

GUARDIANSHIP OF DANIELLE J.

Submitted On Briefs April 29, 2010

Decided May 4, 2010

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

MEMORANDUM OF DECISION

Danielle J. appeals from a judgment entered in the Cumberland County Probate Court (*Mazziotti, J.*) on the petition of the Department of Health and Human Services finding Danielle incapacitated and appointing the Department as her limited guardian. Contrary to Danielle's contention, the court committed no error, constitutional or otherwise, in failing to issue findings of fact or in failing to record the testimonial proceedings. Danielle did not request findings of fact pursuant to 18-A M.R.S. § 5-304(c) (2008),¹ and did not request that the hearing be recorded. *See* Notice Periods for Electronic Recording, Me. Admin. Order JB-05-13 (effective Aug. 1, 2005). The parties' submission of a joint statement of the evidence pursuant to M.R. App. P. 5(d) provided a sufficient record to permit appellate review. *See State v. Milliken*, 2010 ME 1, ¶ 15, 985 A.2d 1152, 1157 (noting that the unavailability of a transcript, by itself, does not constitute a due process violation).

The court also committed neither clear error nor an abuse of discretion in finding that Danielle is incapacitated within the meaning of the guardianship statute and in fashioning the terms of its judgment awarding a limited guardianship

¹ Section 5-304(c) has since been amended. P.L. 2009, ch. 349, § 4 (effective Sept. 12, 2009).

to the Department.² *See* 18-A M.R.S. § 5-101(1) (2009); 18-A M.R.S. § 5-304(b) (2008); *In re Cyr*, 2005 ME 61, ¶ 16, 873 A.2d 355, 360.

The entry is:

Judgment affirmed.

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Cumberland County Probate Court docket number 2009-352
FOR CLERK REFERENCE ONLY

² Section 5-304(b) has since been amended. P.L. 2009, ch. 349, § 1 (effective Sept. 12, 2009).