

Case No.

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. 20-109586

DANA LEE SIMAN,
EXECUTOR OF THE ESTATE OF DONALD SIMAN,
Appellee,

v.
PAMELA GEORGE,
GUARDIAN OF DONALD SIMAN
Appellant.

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT PAMELA GEORGE, AS GUARDIAN OF DONALD SIMAN

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I. THIS CASE IS ONE OF PUBLIC AND GREAT GENERAL INTEREST.

This appeal presents an opportunity to clarify an unsettled area of the law defining the scope of a probate court's jurisdiction to settle outstanding guardianship expenses after the death of a ward. Here, a lack of clarity as to what power a probate court has to issue orders to wind up a guardianship and then approve a guardian's final accounting, has led the Eighth District Court of Appeals to create a new rule of law that strips Ohio probate courts, and guardians, of their power and duty to affirmatively act to settle guardianship accounts and render and approve a final accounting after a ward's death. This rule on which the Eighth District relied, creates an arbitrary timing deadline that requires a probate court to determine its jurisdiction upon the happening of an event (i.e. the death of a ward), rather than based on the issue before the court.

But timing does not determine jurisdiction, subject matter does. The impact of this new rule is trifold. First, it will deter individuals and attorneys from serving as guardians in a critical process that benefits minor children and incompetent adults. This is because the Eighth District's holding, and newly minted rule, prevents the probate court from being able to issue orders to wind up the guardianship and pay outstanding expenses. Limiting a probate court's power in this way leaves guardians with little choice but to incur the expenses personally and hope the estate will reimburse them for their statutorily granted fees and mandated court costs. And if not approved by the estate fiduciary, guardians would then have to pursue additional litigation to recover what the probate court could have approved if that court deemed those administrative expenditures appropriate. In other words, this rule requires guardians to think long and hard about the potential personal cost they may incur when agreeing to serve as a guardian, which is already an onerous responsibility.

Second, it divests probate courts of their power to enforce their orders relating to the payment of outstanding guardianship expenses, and leaves them instead with only the power to

“rubber-stamp” a final accounting. This rule effectively removes the probate court, which is in the best position to review the conduct and expenses of the guardian it appointed, from a crucial final step of the guardianship process. Third, it creates an incentive program that encourages family members and interested parties to “race” to create an estate and take ownership of guardianship funds in order to control who gets paid, and who does not.

Guardians, their attorneys, and probate courts overseeing guardianships should not have to worry about whether their fees, costs, and expenses incurred will be paid by the guardianship estate to which they serve or oversee. They should have assurance that the probate court overseeing the guardianship will have the power and jurisdiction to review, approve, and order payment of statutorily granted fees and outstanding expenses from guardianship funds in order to render a final accounting. Guardians should not be pitted against the estate in a format that rewards the person that obtains possession of the funds first. What is more, filing a final accounting immediately at the time of death, as the Eighth District suggests, does not alleviate the problem. Rather, it overlooks the fact that a guardian must perform administrative tasks that naturally flow from the ward’s death, which the guardian must complete before closing the case with the probate court. Despite this requirement, under the Eighth District’s rule guardians could be left with no financial resources to facilitate that process. Therefore, this Court should accept jurisdiction to resolve this issue of first impression and public and great general interest, and conclude that the scope of the probate court’s jurisdiction after the death of a ward includes jurisdiction and power to issue orders that are necessary to settle outstanding guardianship expenses, including the power to remit payment.

This issue arises out of a dispute involving a guardianship, where Appellant Pamela George served as her father’s guardian in the Cuyahoga County Probate Court. The Ward died leaving

George with outstanding guardianship expenses totaling over \$13,000. Prior to rendering her final accounting, however, Appellee Dana Siman opened an estate in Medina County Probate Court and was appointed Executor. He then promptly withdrew \$15,000 from the guardianship bank account leaving George with \$497. George filed a claim with the Estate, which Siman denied stating the expenses were “obligations of the guardianship.” George filed a Motion to Compel the Return of Guardianship Funds (Motion to Compel) with the Cuyahoga County Probate Court. The probate court ordered the return of guardianship funds because they were necessary to render a final accounting.

On appeal, however, the Eighth District reversed, and vacated the probate court’s order, holding that it did not have the jurisdiction to compel Siman to return guardianship funds. Rather, it found that the final accounting was just an “itemized statement” that could be filed and approved by the probate court without returning the funds. App. Op. ¶6, Appx. 3. To support this conclusion, the Eighth District relied on this Court’s holding in *In re Guardianship of Hollins*, 114 Ohio St. 3d 434, 2007-Ohio-4555, 872 N.E.2d 1214. Specifically, the Eighth District found that *In re Guardianship of Hollins* stands for the proposition that “a guardianship that necessarily terminated upon the happening of an event may not be extended.” *Id.* at ¶ 20. This conclusion, however, misapplies this Court’s holding.

In *In re Guardianship of Hollins*, this Court considered whether the probate court had jurisdiction to (1) approve a settlement and (2) remove and replace a guardian after the minor ward reached the age of majority. *Id.* at ¶¶ 22-30. This Court found that it did not, stating that reaching the age of majority terminated the guardianship, and divested the probate court of jurisdiction to take action relating to the minor ward’s oversight. *Id.* at ¶ 26. In coming to this conclusion, this Court recognized the difference between jurisdiction for “all matters,” and jurisdiction for

rendering a final accounting. *Id.* at ¶ 29. This Court did not, however, hold that the happening of an event (termination of the guardianship) divests a probate court of all power to render orders related to the settlement of outstanding guardianship expenses.

