[Cite as *In re Strickler*, 2009-Ohio-4799.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	
IN RE: BEVAN L. STRICKLER		C. A. No. 09CA009535

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 2004 GI 00052

DECISION AND JOURNAL ENTRY

Dated: September 14, 2009

CARR, Judge.

{¶1} Appellants, Linda Stang, Shannon Dreger, and Thomas Strickler (collectively "the Siblings"), appeal the judgment of the Lorain County Court of Common Pleas, Probate Division, which approved and settled the guardian's account in regard to the guardianship of Bevan Strickler. This Court dismisses for lack of a final, appealable order.

I.

{¶2} Appellee, Ronda Searl, was appointed to serve as the guardian of the person and estate of her mother, Bevan Strickler. The guardianship was in effect from July 21, 2004, until the ward's death on July 7, 2005. Upon notice that the ward had died, the probate court sent a letter to Ronda directing her to file a final account and application to terminate the guardianship.

{¶3} On January 6, 2006, Ronda filed a First and Final Guardian's Account and a motion to terminate the guardianship upon approval of the final account. On February 7, the Siblings filed exceptions to the fiduciary's account, noting generalized exceptions and nearly 400

line item exceptions. On February 10, 2006, the Lorain National Bank, as administrator of the estate of Bevan Strickler, filed exceptions to the guardian's account. All exceptors initiated discovery. The magistrate ordered that the exceptions would be considered upon the briefs and any written materials the parties wished to submit.

{¶4} On April 5, 2007, the magistrate issued a decision on the exceptions to the guardian's account. The Siblings filed a request for findings of fact and conclusions of law on April 12, 2007, based on the magistrate's alleged failure to address numerous issues raised in the exceptions. On April 18, 2007, Ronda filed objections to the magistrate's decision. On April 19, 2007, the Siblings filed objections to the magistrate's decision. On May 3, 2007, the probate court ordered the magistrate to respond to the parties' objections by preparing a supplemental report with findings, and granted the parties 15 days to review the supplemental report and file objections. The probate court did not explicitly rule on the pending objections.

{¶5} On May 9, 2007, the magistrate issued his supplemental findings on the exceptions to the guardian's account. On May 24, 2007, the Siblings filed objections to the magistrate's supplemental findings on the exceptions. Ronda filed objections the same day.

{¶6} On October 10, 2007, Ronda filed a "First and Final Supplemental Guardian's Account," to which the Siblings filed further exceptions.

{¶7} On February 21, 2008, the probate court issued a judgment purportedly ruling on the parties' objections. The same day, the probate court issued an entry approving and settling the guardian's account. On February 28, 2008, the Siblings filed a request that the probate court issue findings of fact and conclusions of law relative to the February 21, 2008 judgment entry. The Siblings further indicated that the probate court had failed to resolve all issues raised in their objections. On March 4, 2008, the probate court issued an entry, asserting that no specific

findings could be made with respect to each of the "367 objections" due to the exceptors' failure to address or categorize each item individually.

{¶8} On March 31, 2008, the Siblings filed a motion for relief from judgment. The same day, the Siblings filed a motion requesting the probate court to clarify its February 21, 2008 judgment entry, as well as a motion to stay proceedings and continue or reinstate bond. Also on March 31, 2008, the Siblings filed a notice of appeal to this Court, appealing the February 21 and March 4, 2008 entries. Finally, on March 31, 2008, the Siblings filed a motion in this Court for remand to the probate court for ruling on the motions pending before the lower court. On April 21, 2008, this Court granted, in part, the motion to remand for a period of thirty days to allow the probate court to rule on the motion for relief from judgment pursuant to Civ.R. 60(B).

{¶9} On April 9, 2008, the probate court issued an entry "with respect to" the motion for relief from judgment by "amend[ing]" its February 21, 2008 judgment entry "by determining there is no just reason for delay." On May 8, 2008, the Siblings filed a motion requesting the probate court to refile its April 9, 2008 entry because the probate court lacked jurisdiction on April 9, 2008, to rule on the motion for relief from judgment due to the pendency of the appeal and lack of order by this Court remanding the matter. The probate court refiled the entry on May 9, 2008.

