appointed Jim as the Ward's emergency guardian, finding that Jim was the preferred guardian under law based on the Ward's most recent nomination of him in her Advance Directive. The order noted "a significant level of animosity and distrust existing between" Jim and Lysa. The order stated that the Ward had returned to living on Jim's property, and Jim had refused to allow Lysa onto the property. The court explained that, as guardian, Jim no longer had the right to prevent Lysa from seeing her mother and ordered him to allow Lysa to speak with the Ward and visit her home. The court noted that it would "have little tolerance" for the continued fighting between the siblings in front of their sick and easily influenced mother. The court found no need to appoint an emergency

² Indeed, in September 2023, the Ward executed a Georgia Advance Directive for Health Care naming Jim as her healthcare agent, with Sandy as the backup agent. She executed a Durable Power of Attorney naming Jim as her attorney-in-fact. She executed an Amendment to her Revocable Trust, which named Jim as the sole trustee of her trust, and Sandy and Lysa as successor trustees in that order. She also executed a Codicil to her Will naming Jim as her executor and Sandy and Lysa as her successor executors in that order.

conservator, as the Ward had few assets outside of a substantial trust over which Jim already had control under the power of attorney.

After this order issued, Jim amended his petition for permanent guardianship and conservatorship, disclosing additional assets of the Ward's that were not listed on his original petition and explaining that he had moved these assets into a bank account in only his name for a period "to prevent [Lysa] from taking these funds for her personal use." The court then vacated its emergency order, reappointed Jim as emergency guardian, and appointed the County Administrator, Julianne Glisson, as the Ward's emergency conservator. Jim again amended his petition for permanent guardianship and conservatorship to remove his request to serve as the Ward's permanent conservator, noting that he had no objection to either his brother Sandy or Glisson serving as conservator.

The case proceeded to a final hearing, which occurred over three days in September 2025. Numerous witnesses testified, including Jim, Sandy, and Lysa, as well as other family members and friends of the family, and medical professionals. On October 1, 2025, the probate court issued its final order appointing Lysa as the Ward's permanent guardian and conservator.

The court first noted evidence of “significant changes in, even manipulations of” the Ward’s assets by Jim during the course of the litigation. The court found that Jim and Sandy concealed assets belonging to the Ward in Jim’s original petition for guardianship, which had led the court to vacate its emergency order and appoint a third-party as conservator. The court also found that Jim’s moving the bulk of the Ward’s assets into trust shortly before the litigation to be “of concern,” and noted inconsistencies in Jim’s testimony concerning his ability to read and understand the legal documents granting him authority over the Ward’s affairs.

The court also found “disturbing” evidence that Jim prohibited Lysa from visiting their mother, despite their mother’s desire to see Lysa. The court found that “it was more important to Jim to control who could be on the property [at which the Ward was living] than it was to avoid upsetting and further confusing their mother.” The court discussed a recording made by the Ward’s friend Julie McIntosh (the “McIntosh recording”). Appellants had objected to this recording being admitted at the hearing as being made in violation of Georgia’s eavesdropping statute. The court, however, admitted the evidence, and described it as “horrificing.” As described by the probate court, the recording shows the Ward happy to see Lysa after being prevented

from doing so by Jim for several weeks. Sandy then enters the room and has a confrontation with his sister, with her falling to the floor. Although Sandy testified that Lysa attacked him, which led to the confrontation, the court found his testimony on this issue non-credible.

The court then concluded that good cause existed to disregard Jim's statutory preference to be appointed the Ward's guardian, finding that he did not look out for the Ward's best interests while acting as emergency guardian. Specifically, the court found that, while Jim was responsible for the Ward's health and safety, she was isolated from her friends and family. The court also found that "Jim's lack of candor, perhaps even his lack of honesty" in court filings and his testimony warranted overriding his statutory preference. The court then found that it was in the Ward's best interest to appoint Lysa as permanent guardian. The court acknowledged that she "is not the perfect choice, only the best one available," as the court concluded that she has the Ward's best interest at heart and "is capable of putting whatever sibling dysfunctions exist to make responsible decisions for their mother's health and safety."

