

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE GUARDIANSHIP OF
MARY ANN POND

: JUDGES:
:
: Hon. Patricia A. Delaney, P.J.
: Hon. Craig R. Baldwin, J.
: Hon. Andrew J. King, J.
:
: Case No. 22 CAF 12 0081
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:
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:
:
: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court
of Common Pleas, Probate Division,
Case No. 21020198PGU

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

July 19, 2023

APPEARANCES:

For Appellant:

DAVID POND, PRO SE
5952 Nike Dr.
Hilliard, OH 43026

For Appellee:

ADRIANN MCGEE
MARY KRAFT
200 Civic Center Dr., Suite 800
Columbus, OH 43215

Delaney, P.J.

{¶1} Appellant Dr. David Pond appeals the November 28, 2022 judgment entries of the Delaware County Court of Common Pleas, Probate Division.

FACTS AND PROCEDURAL HISTORY

Appointment of Guardian of the Estate and Guardian of the Person

{¶2} Appellant Dr. David Pond is the adult child of Mary Ann Pond. On February 18, 2021, the Delaware County Department of Job and Family Services filed an application for the appointment of guardian of alleged incompetent Mary Ann Pond with the Delaware County Court of Common Pleas, Probate Division (Case No. 2102 0198 PGU). After an evidentiary hearing, on March 22, 2021, the magistrate declared Mary Ann Pond incompetent and found it was in her best interest to have a guardian of the person and the estate. The magistrate appointed Nikolas McCoy as the Guardian of the Person and Appellee Adrian McGee as the Guardian of the Estate (hereinafter “Guardian McGee”).

{¶3} Dr. Pond filed objections to the magistrate’s decision on April 5, 2021. The probate court held ruling on the objections while the parties participated in mediation.

{¶4} On January 17, 2022, Guardian McGee filed a Motion for Authority to Exercise Rights of Sole Income and Principal Beneficiary of the Second Amended and Restated Trust Agreement dated August 11, 2000 by Mary Ann Pond. Mary Ann Pond was the beneficiary of the Mary Ann Pond Trust dated August 11, 2000. The Mary Ann Pond Trust benefitted Mary Ann Pond during her lifetime and at her death, distributed the first \$1.2 million to her grandchildren, with the residuary benefit to Dr. Pond. At the time of the March 9, 2021 evidentiary hearing, the Mary Ann Pond Trust owned an investment

account valued at approximately \$1.7 million and a bank account, which held approximately \$300,000.

{¶5} By judgment entry filed on February 18, 2022, the probate court issued its Entry Authorizing Exercise of Beneficiary Authority, which authorized the Guardian of the Estate to exercise all rights of Mary Ann Pond as the grantor and sole beneficiary under the terms of the Mary Ann Pond Trust. Pursuant to the terms of the Mary Ann Pond Trust and the probate court's February 18, 2022 judgment entry, Guardian McGee removed Dr. Pond and Park National Bank as the Successor Trustees and appointed Attorney Thomas Taneff as the Successor Trustee.

{¶6} After mediation was unsuccessful, the probate court issued a detailed judgment entry on May 16, 2022, overruling Dr. Pond's objections to the magistrate's decision appointing guardians for the person and estate of Mary Ann Pond.

{¶7} Dr. Pond filed a pro se appeal of the probate court's decision to this Court in *Matter of Guardianship of Pond*, 5th Dist. Delaware No. 22 CAF 06 0045, 2022-Ohio-4023. Relevant to the current appeal, Dr. Pond did not assign the probate court's February 18, 2022 judgment entry as error. We overruled Dr. Pond's assignments of error and affirmed the appointment of McCoy and McGee as guardians for Mary Ann Pond.

Robert J. Pond Trust, Case No. 2105 0646 PCI

{¶8} Mary Ann Pond was the lifetime sole beneficiary of her husband's trust, the Robert J. Pond Living Trust dated August 11, 2000, and the named successor trustee upon his death. Robert J. Pond passed away on September 5, 2012, and Mary Ann Pond was appointed as the sole successor trustee of Robert's trust. Pursuant to a second amendment to Robert's trust, dated April 16, 2007, in the event Mary Ann Pond was

unwilling or unable to serve, additional successor trustees were listed as Dr. Pond herein, Sam G. Tornik, Jeffrey Sherman, and John J. Rinehart, in that order.

