

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

GUARDIANSHIP OF NICOLE A. WARD

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Sheila G. Farmer, J.

Case No. 14-CA-19

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Court of
Common Pleas, Probate Division,
Case No. 66963

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

March 5, 2015

APPEARANCES:

For Appellee

For Appellant

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Hoffman, J.

{¶1} Appellant John R. Ward appeals the February 6, 2014 Entry, and the March 5, 2014 Nunc Pro Tunc Entry entered by the Fairfield County Court of Common Pleas, Probate Division, which denied his motion to appoint a guardian of the Estate of his daughter, Nicole A. Ward (“Ward”). Appellee is Julie A. Ward.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant and Appellee are the parents of Ward (dob 10/12/1992). The parties’ marriage was terminated by Judgment Entry Decree of Dissolution filed December 2, 2005. The Decree incorporated a Shared Parenting Plan executed by the parties. The Shared Parenting Plan provided, in pertinent part:

The Father shall pay to the Mother, through the Fairfield County Child Support Enforcement Agency as trustee for the minor child, child support in the sum of \$490.41 per month, plus processing charge...Due to the child’s special needs, and the fact that the child shall continue to be dependent upon the parties for her needs after age 18, child support will not terminate upon child’s eighteen birthday or high school graduation. Child support shall continue until the parties agree to terminate such obligation.

{¶3} The Fairfield County Probate Court declared Ward an incompetent adult following her eighteenth birthday in 2010. On December 8, 2010, Appellee filed an application for appointment of guardian of Ward, an alleged incompetent person, pursuant to R.C. 2111.03. Appellee sought appointment as guardian of Ward’s person only. At that time, Ward received Social Security benefits. Appellant paid child support

to Appellee for Ward's benefit. Appellant filed an application for appointment of guardian of alleged incompetent person [Ward] on January 28, 2011. Likewise, Appellant sought appointment as guardian of only Ward's person. On his application, Appellant listed \$0.00 as the total of Ward's whole estate. Appellant subsequently withdrew his application for guardianship, but filed objections to the appointment of Appellee as guardian of the person of Ward. The probate court appointed Appellee as guardian of the person of Ward on December 5, 2011.

{¶4} The trial court modified Appellant's child support obligation, increasing the amount to \$830.12/month via Judgment Entry filed January 21, 2011. The entry also provided Appellant's duty of support "shall continue until further order of the Court".

{¶5} Appellant subsequently filed a motion to remove Appellee as guardian of the person of Ward, and to appoint a guardian of the estate of Ward. The trial court conducted a hearing on the motion on January 15, 2014. After trial court heard oral arguments, it ordered the parties to submit memoranda in support of their respective positions.

{¶6} Via Nunc Pro Tunc Entry file March 5, 2014, the trial court denied Appellant's motion. The trial court found the child support Appellant paid for the benefit of Ward was not an asset of Ward; therefore, it was unnecessary to appoint a guardian of the estate of Ward as there were no assets to administer. The trial court further found the evidence presented was not sufficient to support the removal of Appellee as guardian of the person.

{¶7} It is from this judgment entry Appellant appeals, raising as error:

{¶8} "I. THE TRIAL COURT ERRED TO THE WARD'S PREJUDICE AND ACTED CONTRARY TO LAW WHEN IT DENIED A REQUEST FOR APPOINTMENT OF A GUARDIAN OF THE ESTATE TO ACCOUNT FOR THE WARD'S SUPPORT PAYMENTS."

I

{¶9} Appellant contends the trial court erred in denying his request for the appointment of a guardian of the estate of Ward. Specifically, Appellant argues the trial court's finding child support paid to Appellee for the benefit of Ward was not an asset of Ward's estate was erroneous. We disagree.

{¶10} Appellant cites *In Re Guardianship of Derakhshan*, 110 Ohio App. 3d 190 (1996), in support of his position. We find *Derakhshan* is not applicable.

{¶11} In *Derakhshan*, the parties established a guardianship for the purpose of facilitating child support payments. The appellant-mother was awarded custody of the parties' two minor children. *Id.* at 192. Pursuant to the divorce decree, certain assets of the parties were "deemed to be prepaid child support and shall be held for the benefit of the two (2) minor children * * * and a Guardianship [was] established in the Probate Court of Lake County and the Guardian * * * appointed to take possession of all the assets designated herein * * *." *Id.* The probate court appointed the appellant as guardian. *Id.* at 193.

{¶12} Upon the appellant's motion, the domestic relations court determined the appellee-father owed arrearages and reduced said arrearages to a lump sum judgment. *Id.* The appellant filed an application in probate court, seeking a lump sum distribution of the funds in the guardianship. *Id.* The probate court overruled the appellant's

application in part, holding that the lump sum and ongoing support funds were not legitimate expenditures with respect to the guardianship. *Id.* The appellant appealed. The Eleventh District Court of Appeals found the probate court properly exercised its authority over the expenditure of the funds held under the guardianship. *Id.* at 196. However, the Eleventh District Court of Appeals did not agree with the probate court's stated reason for overruling the request for lump sum payment. *Id.* The Court specifically found "the funds do not now belong to the wards, but instead are being held for their benefit." *Id.* (Citation omitted).

{¶13} Contrary to Appellant's assertion, the *Derakhshan* decision does not "[illustrate] that the decision of the Fairfield County Probate Court in the present case, holding that the support for the Ward is not an asset of the Guardianship, is in error." Brief of Appellant at 8. The fact the *Derakhshan* Court held the probate court had authority over the expenditures of guardianship funds/assets denominated as prepaid child support is not equivalent to holding child support paid for the benefit of a ward is an asset of the ward's estate.

{¶14} The most recent child support order issued in the instant action defined Appellee as obligee. Appellee is the individual entitled to receive the support payments under the support order. Although the support is paid for Ward's benefit, we find the child support is not an asset of Ward's estate. See, generally, *Seegert v. Zietlow*, 95 Ohio App.3d 451, 642 N.E.2d 697 (8th Dist.1994) (Past child support is an asset owned by the custodial parent.); *J.V. v. J.B.*, 8th Dist. No. 101232, 2015 -Ohio- 310 (The parent-obligee, not the child, is real party in interest to the claim for child support.)

{¶15} Additionally, Appellant, in his application for appointment of guardian of alleged incompetent person filed on January 28, 2011, acknowledged the probable value of Ward's estate was \$0.00. We find he is judicially estopped from arguing child support is an asset of Ward's estate.

{¶16} Appellant's sole assignment of error is overruled.

{¶17} The judgment of the Fairfield County Court of Common Pleas, Probate Division, is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Farmer, J. concur