

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re Guardianship of A.V., :  
Appellee, : No. 12AP-300  
(A.V., : (Prob. No. 546645)  
Appellant). : (ACCELERATED CALENDAR)

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D E C I S I O N

Rendered on December 27, 2012

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*DeSanto & McNichols*, and *Debra J. DeSanto*, for appellee  
S.V.

*Isaac, Brant, Ledman & Teetor LLP*, *Sherrille D. Akin* and  
*Thomas N. Anger*, for appellant.

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

BRYANT, J.

{¶ 1} Appellant, A.V., the proposed ward in a guardianship action, appeals from a judgment of the Franklin County Court of Common Pleas, Probate Division, that appointed appellee, S.V., to serve as her guardian due to alleged incompetency. Because the trial court failed to comply with the procedural requirements of Civ.R. 53, we reverse.

**I. Facts and Procedural History**

{¶ 2} On March 28, 2011, S.V. filed an "application for appointment of guardian of incompetent," seeking that he be appointed the guardian for the proposed ward. The matter initially was scheduled for hearing on May 2, 2011. Prior to the scheduled hearing, an investigator for the probate court, pursuant to R.C. 2111.041, filed her report noting the mental, physical, social and residential conditions of the proposed ward. The report concluded with the investigator's opinion that the ward "would benefit from the care and

supervision of a guardian." (R. 12, at 2.) On the same day, the court appointed counsel for the proposed ward.

{¶ 3} An expert evaluator examined the proposed ward pursuant to R.C. 2111.49 and Sup.R. 66. The expert evaluator, a doctor in psychology and a clinical psychologist, filed his report on July 28, 2011 and concluded the proposed ward is not capable of managing individual activities of daily living or making decisions concerning medical treatments, living arrangements and diet due to a history of impulsivity and poor judgment. The evaluator further concluded the proposed ward is not capable of managing individual finances and property because the proposed ward is too emotionally reactive, labile and immature. Noting the proposed ward's condition is neither stabilized nor reversible, the independent evaluator opined that a guardianship should be established.

{¶ 4} After a number of continuances, the matter was heard before a magistrate on November 1, 2011. The magistrate filed a report on November 4, 2011 and concluded S.V.'s application to be appointed guardian of the proposed ward should be approved. Pursuant to Civ.R. 53(E)(7), the court adopted the magistrate's decision the same day and entered judgment in accordance with the magistrate's decision.

{¶ 5} On November 17, 2011, the proposed ward filed objections to the magistrate's decision and followed them with a transcript filed on December 8, 2011. The trial court, in an entry filed March 20, 2012, adopted the magistrate's decision, noting all parties were duly served with a notice and copy of the decision. The court further noted that the proposed ward, through counsel, objected to the decision during the 14-day period allowed for objections. The court then concluded: "Following an independent review pursuant to Civ. R. 53(D)(4), the Court finds there are no errors of conclusion of law or other defects on the face of the decision." (R. 44.) The court further stated that "[a]fter careful review," it found "the Magistrate was correct in concluding that the evidence did not establish that a less restrictive alternative to the guardianship existed that would sufficiently protect the ward's interests." (R. 44.) The court entered judgment accordingly.

## **II. Assignments of Error**

{¶ 6} The proposed ward appeals, assigning three errors:

I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT APPELLEE ESTABLISHED

**APPELLANT'S INCOMPETENCY BY CLEAR AND CONVINCING EVIDENCE?**

**II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT IT IS IN APPELLANT'S BEST INTEREST TO APPOINT APPELLEE AS HER LEGAL GUARDIAN IN LIGHT OF THE HISTORY OF VIOLENCE AND DISCONTENT BETWEEN THEM?**

**III. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT A POWER OF ATTORNEY SIGNED BY APPELLANT AFTER THE FILING OF THE APPLICATION FOR APPOINTMENT OF GUARDIAN AND PRIOR TO THE HEARING ON THE APPLICATION WAS INEFFECTIVE AND, THUS, NOT A LESS RESTRICTIVE ALTERNATIVE TO GUARDIANSHIP?**

Because procedural issues preclude our addressing the merits of the three assignments of error, we reverse without reaching any of the three.

{¶ 7} Pursuant to Civ.R. 53, a party may file written objections within 14 days of a magistrate's decision being filed. Civ.R. 53(D)(3)(b). If a party objects to any finding of fact, the party must support the objection with a transcript of all the evidence submitted to the magistrate relevant to that fact, or an affidavit of that evidence if the transcript is not available. Civ.R. 53(D)(3)(b)(iii). "If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections." Civ.R. 53(D)(4)(d).

{¶ 8} Here, the proposed ward filed timely objections to the magistrate's decision. Further, recognizing that the objections raised issues concerning the magistrate's findings of fact, the proposed ward timely filed a transcript of the magistrate's hearing. *See* Civ.R. 53(D)(3)(b)(iii) (noting that "[t]he objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause").

{¶ 9} Although the proposed ward filed objections and the necessary transcript, the trial court, though acknowledging the objections, did not rule on them. Civ.R. 53(D)(4)(d) specifically requires the court to do so. Even if we were tempted to conclude the trial court implicitly overruled them, to do so would undermine one of the presumed purposes of requiring a ruling, as the ruling provides both the parties and a reviewing court the benefit of the trial court's rationale for resolving the objections.

{¶ 10} The trial court's final entry further promotes our inability to find a ruling on the objections. Civ.R. 53(D)(4)(c) provides that "[i]f no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision." By contrast, Civ.R. 53(D)(4)(d) states that "[i]n ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." The trial court's decision states both that it conducted an independent review and that it found no error or other defect on the face of the magistrate's decision. Although the former is appropriate to a case involving objections, the latter is not. Had the trial court ruled on the objections, the superfluous language would be less significant. In light of no explicit ruling on the objections, the entry's language leaves us uncertain about whether the trial court addressed the objections.

{¶ 11} Because the record contains no ruling on the objections, we are compelled to reverse the decision of the trial court and remand for the trial court's consideration of and ruling on the objections in light of the transcript filed. Once it has determined the objections, the trial court may enter judgment accordingly or remand to the magistrate for further proceedings.

{¶ 12} At the same time, the trial court will have the opportunity to consider the proposed ward's contentions regarding a less restrictive alternative. Although the magistrate was aware of the durable power of attorney the proposed ward's mother produced, the magistrate believed she could not consider the durable power of attorney as a less restrictive alternative because it was filed after guardianship proceedings were commenced. Both parties, however, acknowledge that until the proposed ward has been declared a ward subject to guardianship, the durable power of attorney may be filed and is appropriately considered in the trial court as a less restrictive alternative to a guardianship.

{¶ 13} In the final analysis, because the trial court failed to rule on the proposed ward's objections, the matter must be returned to the trial court for that required ruling and a decision of whether to adopt the magistrate's decision in light of that ruling.

Accordingly, we do not reach any of the three assignments of error but reverse on procedural grounds.

**III. Disposition**

{¶ 14} Because the trial court did not rule on the Civ.R. 53 objections the proposed ward filed, we reverse the judgment of the Franklin County Court of Common Pleas, Probate Division, and remand to give the trial court the opportunity to address the proposed ward's objections.

*Judgment reversed  
and case remanded.*

BROWN, P.J., and TYACK, J., concur.

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