{¶9} Following Robert's death, Mary Ann Pond replaced all initial trustees and named herself and Dr. Pond as co-trustees on January 4, 2013. On June 26, 2015, Mary Ann Pond removed Dr. Pond as a co-trustee. Mary Ann Pond was adjudicated incompetent on March 22, 2021, and Dr. Pond became the Successor Trustee of Robert's trust pursuant to the language of the trust.

{¶10} On May 13, 2021, Guardian McGee filed a petition to invoke the jurisdiction of the probate court over the trust and appoint a corporate trustee pursuant to the language of the trust (Case No. 2105 0646 PCI). A hearing before a magistrate was held on June 9, 2021. By decision filed July 9, 2021, the magistrate found by operation of the trust document, Dr. Pond was in fact the Successor Trustee, and Guardian McGee may, on behalf of Mary Ann Pond, apply to the probate court to remove Dr. Pond as trustee, make demands for principal and income distributions from the trust, and exercise Mary Ann Pond's rights in the trust.

{¶11} On August 5, 2021, Dr. Pond filed objections to the magistrate's July 9, 2021 decision. Dr. Pond argued the magistrate failed to consider and/or incorrectly interpreted provisions of the trust, specifically, Article 6, Section 4, and Article 9, Section 2. The probate court sent the matter to mediation.

{¶12} Following an unsuccessful mediation, the probate court reviewed the objections. By judgment entry filed May 16, 2022, the probate court overruled the objections and adopted the magistrate's decision.

{¶13} On May 27, 2022, Guardian McGee filed a motion to remove Dr. Pond as the successor trustee of the Robert Pond Trust.

{¶14} On June 14, 2022, Dr. Pond filed a pro se appeal of the probate court's May 16, 2022 judgment to this court in *In re Robert J. Pond Living Trust*, 5th Dist. Delaware No. 22 CAF 06 0046, 2022-Ohio-4301.

{¶15} On December 2, 2022, we overruled Dr. Pond's assignments of error and affirmed the May 16, 2022 judgment entry of the probate court.

Continued Pro Se Filings by Dr. Pond in Case No. 2102 0198 PGU

{¶16} After the probate court's appointment of the guardians of the person and estate for Mary Ann Pond and our affirmance of the same, Dr. Pond continued to file pro se motions contesting the appointment and actions of the guardians in Case No. 2102 0198 PGU.

{¶17} On June 10, 2022, Dr. Pond filed a motion to remove Guardians McCoy and McGee as guardians of Mary Ann Pond and a motion for the magistrate to recuse himself. Guardian McGee filed a motion to strike Dr. Pond's June 10, 2022 motions and a motion for sanctions.

{¶18} On July 29, 2022, Dr. Pond filed a motion for order permitting inspection of personal property. He also filed a combined request for production of documents and interrogatories to Guardians McGee and McCoy. On August 15, 2022, Dr. Pond filed an emergency motion to stay any further disposal of personal property from the property and for an emergency inventory of the property.

{¶19} A visiting judge was assigned to the case on September 6, 2022.

A Quest for Gold

{¶20} On September 6, 2022, Guardian McGee and Thomas Taneff, as Trustee of the Mary Ann Pond Revocable Trust dated August 11, 2000, filed a motion with the probate court for an order granting partial distribution of gold held by the American Hartford Gold Group to the Mary Ann Pond Trust. In their motion, Guardian McGee and Taneff provided the underlying facts leading to their request for the transfer of gold.

{¶21} Mary Ann Pond's wealth was held in two trusts: the Mary Ann Pond Trust and the Robert Pond Trust. Mary Ann Pond is the lifetime beneficiary of both Trusts. The motion alleged that in January 2021 and before the guardianship was established, Dr. Pond liquidated approximately \$1.7 million from an investment account owned by the Mary Ann Pond Trust and approximately \$1 million from an investment account owned by the Robert Pond Trust. Dr. Pond deposited the \$1.7 million proceeds from the Mary Ann Pond Trust into the Robert Pond Trust and deposited the \$1 million proceeds from the Robert Pond Trust into the Mary Ann Pond Trust. Dr. Pond then withdrew \$3.1 million from both Trusts and used the proceeds to purchase physical gold (\$2.8 million purchased in January 2021 and \$300,000 purchased in February 2021). The gold was purchased in Dr. Pond's individual name through the American Hartford Gold Group.