The court also noted that the parties did not dispute the maintenance of Glisson as the Ward's conservator. To the extent Sandy enjoyed a statutory preference to be

appointed conservator, the court found good cause to disregard such preference, as it found that Sandy lacked the judgment to act in the Ward's best interests. Accordingly, Glisson was named permanent conservator. This appeal followed.

1. Appellants first assert that the probate court abused its discretion in appointing Lysa as the Ward's guardian over either of them.

Pursuant to OCGA § 29-4-1(a), a probate court may appoint a guardian for an adult if it finds that "the adult lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety."

This Court reviews a trial court's order appointing a guardian over a conservatorship under an abuse of discretion standard. We will not set aside a probate court's findings unless they are clearly erroneous, and when such findings are supported by any evidence, they will be upheld on appeal. The probate court's application of the law, however, is subject to de novo review.

In re Estate of Jenkins, 366 Ga. App. 628, 629 (883 SE2d 843) (2023) (citation modified). Georgia law establishes a specific order of preferences for guardian appointments. The court shall appoint as guardian the individual who will best serve the interest of the adult, considering the statutory order of preferences. OCGA § 29-4-3(a). The individual last nominated by the adult holds the highest preference. OCGA

§ 29-4-3(b)(1). The probate court may disregard the list of statutory preferences only upon good cause shown. OCGA § 29-4-3(a).

In this case, there is no question that Jim had statutory preference to be appointed the Ward's guardian, as he was the individual last nominated by the Ward. OCGA § 29-4-3. And the court here provided its reasons for disregarding the statutory preference in Jim's favor, which we find to be supported by the record and not clearly erroneous. On appeal, Appellants argue that Sandy also enjoyed a statutory preference, as he was named as the Ward's backup health care agent in her most recently executed Advance Directive, and the probate court's order failed to provide the required statutory good-cause basis for disregarding Sandy's statutory preference. We discern no abuse of discretion.

The statute's plain language explains that only one individual may hold the statutory preference outlined in OCGA § 29-4-3(b)(1) — “the individual last nominated by the adult.” See *Jenkins*, 366 Ga. App. at 630–31(1) (where wife of proposed ward was named as health care agent in most recent advance directive, and son of proposed ward was named as the backup health care agent, we considered whether the probate court appropriately found good cause to disregard the statutory

preference for the wife as the individual last nominated by the adult). In the Ward's case, that individual is Jim. As explained by the probate court, the conditions precedent to Sandy serving as the Ward's agent were not met, as Jim was able and willing to serve as nominated. Thus, Appellants have failed to show that Sandy enjoyed a statutory preference which probate court was required to state its good cause for disregarding. And in any event, the court's finding that Sandy does not possess the "judgment to do what is best for the Ward if it inconveniences his exhibited animosity towards his sister" provided good cause to disregard any statutory preference he may have had. See *id.* (no abuse of discretion in disregarding statutory preference where evidence supported the probate court's finding that appointing preferred guardian would not serve the ward's best interest).

Appellants also take issue with several of the probate court's factual findings. However, these findings turn in large part on the probate court's credibility determinations, which we are not in a position to overturn on appeal. *Jenkins*, 366 Ga. App. at 631(1) (probate court in guardianship determination is entitled to credit some testimony and discredit other testimony). To the extent that they have support in the

record, even if contested, we accept the court's findings as supporting its decision. *In re Wheeler*, 368 Ga. App. 1, 6(2) (889 SE2d 132) (2023).

For example, Jim contests the probate court's finding that he isolated the Ward. However, friends of the Ward testified that Jim restricted her phone access and discouraged them from visiting and that Lysa was more helpful in facilitating their communication with the Ward. Jim also contests the probate court's characterization of an incident where he called the police to remove Lysa from the Ward's residence as being indicative of his unsuitability to be guardian. However, the probate court heard Jim's version of events – that he called the police because he believed that Lysa's presence was harmful to the Ward – and it viewed body cam footage of the incident. Accordingly, although Jim may disagree with the court's characterization of the incident, his argument that its finding does not contain support in the record is meritless.

