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**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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**MERIT BRIEF OF APPELLEES  
ALICE I. RICHARDSON AND NORMA LOUISE LEACH**

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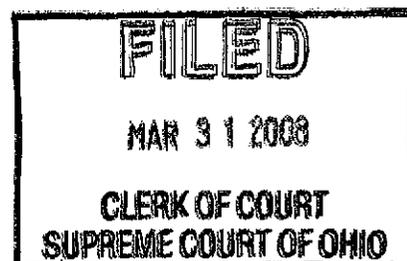


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## STATEMENT OF FACTS

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. [For a summary of the facts see the Guardian Ad Litem Report filed September 11, 2006 (Supp. 21-26)]. In addition to her daughter, Alice E. Ledford, 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, 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 Richardson lived alone.

In April, 2005, Richardson had her hip replaced and for awhile recovered in a rehabilitation facility and then returned to her home with 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, Ledford convinced her mother that they should go to Ledford's home in Dayton, Ohio, until at least Christmas time 2005 or the summer of 2006 when they would return to West Virginia. Ledford lived with her husband, George Ledford. In the spring of 2006 Richardson began asking when she would be returning to her home in West Virginia. (Supp. 93-95, Transcript pp. 55-57).

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 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 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. (Supp. 96, Transcript p. 61).

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 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. (Supp. 96-99, Transcript pp. 61-64). On Wednesday, 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. (Supp. 100, Transcript p. 65). 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. (Supp. 100-104, Transcript pp. 65-69). 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, Richardson returned to her home in Princeton, Mercer County, West Virginia. (Supp. 22) (Supp. 105-106, Transcript pp. 80-81). 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. (Supp. 22). Richardson has remained there since that time and lives with her son, James C. Richardson. Richardson wants to remain in her home in West Virginia until she passes on. (Supp. 15, 23). 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. (Supp. 22).

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, 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.

The Application for Appointment of Guardian of the person of the Alleged Incompetent, Alice I. Richardson, was filed by 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.

Leach and Richardson 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

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. The Memorandum of Appellees Alice I. Richardson and Norma Louise Leach in Response to Memorandum In Support Of Jurisdiction was filed on September 17, 2007. The Entry of the Court accepting appeal on Appellant's Proposition of Law No. II was issued on December 12, 2007. The Merit Brief of Appellant, Alice E. Ledford, Applicant for Appointment of Guardian of the Person of Alice I. Richardson, An Incompetent, was filed on February 29, 2008.

## ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITION OF LAW

### 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.**

In this matter Appellant challenges the reversing and vacating by the Montgomery County Court of Appeals of the Probate Court's appointment of Appellant Alice E. Ledford ("Ledford") as guardian of the person of Appellee Alice I. Richardson ("Richardson"). The Court has accepted the pending appeal on Appellant's Proposition of Law No. II. The crux of Appellant's argument is that because Appellee Norma Louise Leach ("Leach") did not file a competing application for appointment as guardian of her mother she had no standing to appeal the probate court's determination that her mother had legal settlement in Montgomery County, that the probate court had jurisdiction to appoint a guardian for Richardson, that it was necessary that a guardian be appointed for the person of Richardson, and the appointment of Ledford as guardian for Richardson. Appellant relies primarily upon two decisions of the Ohio court of appeals for this proposition, namely, *In re Guardianship of Lee*, Unreported, 2002 Ohio 6194, 2002 Ohio App. LEXIS 6037 (Ohio Ct. App., Miami County Nov. 15, 2002), and *In re Guardianship of Santrucek*, 2007 Ohio 3427, 2007 Ohio App. LEXIS 3137 (Ohio Ct. App., Licking County July 3, 2007). Close analysis of these cases demonstrate that they are distinguishable from the case *sub judice* and do not support Appellant's proposition.

