COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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:

Palecek, Mcllvaine, Hoffman & Morse Co., John Bartolotta and Carl E. Patrick, *for appellant.*

Tucker Ellis L.L.P., Michael J. Ruttinger, and Elisabeth C. Arko
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

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."

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[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

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[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