And, at least three appellate courts, post-*Hollins*, agreed applying this Court's jurisprudence as just that: a recognition that a probate court's limited jurisdiction over a final accounting includes the power to issue and enforce orders that are necessary to wind up the guardianship and settle outstanding guardianship expenses. *See, e.g., In re Guardianship of Hughes*, Eighth Dist. Cuyahoga Nos. 89113, 89126, 2007-Ohio-6843, ¶ 19 (8th Dist.) (finding a probate court retained jurisdiction to determine the merit and amount of attorney fees after the ward's death because a probate court's jurisdiction continues for this limited purpose); *In re Guardianship of Thomas*, 7th Dist. Monroe Nos. 06MO7, 06MO8, 2008-Ohio-2409, ¶¶ 68-71 (7th Dist.) (finding that under *In re Guardianship of Hollins*, the probate court retains jurisdiction over a final accounting, thus the probate court had jurisdiction to resolve numerous issues relating to the final accounting); *In re Hards*, 175 Ohio App.3d 168, 2008-Ohio-630, 885 N.E.2d 980, ¶ 41 (11th Dist.) (finding that a probate court had the power to order an executor to remit guardianship funds because the funds were insufficient making it "impossible to settle the estate's accounts without recovering or otherwise accounting for the funds belonging to the estate.").

Until the Eighth District's decision, no other court in Ohio held that upon a ward's death, a probate court is divested of its power to issue and enforce orders that relate to and are necessary to wind up the guardianship estate, and settle outstanding guardianship expenses. Instead, the Eighth District's rule improperly focuses on the happening of an event to determine jurisdiction, rather than on the substance and the issue was properly before the court. This rule strips probate

courts of their power to effectuate their orders, leaving them only with the ability to “rubber-stamp” a guardian’s “itemized statement,” which runs afoul of Ohio law. App. Op. ¶ 6, Appx. 3.

First, it is well-settled that under Ohio law, a guardian’s power and duty to render a final accounting does not terminate at the time of a ward’s death. *State ex rel. Estate of Hards v. Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 12-13, citing *State ex rel. Hards v. Klammer*, 11th Dist. Lake No. 2004-L-189, 2005-Ohio-2655, at ¶ 20 (holding a guardian retains the power “to make a proper accounting and settlement of any acts taken in regard to [a] ward’s assets.”). Rather, only the legal effect of a guardianship terminates at the time of death. (Emphasis added). *See id.* at ¶ 11, quoting *Simpson v. Holmes*, 106 Ohio St. 437, 140 N.E. 395 (1922); *see also Sommers v. Boyd*, 48 Ohio St. 648, 29 N.E. 497 (1891).

Second, because a probate court retains this limited jurisdiction, the Ohio Revised Code defines its powers. Specifically, R.C. 2109.32(A), R.C. 2101.24(C), and R.C. 2101.24 (A)(1)(e) give a probate court statutory power to approve and settle a guardian’s final accounting. R.C. 2109.32(A) (a probate court shall inquire into, consider, and determine all matters relative to the account * * * and may order the account approved and settled or make any other order that the court considers proper.”); R.C. 2101.24(A)(1)(e) (“[A] probate court has exclusive jurisdiction * * * [t]o * * * direct and control [a guardian’s] conduct, and settle their accounts.”); R.C. 2101.24(C) (Emphasis added) (“[T]he probate court has plenary power at law and in equity *to dispose fully of any matter that is properly before the court. . . .*”).

There is no reason why this Court’s clear holdings in *State ex rel. Estate of Hards* and *In re Guardianship of Hollins*, and the unambiguous language of R.C. 2109.32(A), R.C. 2101.24(C), and R.C. 2101.24(A)(1)(e), should not be read to include issuing orders and compelling the return

of guardianship funds as part of a probate court's limited jurisdiction to approve a final accounting and settle guardianship accounts.

The facts of this case underscore the need for clarity. George as guardian was left with guardianship expenses upon the Ward's death. Prior to rendering a final accounting, the Executor opened an estate and withdrew the funds. This left George, and the probate court, without recourse to wind up the guardianship, and pay approved, outstanding, and administrative expenses. Historically, the probate court reviews and decides whether these items should be paid from the guardianship estate and correspondingly included as part of rendering the final accounting. The Eighth District recognized both that a probate court retains jurisdiction over a final accounting, and that a probate court has jurisdiction in rem over the guardianship funds. Yet, it latched onto the term "itemized statement" and adhered to an arbitrary timing deadline as the factors to consider when determining the scope of a probate court's jurisdiction.

This Court should not permit that result, it should accept jurisdiction, and clarify the scope of a probate court's jurisdiction to approve a final account and issue orders necessary to settle guardianship accounts after the legal termination of the guardianship.

II. STATEMENT OF THE CASE AND FACTS

A. Creating the guardianship.

The Ward's health issues rendered him incompetent. His three children, including George and Siman, sought guardianship in the probate court on his behalf. App. Op. ¶ 1, Appx. 1-2. In March 2018, the probate court appointed George guardian (App. Op. ¶ 4, Appx. 3) and she served in that capacity until the Ward's death. App. Op. ¶ 4, Appx. 3.

