

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: The Guardianship of Albert Metoyer,	:	
	:	No. 10AP-1061
(Paul S. Kormanik, Guardian of the Estate of Albert Metoyer,	:	(Prob. No. 523327)
	:	(REGULAR CALENDAR)
Appellant).	:	
 In re: The Guardianship of Albert Metoyer,	:	
	:	No. 10AP-1062
(Paul S. Kormanik, Guardian of the Estate of Albert Metoyer,	:	(Prob. No. 523327A)
	:	(REGULAR CALENDAR)
Appellant).	:	

D E C I S I O N

Rendered on September 27, 2011

Paul S. Kormanik, for appellant.

Semple & Eicher Co., L.P.A., and Geoffrey L. Eicher, for
appellee.

APPEAL from the Franklin County Court of Common Pleas,
Probate Division

CONNOR, J.

{¶1} Paul S. Kormanik ("Mr. Kormanik"), as Guardian of the Estate of Albert Metoyer ("Mr. Metoyer"), appeals the judgment rendered by the Franklin County Court of Common Pleas, Probate Division, in which it ordered the distribution of proceeds from the

sale of real estate. For the reasons that follow, we affirm the judgment of the probate court.

{¶2} Mr. Metoyer became a resident at Heartland Victorian Village nursing home ("Heartland") on June 19, 2006. On July 26, 2007, the probate court found Mr. Metoyer to be incompetent and accordingly appointed Mr. Kormanik as guardian over his person and estate. Mr. Kormanik filed numerous Medicaid applications before Mr. Metoyer became Medicaid eligible on April 1, 2008. All but \$15,041 of Heartland's bills were paid.

{¶3} Of relevance to this appeal, Mr. Metoyer owned real estate that was sold at a public sale for \$50,000 on May 12, 2008. On October 8, 2010, the probate court issued an entry distributing the proceeds of the sale. Heartland's remaining bill was paid out of the proceeds from the sale. It is from this entry that Mr. Kormanik appeals and raises the following assignment of error:

The trial court erred in failing to hold an evidentiary hearing on the Plaintiff's Application For Journal Entry Ordering Distribution Of The Sale Of Proceeds filed on February 5, 2010, thereby making its Judgment Entry filed on October 8, 2010, based upon facts that were not in evidence.

{¶4} In Mr. Kormanik's sole assignment of error, he argues that the probate court should have conducted an evidentiary hearing in order to determine the proper distribution of the proceeds from the real estate sale. However, we find that Mr. Kormanik has failed to preserve this argument for purposes of this appeal.

{¶5} On May 19, 2010, the probate court issued an entry, which described the procedural history of this matter. Importantly, it also provided: "By agreement[,] the court will consider and rule on the objections and determine proper distribution of the remaining assets from the land sale without further hearing." (May 19, 2010 Entry, at 3.) Therefore,

as was clear, the parties agreed that no further hearing was necessary. Now, however, the only purported error Mr. Kormanik asserts is based upon the fact that no further hearing occurred.

{¶6} A party may not sit idly by and "sand bag" a trial court by inaction at a time when a purported error can be corrected. See *State v. Mills*, 9th Dist. No. 21751, 2004-Ohio-1750, ¶4, citing *State v. Williams* (1977), 51 Ohio St.2d 112, paragraph one of the syllabus. Rather, a party must preserve its right to assert an error on appeal by raising the issue at the time when it can be corrected. See *Yackel v. Kay* (1994), 95 Ohio App.3d 472, 479 ("an appellate court will not consider issues which the appellant failed to raise in the trial court"). Therefore, without addressing whether the trial court erred by distributing the proceeds without conducting an evidentiary hearing, we find that Mr. Kormanik waived the purported error he attempts to raise in his sole assignment of error.

{¶7} Based upon the foregoing, we overrule Mr. Kormanik's sole assignment of error and affirm the judgment rendered by the Franklin County Court of Common Pleas, Probate Division.

Judgment affirmed.

BRYANT, P.J., and KLATT, J., concur.