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. The probate court's jurisdiction in matters of appointment of guardians for incompetent persons is governed by R.C. §2111.02, providing, in pertinent part, as follows:

(A) When found necessary, the probate court on its own motion or on application by any interested party shall appoint \* \* \* a guardian of the person, the estate, or both, of a minor or incompetent, 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 and, except in the case of a minor, has had the opportunity to have the assistance of counsel in the proceeding for the appointment of such guardian. \* \* \*

R.C. §2111.04, further provides, in pertinent part, that:

(A) Except for an interim or emergency guardian appointed under division (B)(2) or (3) of section 2111.02 of the Revised Code, no guardian of the person, the estate, or both shall be appointed until at least seven days after the probate court has caused written notice, setting forth the time and place of the hearing, to be served as follows:

\* \* \*

(2) In the appointment of the guardian of an incompetent, notice shall be served:

\* \* \*

(b) Upon the next of kin of the person for whom appointment is sought who are known to reside in this state. \* \* \*

Thus, notice of the application for the appointment of a guardian for an incompetent must be given to the known next of kin, known to reside in the state in which the application is made. The service of the prescribed notice is a condition precedent to the appointment of a guardian, and letters of appointment issued without such notice would be improperly issued, the proof of which would be grounds for the termination of the guardianship. *In re Guardianship of Kelley*, 1 Ohio App. 2d 137, 204 N.E.2d 96 (1964). As daughter of the prospective ward Leach was next of kin residing in Ohio and entitled to notice of the hearing on Ledford's application to be appointed pursuant to R.C. §2111.04. Compliance with the notice provisions as set forth above assures that those affected by the proposed guardianship are given the opportunity to be heard and afforded their right to due process. See *In re Guardianship of Reynolds* (1956), 103 Ohio

App. 102, 106-107, 144 N.E.2d 501; *Horn v. Childers* (1959), 116 Ohio App. 175, 181, 187 N.E.2d 402; *In re Koenigshoff* (1954), 99 Ohio App. 39, 119 N.E.2d 652.

Resident next of kin of the proposed ward thus have a statutorily conferred interest in a guardianship appointment order of the probate court.

The guardian for an incompetent can be named only after notice served upon the known next of kin of such person, known to reside in the county in which the application is made. Thus, the statute recognizes that the known next of kin resident in the county in which the application for the appointment is made are affected to the extent at least that they should be notified and have opportunity to appear, consent or contest the appointment. We are of opinion that those who stand in such relation to the incompetent may be said to be those who are affected by any order taken in the guardianship matter.

*Gariety v. Doorley*, 31 Ohio Law Abs. 182, 1940 Ohio App. LEXIS 1294 (Ohio Ct. App., Shelby County 1940).

R.C. §2101.42 establishes what cases are appealable from the probate court, providing:

From any final order, judgment, or decree of the probate court, an appeal on a question of law may be prosecuted to the court of appeals in the manner and within the time provided for the prosecution of such appeals from the court of common pleas to the court of appeals. For the purpose of prosecuting appeals on questions of law from the probate court, the probate court shall exercise judicial functions inferior only to the court of appeals and the supreme court.

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 Savings Bank v. Ambrose* (1990), 56 Ohio St.3d 53, 563 N.E.2d 1388. The Court of Appeals in the case *sub judice* determined,

as a next of kin who is entitled by R.C. 2111.04(A)(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.

*In re Guardianship of Richardson*, 172 Ohio App. 3d 410, 415, 875 N.E.2d 129, 134 (2007).

The general rule that one must have been a party to the trial court proceeding in order to appeal the trial court's ruling is subject to a number of well-recognized exceptions.

One such exception is that “[a]ppeals by those who participated as if parties are frequently entertained despite a failure to achieve formal status as a party.” 15A Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction and Related Matters* § 3902.1 (2d ed.1992). “Most of these appeals involve persons who participate in trial court proceedings as if they had intervened, and who seem to have been treated on all sides as de facto parties.” *Id.* (citations omitted). *See, e.g., SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 329-330 (5th Cir.2001) (applying a three-part test to decide whether a non-party may appeal, and inquiring whether (1) the non-party actually participated in the proceedings, (2) the equities weigh in favor of hearing the appeal, and (3) the non-party has a personal stake in the outcome). *Cf. Devlin v. Scardelletti*, 536 U.S. 1, ----, 122 S.Ct. 2005, 2013, 153 L.Ed.2d 27 (2002) (holding that nonnamed class members who are bound by class action settlement to which they objected at the fairness hearing may appeal the approval of the settlement even though they did not intervene and become named parties).