B. Guardianship expenses.

As guardian, George maintained a guardianship account at a branch of Huntington National Bank. App. Op. ¶ 5, Appx. 3. George incurred expenses while administering the guardianship and

caring for her father. These included expenses for skilled nursing, bond insurance, guardianship fees, attorneys' fees, and court costs. The probate court approved some of the attorney fees. The remainder of the expenses were not submitted to, or approved by the probate court before the Ward's death. The outstanding expenses totaled \$13,292.11. App. Op. ¶ 6, Appx. 3.

C. Opening the Estate.

After the Ward's death, Siman obtained letters of authority to administer the Estate from the Medina County Probate Court. *In Re Estate of Donald Siman*, Case No. 2019-09-ES-00457 (Med. Cty. P.C.). Once appointed, Siman removed \$15,000 from the guardianship bank account. App. Op. ¶ 5, Appx. 3. George had not yet filed her final account or paid outstanding expenses. Siman left \$497 in the account. *Id.*

D. Rejecting the guardian's claims.

Shortly thereafter, George and her current and former counsel, filed claims with the Estate for expenses incurred by the guardianship and related to its administration. App. Op. ¶ 6, Appx. 3. Siman rejected these claims, stating they were "obligations of the guardianship." *Id.*

E. Motion to compel and the Probate Court's ruling.

After Siman rejected her claims, George returned to the Cuyahoga County Probate Court and filed a Motion to Compel the guardianship funds. The probate court granted the Motion to Compel, finding it retained jurisdiction and power over the guardian and guardianship funds, explaining that George could not render her final accounting "without the guardianship funds being returned to the guardian's control." Cuy. P.C. J.E. Granting Mot. to Compel, at 1-2, Appx. 14-15.

F. The Eight District reverses.

On appeal, the Eighth District acknowledged that probate courts have subject matter jurisdiction over guardianships and guardianship funds, and retain limited jurisdiction to render a final accounting and settle guardianship accounts. App. Op. at ¶¶ 14-20, ¶ 31, Appx. at 6-9, 12,

citing *State ex rel. Estate of Hards*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 12-13; *In re Guardianship of Jadwisiak*, 64 Ohio St.3d 176, 180, 593 N.E.2d 1379 (1992). But, according to the Eighth District, because a final accounting is just an “itemized statement” and because the Ward passed away prior to the payment and approval of the expenses, the probate court did not have jurisdiction to compel the Executor to return guardianship funds. App. Op. at ¶¶ 14-20, ¶ 31, Appx. at 6-9, 12. The Eighth District then vacated the probate court’s order.

III. ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law

The scope of a probate court’s jurisdiction over guardianships includes the authority to compel the return of funds that belonged to the guardianship that are necessary to render a final accounting and settle guardianship accounts, and this authority extends beyond the death of a ward until a final accounting is approved by the probate court.

This Court should clarify that after the death of a ward, a probate court’s jurisdiction includes the power to issue orders that are necessary to settle outstanding guardianship expenses, including the authority to compel the return of funds that belonged to the guardianship. This rule of law fits with the established principle that even after the legal termination of a guardianship, a probate court retains limited subject matter jurisdiction over the final accounting and matters relating to a ward’s assets. *See, e.g., State ex rel. Estate of Hards* at ¶¶ 12-13, citing *State ex rel. Hards*, 2005-Ohio-2655 at ¶ 20 (11th Dist.) (holding a guardian retains the power “to make a proper accounting and settlement of any acts taken in regard to [a] ward’s assets.”). And it is this distinction that defines the scope of a probate court’s jurisdiction upon the death of a ward.

This Court recognized this distinction in *In re Guardianship of Hollins*. In *In re Guardianship of Hollins*, this Court held that after the legal termination of a guardianship, a probate court no longer had authority to (1) approve a settlement and (2) remove and replace a guardian. *In re Guardianship of Hollins*, 114 Ohio St. 3d 434, 2007-Ohio-4555, 872 N.E.2d 1214,

at ¶¶ 22-30. As this Court reasoned, once the legal effect of the guardianship is terminated the guardian, and the probate court, are without jurisdiction to take action relating to a ward's oversight. *Id.* at ¶ 26. This Court did not, however as the Eighth District contends, create a blanket rule that a probate court loses all jurisdiction to issue orders upon the termination of the guardianship. Rather, as this Court noted, although the legal effect of the guardianship terminated, the probate court retained jurisdiction for the "limited purpose of settling the guardian's final accounting." *Id.* at ¶ 29, citing *State ex rel. Estate of Hards* at ¶ 13. Thus, this Court drew a distinction between jurisdiction over all matters pending before the probate court, and jurisdiction over matters relating to the settling of the guardianship accounts. A probate court does not have jurisdiction over the former, but it does over the latter.