{¶22} The American Hartford Gold Group delivered the gold in several shipments. The first shipment of approximately \$640,000 in gold was allegedly received by Dr. Pond and stored in a safe in Mary Ann Pond's home. A second shipment of \$80,000 was lost by the UPS. UPS pursued a claim for the missing shipment, which Dr. Pond allegedly collected and concealed from the Guardian McGee, who discovered the transaction

through communication with the American Hartford Gold Group. Guardian McGee believed that Dr. Pond was in possession of the \$80,000 in gold.

{¶23} The American Hartford Gold Group informed Guardian McGee that in his capacity as Successor Trustee of the Robert Pond Trust, Dr. Pond requested the remaining gold be delivered to him. In March 2021, due to the pending guardianship proceedings, the American Hartford Gold Group halted shipment of the remaining gold, in the amount of \$2,340,000. The motion stated that the American Hartford Gold Group would hold the remaining gold until it received an Order from the probate court directing its release.

{¶24} In their motion, Guardian McGee and Trustee Taneff argued that Dr. Pond purchased \$3.1 million in gold using co-mingled Trust funds. For the January 2021 purchase, the motion argued the Mary Ann Pond Trust owned 60.6% of the physical gold and the Robert Pond Trust owned 39.4% of the physical gold. For the February 2021 purchase, the motion argued the Mary Ann Pond Trust owned 73.8% of the physical gold and the Robert Pond Trust owned 26.2% of the physical gold.

{¶25} The motion argued that Mary Ann Pond required additional funding to support her ongoing care. Pursuant to the terms of the Mary Ann Pond Trust, the Trustee of the Mary Ann Pond Trust had authority to receive a partial release of the gold, to hold and distribute for the benefit of Mary Ann Pond. Guardian McGee and Trustee Taneff requested the probate court issue an Order directing the American Hartford Gold Group to make a partial distribution, releasing 20% of the gold to the Mary Ann Pond Trust for continuity of Mary Ann Pond's care and maintenance.

Dr. Pond's Responsive Motions

{¶26} On September 28, 2022, Dr. Pond filed multiple motions with the probate court. First, he filed a motion for the recusal of the visiting judge due to his bias towards Guardian McGee. Second, he filed a “Combined Motions from Dr. David Pond in response to Guardian McGee’s late financial filing.” Dr. Pond alleged in the motion that Guardian McGee had engaged in illegal activity in disposing of Dr. Pond’s and Mary Ann Pond’s assets. He requested the probate court remove Guardian McGee as the guardian of the estate. Third, he filed a “Motion of Dr. David Pond, Trustee of the Robert J. Pond trust, and of the Mary Ann Pond Trust for Change of venue of status conference. Probate court to follow the court motions in the order they were filed, and follow order of natural priority of importance of motions that are in the wards best interest. That motions for removal of guardian is certainly a priority over whether to give a guardian more valuable items such as gold.”

Oral Hearing on October 6, 2022

{¶27} The probate court set the pending motions for a hearing on October 6, 2022. Dr. Pond, Guardian McGee, Guardian McCoy, Trustee Taneff, and Attorney Terrence P. Flahive appeared at the October 6, 2022 hearing.¹

{¶28} The probate court first overruled Dr. Pond’s September 28, 2022 motion to the Court to follow the motions in the order in which they were filed. The probate court held it was the court’s discretion to manage the proceedings before it. (T. 7).

