

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF THE GUARDIANSHIP : SUPREME COURT  
OF ALICE I. RICHARDSON, AN ALLEGED : Case No. 2007-1546  
INCOMPETENT :  
: On Appeal from the Montgomery  
: County Court of Appeals, Second  
: Appellate District  
: Court of Appeals  
: Case No. CA 22000

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MEMORANDUM OF APPELLEES ALICE I. RICHARDSON AND NORMA LOUISE  
LEACH IN RESPONSE TO MEMORANDUM IN SUPPORT OF JURISDICTION

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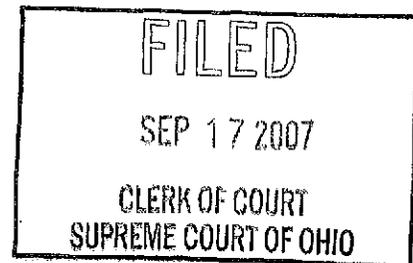


TABLE OF CONTENTS

	<u>Page Reference</u>
APPELLEE'S STATEMENT AS TO WHY THE CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST .....	1
STATEMENT OF THE CASE .....	2
STATEMENT OF FACTS .....	3
ARGUMENT .....	7
<u>Appellant's Proposition of Law No. I</u> .....	7
<p>When the probate court's subject matter jurisdiction in a guardianship proceeding is established by the residency or legal settlement of the ward at the time of filing of the application for appointment of guardian under R.C. §2111.9.02(A), its jurisdiction may not thereafter be divested by the removal of the prospective ward from Ohio during the pendency of the application.</p>	
<u>Appellant's Proposition of Law No. II</u> .....	10
<p>Absent filing of her own competing application for appointment as guardian under O.R.C. §2111.02(A), a "next-of-kin" under O.R.C. §2111.01(E) has no standing under App. 4(A) to appeal the probate court's order appointing a guardian for the ward.</p>	
<u>Appellant's Proposition of Law No. III</u> .....	11
<p>In a proceeding under O.R.C. §2111.02(A), the failure of the ward and her guardian ad litem to object to the magistrate's decision constitutes a waiver of the ward's right under Civ. R. 53(D)(3)(b)(iv) to assign as error on appeal the adoption by the probate court of the magistrates factual findings and legal conclusions.</p>	
CONCLUSION .....	12
CERTIFICATE OF SERVICE .....	12

APPELLEE'S STATEMENT AS TO WHY THE CASE  
IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

When considering whether to grant a discretionary appeal on grounds that a case is of public or great general interest, the sole issue for determination is whether the case presents questions of such interest as distinguished from questions of interest primarily to parties. "This court will grant a motion to certify only if there is a substantial constitutional question or if the case is of public or great general interest." *Noble v. Colwell* (1989), 44 Ohio St.3d 92, 94, 540 N.E.2d 1381.

In its Opinion and Final Entry rendered on July 6, 2007, the Court of Appeals of Montgomery County, Ohio, Second Appellate District, in reversing and vacating the Montgomery County Probate Court's appointment of Appellant Alice E. Ledford as guardian of the person and estate of Appellee Alice I. Richardson, stated that:

When jurisdiction is in rem, due process requires the res of the action to be within the court's territorial jurisdiction in order for subject matter jurisdiction to exist. The jurisdiction that Alice E. Ledford invoked pursuant to R.C. 2111.02(A) when she filed her application for guardianship, which required allegations of residency and/or legal settlement, is subject to a condition subsequent; a showing that one or both of those conditions exist. Unless that showing is made, the court lacks the subject-matter jurisdiction conferred by R.C. 2111.02(A) to grant the application, as the Probate Court did.

Opinion at p. 15.

In so concluding, the Court of Appeals conducted a thorough analysis of the law and facts to determine if Appellee Alice I. Richardson "is a resident of the county or has a legal settlement in the county" in order to invoke the subject-matter jurisdiction of the probate court to grant the appointment sought by Appellant Alice E. Ledford as guardian of the person and estate of Appellee Alice I. Richardson. After doing so, the Court of Appeals determined that "[n]either condition existed when the Probate Court appointed Alice E. Ledford the guardian of the person

and estate of Alice I. Richardson. Therefore, the Probate court erred when it made the appointment.” Opinion at p. 15.