This rule tracks longstanding principles of Ohio law in probate courts and the administration of guardianships upon a ward's death. And, although this Court has not explicitly defined the scope of a probate court's jurisdiction to render a final accounting and settle guardianship accounts; a majority of courts who have considered the issue find that a probate court's jurisdiction encompasses several affirmative duties, including settlement of the guardianship accounts, and winding up of the guardianship estate. *See, e.g., Scattergood v. Ingram*, 86 Ohio St. 76, 78, 98 N.E. 923 (1912) (holding that a claim by a guardian for services rendered to a ward does not have to be presented to a ward's personal representatives in case of a ward's death); *In re Hards*, 175 Ohio App.3d 168, 2008-Ohio-630, 885 N.E.2d 980, ¶ 41 (11th Dist.) (finding the probate court had the power to order the return of guardianship assets because the decision "was made in the course of 'winding up' the affairs of the guardianship."); *In re Guardianship of Hughes*, 2007-Ohio-6843, at ¶ 13-20 (finding the probate court retained jurisdiction to consider the award of attorney's fees even after the ward's death); *Swift v. Gray*,

11th Dist. Trumbull No. 2007-T-0096, 2008-Ohio-2321, ¶ 51 (finding that even after the death of a ward, the probate court retained jurisdiction to approve the guardian's final accounting).

This rule also aligns with the clear statutory authority granted to probate court's by the Ohio legislature under R.C. 2109.32(A), 2101.24(C), and 2101.24(A)(1)(e). This power includes authority to issue orders regarding any matter that is properly before the court. These statutes are clear and unambiguous. For example:

- R.C. 2109.32(A) (Emphasis added): At the hearing upon an account required by section 2109.302 or 2109.303 of the Revised Code * * * the court shall inquire into, consider, and determine all matters relative to the account * * * and may order the *account approved and settled* or make *any other order that the court considers proper*.
- R.C. 2101.24(A)(1)(e): “[A] probate court has exclusive jurisdiction * * * [t]o * * * direct and control [a guardian's] conduct, and settle their accounts.”
- R.C. 2101.24(C) (Emphasis added): The probate court has plenary power at law and in equity *to dispose fully of any matter that is properly before the court*, unless the power is expressly otherwise limited or denied by a section of the Revised Code.

Under this statutory framework, a probate court has authority to (1) direct, control, and settle guardianship accounts, (2) render proper orders, and (3) dispose fully of matters properly before it. The Eighth District's holding – that a probate court's power includes only the approval of the final accounting expenses, but does not include the power to enforce those rulings through a court order – directly contravenes the plain language of these statutes, and renders them meaningless. This cannot be the correct interpretation, or the legislature's intent, when it passed this comprehensive statutory framework. *See State ex rel. Natl. Lime & Stone Co. v. Marion Cty. Bd. of Commr.*, 152 Ohio St.3d 393, 2017-Ohio-8348, 97 N.E.3d 404, ¶ 14 (finding the role of the court is “to evaluate [a] statute as a whole and to interpret it in a manner that will give effect to

every word and clause, avoiding a construction that will render a provision meaningless or inoperative.”).

Nothing in the plain language, or the legislative history, indicates that a probate court’s express and exclusive jurisdiction to issue “proper orders” terminates upon a ward’s death. To the contrary, the statutory framework indicates that the Ohio legislature intended to give probate courts exclusive jurisdiction over matters properly before it. And, because the Supreme Court of Ohio holds that a probate court retains subject matter jurisdiction for the limited purpose of rendering a final accounting and settling all matters touching a ward’s assets, it is axiomatic that the statutes laying out its authority apply and vest the probate court with a means to achieving that end.

Finally, this rule supports this Court’s precedent that a probate court’s proceedings over guardianships are proceedings in rem. *In re Guardianship of Santrucek*, 120 Ohio St. 3d 67, 2008-Ohio-4915, 896 N.E.2d 683, ¶ 5. Actions in rem are proceedings against property—not persons. *Moss v. Std. Drug Co.*, 159 Ohio St. 464, 470, 112 N.E.2d 542 (1953). Thus, a probate court has in rem jurisdiction over guardianship funds themselves. *In re Guardianship of Thomas*, 2008-Ohio-2409, ¶ 53, citing *In re Guardianship of Jadwisiak*, 64 Ohio St. 3d at 182, 593 N.E.2d 1379. Ordering a third party to remit guardianship funds is within a probate court’s in rem jurisdiction. *In re Guardianship of Jadwisiak*, 64 Ohio St. at 182 (holding that the probate court had jurisdiction order an attorney to return settlement funds obtained on behalf of the ward). And, this jurisdiction over the guardianship funds continues until a guardian winds up the guardianship and renders a final accounting. See, e.g., *In re Guardianship of Thomas* at ¶¶ 53-57.

A rule that confirms that a probate court retains limited jurisdiction over funds belonging to the guardianship to issue orders necessary for a guardian to render a final accounting and a probate court to settle guardianship accounts, even after a ward’s death, aligns and harmonizes this

Court's clear precedent and the unambiguous language of the Ohio Revised Code. Just as this Court held that after a ward's death a probate court retains "those powers and duties necessarily involved in the proper accounting and settlement of the [guardianship]" *State ex rel. Estate of Hards*, 110 Ohio St. 3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 13, citing *State ex rel. Beedle v. Kiracofe*, 176 Ohio St. 149, 151, 198 N.E.2d 61 (1964), so too should it clarify that these powers and duties include the power to issue orders and remit guardianship funds. Thus, in a guardianship proceeding, when a ward passes away, the probate court should retain jurisdiction over the guardianship and guardianship funds for the limited purpose of rendering a final accounting and settling guardianship accounts. And, this jurisdiction should include the power to issue orders that are necessary to settle outstanding guardianship expenses, including the power to remit payment.