{¶29} The trial probate court next heard arguments on Dr. Pond’s motion for recusal. (T. 8). Dr. Pond argued that after the appointment of the visiting judge, Dr. Pond

¹ At an earlier point in the guardianship proceedings, the probate court had appointed Attorney Flahive as the attorney for Mary Ann Pond.

had filed many motions asking in part for the removal of Guardian McGee for financial misconduct, but the probate court did not set the matter for an oral hearing until Guardian McGee filed a motion for partial distribution of the funds from the American Hartford Gold Group. (T. 9). Dr. Pond argued that the probate court was biased towards Guardian McGee in its rulings. (T. 13). The other parties stated they had no objections to the visiting judge proceeding in the guardianship action. Attorney Flahive argued that the issue in the guardianship action was not the financials, but what was in the best interest of Mary Ann Pond. (T. 15). He stated the probate court had already determined after an evidentiary hearing, which was affirmed on appeal, that it was not in the best interest for Dr. Pond be appointed guardian for Mary Ann Pond. Guardian McCoy and Guardian McGee were appointed by the probate court for the care of Mary Ann Pond and had done a very good job in maintaining Mary Ann Pond in her home with 24/7 care. (T. 16). The probate court overruled Dr. Pond's motion for recusal. (T. 21).

{¶30} The probate court next heard arguments on Guardian McGee's September 6, 2022 motion for partial distribution from the American Hartford Gold Group. (T. 21). The probate court found the sole issue before it was whether there should be a partial distribution from the American Hartford Gold Group for the care of Mary Ann Pond. (T. 83).

{¶31} Mary Ann Pond was the sole beneficiary for both the Robert J. Pond Trust and the Mary Ann Pond Trust. (T. 32). Dr. Pond stated he was the sole living beneficiary of Mary Ann Pond. At the time of the hearing, Dr. Pond was the Successor Trustee for the Robert J. Pond Trust. Pursuant to the terms of the Mary Ann Pond Trust, the probate court permitted the guardian of the beneficiary appoint Attorney Taneff as the Successor

Trustee for the Mary Ann Pond Trust on February 18, 2022. (T. 78). There was no dispute that Dr. Pond liquidated investments from the Mary Ann Pond Trust and the Robert J. Pond Trust and used those funds to purchase gold from the American Hartford Gold Group. Ownership of the gold held by the American Hartford Gold Group could be traced to the Mary Ann Pond Trust and the Robert J. Pond Trust.

{¶32} Guardian McGee argued that a partial distribution was necessary because the guardianship did not have liquid funds to continue providing the best care for Mary Ann Pond as befitting the manner of living to which she was accustomed. At the time of the hearing, the Mary Ann Pond Trust only had \$130,000 in cash. Guardian McCoy stated that when the guardianship was first put in place, a majority of the expenses went to home maintenance so that Mary Ann Pond could safely remain in her home, per her wishes. Once the home was fixed and Mary Ann Pond's health was stabilized, funding went to her care and maintenance. She required 24/7 supervision. She had concierge physicians who came to her home monthly or as needed. Nurses came to the home weekly. The guardianship required more funds to continue the current state of care and maintenance for Mary Ann Pond.

{¶33} Guardian McGee argued funds for Mary Ann Pond's care were available from a partial distribution of the gold purchased from the American Hartford Gold Group. Guardian McGee stated the 20% partial distribution was calculated to only be from the portion of gold purchased by the Mary Ann Pond Trust, not the Robert J. Pond Trust. In lieu of a partial distribution, Guardian McGee argued it would move to direct Dr. Pond, as the Successor Trustee of the Robert J. Pond Trust, to contribute funds to its beneficiary, Mary Ann Pond.

{¶34} Dr. Pond argued the guardians were engaging in financial misconduct in their care of Mary Ann Pond. He contended the maintenance of the home and the care provided to Mary Ann Pond was more expensive than necessary, which was why the guardianship was running out of funds.

{¶35} At the conclusion of the arguments, the probate court ruled in favor of Guardian McGee as to the partial distribution of funds. (T. 90). The probate court found that a full hearing was necessary before the court ordered a complete retrieval of all gold and a determination of where that gold should go. (T. 90-91).

Judgment Entries

{¶36} On November 28, 2022, the probate court issued two judgment entries. In the first judgment entry, the probate court denied:

- Dr. Pond's motion for recusal;
- Dr. Pond's motion to change venue;
- Dr. Pond's motion for the court to follow order of priority of importance of order of motion; and
- Dr. Pond's motion to stay disposal of his personal property.

The probate court granted Guardian McGee's motion for partial distribution. It ordered the American Hartford Gold Group to make a partial distribution of an amount equivalent to 20% of the value of the gold or other precious metals related to this case and the Mary Ann Pond Trust to be delivered to Attorney Taneff as Successor Trustee of the Mary Ann Pond Trust. The distribution was to be made within 14 days of the date of the November 28, 2022 order.

