

GUARDIANSHIP OF MATTHEW B.

Submitted on Briefs April 26, 2012  
Decided October 18, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,  
GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Matthew B. appeals from a judgment of the Penobscot County Probate Court (*Woodcock, J.*) finding him incapacitated and appointing the Department of Health and Human Services as his full guardian pursuant to 18-A M.R.S. §§ 5-304(b), 5-601 (2011). On appeal, Matthew contends that he was denied effective assistance of counsel when his attorney failed to request that the hearing be recorded. We have noted that the mere unavailability of a transcript does not violate due process rights unless the appellant can show that the absence of the transcript resulted in prejudice on appeal.<sup>1</sup> *See State v. Milliken*, 2010 ME 1, ¶¶ 15-16, 985 A.2d 1152. When transcripts are not available, the parties may provide a statement of evidence pursuant to Maine Rule of Appellate Procedure 5(d).

Following the hearing in Probate Court, the parties did not provide a statement of the evidence in lieu of a transcript<sup>2</sup> and the burden was on Matthew to provide an adequate record for review. *See Greaton v. Greaton*, 2012 ME 17, ¶ 4, 36 A.3d 913. Without a statement of the evidence, we must assume that the court had sufficient evidence to support its factual findings. *Id.* ¶ 2; *see also In re Cyr*,

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<sup>1</sup> It is best practice to record everything, whether or not requested, in matters involving constitutional rights. *See* Recording of Trial Court Proceedings, Me. Admin. Order JB-12-1 (effective Feb. 1, 2012).

<sup>2</sup> We issued a procedural order requesting Matthew to provide a statement of the evidence pursuant to M.R. App. P. 5(d), but the court was unable to settle and approve the statements of the parties.

2005 ME 61, ¶ 17, 873 A.2d 355 (stating that because a guardianship hearing was not recorded, and the appellant did not provide a statement pursuant to Appellate Rule 5(d), we assume that the probate court had sufficient evidence to support its findings). Based on the record available, Matthew cannot show that his attorney committed any error, that any such error was not harmless, *see Greaton*, 2012 ME 17, ¶ 3, 36 A.3d 913, or that he was otherwise prejudiced, *see Pottios v. State*, 1997 ME 234, ¶¶ 9-10, 704 A.2d 1221.

The entry is:

Judgment affirmed.

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**On the briefs:**

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William J. Schneider, Attorney General, and Katherine Greason, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Department of Health and Human Services