IV. CONCLUSION

This Court should accept jurisdiction to clarify the scope of a probate court's jurisdiction to settle outstanding guardianship expenses after the death of a ward.

Respectfully submitted,

/s/ Elisabeth C. Arko

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PROOF OF SERVICE

A copy of the foregoing was served on October 30, 2020 per S.Ct.Prac.R. 3.11(C)(1) by electronic mail to:

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APPENDIX

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

SEP 17 2020

IN RE GUARDIANSHIP
OF DONALD SIMAN

: No. 109586

[Appeal by Dana Lee Siman]

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED

RELEASED AND JOURNALIZED: September 17, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Probate Division
Case No. 2017-GRD-231014

Appearances:

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Sweet Legal Group, L.L.C., and Allan P. Sweet, *for appellee.*

PATRICIA ANN BLACKMON, J.:

{¶ 1} Dana Lee Siman (“Dana”) is the executor of the estate (“the Estate”) of Donald Siman (“Donald”). Pamela L. George (“Pamela”) was the guardian for

CA20109586



114481857

Donald, both of his person and his Estate, prior to Donald's death. Dana and Pamela are brother and sister. Donald was their father. Dana appeals from the probate court's judgment granting Pamela's motion to compel return of funds. Dana assigns the following errors for our review.

- I. The probate court erred in granting Appellee's Motion to Compel Return of Funds to the Guardianship and its decision should be overturned because it is not supported by Ohio Law.
- II. The probate court erred in finding that the prior Guardian for Donald Siman, deceased, is unable to pay final bills of the guardianship and prepare and file a final accounting without the return of funds previously held in a guardianship bank account.
- III. The probate court erred in declaring that it has jurisdiction over Appellant Dana Lee Siman pursuant to Ohio Revised Code 2101.24(A)(1)(e) and 2109.32(A).

{¶ 2} Having reviewed the record and pertinent law, we vacate for lack of jurisdiction. The apposite facts follow.

{¶ 3} On December 29, 2017, Dana filed an application for appointment of guardian of Donald. At the time, Donald was 82 years old, lived in a nursing home, and suffered from various health issues that left him incompetent. On January 24, 2018, the probate court issued a "Court Investigator's Report on Proposed Guardianship." This report recommended the appointment of a guardian, but noted in the special remarks section that Dana's application was contested by his sisters, Pamela and Cindy. The report concluded as follows: "After considering the situation and the family conflict a third party (attorney application) is recommended to serve as [guardian]."

{¶ 4} On January 25, 2018, Pamela also filed an application for appointment of guardian of Donald. Against the investigator's recommendation, the probate court appointed Pamela as Donald's guardian on January 26, 2018. The court's journal entry reads in part as follows: "the family agreed that Pamela George should serve as Guardian of the Person and Estate * * *. Dana agreed that his application would be withdrawn."

{¶ 5} Donald passed away on April 14, 2019. On September 25, 2019, Dana applied for authority to administer the Estate in the Medina County Probate Court, which, in turn, appointed Dana as executor of the Estate. On October 4, 2019, Dana withdrew \$15,000 from a "guardianship account"¹ held at Huntington Bank. According to the record, after this withdrawal, the guardianship account had a balance of \$497.67.

{¶ 6} At this time, Pamela had not yet filed the final accounting associated with the guardianship. On October 10, 2019, Pamela filed claims against the Estate in the Medina County Probate Court for guardianship funds in the amount of \$10,132.66 in unpaid expenses plus \$3,159.45 in unpaid attorney fees. On October 15, 2019, the Estate rejected these claims, stating in correspondence to Pamela as follows: "The Estate * * * is not obligated to pay this claim, as the itemized expenses and services are obligations of the guardianship of Donald William Siman and should be paid from the guardianship estate."

¹ According to the record, the name on the Huntington Bank account in question was "Pamela L. George Guardian for Donald W. Siman."

{¶ 7} On November 18, 2019, Pamela filed a motion in the Cuyahoga County Probate Court to compel return of funds to guardianship, which the court granted on February 20, 2020. It is from this order that Dana appeals.

Standard of Review

{¶ 8} “The question of subject-matter jurisdiction is a question of law, subject to a de novo review on appeal.” *Cuyahoga Cty. Bd. of Cty. Commrs. v. Daroczy*, 179 Ohio App.3d 625, 2008-Ohio-5491, 899 N.E.2d 1017, ¶ 4 (8th Dist.). An appellate court’s review of probate court proceedings involving guardianships, on the other hand, is subject to an abuse of discretion standard. *See Whitaker v. Estate of Whitaker*, 105 Ohio App.3d 46, 663 N.E.2d 681 (4th Dist.1995).

