

Case No. 2020-1321

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# In the Supreme Court of Ohio

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

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

v.  
PAMELA GEORGE,  
GUARDIAN OF DONALD SIMAN  
*Appellant.*

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## **APPELLEE'S MEMORANDUM IN RESPONSE TO APPELLANT PAMELA GEORGE'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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## **I. THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST**

The ruling of the Eighth District Court of Appeals (“Court of Appeals”) was founded on a unique set of facts and is entirely consistent with well-established Ohio law regarding the parameters of a probate court’s jurisdiction. The trial court erred by failing to apply established Ohio authority to these specific facts. The Court of Appeals recognized this error and reversed the trial court’s decision granting Pamela George’s (“Appellant”) Motion to Compel Return of Funds to Guardianship (“Motion to Compel”). Given that this case is premised on such a specific set of facts, and is already supported by well-established Ohio law, it is clearly of no public or great general interest.

Appellant’s request that this Court accept jurisdiction to review the ruling from the Court of Appeals is based on Appellant’s inaccurate description of the ruling as holding that a probate court has no power to settle guardianship accounts or approve a final accounting after a ward’s death. (Appellant’s Memorandum In Support at 2). The Court of Appeals made no such holding. The Court of Appeals simply held that the Cuyahoga County Probate Court’s jurisdiction over the final accounting of the guardianship account at issue does not extend to compelling the executor of an estate to return funds held in the estate account under the jurisdictional oversite of the Medina County Probate Court. (Eighth Appellate District Court of Appeals, Ohio, Journal Entry and Opinion, dated September 17, 2020, Case No. 109586, ¶ 14). The Appellant’s inaccurate misrepresentation to this Court does not render this case of public or great general interest.

This case dealt with a very unique and specific factual scenario regarding the removal of funds previously held in a Huntington Bank guardianship estate account under the jurisdictional oversight of the Cuyahoga County Probate Court. These funds were later deposited in an estate account under the jurisdictional oversite of the Medina County Probate Court. Donald William

Siman (the “Ward”) died on April 14, 2019. On September 25, 2019, Dana Lee Siman (“Appellee”) applied for authority to administer the Ward’s estate (“Estate”) in the Medina County Probate Court under Case Number 2019 09 ES 00457. The Medina County Probate Court appointed Appellee as executor and issued corresponding letters of authority on September 26, 2019. On October 4, 2019, Appellee presented his letters of authority at Huntington Bank and withdrew funds owned by the Ward. Those funds, unbeknownst to Appellee, included funds from a guardianship bank account.

On October 10, 2019, Appellant, as guardian, and her counsel, filed claims in the Estate administration for expenses allegedly related to the guardianship and its administration. Appellee, in his capacity as personal representative of the Estate, filed formal rejections on those claims. Appellant, rather than follow the statutorily mandated process outlined in Ohio Revised Code (“R.C.”) 2117.12 of filing a civil complaint on the rejected claim within sixty (60) days, filed the Motion to Compel. The Motion to Compel provided that the guardianship could not be concluded until a final accounting is filed, and further alleged that a final accounting could not be prepared until the funds were returned to the guardianship account. The Cuyahoga County Probate Court entered judgment compelling Appellee to return the funds, effectively ordering the Medina County Probate Court to submit to the Cuyahoga County Probate Court’s jurisdiction.

Appellant asks this Court to rule on whether the Cuyahoga County Probate Court’s jurisdiction over the final accounting extends to compelling the executor of the Estate to return funds to the guardianship account under these unique facts. Because this case is premised on such a specific set of facts and the Court of Appeals’ decision is extensively supported by well-established Ohio law, as demonstrated in Section II below, the public would not benefit in any way

from a decision by this court to accept review of this case. Appellant's request for jurisdiction should be denied.