*In re Mollie Orshansky*, 804 A.2d 1077, 1090 (2002).

In this matter Leach participated at the hearing on Ledford’s application. Her counsel cross-examined Appellant, called witnesses and made arguments. Leach herself testified. As a resident next of kin of the proposed ward Leach had a statutorily conferred interest in the guardianship appointment order of the probate court. *Gariety v. Doorley*, 31 Ohio Law Abs. 182, 1940 Ohio App. LEXIS 1294 (Ohio Ct. App., Shelby County 1940). Even if she failed to achieve formal status as a party she participated in the hearing as if she had intervened and seemed to be treated on all sides as a de facto party. Accordingly, she does not lack standing to appeal the order of the probate court appointing Appellant guardian of Richardson.

“While [the statutory scheme] does not give specific guidance as to who may appeal from an order adjudicating incompetence \* \* \* an interested party to an incompetency adjudication who [is] entitled to notice of the incompetency proceeding, [is] also authorized \* \* \* to appeal from the order adjudicating incompetence.” (Bracketing wording substituted). *In the Matter of*

*Ruth Bunn Winstead*, 657 S.E.2d 411, 413 (N.C.App., 2008)[citing *In re Guardianship of Richardson*, 172 Ohio App.3d 410, 875 N.E.2d 129 (2007)].

The two decisions of the Ohio court of appeals that Appellant primarily relies upon for its proposition that Leach lacks standing to appeal, namely, *In re Guardianship of Lee*, Unreported, 2002 Ohio 6194, 2002 Ohio App. LEXIS 6037 (Ohio Ct. App., Miami County Nov. 15, 2002), and *In re Guardianship of Santrucek*, 2007 Ohio 3427, 2007 Ohio App. LEXIS 3137 (Ohio Ct. App., Licking County July 3, 2007), are inapposite. Both cases are distinguishable from the case *sub judice* and do not support Appellant's broad brush proposition that absent filing of her own competing application for appointment as guardian a next of kin has no standing under App. 4(A) to appeal the probate court's order appointing a guardian for the ward.

*In re Guardianship of Lee*, Unreported, 2002 Ohio 6194, 2002 Ohio App. LEXIS 6037 (Ohio Ct. App., Miami County Nov. 15, 2002) was a case where the Second District Court of Appeals considered an appeal from an order of the probate court finding Dorothy Lee incompetent and appointing Charles Cromley, an attorney, guardian of her person and estate. The appeal was brought by Albert Scott, Dorothy Lee's nephew. He and two of her siblings lived with Lee when Cromley filed his application to be appointed Lee's guardian. Notice of Cromley's application was served on Scott and Dorothy Lee's other next of kin. They appeared at the hearing on the application, and Scott testified. The court found Dorothy Lee incompetent, and that finding was not disputed by Scott. Instead, he argued that the court was required to give preference for the appointment to him and others of Lee's next of kin, and could appoint a stranger such as Cromley only if the court first found Dorothy Lee's next of kin unsuitable. The court made no finding that Dorothy Lee's next of kin were unsuitable for the appointment. It found Cromley qualified and suitable. The court also noted that Cromley's was the only

application before it. In determining that Scott lacked standing to complain that the trial court erred or abused its discretion when it appointed Cromley, the Court of Appeals stated:

[t]he only person who might complain is Dorothy Lee, but she has not. Scott would have standing to complain that the court erred when it failed to appoint him had he filed an application for appointment. He didn't, and he therefore suffered no consequences adverse to his interests in this action as a result of the court's appointment of Cromley. Consequently, there is no relief this court can offer Scott in this appeal.