Probate Court Jurisdiction

{¶ 9} We address Dana’s third assigned error first because jurisdiction, when raised, is a logical starting point in any case. On appeal, Dana argues that the probate court did not have subject matter jurisdiction “to direct or control [him or] order [him] to return the funds to the guardianship bank account.²”

{¶ 10} To support this argument, Dana cites to R.C. 2101.24(A)(1)(e), that gives the probate court jurisdiction over guardians, and R.C. 2109.32(A), that mandates that the court hold a hearing regarding the statutorily required accounting of administrators, executors, guardians, conservators, testamentary trustees, and

² Dana’s third assigned error reads in part as follows: “The probate court erred in declaring that it has jurisdiction over Appellant Dana Lee Siman * * *.” While the wording of this assigned error may lead the reader to believe that Dana is challenging the court’s personal jurisdiction over him, the content of his argument on appeal is that the probate court did not have subject matter jurisdiction to compel the return of guardianship funds.

other fiduciaries. R.C. 2109.32(A) further states that, at these hearings, the probate court has jurisdiction to “determine all matters relative to the account and the manner in which the fiduciary has executed the fiduciary’s trust * * * and may order the account approved and settled or make any other order that the court considers proper.” Dana argues that these statutes do not apply to him because he is not a guardian, and a final accounting was never submitted in this case.

{¶ 11} Probate courts have subject matter jurisdiction over guardianships and guardianship funds. *See In re Guardianship of Jadwisiak*, 64 Ohio St.3d 176, 180, 593 N.E.2d 1379 (1992) (referring to “the extension of the probate court’s jurisdiction to all matters ‘touching the guardianship’”). *See also* R.C. 2101.24(A)(1) (“Except as otherwise provided by law, the probate court has exclusive jurisdiction: * * * (e) To appoint and remove guardians * * *, direct and control their conduct, and settle their accounts; * * *.”).

{¶ 12} However, “[i]t is well-settled that the death of a ward terminates any guardianship proceedings by operation of law.” *In re Guardianship of Mogul*, 11th Dist. Trumbull No. 2001-T-0083, 2002 Ohio App. LEXIS 2057 (Apr. 30, 2002). The Ohio Supreme Court has further explained the exclusive, yet limited, jurisdiction of a probate court over guardianships:

although “there is precedent under Ohio law for the general proposition that the legal effect of a guardianship ends upon the death of the ward,” a guardian has the power after the ward’s death to make a proper accounting and settlement of any acts taken in regard to the ward’s assets. * * * Thus, the “jurisdiction of a guardianship court does not completely terminate immediately after the ward’s death.” * * * Therefore, even after the ward’s death, “those powers and duties

necessarily involved in the proper accounting and settlement of the [guardianship] continue.”

(Citations omitted.) *State ex rel. Estate of Hards v. Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 12-13. *See also Simpson v. Holmes*, 106 Ohio St. 437, 439, 140 N.E. 395 (1922) (“The guardian is the personal representative of the ward while the ward lives; upon the ward’s death the administrator or executor becomes his personal representative.”).

{¶ 13} Having determined the parameters of the probate court’s jurisdiction, we turn to the unique facts of the case at hand. It is undisputed that Pamela did not file a final accounting related to Donald’s guardianship. Ohio law states that guardians “shall render a final account within thirty days after completing the administration of the ward’s estate * * *.” R.C. 2109.302(A).

{¶ 14} In the case at hand, Donald passed away on April 14, 2019, and the court’s action that is the subject of this appeal occurred on February 20, 2020. The issue we are faced with is whether the probate court’s jurisdiction over the final accounting extended to compelling the executor of the Estate to return funds to the guardianship account. We find that it did not. Pursuant to R.C. 2109.302(A), a final accounting includes an itemized statement of all guardianship funds. Pamela, as guardian, can complete and submit a final accounting without the return of the funds.

{¶ 15} “[O]nce a guardianship ceases to exist, a probate court retains jurisdiction for the limited purpose of settling the guardian’s final accounting.” *In*

re Guardianship of Hollins, 114 Ohio St.3d 434, 2007-Ohio-4555, 872 N.E.2d 1214,

¶ 29. *Hollins* involved the guardianship of a minor, rather than a mentally incompetent adult, but we find the analogy apropos. See R.C. 2111.50(B) (“In connection with any person whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian, the court has * * * all the powers that relate to the person and the estate of the person * * *”).

{¶ 16} The issue the *Hollins* court addressed was “whether a probate court may properly retain jurisdiction and issue orders related to the minor ward once that ward has reached the age of 18.” *Id.* at ¶ 10. The Ohio Supreme Court held that the probate court did not have jurisdiction to journalize a settlement agreement after Hollins turned 18, even though the agreement had been reached at a hearing held prior to the ward’s 18th birthday.

{¶ 17} In *Hollins*, the guardian filed a motion to approve settlement in August 2004, and a magistrate held a hearing and issued a decision in September 2004. The probate court held a hearing on the settlement and the magistrate’s decision sometime in January 2005. On Saturday January 29, 2005, Hollins turned 18. On Monday January 31, 2005, “the probate court journalized a judgment entry approving the application to settle * * *.” *Id.* at ¶ 5. Also on January 31, 2005, the guardian filed the final accounting, stating that “because the court had not approved a settlement by Hollins’s 18th birthday, his estate contained no funds.” *Id.* at ¶ 6.

Subsequently, the probate court removed the guardian and appointed a successor guardian. *Id.* at ¶ 8.

{¶ 18} This court vacated both orders, finding that “the probate court was without jurisdiction to issue any orders.” *In re Guardianship of Hollins*, 8th Dist. Cuyahoga Nos. 86412 and 86574, 2006-Ohio-1543. The Ohio Supreme Court affirmed, finding that when Hollins turned 18, the probate court was “deprived of jurisdiction to issue orders related to the oversight of the guardianship of Hollins. Therefore, both the order approving the settlement and the order removing [the] guardian are invalid for lack of jurisdiction.” *Hollins*, 114 Ohio St.3d 434, 2007-Ohio-4555, 872 N.E.2d 1214, at ¶ 26.