{¶37} In its second judgment entry, the probate court ordered Guardian McGee to provide a written inventory of all personal property identified as belonging to Dr. Pond. Dr. Pond was ordered to remove the personal property listed in the written inventory.

{¶38} It is from the November 28, 2022 judgment entries that Dr. Pond now appeals.

ASSIGNMENTS OF ERROR

{¶39} David Pond raises eight Assignments of Error:

I. THE PROBATE COURT ERRED AND ABUSED ITS DISCRETION WHEN IT IGNORED LAW, FACTS, AND ARGUMENTS RELATING TO NOT ONLY SUCCESSOR TRUSTEE OF THE MARY ANN POND TRUST, BUT WHO THE ACTUAL SUCCESSOR TRUSTEE OF THE MARY ANN POND TRUST WAS IN THE FIRST PLACE.

II. THE PROBATE COURT ERRED AND ABUSED ITS DISCRETION WHEN THE PROBATE JUDGE STATEMENT WENT AGAINST THE COURT DOCKET AND WENT AGAINST EVIDENCE WHEN HE STATED "I-I APPRECIATE THE QUESTION OF WHETHER -- WHETHER THE SUCCESSOR TRUSTEE IS MR. TANEFF OR DR. POND. COURT IS SATISFIED AT THIS POINT THAT THERE HAS BEEN A COURT ORDER THAT AUTHORIZED THE APPOINTMENT OF MR. TANEFF AND, ACCORDINGLY, THE FUNDS AND THE GOLD CAN BE DISTRIBUTED OR DELIVERED TO HIM THAT'S THE SUCCESSOR TRUSTEE OF THE MARY POND TRUST." ESPECIALLY WHEN THERE WAS ABSOLUTELY

NO COURT ORDER THAT AUTHORIZED THE APPOINTMENT OF MR. TANEFF BY THE GUARDIAN OR THE COURT UNDER OHIO LAW.

III. THE PROBATE COURT ERRED AND ABUSED ITS DISCRETION WHEN IT NOT ONLY WENT OUTSIDE OF ITS JURISDICTION CONCERNING THE APPROPRIATION OF DR. DAVID PONDS [SIC] PERSONAL PROPERTY, IT WENT AGAINST THE LAW AND ARGUMENTS THAT WERE IN FRONT OF PROBATE COURT.

IV. THE PROBATE COURT ERRED AND ABUSED ITS DISCRETION AND SHOWED BIAS BY IGNORING AN EMERGENCY MOTION FROM DR. DAVID POND CONCERNING HIS PRIVATE PROPERTY RIGHTS, THE COURT HADN'T EVEN READ THE MOTION AS EVIDENCED BY THE TRANSCRIPT AND MADE AN ORDER THAT DAY WITHOUT EVEN READING THE MOTION.

V. THE PROBATE COURT ERRED AND ABUSED ITS DISCRETION BY COMPLETELY IGNORING UNCONTESTED MOTION BY DR. DAVID POND CHALLENGING GUARDIANS FINANCIAL FILING AND REQUESTING REMOVAL OF GUARDIAN AND HOLDING GUARDIAN RESPONSIBLE FOR HER FINANCIAL CRIMES AGAINST HER WARD, AND AGAINST TWO TRUSTS, AND DOCTOR DAVID PONDS PROPERTY, AND THE PROPERTY OF DOCTOR DAVID PONDS CHILDREN.

VI. THE PROBATE COURT ERRED IN ABUSED ITS DISCRETION WHEN IT COMPLETELY IGNORED THE COURT'S OWN NOTICE OF PAST-DUE ACCOUNT.

VII. THE PROBATE COURT ERRED AND ABUSED ITS DISCRETION WHEN IT IGNORED A COMPLETELY UNOPPOSED MOTION FROM DR. DAVID POND IN RESPONSE TO GUARDIAN MCGEES LATE FINANCIAL FILING.

