

STATE OF OHIO                    )  
  )ss:  
COUNTY OF LORAIN            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE: STRICKLER

C.A. No.       09CA009692

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

DECISION AND JOURNAL ENTRY

Dated: May 24, 2010

---

MOORE, Judge.

{¶1} Appellants, Linda Stang, Shannon Dreger, and Thomas Strickler, (collectively “the Siblings”) appeal from the decision of the Lorain County Probate Court. This Court dismisses for lack of jurisdiction.

I.

{¶2} This case has previously been before this Court twice. We recently summarized the facts as follows:

“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.

“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.

“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.

“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.

“On October 10, 2007, Ronda filed a ‘First and Final Supplemental Guardian’s Account,’ to which the Siblings filed further exceptions.

“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.

“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).

“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.

“On November 10, 2008, this Court dismissed the Siblings’ appeal for lack of a final, [appealable] 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.” *In re Strickler*, 9th Dist. No. 09CA009535, 2009-Ohio-4799, at ¶¶2-10 (“*Strickler II*”)

{¶3} On September 14, 2009, this Court again dismissed the Siblings’ appeal for lack of a final appealable order because the probate court failed to rule on the parties’ objections filed in April of 2007. *Strickler II*, at ¶15. In response, on September 29, 2009, the probate court issued its entry, disposing of the parties’ April 2007 objections as well as the parties’ May 2007 objections. The Siblings timely appealed from this decision and have raised four assignments of error for our review. We have combined the errors for ease of review.

## II.

### **ASSIGNMENT OF ERROR I**

“PROBATE COURT ERRED IN ITS DECISION DATED SEPTEMBER 29, 2009, IN RELATION TO:

“-SIBLINGS’ OBJECTIONS OF APRIL 19, 2007, OBJECTION NO. 2, AS STATED ON PAGE 2 OF ITS DECISION;

“-SIBLINGS’ OBJECTIONS OF MAY 24, 2007, OBJECTION NO. 1, AS STATED ON PAGE 3;

“-SIBLINGS’ OBJECTIONS OF MAY 24, 2007, OBJECTION NO. 4, AS STATED ON PAGE 4; AND

“-SIBLINGS’ OBJECTIONS OF MAY 24, 2007, OBJECTION NO. 6, AS STATED ON PAGE 6.”

### **ASSIGNMENT OF ERROR II**

“PROBATE COURT ERRED IN ITS DECISION DATED SEPTEMBER 29, 2009 IN RELATION TO:

“-SIBLINGS’ OBJECTIONS OF APRIL 19, 2007, OBJECTION NO. 3, AS STATED ON PAGE 3 OF ITS DECISION;

“-SIBLINGS’ OBJECTIONS OF MAY 24, 2007, OBJECTION NO. 2, AS STATED ON PAGE 3; AND

“-SIBLINGS’ OBJECTIONS OF MAY 24, 2007, OBJECTION NO. 5, AS STATED ON PAGE 5.”

### **ASSIGNMENT OF ERROR III**

“PROBATE COURT ERRED IN ITS DECISION DATED SEPTEMBER 29, 2009 IN RELATION TO:

“-SIBLINGS’ OBJECTIONS OF APRIL 19, 2007, OBJECTION NO. 5, AS STATED ON PAGE 3 OF ITS DECISION; AND

“-SIBLINGS’ OBJECTIONS OF MAY 24, 2007, OBJECTION NO. 7, AS STATED ON PAGE 4.”

### **ASSIGNMENT OF ERROR IV**

“PROBATE COURT ERRED IN PERMITTING [RONDA] TO FILE A ‘1ST & FINAL SUPPLEMENTAL ACCOUNT.’”

{¶4} This case has a long and tortured procedural history, and the parties regrettably have expended vast time and financial resources in pursuit of a final resolution of their dispute. The trial court has wrestled to address hundreds of exceptions to the Guardian’s accounts and multiple objections from all parties. This Court has twice dismissed appeals in this case for lack of subject matter jurisdiction because of incomplete rulings on party objections. See *Strickler I* and *Strickler II*. Unfortunately, we must again dismiss the appeal for the same reason.

{¶5} As we have twice already stated in this matter:

“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; *Strickler II* at ¶13.

{¶6} On September 29, 2009, the probate court acknowledged that it had failed to explicitly rule on the outstanding objections to magistrate’s decisions. The probate court issued a ruling on the objections, either overruling or sustaining each of the 15 objections it identified. Unfortunately, the probate court ended its discussion there, failing to further explicitly enter judgment independently of the magistrate. It is well settled that a trial court may not simply adopt or affirm the magistrate’s decision. *Harkai*, 136 Ohio App.3d at 218-21. Rather, after explicitly ruling on every objection, it must enunciate the orders which resolve the issues in dispute. In this case, the probate court failed to enunciate any orders resolving the underlying issues in dispute. In fact, the probate court did not adopt or affirm the decision, adhere to an earlier order, or even enter judgment at all. See Civ.R. 53

{¶7} One day after the probate court issued its judgment entry ruling on the objections, the Siblings also filed a motion for court ruling, requesting the appointment of a special master commissioner to review the pending issues and report his or her findings of fact and conclusions

of law to the probate court due to the complexity of the case. Given the glut of documentation submitted and numerous challenges regarding the Guardian's account, this Court cannot imagine a situation in which the services of a special master commissioner would be more beneficial.

{¶8} Because the trial court failed to explicitly enter judgment, this Court must dismiss the Siblings' appeal for lack of a final, appealable order.

### III.

{¶9} This Court does not have jurisdiction to consider the Siblings' assignments of error because they have not appealed from a final, appealable order. As such, the appeal is dismissed.

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 Appellant.

---

CARLA MOORE  
FOR THE COURT

CARR, P. J.  
WHITMORE, J.  
CONCUR

APPEARANCES:

ROBERT E. LESSING, JR., Attorney at Law, for Appellants.

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

JAY C. MARCIE, Attorney at Law, for Appellee.

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