{¶10} On November 10, 2008, this Court dismissed the Siblings' appeal for lack of a final, appeal order because the probate court had failed to explicitly rule on the pending objections. *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813 ("*Strickler I*"). In response, on January 22, 2009, the probate court issued an entry purportedly ruling on all outstanding motions and objections. The probate court issued separate findings of

fact and conclusions of law the same day. On January 28, 2009, the probate court issued an entry approving and settling the guardianship account.

{¶11} The Siblings now appeal, raising two assignments of error for review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ERRED IN PERMITTING THE GUARDIAN TO FILE A '1ST & FINAL SUPPLEMENTAL ACCOUNT.'"

ASSIGNMENT OF ERROR II

"THE TRIAL COURT ERRED IN APPROVING THE GUARDIAN'S FINAL ACCOUNT, HOLDING THE GUARDIAN CHARGEABLE WITH ONLY $5,610.36 IN RECEIPT SHORTAGES."

{¶12} This Court may not address either assignment of error because the Siblings have not appealed from a final judgment.

{¶13} As we stated in *Strickler I*:

"The Ohio Constitution limits an appellate court's jurisdiction to the review of final judgments of lower courts. Section 3(B)(2), Article IV. For a judgment to be final and appealable, the requirements of R.C. 2505.02 must be satisfied. *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88. Pursuant to R.C. 2505.02(B), an order must fully determine an action to be final.

"Civ.R. 53 governs magistrate's decisions. This Court has literally interpreted Civ.R. 53 in the past and has held that for a trial court's ruling on a magistrate's decision to be final, the court must independently enter judgment. *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 218-21 (holding that an order in which the court merely adopts or affirms a magistrate's decision is not final because a court must explicitly enter judgment independently of the magistrate). Apart from requiring a trial court to enter its own judgment on a magistrate's decision, Civ.R. 53 also requires a court to dispose of any timely filed objections. The rule provides that '[i]f 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). When a trial court enters judgment on a magistrate's decision, but fails to explicitly rule on a party's objections, that judgment does not constitute a final, appealable order because it does not fully determine the action. See R.C. 2505.02; *In re K.K.*, 9th Dist. No. 22352, 2005-Ohio-3112, at ¶11-14 (noting that court must explicitly dispose of any objections raised pursuant to Civ.R. 53)." *Strickler I* at ¶7-8.

{¶14} Civ.R. 53 (D)(3)(b)(i) provides that "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision***." The record reflects that both Ronda and the Siblings filed timely objections to the magistrate's April 5, 2007 decision, on April 18 and 19, 2007, respectively. In response, the probate court directed the magistrate to prepare a supplemental report with findings. While the probate court had authority to return the matter to the magistrate pursuant to Civ.R. 53(D)(4)(b), it was still obligated pursuant to Civ.R. 53(D)(4)(d) to rule on the objections. It purported to do so by way of its February 21, 2008 judgment entry on objections. This Court, however, concluded that the probate court had failed to rule on any pending objections because it failed to explicitly overrule or sustain the objections. *Strickler I* at ¶10.

{¶15} In an attempt to cure its earlier failure to explicitly rule on the objections, the probate court issued its January 22, 2009 entry in which it explicitly denied objections filed on May 24, 2007, by both Ronda and the Siblings. In regard to the objections filed on April 18 and 19, 2007, however, the probate court merely stated that those objections had been "ruled upon by this court's entry of May 3, 2007." The probate court, however, made no ruling, i.e., neither overruled nor sustained the April 2007 objections, in its May 3, 2007 entry. Because the probate court failed to explicitly rule on all the parties' objections, it has not fully determined the action below. Accordingly, there is no final, appealable order, and this Court lacks jurisdiction to consider the merits of the appeal.

III.

{¶16} The entry of the Lorain County Court of Common Pleas, Probate Division, does not constitute a final, appealable order. Accordingly, the appeal is dismissed for lack of jurisdiction.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
MOORE, P. J.
CONCUR

APPEARANCES:

ROBERT E. LESSING, JR., and ANDREA C. KRYSZAK, Attorneys at Law, for Appellants.

TERENCE E. SCANLON, Attorney at Law, for Appellants.

JAY C. MARCIE, and BARBARA AQUILLA BUTLER, Attorneys at Law, for Appellee.

JOHN D. PINCURA. III, Attorney at Law, for Appellee.