VIII. THE PROBATE COURT ERRED AND ABUSED ITS DISCRETION AS A MATTER OF FACTS, AND A MATTER OF ARGUMENT AND BY THE LOCAL RULES, BY SHOWING BIAS BY THE TIMING OF THE MOTIONS IT PLACED ON THE HEARING SCHEDULE, DECIDING WHICH MOTIONS WOULD BE HEARD, AND WHICH MOTIONS WOULD NOT BE HEARD. THE BIAS WAS IN EFFECT A DE FACTO DENYING DR. DAVID POND'S MOTION FOR REMOVAL OF GUARDIAN AND DENYING THE COURT'S OWN WARNING TO MCGEE ABOUT REMOVAL OF HER AS THE GUARDIAN FOR MISSING HER DEADLINE FOR FILING HER ACCOUNTING, AND IGNORING THE UNOPPOSED MOTION FROM DOCTOR DAVID POND ABOUT INVESTIGATING THE GUARDIAN DUE TO HER FINANCIAL CRIMES IN FRAUDULENT STATEMENTS IN HER FINANCIAL REPORT ITSELF, AND WITHOUT EVER PROVIDING A HEARING, WITHOUT PROVIDING REVIEW, AND JUMPING FORWARD AND FAST TRACKING AND APPROVAL FOR THE GUARDIAN 'S MOTION FOR GOLD FROM A TRUST FOR WHICH THE GUARDIAN NOT

ONLY LACKED THE AUTHORITY TO FILE THE MOTION IN THE FIRST PLACE, AND THE GUARDIAN DID NOT NOTIFY THE TRUE TRUSTEE OF THE TRUST DR. DAVID POND UNTIL AFTER THE HEARING HAD ALREADY TAKEN PLACE.

ANALYSIS

Pending Motions

{¶40} Before we address the merits of Dr. Pond's appeal, we consider the pending motions before this Court. Guardian McGee filed a Motion to Dismiss Appeal on January 3, 2023 and a Motion to Strike Response to Motion to Dismiss on January 17, 2023. Dr. Pond filed responses to the motions on January 9, 2023 and January 20, 2023.

{¶41} Upon due consideration of the Guardian McGee's motions, we find them to be not well taken and deny the same. We will proceed with our consideration of Dr. Pond's appeal of the November 28, 2022 judgment entries.

Dr. Pond's Failure to Comply with the Appellate Rules

{¶42} Before we address the merits of the appeal, we must consider Dr. Pond's failure to comply with the requirements of the Ohio Rules of Appellate Procedure and the Local Rules of the Fifth District Court of Appeals. We understand that Dr. Pond has filed this appeal pro se. However, "like members of the bar, pro se litigants are required to comply with rules of practice and procedure." *Monaco v. Monaco*, 5th Dist. Tuscarawas No. 2023 AP 01 0001, 2023-Ohio-1869, 2023 WL 3842695, ¶ 24 quoting *Hardy v. Belmont Correctional Inst.*, 10th Dist. No. 06AP-116, 2006-Ohio-3316, ¶ 9. See, also, *State v. Hall*, 11th Dist. No. 2007-T-0022, 2008-Ohio-2128, ¶ 11. We note this is not Dr. Pond's first pro se appeal to this Court. This is Dr. Pond's third invocation of our appellate

jurisdiction. If Dr. Pond continues to litigate matters pro se with this Court, he will follow the Ohio Rules of Appellate Procedure and the Local Rules of the Fifth District Court of Appeals as required by all other litigants.

{¶43} App.R. 19(A) requires double spacing between each line of text and limits the length of appellant's brief to 30 pages, "exclusive of the cover page, table of contents, table of cases, statutes and other authorities cited, statement regarding oral argument, certificates of counsel, signature blocks, certificate of service, and appendices, if any." See *also* Loc.R. 9(B). Local Rule 9(C) and (D) permit footnotes to be single spaced but requires that they be in 12-point type, either Times New Roman or Arial. *Krantz v. Pahnke*, 5th Dist. Richland No. 2021 CA 0043, 2022-Ohio-15, 2022 WL 39486, ¶ 26. Dr. Pond's brief contains a "Statement of the Case and Relivant [sic] Facts," which is single-spaced in a font smaller than 12-point. Dr. Pond's brief exceeds 30 pages, and he did not request leave to file his brief in excess of the page limit.

