

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: The Guardianship
of Heather Lavers

Court of Appeals No. L-11-1044

Trial Court No. 2008 GDN 2107

DECISION AND JUDGMENT

Decided: June 22, 2011

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Joel J. Kirkpatrick and Michael A. McCoin, for appellant/
cross-appellee.

Douglas A. Wilkins, for appellee/cross-appellant.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court sua sponte. On April 12, 2011, this court issued an order requiring the parties to file jurisdictional memoranda addressing the issue of whether the February 3, 2011 judgment of the Lucas County Court of Common Pleas, Probate Division, is a final appealable order under R.C. 2505.02. The parties,

appellant/cross-appellee Robert Lavers, Guardian of Heather M. Lavers, and appellee/cross-appellant Heidi Kaczala, each filed their respective memorandum. The parties disagree on whether the February 3 judgment is a final appealable order.

{¶ 2} R.C. 2505.02 defines what is a final, appealable order, and states in pertinent part:

{¶ 3} "(A) As used in this section:

{¶ 4} "(1) 'Substantial right' means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

{¶ 5} "(2) 'Special proceeding' means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

{¶ 6} "(3) 'Provisional remedy' means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, * * *.

{¶ 7} "(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶ 8} "(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶ 9} "(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶ 10} "* * *

{¶ 11} "(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶ 12} "(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶ 13} "(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action."

{¶ 14} Based upon our review of the record before the court, we find that the February 3 judgment denying appellant/cross-appellee's motion to remove his wife/ward from the state of Ohio constitutes a final appealable order under R.C. 2505.02(B)(1). The February 3 judgment affects a substantial right within the meaning of R.C. 2505.02(A) in that it determines the action and prevents the guardian from removing the ward from the state. The record also reflects that the probate court has decided this issue with finality. See, e.g., *Christian v. Johnson*, 9th Dist. No. 24327, 2009-Ohio-3863, ¶ 9. ("The entire concept of "final orders" is based upon the rationale that the court making an order which is not final is thereby retaining jurisdiction for further proceedings. A final order, therefore, is one *disposing of the whole case* or some separate and distinct branch thereof.' *Noble v. Colwell*, 44 Ohio St.3d 92, 94 (1989) (quoting *Lantsberry v. Tilley*

Lamp Co., 27 Ohio St.2d 303, 306 (1971)).") Appellee/cross-appellant has presented no persuasive case law to the contrary.

{¶ 15} It is so ordered.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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