

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

In re The Guardianship of
Edward I. Soltesz,
An Incompetent Person

Court of Appeals Nos. E-13-067
E-13-072

Trial Court No. GDN 2007-2-028

[E. Dean Soltesz—Appellant]

DECISION AND JUDGMENT

Decided: June 27, 2014

* * * * *

E. Dean Soltesz, pro se.

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YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, E. Dean Soltesz, appeals the judgment of the Erie County Court of Common Pleas, Probate Division, denying his “motion for correction or modification of the record,” and his “motion for an evidentiary hearing.” This matter was placed on the court’s accelerated calendar on May 29, 2014. We affirm.

A. Facts and Procedural Background

{¶ 2} This appeal relates to an ongoing dispute between appellant and the probate court as to whether the court's handling of the guardianship and estate of appellant's father, Edward Soltesz, was lawful. The underlying guardianship began on May 8, 2007, and continued until an entry approving and settling the account was filed on May 30, 2012. Edward passed away on December 7, 2011. Appellant did not appeal from the trial court's May 30, 2012 entry.

{¶ 3} On September 9, 2013, appellant filed his motion for correction or modification of the record, requesting the probate court to correct the record it provided to this court during appellant's prior appeals, of which there have been many. Through his motion, appellant requested a transcript from a hearing held before the probate court on January 28, 2008. Appellant averred that the hearing transcript was necessary in order to prove that the probate court erred in refusing to transfer Edward's real property to appellant pursuant to Edward's wishes. Appellant insisted that the transcript was available through CourtSmart Digital Systems, Inc., a company that allegedly performed records retention for the Erie County Court of Common Pleas on the relevant date. Alternatively, if the transcript was unavailable, appellant requested information from CourtSmart as to why the transcript was unavailable.

{¶ 4} Appellant attempted to secure a copy of the hearing transcript directly from CourtSmart. However, representatives at CourtSmart explained that they were unable to provide him with the information he was looking for unless directed to do so by the

probate court. Additionally, appellant filed a public records request with the Erie County Auditor, which was subsequently forwarded to the Erie County Clerk of Courts. The clerk of courts ultimately informed appellant that a transcript of the January 28, 2008 hearing was not in existence.

{¶ 5} Upon consideration of appellant's arguments in support of his motion for correction or modification of the record, the probate court denied the motion on September 30, 2013. Appellant timely appealed the trial court's judgment.

{¶ 6} Additionally, appellant filed another motion with the probate court on October 18, 2013, in which he requested an evidentiary hearing. The probate court denied appellant's motion, stating: "This case has been closed since May 30, 2012 but the Court erroneously accepted filings by E. Dean Soltesz on September 9, 2013 and on October 18, 2013." Once again, appellant timely appealed the probate court's denial of his motion. The appeals have since been consolidated.

{¶ 7} Notably, appellant has since filed a motion for correction or modification of the record with this court, which was denied on February 13, 2014. He also filed a "motion to order the probate court to permit appellant to obtain information from CourtSmart Digital Systems, Inc." This motion was also denied on February 12, 2014.

B. Assignments of Error

{¶ 8} On appeal, appellant presents the following assignments for our review:

I. THE PROBATE COURT ERRED TO THE PREJUDICE OF
APPELLANT AND MY DAD, WHEN IT DENIED APPELLANT'S

MOTION FOR EVIDENTIARY HEARING WITH PRAECIPE AND SUBPOENAS PROVIDED WITH SUCH MOTION FOR EVIDENCE TO BE OBTAINED FROM COURTSMART DIGITAL SYSTEMS, INC., WHICH HAS BEEN THE COMPANY ABLE TO PROVIDE THE SOUND RECORDINGS OF THE HEARING HELD ON JANUARY 28, 2008.

II. THE TRIAL COURT IS WITHOUT JURISDICTION TO CONCEAL THE RECORD OF THE JANUARY 28, 2008 HEARING RECORD FROM APPELLATE REVIEW.

III. THE RECORD OF THE JANUARY 28, 2008 HEARING HELD IN THE CASE ON APPEAL WOULD PROVE THAT THE PROBATE COURT HAS VIOLATED ITS DUTIES AS SUPERIOR GUARDIAN OF THE WARD, IF THE COURT OF APPEALS WOULD HAVE JUSTLY GRANTED APPELLANT'S APP.R. 9(E) MOTION FOR CORRECTION OF THE RECORD.

IV. THIS COURT OF APPEALS IS WITHOUT JURISDICTION TO DENY APPELLANT'S APP.R. 9(E) MOTION FOR CORRECTION OF THE RECORD, WHEN AN ISSUE HAS ARISEN IN THE APPEAL THAT THE RECORD OF A HEARING IN THE PROBATE COURT IS BEING CONCEALED FROM APPELLATE REVIEW, AND ONE OF THE ISSUES ON APPEAL INVOLVES THAT RECORD.

II. Analysis

{¶ 9} In each of appellant's assignments of error, he argues that he was entitled to receive a copy of the transcript from the January 28, 2008 hearing. He argues in his first two assignments of error that the trial court erroneously failed to provide him with a copy of the transcript pursuant to his request. In his final two assignments of error, he argues that this court erred in denying his motion for correction of the record under App.R. 9. Since appellant's assignments are interrelated, we will address them simultaneously.

{¶ 10} At the outset, we note that appellant's stated purpose for requesting a copy of the transcript from the January 28, 2008 hearing is so that he may challenge the probate court's handling of Edward's guardianship. As noted above, however, appellant did not file a notice of appeal challenging the trial court's May 30, 2012 entry settling the account. Thus, the transcript is not part of the record in this appeal, which merely challenges the trial court's denial of his motion to correct the record and his motion for an evidentiary hearing. As such, App.R. 9 is not the appropriate avenue for obtaining the transcript. Instead, appellant's attempts at retrieving the transcript are more akin to a public records request under R.C. 149.43. Under that statute, the legislature has evinced a clear intent to remedy violations of the public records request law through the use of mandamus actions. Appellant's action is not a mandamus action. Accordingly, we find appellant's assignments of error not well-taken.

III. Conclusion

{¶ 11} Based on the foregoing, the judgment of the Erie County Court of Common Pleas, Probate Division, is affirmed. Costs are hereby assessed to appellant in accordance with App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, 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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.