## **II. APPELLEE'S POSITION ON APPELLANT'S PROPOSITION OF LAW**

### **Appellant's 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.**

The issue decided by the Court of Appeals was whether the Cuyahoga County Probate Court's jurisdiction over the final accounting of the guardianship account at issue extends to compelling the executor of an estate to return funds held in the estate account under the jurisdictional oversite of the Medina County Probate Court. (Eighth Appellate District Court of Appeals, Ohio, Journal Entry and Opinion, dated September 17, 2020, Case No. 109586, ¶ 14). The Court of Appeals found that it did not. *Id.* Appellant alleges that the Court of Appeals "create[d] 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." (Appellant's Memorandum In Support at 1). However, it is Appellant that now asks this Court to forgo established Ohio law and extend the jurisdictional guardianship powers of a probate court over third parties. Appellant has failed to cite even one case providing a probate court with the powers she is seeking now.

Appellant seeks to suggest that the Court of Appeals has stripped probate courts and guardians of their powers to render final accounts and settlement of the guardianship. This is simply not true. It is well settled that 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; . . .”). Further, R.C. 2109.32(A) gives a probate court authority to issue any order that the court considers proper at the hearing upon an account. (Emphasis added).

However, “[i]t is well-settled that the death of a ward terminate[s] 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). *See also Simpson v. Holmes Admr., et al.*, 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.”); and *In re Guardianship of Hollins*, 114 Ohio St.3d 434, 2007-Ohio-4555, 872 N.E.2d 1214, ¶ 29 (“[O]nce a guardianship ceases to exists, a probate court retains jurisdiction for the limited purposes of setline the guardian’s final accounting.”)

This case is not about a probate court’s powers over the guardian – as Appellant suggests. Rather, it is about a probate court’s power over a third-party representative appointed by another probate court. Appellant has failed to cite one case or statute providing for the type of expansive powers she seeks now. For example, Appellant cites *In re Hards*, 175 Ohio App.3d 168, 2008-Ohio-360, 885 N.E.2d 980, ¶ 41 (11<sup>th</sup> Dist), an appeal from the Lake County Court of Common Pleas, for the proposition that a probate court has 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.” (Appellant’s Memorandum In Support at 9). However, *In re Hards* concerns a former guardian who took guardianship funds totaling \$220,350.40, not the Estate executor as we

have here. The *In re Hards* court ordered the former guardian to file an accounting and turn over the estate assets to the successor guardian. The guardian in that case refused, leading to eight counts of criminal contempt. In other words, it is Appellant who advocates for the establishment of new law and the abolishment of existing rules and procedures.

In this case, Appellant moved the Cuyahoga County Probate Court to compel the return of the guardianship funds pursuant to the court's statutory authority under R.C. 2101.24(A)(1)(e) and 2109.32(A). R.C. 2101.24(A)(1)(e) gives the probate court exclusive jurisdiction "to appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts." Thus, Section 2101.24(A)(1)(e) grants the probate court jurisdictional authority to direct and control the conduct of a guardian, but does not grant the probate court jurisdiction over a third-party. As such, the Cuyahoga County Probate Court has jurisdictional authority to direct and control the conduct of Appellant, as the guardian, but it does not have jurisdictional authority over Appellee, a third-party representative appointed by another probate court. The Cuyahoga County Probate Court is effectively ordering the Medina County Probate Court to submit to its jurisdiction. Since the Cuyahoga County Probate Court has no authority pursuant to R.C. 2102.24(A)(1)(e) to direct or control Appellee, it cannot order Appellee to return the funds to the guardianship bank account. Additionally, R.C. 2109.32(A) gives a probate court authority to issue any order that the court considers proper at the hearing upon an account. (Emphasis added). This statutory provision has no control over Appellant's Motion to Compel because such a motion does not constitute a hearing upon an account.

Appellant seeks to have this Court establish new law expanding a probate court's jurisdiction over a third-party representative appointed by another probate court. For the reasons above, Appellant's request for jurisdiction should be denied.