{¶44} Dr. Pond's disregard for the Ohio Rules of Appellate Procedure and this Court's Local Rules is tantamount to failure to file a brief, and pursuant to App.R. 18(C), this Court could dismiss the instant appeal for want of prosecution. *State v. Patterson*, 5th Dist. Ashland No. 02-COA-041, 2003-Ohio-4673, ¶ 5. We will instead consider the merits of this matter, but the disregard for the Rules must carry some consequences. Dr. Pond's initial brief exceeded the page restriction without our leave. We will not consider any of Dr. Pond's argument beyond page number 30. We will not consider the section captioned "Statement of the Case and Relivant [sic] Facts," as it is single-spaced and fails to contain complete references to the record in violation of the Appellant Rules. *Krantz v. Pahnke*, 5th Dist. Richland No. 2021 CA 0043, 2022-Ohio-15, 2022 WL 39486, ¶ 30.

I. and II.

{¶45} In his first and second Assignments of Error, Dr. Pond argues the probate court erred when it recognized Attorney Taneff as the Successor Trustee of the Mary Ann Pond Trust. We disagree.

{¶46} By magistrate's decision filed on March 22, 2021, the magistrate declared Mary Ann Pond incompetent and found it was in her best interest to have a guardian of the person and the estate. The magistrate appointed Guardian McCoy as the Guardian of the Person and Guardian McGee as the Guardian of the Estate.

{¶47} On February 18, 2022, the probate court issued a judgment entry granting Guardian McGee's January 17, 2022 motion for Authority to Exercise Rights of Sole Income and Principal Beneficiary of the Second Amended and Restated Trust Agreement dated August 11, 2000 by Mary Ann Pond. Under the authority of the February 18, 2022 judgment entry, Guardian McGee removed Dr. Pond as the Successor Trustee and appointed Attorney Taneff as the Successor Trustee of the Mary Ann Pond Trust.

{¶48} On May 16, 2022, the probate court overruled Dr. Pond's objections to the magistrate's decision appointing guardians for the person and estate of Mary Ann Pond. Dr. Pond filed a pro se appeal of the probate court's decision to this Court in *Matter of Guardianship of Pond*, 5th Dist. Delaware No. 22 CAF 06 0045, 2022-Ohio-4023. Dr. Pond neither assigned the probate court's February 18, 2022 judgment entry as error in his appeal nor did he separately appeal the February 18, 2022 judgment entry. We overruled Dr. Pond's assignments of error and affirmed the appointment of McCoy and McGee as guardians for Mary Ann Pond.

{¶49} Dr. Pond's arguments in this appeal as to the proper Successor Trustee of the Mary Ann Pond Trust originate from the probate court's February 18, 2022 judgment entry authorizing Guardian McGee to exercise the beneficiary authority under the terms of the trust agreement and appoint a successor trustee. Dr. Pond did not timely appeal the February 18, 2022 judgment entry and the question of whether the probate court erred in granting Guardian McGee the authority to appoint a successor trustee through her powers as the guardian of the estate. In the case sub judice, Dr. Pond appeals the November 28, 2022 judgment entries, which ordered the American Hartford Gold Group issue a partial distribution of gold to the Mary Ann Pond Trust for the care and benefit of its sole beneficiary, Mary Ann Pond.

{¶50} Accordingly, we find Dr. Pond's arguments as to the February 18, 2022 judgment entry and Guardian McGee's authority to appoint a Successor Trustee to the Mary Ann Pond Trust are barred by the doctrine of res judicata. Under the doctrine of res judicata, "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995), syllabus. "The very purpose of res judicata is to deter the repeated litigation of resolved issues, thereby ensuring finality in judgments and the conservation of judicial resources." *State v. Martin*, 8th Dist. Cuyahoga No. 110257, 2022-Ohio-524, 2022 WL 557712, ¶ 10 quoting *Kelm v. Kelm*, 92 Ohio St.3d 223, 227, 749 N.E.2d 299 (2001).

{¶51} Dr. Pond's first and second Assignments of Error are overruled.

III. and IV.

{¶52} In his third and fourth Assignments of Error, Dr. Pond contends the probate court was without jurisdiction to order him to remove his personal property from the residence of Mary Ann Pond. We disagree.