{¶ 19} *Hollins* also discussed the probate court’s jurisdiction over the final accounting.

[Appellant] argues that by holding that a probate court’s jurisdiction over a minor ward terminates when that ward reaches the age of majority, we also deprive probate courts of the authority to oversee and approve a guardian’s final account. While it is true that such accounts must necessarily be filed after the ward turns 18, our decision does not mean that probate courts are without authority to approve these accountings. Probate courts are granted additional jurisdiction for a limited and specific purpose. R.C. 2109.302(A) provides that “every guardian or conservator shall render a final account within thirty days after completing the administration of the ward’s estate.” This requirement necessarily provides an independent grant of jurisdiction to the probate court for the consideration and settlement of a guardian’s final account; it does not provide jurisdiction beyond a minor’s age of majority for other purposes.

Id. at ¶ 27.

{¶ 20} Applying the Ohio Supreme Court's reasoning in *Hollins* to the case at hand, we find that the probate court lacked jurisdiction to grant Pamela's motion to compel return of guardianship funds. *Hollins* shows that a guardianship that necessarily terminates upon the happening of an event may not be extended from a Saturday to the following Monday. Accordingly, Dana's third assigned error is sustained.

Motion to Compel Return of Funds and Final Accounting

{¶ 21} Assuming arguendo that the probate court had jurisdiction to issue the order in question, we address Dana's first and second assigned errors together because the arguments overlap. In these assigned errors, Dana argues that the court erred by granting Pamela's motion to compel return of guardianship funds because a) the guardianship terminated upon the death of the ward, and b) the funds are not needed for the final accounting.

{¶ 22} Dana's first sub-argument under this assigned error is that the guardianship terminated upon the death of the ward. This relates to the probate court's jurisdiction and was analyzed extensively previously in this opinion.

{¶ 23} We turn to whether the funds were needed for the final accounting. The probate court's journal entry granting Pamela's motion to compel return of funds states that "the Guardian has not filed her Final Account and is unable to do so without the guardianship funds being returned to the guardian's control." We do not agree.

{¶ 24} In the final accounting, the guardian shall include

an itemized statement of all receipts of the guardian * * * during the accounting period and of all disbursements and distributions made by the guardian * * * during the accounting period. * * * In addition, the account shall include an itemized statement of all funds, assets, and investments of the estate known to or in possession of the guardian or conservator at the end of the accounting period and shall show any changes in investments since the last previous account.

R.C. 2109.302(A). *See also* R.C. 2109.32(A) (“At the hearing upon an account * * * the court shall inquire into, consider, and determine all matters relative to the account and the manner in which the fiduciary has execute the fiduciary’s trust, including the investment of trust funds, and may order the account approved and settled or make any other order that the court considers proper.”).

{¶ 25} Dana argues that Pamela is capable of submitting a final accounting without return of the funds. In other words, the \$15,000 could be “accounted for” by noting that the Estate’s executor withdrew it from the guardianship account. This argument is supported by *Hollins*, which stands for the proposition that a final accounting is merely a report of the account’s status and may have a zero balance. *Hollins* at ¶ 6.

{¶ 26} Dana also argues that R.C. Chapter 2117 “provides a guardian with an adequate remedy/procedure for obtaining payment on claims [including] the statutorily mandated process of filing a civil complaint on the rejected claims within sixty days.” *See* R.C. 2117.12.

{¶ 27} Pamela, on the other hand, argues that the case at hand is similar to *In re Guardianship of Hards*, 175 Ohio App.3d 168, 2008-Ohio-630, 885 N.E.2d 980 (11th Dist.).

The probate court's order to return assets to the guardianship was made in the course of "winding up" the affairs of the guardianship. Prior to [the ward's] death, [the guardian] had reported estate assets in excess of \$ 200,000. * * * In 2003, the probate court became concerned that these guardianship funds had been improperly disbursed as joint and survivorship or payable upon death, although they had not been identified as such prior to [the ward's] passing. Moreover, the funds remaining in the estate were inadequate to cover the costs of the estate. Thus, it was impossible to settle the estate's accounts without recovering or otherwise accounting for the funds belonging to the estate. Due to [the guardian's] failure to comply with the court's orders, it was impossible to determine the status or even the location of these funds as well as to make a final accounting.

For these reasons, the order for the return of the improperly transferred assets to the guardianship estate was necessary to the "winding up" of the estate's affairs and within the probate court's continuing jurisdiction.

Id. at ¶ 41-42.

{¶ 28} In *Hards*, it was the former guardian who took guardianship funds, and in the case at hand, it was the Estate's executor who took guardianship funds. The facts of *Hards* are readily distinguishable from the facts in the case at hand.

{¶ 29} In *Hards*, the ward's daughter was appointed as guardian in 1995. The court appointed a special master to manage guardianship litigation in 2001. Upon recommendation of the special master, the ward's daughter was removed as guardian and replaced by a successor guardian in 2002. On February 4, 2002, the court ordered the former guardian to file an accounting and turn the estate assets, which totaled \$220,350.40 at the time of the previous accounting, over to the successor guardian within 30 days. The former guardian did not comply with these orders. *Id.* at ¶ 2-9.