The exercise undertaken by the Court of Appeals in determining whether the probate court had subject-matter jurisdiction of Appellant’s application for appointment of guardianship in this matter was not unique. It was the same endeavor that every trial and appellate court undergoes to determine that issue. The decision of the Court of Appeals in this case resulted from an intensive examination of the facts and a thorough analysis of the law. Its decision is based firmly upon long standing legal principal and precedent. As a result, this case presents questions that are of interest primarily to parties, as distinguished from matters that are of public or great general interest.

Furthermore, the claims raised by Appellant are now moot. Appellee has lived in her home in Mercer County, West Virginia, since August 12, 2006. On August 1, 2007, the Circuit Court of Mercer County, West Virginia, specifically found that Richardson is competent. *Alice I. Richardson v. George W. Ledford, et al.*, Case No. 06-P-158, Chief Judge Derek C. Swope, Order dated August 1, 2007. Accordingly, Appellee respectfully requests that the Court deny a discretionary appeal in this case.

#### STATEMENT OF THE CASE

The Application for Appointment of Guardian of the person of the Alleged Incompetent, Alice I. Richardson, was filed by Alice E. Ledford on June 29, 2006. The Statement of Expert Evaluation was filed on June 29, 2006. The Application for Appointment of Guardian of the person and estate of the Alleged Incompetent, Alice I. Richardson, was filed by James C. Richardson on July 21, 2006. The Report of the Guardian Ad Litem was filed on September 11, 2006.

A hearing was held on the applications on September 19, 2006, and the Magistrate's Decision was filed on September 22, 2006. The Amended Magistrate's Decision was filed on October 17, 2006. Objections were filed to the Amended Magistrate's Decision on October 31, 2006. The trial court issued An Entry and Decision Modifying the Magistrate's Decision on January 23, 2007.

Appellants timely filed their Notice of Appeal from the Decision on January 29, 2007. The Brief of Appellants Alice I. Richardson & Norma Louise Leach was filed on April 16, 2007. The Brief of Appellee-Guardian, Alice E. Ledford was filed on May 7, 2007. The Reply Brief of Appellants Alice I. Richardson & Norma Louise Leach was filed on May 23, 2007. The Opinion and Final Entry was rendered on July 6, 2007, by the Court of Appeals of Montgomery County, Ohio, Second Appellate District, reversing and vacating the Montgomery County Probate Court's appointment of Appellant Alice E. Ledford as guardian of the person and estate of Appellee Alice I. Richardson.

The Notice of Appeal of Appellant, Alice E. Ledford, Applicant for Appointment as Guardian of the Person of Alice I. Richardson, An Incompetent, and Memorandum of Appellant, Alice E. Ledford, Applicant for Appointment as Guardian of the Person of Alice I. Richardson, An Incompetent, In Support of Jurisdiction were filed on August 17, 2007.

#### STATEMENT OF FACTS

Alice I. Richardson, 87 years of age, is the mother of Alice E. Ledford, the Applicant for Guardian of the person of her mother filed in the Probate Court of Montgomery County, Ohio on June 29, 2006. In addition to her daughter, Alice E. Ledford, Alice I. Richardson has three other children, namely; James C. Richardson (Jim Richardson), Norma Louise Leach (Louise Leach) and Johnnie E. Richardson. Her son, James C. Richardson and daughter, Norma Louise Leach

were residents of Dayton, Ohio. James C. Richardson is now living in West Virginia. Her son, Johnnie E. Richardson, is a resident of Georgia. Until August of 2005, Alice I. Richardson had lived over 30 years in Princeton, Mercer County, West Virginia. Her husband, and father of the children, died in 1990 and from that time on Alice I. Richardson lived alone.

The applicant Alice E. Ledford is employed by The Montgomery County Board of Mental Retardation and Developmental Disabilities and has been so employed for 31 years as of the date of the hearing on September 19, 2006. During the more recent years prior to 2005, Alice E. Ledford spent her vacation summer breaks and major holidays visiting with her mother in West Virginia.

In April, 2005, Alice I. Richardson had her hip replaced and for awhile recovered in a rehabilitation facility and then returned to her home with Alice E. Ledford's assistance and therapy. In addition to recovering from hip surgery, Richardson was hard of hearing and had significant loss of vision. On or about July 24, 2005, Alice E. Ledford convinced her mother that they should go to Alice E. Ledford's home in Dayton, Ohio, until at least Christmas time 2005 or the summer of 2006 when they would return to West Virginia.