The Court of Appeals determined that had Scott filed an application to be appointed guardian of Dorothy Lee he “would have standing to complain that the court erred when it failed to appoint him.” Contrary to Appellant’s assertion, the Court of Appeals did not determine that, absent filing a competing application for appointment as guardian, a next of kin entitled to notice under R.C. §2111.02(A) has no standing to appeal an erroneous appointment of a guardian by the probate court. Unlike Leach, Scott agreed that it was necessary for a guardian to be appointed. Unlike Scott, Leach asserted that the probate court lacked jurisdiction to appoint a guardian. Scott’s complaint was that someone other than himself or his relatives were appointed when none made application for appointment. Leach did not assert that the probate court should have appointed her, or someone other than Ledford, as guardian for Richardson. Leach complained that appointment of a guardian was improper because it was unnecessary and because the probate court lacked subject matter jurisdiction. For the law to suppose that in order for her to complain on appeal that the appointment was unnecessary and inappropriate, she must first file an application asserting the complete opposite (i.e. that guardianship was necessary and that the probate court has jurisdiction) is utterly illogical. In the words of Mr. Bumble in Dickens' *Oliver Twist* “\* \* \* [i]f the law supposes that \* \* \* the law is a ass -- a idiot. \* \* \*” See fn. 2, *Greeley v. Miami Valley Maintenance Contractors*, 49 Ohio St. 3d 228, 233, 551 N.E.2d 981, 985 (1990). Contrary to Appellant’s assertion that the Second District Court of Appeals “abandon[ed] its

logic in the *Lee* case”, Judge Grady’s decisions in *Lee* and *Richardson* are entirely consistent, Appellant’s misreading of them notwithstanding.

Similarly, *In re Guardianship of Santrucek*, 2007 Ohio 3427, 2007 Ohio App. LEXIS 3137 (Ohio Ct. App., Licking County July 3, 2007), does not support Appellant’s broad proposition. In that case, Appellant Jennie Hull appealed the decision of the Licking County Court of Common Pleas, Probate Division, which appointed Appellee Victoria Wellington the guardian of the person and estate of Bessie Santrucek, a ninety-six year-old incompetent adult. Bessie Santrucek, the elderly mother of Hull and Wellington, formerly resided in Clinton County, Michigan. Wellington periodically made trips from the Granville, Ohio area to Michigan to visit Bessie. During such visits in December 2005 and March 2006, Wellington became concerned about Bessie’s uncharacteristic behaviors, such as repeatedly asking identical questions and failing to orderly maintain her financial and tax paperwork. In mid-March 2006, Wellington arranged to have Bessie reside at the Alterra Sterling House in Newark, an assisted-living facility. In May 2006, Wellington filed an application in the Licking County Court of Common Pleas, Probate Division, to be named as Bessie’s guardian, pursuant to R.C. 2111.02. Hull, a resident of Arizona, thereafter filed an eight-branch pre-trial motion, but did not herself apply to be named Bessie’s guardian. On August 25, 2006, the trial court issued a judgment entry finding, *inter alia*, in response to Hull’s motion, that it had jurisdiction and venue to hear the guardianship application, and that the case should not be removed to Michigan. Hull sought to be named Bessie’s conservator in the Michigan courts. On October 9, 2006, following a final hearing, the trial court issued a judgment entry appointing Wellington as the guardian of Bessie’s person and estate. The Court of Appeals of Licking County determined that Hull was without standing to appeal under the circumstances of the case. *Id.* at p. 2.

Unlike Leach, Hull was not a resident next of kin entitled to notice of the application for the appointment of a guardian for an incompetent in accordance with R.C. 2111.04(A)(2)(b). Accordingly, the “circumstances of this case” involving Leach are entirely different and the logic of the Licking County Court of Appeals in *Santrucek* does not apply. As the Court of Appeals in the case *sub judice* concluded, “as a next of kin who is entitled by R.C. 2111.04(A)(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.

Furthermore, whether Leach lacked standing to appeal the probate court’s determination, Richardson surely did not. Accordingly, Leach’s status does not affect the reversal by the Court of Appeals of the probate court’s appointment of Ledford as guardian of Richardson. Clearly, the proposed ward herself has standing to challenge the appointment of a guardian for her.

R.C. 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 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.