{¶ 30} The ward died on February 24, 2002. The legal battle over the guardianship funds continued between the former guardian on one side, and the special master and successor guardian on the other side. Ultimately, on January 5, 2007, the probate court found the former guardian guilty of eight counts of criminal contempt for failure to comply with court orders. *Id.* at ¶ 28.

{¶ 31} In the case at hand, the relevant court orders were issued after Donald's death, and there was no pending controversy at the time he died. We decline to apply *Hards* to the instant case. Accordingly, even if the trial court had jurisdiction, we would find that the court abused its discretion by granting Pamela's motion to compel return of funds to guardianship, thus sustaining Dana's first and second assigned errors.

{¶ 32} Judgment vacated.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27
of the Rules of Appellate Procedure.

Patricia Ann Blackmon
PATRICIA ANN BLACKMON, JUDGE

MARY J. BOYLE, P.J., CONCURS;
KATHLEEN ANN KEOUGH, J., CONCURS
IN JUDGMENT ONLY

FILED AND JOURNALIZED
PER APP.R. 22(C)

SEP 17 2020

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Greg Hercik Deputy

PROBATE COURT OF CUYAHOGA COUNTY, OHIO

ANTHONY J. RUSSO, PRESIDING JUDGE
LAURA J. GALLAGHER, JUDGE

IN THE MATTER OF
THE GUARDIANSHIP OF:

DONALD WILLIAM SIMAN, AN
INCAPACITATED PERSON

Case No: 2017GRD231014

JUDGMENT ENTRY

This matter came on for consideration upon the Motion to Compel Return of Funds to Guardianship (Motion), filed by Pamela L. George, Guardian of Person and Estate of Donald William Siman (now deceased), by and through her attorney Allan P. Sweet, Esq.

The Guardian, in her Motion, states that Dana Lee Siman, Executor of the Decedent's Estate, opened in Medina County, has removed \$15,000.00 from the Guardianship bank account and refused to return same, thereby causing the guardian to be unable to pay the final bills of the guardianship and file her Final Accounting. She requests that this Court order the Executor to return the funds pursuant to its statutory authority. (O.R.C. 2101.24(A)(1)(e) (Court's statutory authority to direct guardians); 2109.32(A) (plenary power to dispose fully of all matters properly before the Court and touching the guardianship); and 2109.32(A) (Authority retained to issue any order the Court considers proper until the guardian is discharged)).

The Executor has filed a Response (Opposition to Motion to Compel) arguing that the Guardian's authority ended at the moment of death (*Simpson v. Holmes Admr., et al*, 106 Ohio St. 437 (Ohio 1922)) and that the Executor had a duty to collect the assets of the decedent (*In re: Estate of Kemp (Ohio 3rd District)* 189 Ohio Ap 3d 232 (2010)).¹ A hearing was held on 12/20/2019, at which the attorneys discussed the facts contained in the motions and presented oral argument; the hearing was recorded in part². The final brief was submitted on 1/14/2020.

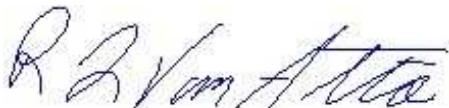
¹ The Executor also cites this Court's Handbook for Guardians in support of his argument. This argument fails as the Handbook specifically states that it contains only general guidance to the public (laypersons) and specifically advises same to contact an attorney for specific legal advice. (Handbook at 1).

² It appears that the Executor has chosen this course of action, at least in part, in response to his belief that, PRIOR to the guardianship, Pamela George had misappropriated certain other funds allegedly belonging to the decedent. If that is his concern, the Executor has other legal options at his disposal to pursue that question.

After review of all evidence and argument, this Court concludes as follows. Although *Simpson, supra*, states the general principle that the death of a ward terminates the powers and duties of the guardian; statutory and recent case law are clear that the guardian retains the power after the ward's death to make a proper accounting and to settle any acts taken in regard to the ward's assets. Additionally, the Court's jurisdiction over the guardianship estate does not completely terminate upon the ward's death, but necessarily continues to allow for the proper accounting and settlement of the guardianship. (*State ex rel. Estate of Hards v. Klammer*, 110 St.3d 104, 2006-Ohio-3670, para. 12-13; *State ex rel. Beedle v. Kiracofe* (1964), 176 Ohio St. 149, 151; *In re Guardianship of Hughes*, 2007-Ohio-6843, paras. 15-19; and see *Simpson, supra*, at 440-441; O.R.C. 2101.24(A)(1)(e); 2109.32(A); and 2109.32(A)).

In the instant case, the Guardian has not filed her Final Account and is unable to do so without the guardianship funds being returned to the guardian's control. This Court's authority over the guardian, the guardianship, and its assets continues in effect. The Guardian's Motion is granted; Dana Lee Siman, having appeared and submitted to this Court's jurisdiction and having taken possession of an asset subject to this Court's jurisdiction, is hereby Ordered to immediately return the subject \$15,000.00 to the guardianship of Donald Siman.

IT IS SO ORDERED.



ROBERTA LEE VANATTA

February 20, 2020

Date



JUDGE ANTHONY J. RUSSO