



WHEREAS, J.G. and C.A.G. responded in opposition on August 31, 2021;<sup>6</sup>

WHEREAS, “[t]his Court may, in its discretion, ‘remove a guardian for any sufficient cause[;]’”<sup>7</sup> in exercising this discretion, the Court looks toward the best interest of the person with a disability;

WHEREAS, “[u]nder the doctrine of *res judicata*, a final judgment upon the merits rendered by a court of competent jurisdiction may, in the absence of fraud or collusion, be raised as an absolute bar to the maintenance of a second suit in a different court upon the same matter by the same party, or his privies[;]”<sup>8</sup> “[t]he doctrine of *res judicata* bars a claim when (1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the [asserting parties] in the case at bar; and (5) the decree in the prior action was a final decree[;]”<sup>9</sup>

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<sup>6</sup> D.I. 61.

<sup>7</sup> *In re Williams*, 2011 WL 3925690, at \*2 (Del. Ch. Aug. 25, 2011) (quoting 12 *Del. C.* § 3908(a)).

<sup>8</sup> *Shahin v. City of Dover*, 2021 WL 4099434, at \*3 (Del. Sept. 8, 2021) (citations and quotation marks omitted).

<sup>9</sup> *Vama F.Z. Co. v. Pac. Control Sys.*, 239 A.3d 388 (Del. 2020) (citations omitted).

WHEREAS, dismissal for failure to state a claim is only appropriate if the non-moving party “would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof[;]”<sup>10</sup>

IT IS HEREBY ORDERED, this 17<sup>th</sup> day of September, 2021, as follows:

1. The motion to dismiss is DENIED.
  - a. *Res judicata* does not bar the Petition to Remove because the claims and issues presented to and decided by the Family Court are not the same as the request for relief in the Petition to Remove. At the Family Court, the movants sought protection from alleged abuse. The Family Court found the evidence did not support “a prima facie case of child abuse.”<sup>11</sup> But the Petition to Remove asks a different question—should M.S. be removed as a court-appointed guardian? Removal does not require a showing of abuse and, rather, rests on whether there is good cause to remove M.S. and if removal is in the best interest of J.D.G.
  - b. Even considering the Family Court rulings, J.G. and C.A.G. have stated a cognizable claim that there is good cause to remove M.S. as co-guardian and that her removal would be in J.D.G.’s best interest.

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<sup>10</sup> *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002) (citations and quotation marks omitted).

<sup>11</sup> *See* D.I. 59, Ex. A-B.

2. Further consideration of the Petition to Remove will remain STAYED. M.S.'s request for additional visitation to make up for time lost and her request for shifting of attorneys' fees and costs are likewise STAYED and will be addressed in connection with the Petition to Remove.

3. A hearing to address M.S.'s requests for longer and unmonitored visitation during this interim period will be scheduled by separate order. This hearing will be expressly limited to the following topics: (1) visits between J.D.G. and M.S. since June 15, 2021 (the number and type of visits and any concerns regarding attendance at, or conduct during, those visitations) and (2) the recommendation of J.D.G.'s counselor regarding future visitation (format, length, frequency, and any other limitations or requirements). J.G. and C.A.G. shall ensure that J.D.G.'s counselor attends and testifies at the hearing. The allegations of past abuse or failure to protect and any discussion of the pending investigation or related proceedings are expressly off limits.

**IT IS SO ORDERED.**

/s/ Selena E. Molina  
Magistrate in Chancery