The Court has not accepted for appeal Appellant’s Proposition of Law No. I, which challenges that determination. Therefore, in a sense, Leach’s status as a party is inconsequential at this juncture. As Appellant has aptly expressed, “[s]ince the ward, Mrs. Richardson, also appealed, a ruling by this Court on Leach’s ‘standing’ to appeal, not addressing Mrs. Richardson’s status as a valid appellant, will have no determinative effect on the outcome of the case in the event of reversal by this Court based on Proposition of Law No. II.” Merit Brief of Appellant, Alice E. Ledford, Applicant for Appointment of Guardian of the Person of Alice I. Richardson, an Incompetent at pp. 15-16.

Accordingly, out of abject necessity, Appellant makes the astonishing proposal that the Court should “enter judgment summarily that Mrs. Richardson has waived her right of appeal under Civ. R. 53(D)(3)(b)(iv).” Merit Brief of Appellant, Alice E. Ledford, Applicant for Appointment of Guardian of the Person of Alice I. Richardson, an Incompetent at p. 16. First of all, to do so, the Court would necessarily be deciding in Appellant’s favor the merits of Appellant’s Proposition of Law No. I and Proposition of Law No. III, neither of which the Court has accepted for appeal. Moreover, in order to do so, the Court would not only have to

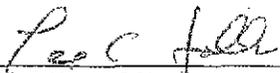
“summarily” rule that Richardson waived her right of appeal, it would have to, as well, “summarily” overturn long established legal precedent. Appellant’s assertion that any failure on the part of Richardson to object to the magistrate’s decision waives her ability to dispute the subject matter jurisdiction of the probate court before the Court of Appeals, or otherwise invalidates the action of the Court of Appeals in finding that the probate court lacked jurisdiction, is utterly without merit. With respect to Richardson, Appellant confuses the concepts of standing and preservation of issues for appeal. There can be no doubt that Richardson has standing to appeal the probate court’s appointment of a guardian. *In re Guardianship of Lee*, Unreported, 2002 Ohio 6194, 2002 Ohio App. LEXIS 6037 (Ohio Ct. App., Miami County Nov. 15, 2002). In reality Appellant argues that Richardson failed to preserve for appeal her assertion that the probate court lacked jurisdiction because she failed to object to the magistrate’s decision. However, 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, 358 N.E.2d 536.; overruled on other grounds, *Manning v. Ohio State Library Bd.*, (1991) 62 Ohio St.3d 24, 29, 577 N.E.2d 650, 653. 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, 617 N.E.2d 701. If a court lacks subject matter jurisdiction, its judgments are void *ab initio*. *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 70, 518 N.E.2d 941, 944. Ohio courts inherently possess the power to vacate a void judgment. *Id.* The only proper response of the Court is to summarily reject Appellant’s astounding proposition.

**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 31<sup>st</sup> day of March, 2008, addressed as follows:

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\_\_\_\_\_  
Lee C. Falke (003922)

Furthermore, 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.

**CONCLUSION**

Appellee respectfully requests that the Court issue an Order affirming 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.

Respectfully submitted,



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Attorney for Appellees  
Alice I. Richardson and Norma Louise Leach

**APPENDIX**

## **2101.42**

### **Statutes and Session Law**

#### **TITLE [21] XXI COURTS -- PROBATE -- JUVENILE**

#### **CHAPTER 2101: PROBATE COURT -- JURISDICTION; PROCEDURE**

#### **2101.42 Cases appealable from probate court.**

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#### **2101.42 Cases appealable from probate court.**

From any final order, judgment, or decree of the probate court, an appeal on a question of law may be prosecuted to the court of appeals in the manner and within the time provided for the prosecution of such appeals from the court of common pleas to the court of appeals. For the purpose of prosecuting appeals on questions of law from the probate court, the probate court shall exercise judicial functions inferior only to the court of appeals and the supreme court.

Effective Date: 01-01-1976

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BRENDA DAVIS  
CLERK CIRCUIT COURT  
MERCER COUNTY

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA

ALICE I. RICHARDSON,  
A/k/a ISABELLA RICHARDSON,

Petitioner,

v.