Alice E. Ledford lived with her husband, George Ledford. They converted a family room to a bedroom for Richardson. They also remodeled the bathroom, installed handrails in her bathroom and in the stairways where needed for her protection. The improvements were paid for by the Ledford's. Richardson remained by herself when Ledford went to work which meant that she was alone from 8:30 a.m. to 3:15 p.m. each working day. However, Mr. Ledford would stop by the house sometimes during the day to check on her. In the spring of 2006, Richardson began asking when she would be returning to her home in West Virginia.

A birthday party was held for Richardson on Friday, June 23, 2006, at the Ledford's home. Her 87<sup>th</sup> birthday was on June 22, 2006. In addition to Alice I. Richardson and Ledford, Jim Richardson and his wife, Pat Richardson, and Louise Leach and her husband, Don Leach, were also present. Mr. Ledford was said to be at a meeting. At the birthday party Richardson asked her son, Jim Richardson, to take her back home to West Virginia. He said that he would take her home but Alice E. Ledford said that her mother was not going back to West Virginia. A phone call was received earlier that day from a neighbor in West Virginia who said that George Ledford was having a party at Richardson's home in West Virginia for his family.

Jim Richardson returned to visit his mother on Saturday, June 24, 2006. When he left, his sister, Alice Ledford, told him not to come back on her property. He returned on Sunday anyway and rattled the window and Alice Ledford called the police on him. The police told her to shut the window and lock the doors and that is what she did. When George Ledford returned to Dayton on Sunday, June 25, 2006, Richardson confronted him about the party and he said the home no longer belonged to her. Richardson called Louise Leach at 6 a.m. on Monday, June 26, 2006, and told her about the confrontation she had with George Ledford. Louise Leach talked with her mother again on Tuesday, June 26, 2006. On Wednesday, June 27, 2006, Louise Leach tried to reach her mother by phone and could not reach her. Mrs. Leach checked with the phone company and found that the phone had been disconnected. That day or the next day Louise Leach and her husband went to the Ledford residence to see Richardson. When they arrived they were met by George Ledford and were told they were trespassing and to leave the premises. Mr. and Mrs. Leach went to the local police, returned to the Ledford's residence with the police, and again were told to leave the premises. On June 29, 2006 the Application for Guardianship herein was filed.

Norma Louise Leach and James C. Richardson were not allowed to see their mother until after August 12, 2006. On August 12, 2006, Alice I. Richardson returned to her home in Princeton, Mercer County, West Virginia. On August 13, 2006, the day after Appellee Alice I. Richardson returned to Mercer County, West Virginia, the police were called to Richardson's home under the suspicion she had been kidnapped. After the police were satisfied that she was in her own home by her own free will, they made no further investigation. Alice I. Richardson has remained there since that time and lives with her son, James C. Richardson. Alice I. Richardson wants to remain in her home in West Virginia until she passes on. On August 14, 2006, George W. Ledford as Trustee, stuck a note in the front door of Alice Richardson's residence, notifying Alice Richardson to vacate her own home, and further notifying her that unless she did not vacate the premises, a warrant would be issued for her arrest.

By order of the Circuit Court of Mercer County, West Virginia, *Alice I. Richardson v. George W. Ledford*, et al., Case No. 06-P-158, dated August 23, 2006, an evaluation was conducted by Riaz Uddin Riaz, M.D., a geriatric psychiatrist, to determine the competency of Richardson. A hearing was held in the Circuit Court of Mercer County, West Virginia, on May 11, 2007, at which Dr. Riaz testified that he did not believe that the Haldol prescribed to her by her previous treating physician in Ohio was an appropriate treatment for her condition. It was his opinion that this medicine was unnecessary because she was not delusional and that this medicine caused severe side effects. Dr. Riaz also testified that Richardson's memory has improved since discontinuing this medicine. He did not find symptoms of depression or Alzheimer's, but continues her medications for a mild anxiety disorder.

At the hearing a caseworker for the West Virginia Department of Health and Human Resources Division of Adult Protective Services ("DHHR") testified that she found on her

monthly visits that Richardson's home is clean, she is well nourished, and is attending all required appointments. Of her medical condition, she found that she has poor vision and is extremely hard of hearing which necessitated her having some assistance in her home. Of her psychological condition she found Richardson well oriented and attentive. She further testified that Richardson repeatedly advises her that she wishes to stay in the State of West Virginia. The Circuit Court of Mercer County, West Virginia, upon hearing the evidence of the parties, reviewing the report of Dr. Riaz, and observing Richardson at the trial, specifically found that Richardson is competent. *Alice I. Richardson v. George W. Ledford, et al.*, Case No. 06-P-158, Chief Judge Derek C. Swope, Order dated August 1, 2007.