{¶53} Dr. Pond has maintained throughout this guardianship proceeding that he has personal property located at Mary Ann Pond's residence. He filed multiple motions with the probate court requesting the court order Guardian McGee to provide him with access to his personal property. He contended Guardian McGee improperly disposed of his property. The probate court sent the parties to mediation to resolve the issue, which was unsuccessful.

{¶54} By judgment entries filed on November 28, 2022, the probate court found that Dr. Pond's property and assets were not the subject of the action, but ancillary to the proceedings because of the need to secure Mary Ann Pond's property and assets, which were the subject of the action. It then ordered Guardian McGee prepare a written inventory as to any property that could be connected to Dr. Pond. The property was to be moved to a central location where Dr. Pond could remove the property.

{¶55} As the guardian of the estate, the guardian has the duty to protect and manage the ward's personal and real property. R.C. 2111.14. We find the probate court did not abuse its discretion in ordering Guardian McGee to effectuate her duties to protect and manage Mary Ann Pond's property by unwinding Mary Ann Pond's personal property from Dr. Pond's personal property.

{¶56} Dr. Pond's third and fourth Assignments of Error are overruled.

V., VI. And VII.

{¶57} In Dr. Pond's fifth, sixth, and seventh Assignments of Error, he argues the trial court erred when it failed to rule on his pending motions.

{¶58} "Trial courts have inherent power to manage their own dockets and the progress of the proceedings before them." *Pond v. Pond*, 10th Dist. Franklin No. 20AP-262, 2021-Ohio-1708, 2021 WL 1990195, ¶ 9 quoting *U.S. Bank Natl. Assn. v. Lewis*, 10th Dist. No. 18AP-550, 2019-Ohio-3014, ¶ 10, citing *Canady v. Rekau & Rekau, Inc.*, 10th Dist. No. 09AP-32, 2009-Ohio-4974, ¶ 16. We apply an abuse of discretion standard to review whether a court erred in the implementation of its own scheduling order. *America's Floor Source, LLC v. Homes*, 191 Ohio App.3d 493, 2010-Ohio-6296, ¶ 46 (10th Dist.) (applying an abuse of discretion standard to asserted error that trial court "erred by overruling the motion to modify the case management scheduling order").

{¶59} In this case, Dr. Pond has made numerous filings with questionable service on the opposing parties.² Because the probate court has not yet ruled on Dr. Pond's pending motions does not mean that it will not. Accordingly, because the probate court has not ruled on the pending motions raised by Dr. Pond in this appeal, we have no final order from which an appeal may be taken. See *In re Guardianship of Gilfillen*, 10th Dist. Franklin No. 02AP-1239, 2003-Ohio-3011, 2003 WL 21357196, ¶ 18.

{¶60} Dr. Pond's fifth, sixth, and seventh Assignments of Error are overruled.

² On November 30, 2022, Guardian McGee filed a complaint on behalf of Mary Ann Pond in the Delaware County Court of Common Pleas, General Division, to declare Dr. Pond a vexatious litigator. On February 23, 2023, Guardian McGee filed an application in the probate court for approval to pursue the complaint on behalf of the ward. By judgment entry filed March 6, 2023, the probate court granted the application and gave Guardian McGee approval to litigate her complaint to declare Dr. Pond a vexatious litigator as described in the application. Dr. Pond appealed the probate court's decision in *Matter of Guardianship of Pond*, 5th Dist. Delaware No. 23 CAF 04 0025, 2023-Ohio-2190. We found the February 23, 2023 judgment entry was not a final appealable order and dismissed the appeal for lack of jurisdiction. *Id.* at ¶ 27.

VIII.

{¶61} In his eighth Assignment of Error, Dr. Pond contends the probate court abused its discretion managing the docket and the progress of the proceedings before it.

{¶62} Dr. Pond's arguments for the eighth Assignment of Error exceed the 30-page limit for an initial brief as stated in App.R. 16, App.R. 19, and Loc.R. 9 of the Fifth District Court of Appeals. Dr. Pond did not seek leave of this Court and show good cause to exceed the 30-page limit, so this Court will not consider the eighth Assignment of Error. Loc.R. 9(B).

CONCLUSION

{¶63} The judgment of the Delaware County Court of Common Pleas, Probate Division, is affirmed.

By: Delaney, P.J.,

Baldwin, J. and

King, J., concur.