Civil Action No. 06-P-158  
Chief Judge Derek C. Swope

GEORGE W. LEDFORD, individually,  
ALICE E. LEDFORD, individually,  
JOHNNIE R. RICHARDSON, individually,  
And GEORGE W. LEDFORD, and/or  
JOHN RICHARDSON, alleged successor  
Trustees of the Alice I. Richardson  
2001 Trust,

Respondents.

### ORDER

On May 11, 2007, this matter came before the Court for a Bench Trial. The Petitioner appeared in person and by counsel, John P. Anderson, Esq., and the Respondents appeared by counsel, Kathryn R. Bayless, Esq. Also appearing was Thomas M. Janutolo, Jr., Esq., Guardian Ad Litem for the Petitioner. Wherefore, the Court heard the arguments of counsel and retired to review the pleadings, research the relevant law, and consider its decision, which is set forth herein:

### FINDINGS OF FACT

1. The Petitioner, Alice I. Richardson, is an eighty-eight (88) year old woman who has lived the majority of her life in Mercer County, West Virginia.
2. Following a surgery performed in June of 2005, Ms. Richardson moved in with her daughter, Alice E. Ledford, and son-in-law, George W. Ledford,

in Vandalia, Ohio. It is Ms. Richardson's testimony that she only expected to remain in Ohio until she had fully recuperated from the surgery at which time the Ledfords would transport her back to her home in West Virginia. Ms. Richardson further testified that she never had any intention of becoming a resident of the State of Ohio.

3. Ms. Richardson testified at the hearing that she had asked the Ledfords to return her to West Virginia. She further testified that on at least one occasion, George Ledford told her that "she did not have a home".
4. It appears from the record that both during this recuperation and for some time prior thereto, Mr. Ledford had served as Ms. Richardson's Attorney and had handled the majority of her legal and financial affairs.
5. Pursuant to this assistance, Ms. Richardson had signed numerous legal documents over the years including powers of attorney, a will, and a trust. It is Ms. Richardson's testimony that these documents were never explained to her and that Mr. Ledford always told her that she was signing papers that would "make her a bunch of money".
6. Sometime after Ms. Richardson arrived in Ohio, her daughter decided that Ms. Richardson was incompetent to care for herself. She then filed an application for guardianship in the Probate Court of Montgomery County, Ohio on June 29, 2006.
7. This application was supported by the evaluation of Dr. Alstadt, which found that Ms. Richardson suffered from "an Alzheimer's type dementia" with significant short-term memory problems, an inability to

independently eat or take medications appropriately, and impaired concentration and judgment.

8. On August 12, 2006, Ms. Richardson was at a restaurant with the Ledfords where she saw her son, James Richardson with his brother-in-law Don Leach<sup>1</sup>. According to Ms. Richardson, she asked James Richardson to return her to her home in West Virginia.<sup>2</sup>
9. Ms. Richardson further testified that upon hearing this request Ms. Ledford attacked her by jumping on her back. A bystander intervened. Somehow in the process Ms. Ledford ended up with Ms. Richardson's purse, which she refused to return. Once the altercation ceased, James Richardson immediately transported Ms. Richardson back to her home in Mercer County, West Virginia where she has since remained.
10. On August 13, 2006, the day after Ms. Richardson returned to Mercer County, West Virginia, the police were called to Ms. Richardson's home under the suspicion she had been kidnapped. After they were satisfied that she was in her own home by her own free will, they made no further investigation.
11. On August 14, 2006, Mr. Ledford caused a notice to be posted on Ms. Richardson's door informing her that she no longer owned the home. Rather a trust that she created known as the "Alice I. Richardson 2001

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<sup>1</sup> Mr. Leach is married to Norma Leach, the Petitioner's daughter.

<sup>2</sup> She further testified that she had also made this request at a birthday party at which time James Richardson told her that he could not take her home due time and/or money constraints. At the restaurant she offered monetary remuneration for his trip.

Trust" was now the legal owner of the home.<sup>3</sup> The notice further stated that she and all other occupants of the home would have a warrant issued against them and be arrested if they remained in the home past noon on August 15, 2006.

12. On this same date, Mr. Ledford signed documents to remove the situs of the Trust from the State of West Virginia to the State of Ohio. These documents were filed on August 15, 2006.