#### ARGUMENT

##### Appellant's Proposition of Law No. I

When the probate court's subject matter jurisdiction in a guardianship proceeding is established by the residency or legal settlement of the ward at the time of filing of the application for appointment of guardian under R.C. §2111.9.02(A), its jurisdiction may not thereafter be divested by the removal of the prospective ward from Ohio during the pendency of the application.

In this matter Appellant challenges the reversing and vacating by the Court of Appeals of the Montgomery County Probate Court's appointment of Appellant Alice E. Ledford as guardian of the person and estate of Appellee Alice I. Richardson. Notwithstanding any merit of Appellant's position, the validity of which Appellee denies, Appellant's claims are now moot. Appellee has lived in her home in Mercer County, West Virginia, since August 12, 2006. On August 1, 2007, the Circuit Court of Mercer County, West Virginia, specifically found that Richardson is competent. *Alice I. Richardson v. George W. Ledford, et al.*, Case No. 06-P-158, Chief Judge Derek C. Swope, Order dated August 1, 2007.

The crux of Appellant's position is that the Court of Appeals erred in determining that the prospective ward must, at the time of appointment of a guardian, be either a resident of the county or have a legal settlement in the county, in order to invoke the subject-matter jurisdiction of the probate court. Because the probate court is a court of limited jurisdiction, probate proceedings are restricted to those actions permitted by statute and by the Constitution. *State ex rel. Lipinski v. Cuyahoga Cty. Court of Common Pleas, Probate Div.* (1995), 74 Ohio St.3d 19, 22, 655 N.E.2d 1303, 1306; *Corron v. Corron* (1988), 40 Ohio St.3d 75, 531 N.E.2d 708, paragraph one of the syllabus.

Appellee left Ohio to return to her long term home in West Virginia prior to any hearings on the competing applications for appointment of guardian and prior to Appellant's application for appointment of an emergency guardian pursuant to R.C. 2111.02(B)(3). There had been no adjudication that Appellee was incompetent prior to the exercise of her free will to return to her home. The emergency appointment provisions of R.C. 2111.02(B)(3) provide adequate protection against Appellant's apocalyptic visions of the "meddling of those opposed to the process by re-settling or attempting to re-settle the prospective ward outside of Ohio in order to thwart the probate court's intervention." Appellant's Memorandum in Support of Jurisdiction at p. 1. Furthermore, the ordinary processes of the law, criminal and civil, provide both deterrence of unlawful interference by such meddlers as well punishment for any such inappropriate conduct. In the case *sub judice* those processes were invoked and revealed nothing untoward with respect to Appellee's decision to return to her home.

Ohio Revised Code Section 2111.02(A) provides in pertinent part:

When found necessary, the probate court \* \* \* on application \* \* \* shall appoint a \* \* \* guardian of the person \* \* \* provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county \* \* \*

For purposes of R.C. §2111.02(A), “residence” requires an actual presence at some abode coupled with the intent to remain at that place for some time. *In re Guardianship of Fisher* (1993), 91 Ohio App 3d 212, 632 N.E. 2d 533, 535. The term “legal settlement” connotes one living in an area with some degree of permanency greater than a visit lasting a few days or weeks. *Id.* R.C. §2111.02(A) governs orders appointing of guardians, and the section provides that the probate court may appoint a guardian “provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county \* \* \*”. (Emphasis added). Accordingly, the Court of Appeals determined that “R.C. §2111.02(A) therefore requires a finding that either alternative exists when the guardian is appointed.” The Court noted that at the time of the appointment Richardson had been gone from Montgomery County, Ohio, since August 12, 2006, a period of 164 days. Opinion and Final Entry at p. 12. The Court concluded:

For these purposes, “residency requires an actual physical presence, and “legal settlement” contemplates living in an area. *Fisher*. Neither condition existed when the Probate Court appointed Alice E. Ledford the guardian of the person and estate of Alice I. Richardson. Therefore, the probate court erred when it made the appointment.

Appellant criticizes the Court’s analysis but offers no legal authority to the contrary. Neither does Appellant provide a convincing reason to disregard the literal provisions of R.C. §2111.02(A) that the probate court on application shall appoint a guardian of the person “provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county”. (Emphasis added). Appellant’s public policy pronouncements and visions of catastrophe fall short of the mark.