As an aside from a probate court’s jurisdiction over a third-party representative appointed by another probate court, Appellant’s suggestion that the funds at issue are required to render a final accounting are disingenuous. Appellant is fully capable of performing an accounting without the funds being returned to the guardianship account. Pursuant to R.C. 2109.302(A), a final accounting includes an itemized statement of all guardianship funds. Appellant would merely “Account” for those funds by stating that there are “X” amount of funds currently in the guardianship account and that \$15,000.00 of funds have been transferred to the Estate account pursuant to the administration under Medina County Probate Court, Case Number 2019 09 ES 00457. This position is supported by Page 29 of the “Fundamentals of Adult Guardianship” produced by the Justices of the Ohio Supreme Court and available at: <https://www.ohiochannel.org/Assets/Files/UserContent/40/155679.pdf>. This Court states: “If a ward has an estate, then upon his death the duty of the guardian is to preserve the estate and deliver the same to whomever the probate court appoints to administer the ward’s estate. Thereafter, the Guardian must file a final account with the court.” *See* Page 29, Number 3. (Emphasis added). Thus, it is this Court’s opinion that a guardian can in fact prepare a final account after funds have been delivered to the personal representative.

Likewise, Appellant’s contention that the funds need to be returned in order to pay alleged administration costs and other bills of the guardianship, is also disingenuous. R.C. Chapter 2117, Presentment of Claims Against Estate, provides a guardian with an adequate remedy and procedure for obtaining payment on claims. Here, the guardian took such action, and Appellee rejected Appellant’s submitted claim in the Estate administration. Unsatisfied with the result, Appellant filed her Motion to Compel, attempting to usurp the statutorily mandated process of filing a civil complaint on the rejected claims within sixty days. *See Ohio Revised Code 2117.12. See also*

*Simpson v. Holmes Admr., et al.*, 106 Ohio St. 437, 140 N.E. 395 (1922). Appellant did not file a civil complaint against the Estate on her rejected claim within sixty days of the rejection.

Appellee, as executor of the Estate, had an affirmative duty to act and marshal the assets of the Estate. “The Executor has an obligation and mandatory duty to seek out and collect every asset belonging to the decedent...and include it in the estate.” *In re: Estate of Kemp* (Ohio 3rd District) 189 Ohio App.3d 232 (2010), citing R.C. 2113.25. Here, consistent with and pursuant to well-establish Ohio law, Appellee performed his duty to seek out and collect assets belonging to the Ward. He presented his letters of authority to Huntington Bank, received funds belonging to the deceased Ward, and deposited the same into an Estate account under the judicial oversight of the Medina County Probate Court. The only legal action that Appellant could have taken would have been to preserve the assets of the Estate until delivery was made to Appellee, the Estate’s personal representative. It makes absolutely no difference that Appellee collected the funds himself instead of having received them directly from the guardian.

By filing her Motion to Compel, Appellant attempts to unlawfully remove assets solely belonging to the Estate of Donald William Siman and thereby expand the jurisdictional guardianship powers of a probate court over third parties. Appellant has failed to cite even one case providing a probate court with the powers she is seeking now.

### **III. CONCLUSION**

The Court of Appeals did not make the ruling that Appellant inaccurately represents to this Court. Appellant seeks to expand the statutory jurisdictional guardianship powers of the Cuyahoga County Probate Court over third parties not before that court and who are subject to another court’s jurisdiction. There is no concurrent jurisdiction delineated by statute. Given that this case is premised on such a specific set of facts, and is already supported by well-established Ohio law, it

is clearly of no public or great general interest. Accordingly, Appellant's request that this Court accept jurisdiction to review should be denied.

Respectfully submitted,

**PALECEK, McILVAINE, HOFFMANN &  
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/s/ Brandon Davis

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A copy of the foregoing was served on November 24, 2020 per S.Ct.Prac.R. 3.11(C)(1) by electronic mail to:

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