13. On August 17, 2006, Ms. Richardson sought the assistance of counsel and filed the present Petition. At that time, no decision had been rendered in the Ohio guardianship proceeding. The Petition made the following requests:

- a. That the Petitioner be allowed to return to her residence in Mercer County, West Virginia;
- b. That all the Powers of Attorney held by Johnnie E. Richardson, George Ledford, and/or Alice E. Ledford be revoked;<sup>4</sup>
- c. That the 2001 Trust documents be produced by Mr. Ledford<sup>5</sup> and that that Trust be dissolved;
- d. For the return of all property and money in possession of the Ledfords; and

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<sup>3</sup> Interestingly, Ms. Richardson was the Trustee of the Trust until July 28, 2006 when Mr. Ledford filed paperwork to have himself and Mr. Johnnie Richardson replace her as co-trustees.

<sup>4</sup> At some point during this dispute, Ms. Richardson signed documents purporting to revoke all Powers of Attorneys, Trusts, etc. and Mr. Ledford filed suit against her on behalf of the Trust in Ohio. This suit has since been voluntarily dismissed.

<sup>5</sup> Mr. Ledford has argued that he cannot produce the Trust documents due to the attorney-client privilege because Ms. Richardson, as an incompetent, is no longer the client. The Court at the May 11, 2007 hearing Ordered the production of this document.

- e. That the Petitioner's Will be surrendered to her.
14. On August 17, 2006 this Court issued an Order allowing temporary relief to Ms. Richardson, including allowing her to occupy her home. The Order further directed the West Virginia Department of Health and Human Resources Division of Adult Protective Services (hereinafter referred to as "the DHHR") to conduct an investigation.
  15. On August 21, 2006 the Respondents filed a Motion to Dismiss based upon lack of personal and subject matter jurisdiction due to the ongoing guardianship proceeding in Ohio and upon the fact that Ms. Richardson is incompetent and therefore unable to file suit on her own behalf.
  16. On August 24, 2006, the DHHR filed its report with the Circuit Clerk. This report found that Ms. Richardson's home was clean and that she was attending her doctor's appointments as scheduled. The recommendation of the DHHR was to allow her to stay in her home with the continued assistance of her son, James Richardson.
  17. On August 23, 2006, the Court held a hearing on the Respondent's Motion to Dismiss. At that time, the Court took the Motion under advisement but Ordered that an evaluation be conducted by Riaz Uddin Riaz, M.D., a geriatric psychiatrist, to determine the competency of Ms. Richardson. This Order also appointed Thomas M. Janutolo, Jr., Esq. to serve as Guardian Ad Litem for the Petitioner.
  18. Following a hearing on January 23, 2007, which Ms. Richardson did not attend, an Ohio Probate Court determined that Ms. Richardson was

incompetent and appointed Ms. Ledford as her guardian. Ms. Richardson filed a timely appeal of this Order and on March 2, 2007, the Second District Court of Appeals of Montgomery County, Ohio stayed the Order finding Ms. Richardson incompetent. This Order was partially based on the Affidavit of Dr. Riaz, which found to a reasonable degree of medical certainty that Ms. Richardson would be detrimentally harmed mentally if she were removed from her home in Mercer County, West Virginia.

19. On May 11, 2007, a hearing was held in this matter. At that time, the Court heard the evidence of the parties concerning the Respondents' Motion to Dismiss and Motion to Stay. At that time, the Court took those Motions under advisement and proceeded with a bench trial on the merits of the case.

20. At this hearing, the Court heard the testimony of the Petitioner, Alice Richardson, Dr. Riaz, Theresa N. Wells, Don Leach, and James Richardson.

21. The testimony of Dr. Riaz confirmed his initial finding to a reasonable degree of medical certainty that Ms. Richardson is in fact competent. He further 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.