Appellant's Proposition of Law No. II

Absent filing of her own competing application for appointment as guardian under O.R.C. §2111.02(A), a "next-of-kin" under O.R.C. §2111.01(E) has no standing under App. 4(A) to appeal the probate court's order appointing a guardian for the ward.

App.R. 4(A) states that a notice of appeal from a final order or judgment authorized by App.R. 3 may be filed by a "party" to the action in which the judgment or order was entered. In order to be a party, and have standing to appeal, the prospective appellant must have a present interest in the litigation and be prejudiced by the order or judgment from which the appeal is taken. *Ohio Sav. Bank v. Ambrose* (1990), 56 Ohio St.3d 53, 563 N.E.2d 1388. The Court of Appeals concluded that "as a next of kin who is entitled by R.C. 2111.04(B)(2)(b) to notice of the guardianship application that Alice E. Ledford filed, Norma Leach has an interest in the proceeding concerning her mother that confers on Norma Leach the status of a 'party' for purposes of App.R. 4(A). Therefore, she does not lack standing to appeal." Opinion and Final Entry at p. 8.

Appellant asserts that this conclusion is in conflict with Ohio's Fifth Appellate District's decision of *In re Guardianship of Santrucek*, 2007 WL 1934729, 2007-Ohio-3427 (Ohio App. 5 Dist. Jul 03, 2007) (No. 06 CA 130). Leach appeared at the hearing on Appellant's application to be appointed guardian of Richardson, testified, conducted examination of witnesses through counsel and made argument to the probate court regarding the appropriateness of the appointment. Clearly these are matters that she would not be denied if the notice requirements of R.C. 2111.04(B)(2)(b) were to mean anything. It is illogical to assert that Leach's interest in such matters fail to extend beyond the trial court.

Additionally, the procedure for certification for conflict is governed by App. R. 25 (which supersedes RC 2501.12) and App. R. 15. Under the Rule, a motion seeking an order to

certify must be filed in the court of appeals before the judgment entry in the case is filed for journalization, or within 10 days after announcement of the court's decision, whichever is later. Appellant failed to follow this procedure and is accordingly precluded from claiming a conflict as a basis for certification.

Furthermore, whether Leach lacked standing to appeal the probate court's determination, Richardson surely did not. Accordingly, Leach's status should not persuade the Court to allow a discretionary appeal on the basis of lack of standing of a next-of-kin of the proposed ward where the ward herself clearly has standing to challenge the appointment of a guardian for her.

#### Appellant's Proposition of Law No. III

In a proceeding under O.R.C. §2111.02(A), the failure of the ward and her guardian ad litem to object to the magistrate's decision constitutes a waiver of the ward's right under Civ. R. 53(D)(3)(b)(iv) to assign as error on appeal the adoption by the probate court of the magistrates factual findings and legal conclusions.

Appellant's assertion that any failure on the part of Richardson to object to the magistrate's decision constitutes a waiver of her rights and therefore forms the basis for a reversal of the Opinion and Entry of the Court of Appeals is utterly without merit. The lack of subject matter jurisdiction may be raised at any point during the proceedings by the parties. Civ.R. 12(H). Lack of subject matter jurisdiction may be raised *sua sponte* by the court at any stage in the proceedings and it may be raised for the first time on appeal. *Fox v. Eaton Corp.* (1976), 48 Ohio St.2d 236, 238; overruled on other grounds, *Manning v. Ohio State Library Bd.*, (1991) 62 Ohio St.3d 24, 29. In addition, a court of appeals is bound to raise any jurisdictional questions not raised by the parties. *Kouns v. Pemberton* (1992), 84 Ohio App.3d 499, 501. If a court lacks subject matter jurisdiction, its judgments are void *ab initio*. *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 70. Ohio courts inherently possess the power to vacate a void judgment. *Id.*

CONCLUSION

Appellee respectfully requests that the Court deny a discretionary appeal from the judgment of the Montgomery County Court of Appeals, Second Appellate District, entered in Court of Appeals Case No. CA 021183 on July 6, 2007, pursuant to S.Ct. Prac. R. II, Section 1(A)(3).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon counsel of record by mailing a copy to them via ordinary U.S. mail, this 17<sup>th</sup> day of September, 2007, addressed as follows:

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