Accordingly, where the evidence supported the probate court's decision, even if disputed, we find no abuse of discretion. *In re Holloway*, 251 Ga. App. 892, 894–95 (555 SE2d 228) (2001) (affirming probate court's appointment of county guardian over the children of a ward because evidence supported the probate court's findings

that the children had all acted in ways that called their judgment into question, including their disdain and mistrust of each other); *In re Wheeler*, 368 Ga. App. at 6(2) (affirming probate court’s disregard of individual with statutory preference because the evidence supported the probate court’s findings that the individual alienated the ward from other family members).

Appellants also argue that the probate court failed to explain why appointing Lysa was in the Ward’s best interest. We have held that even when a probate court adequately explains its reasons for bypassing a petitioner with statutory preference, its order may still be insufficient if it fails to “contain any findings or conclusions as to [the appointed guardian’s] suitability to act as [the Ward’s] guardian.” *Jenkins*, 366 Ga. App. at 632(2). We have been explicit that the order must contain more than the stated conclusion that the appointed guardian is the person who would best serve the Ward’s interest, and an absence of actual findings may serve as the basis to vacate such an order and remand for the probate court to “prepare appropriate findings of fact to support its decision.” *Id.* at 633(2).

Here, we conclude that the probate court’s order includes sufficient findings to support its appointment of Lysa as guardian. In addition to concluding that such an

appointment was in the Ward's best interest, the court also noted that Lysa "has the Ward's best interests at heart[,] and she is capable of putting aside whatever sibling dysfunctions exist to make responsible decisions for their mother's health and safety." In this case, the sibling disputes are at the heart of the issue the probate court was tasked with deciding, and thus we conclude that the probate court's finding addressing this critical issue was sufficient to explain its decision. Accordingly, we discern no abuse of discretion in the probate court's choice of guardian in this case.

2. Appellants also argue that the probate court erroneously admitted the McIntosh recording because it was obtained in violation of OCGA § 16-11-62, and was therefore inadmissible under OCGA § 16-11-67.

We review evidentiary rulings from a probate court for abuse of discretion. *Dorsey v. Kennedy*, 284 Ga. 464, 464(1) (668 SE2d 649) (2008). OCGA § 16-11-62(1) makes it unlawful for any person "in a clandestine manner intentionally to overhear, transmit, or record ... the private conversation of another which shall originate in any private place." OCGA § 16-11-62(2) makes it unlawful for any person, through the use of any device, "without the consent of all persons observed," to observe, photograph, or record the activities of another which occur "in any private place and out of public

view.” And OCGA § 16-11-67 provides that no evidence obtained in a manner which violates OCGA § 16-11-62 shall be admissible in any court of this state except to prove violations of the eavesdropping statutes.

As explained above, the probate court admitted this video over Appellants’ objection, finding that it was “not illegal” under OCGA § 16-11-62(2). Pretermitted whether the probate court erred in admitting the video, we agree with Lysa that its admission was not harmful such that reversal is warranted. See *In re Wilson*, 374 Ga. App. 326, 328 (912 SE2d 354) (2025) (evidentiary error is only reversible error if harmful). Sandy, Lysa, and McIntosh testified about this incident, with the probate court finding Sandy’s testimony to be non-credible. The probate court would thus be aware of this incident with or without the video and audio recording. Further, the video was merely one of multiple reasons that the probate court found Jim and Sandy to be unfit to serve as the Ward’s guardians, in addition to their suspicious behavior towards the Ward’s assets and their other conflicts with Lysa. It is therefore not highly probable that the admission of this evidence contributed to the probate court’s decision. See *id.* (where there was substantial other evidence supporting probate court’s decision, erroneous admission of evidence was harmless); *In re Vincent*, 240

Ga. App. 876, 879–80(3) (525 SE2d 409) (1999) (where erroneously admitted evidence is duplicative of other evidence, its admission is harmless). For all of these reasons, we affirm the probate court’s order in this case.

Judgment affirmed. Dillard, P. J., and Pipkin, J., concur.