22. Dr. Riaz also testified that Ms. Richardson's memory has improved since discontinuing the medicine. He does not find symptoms of depression or Alzheimer's, but continues her medications for a mild anxiety disorder.
23. Ms. Wells testified that she is Ms. Richardson's case worker for the DHHR. She testified that she has found on her monthly visits that the Petitioner's home is clean, she is well nourished, and she 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 Ms. Richardson well oriented and attentive. She further testified that Ms. Richardson repeatedly advises her that she wishes to stay in the State of West Virginia.
24. The Court upon hearing the evidence of the parties, reviewing the report of Dr. Riaz, and observing the Petitioner at the trial of this matter, specifically finds that the Petitioner is competent. While the Petitioner was reluctant to answer some lines of questioning, she seemed completely lucid and capable and understanding the issues and communicating her wishes pertaining thereto. However, this Court also finds that the Petitioner needs the continuing assistance of her son, James Richardson.
25. On July 6, 2007, the Court of Appeals of Montgomery County, Ohio issued an Opinion, which reversed and vacated the Probate Court's appointment of Alice E. Ledford as guardian of the person and estate of

Alice I. Richardson on the grounds that the Probate Court lacked subject-matter jurisdiction.

26. On July 11, 2007, the Petitioner filed a certified and authenticated copy of the final decision of the Court of Appeals of Montgomery County, Ohio with this Court.

27. On July 16, 2007, this Court issued an Order denying the Respondents' Motion to Stay and Motion to Dismiss. Accordingly, this matter is ripe for decision.

#### CONCLUSIONS OF LAW

Having specifically found that the Petitioner is competent to proceed in this matter, the Court will address the relief prayed for by the Petitioner in her Petition. The first request is that the Court issue an Order allowing the Petitioner, and her son James Richardson, or any other individual she so chooses, to occupy her home located at 36 Green Acres Drive, Green Acres Subdivision, Plymouth District, Mercer County, West Virginia. This request is granted.

The second request in Petitioner's Petition is that the Court require the production of the Alice I. Richardson 2001 Trust, and after inspection hold it to be naught and dissolved. The Court shall hold ruling on this request in abeyance until such time as the trust is produced. The Court, by Order dated June 21, 2007, Ordered the respondent, George Ledford, "to forthwith produce an identical copy of any trust agreement, with attachments, executed by petitioner which is in the control and/or possession of the respondent, George Ledford, or any attorney or agent under his direction, unto the Court, the guardian ad litem, and John P. Anderson". This Order remains in effect and the

Respondent is given ten (10) days from the date of the present Order to comply with this direction.

The third request in Petitioner's Petition is that the Court require the Ledfords to surrender unto the Petitioner all monetary assets of her estate, including but not limited to, cash, certificates of deposit, money market accounts, savings accounts, and any and all other monetary assets of her estate, including her Will. Finding that the Petitioner is competent to handle her own affairs, this request is hereby granted. The Respondents shall also file a complete accounting of the receipts and distributions of all property, real and personal, held by any of them for or on behalf of the Petitioner.

### RULING

Therefore, it is **ORDERED, ADJUDGED, and DECREED** by this Court that:

1. the Petitioner and her son James Richardson, or any other individual she so chooses, may occupy her home located at 36 Green Acres Drive, Green Acres Subdivision, Plymouth District, Mercer County, West Virginia;
2. the Respondent, George Ledford, is given ten (10) days to forthwith produce an identical copy of any trust agreement, with attachments, executed by petitioner which is in the control and/or possession of the Respondent, George Ledford, or any attorney or agent under his direction, unto the Court, the guardian ad litem, and John P. Anderson, Esq.; and

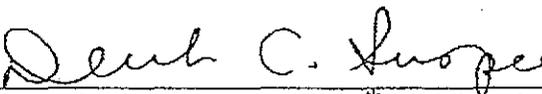
3. the Respondents shall surrender unto the Petitioner all real and personal assets of her estate, including but not limited to, cash, certificates of deposit, money market accounts, savings accounts, and any and all other monetary assets of her estate, including her Will.

The objections and exceptions of all parties to any adverse rulings herein are duly noted.

The Clerk of the Circuit Court is directed to send copies of this Order to all counsel of record.

This matter is to remain on the docket of this Court for further hearings on any other issues.

Entered this, the 31st day of July, 2007.

  
\_\_\_\_\_  
Chief Judge Derek C. Swope, 9<sup>th</sup> Judicial Circuit