
In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY, OHIO
CASE NO. 22000

IN THE MATTER OF THE GUARDIANSHIP OF ALICE I. RICHARDSON,
AN INCOMPETENT

**MOTION FOR RECONSIDERATION OF APPELLANT, ALICE E. LEDFORD,
APPLICANT FOR APPOINTMENT AS GUARDIAN OF THE PERSON OF ALICE I.
RICHARDSON, AN INCOMPETENT**

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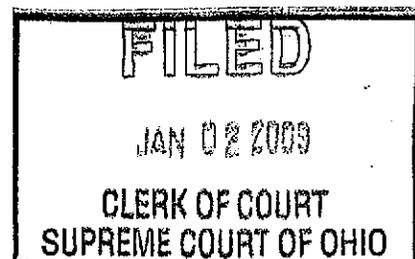


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I. MOTION FOR RECONSIDERATION OF JUDGMENT ENTERED
DECEMBER 24, 2008

Appellant, Alice E. Ledford, Applicant for Appointment as Guardian of the Person of Alice I. Richardson, an Incompetent ("Ledford"), moves this Court pursuant to S. Ct. Prac. R. XI, Section 2(B)(2) and (4) for reconsideration with request that this Court reverse and remand this appeal to the Montgomery County Court of Appeals for review and ruling on the issue whether Appellee, Alice I. Richardson ("Richardson"), waived her right to appeal under Civ. R. 53(D)(3)(b)(iv) and R.C. 2111.02(C)(2) on her assignments of error made in the court of appeals.

II. MEMORANDUM

The December 24, 2008, “reversal” of this appeal rests solely upon the Montgomery County Court of Appeals’ erroneous holding that appellee (appellant below) “Norma Leach has standing to appeal the creation of a guardianship over Alice Richardson”. A reversal so limited, without affecting the outcome of the case, is unprecedented and contrary to the Court’s well-settled policy of not rendering advisory opinions. *Travis v. Public Utilities Comm. of Ohio* (1931), 123 Ohio St. 355; 175 N.E. 586; 9 Ohio L. Abs. 443, syllabus ¶2 (“It is only the duty of this Court to decide actual controversies where the judgment can be carried into effect, and not to give opinions upon moot questions, or abstract propositions, or to declare principles or rules of law which cannot affect the matter at issue in the case before it.”); *State ex rel. White v. Kilbane Koch*, 96 Ohio St. 3d 395, 2002 Ohio 4848, 775 N.E.2d 508, P18 (reiterating the Court’s “well-settled precedent that we will not indulge in advisory opinions”).

Neither the Montgomery County Court of Appeals nor this Court has addressed the merits of the validity of the appeal by Richardson in the court below. While this Court has “reversed” on the basis of Leach’s lack of standing to appeal, it has let stand without consideration or decision the validity of Richardson’s appeal under the “waiver” provisions of Civ. R. 53(D)(3)(b)(iv) and R.C. 2111.02(C)(2). This Court and the Montgomery County Court of Appeals have thus come only half-way in the appellate review of this case.

“The definition of ‘reverse’ contained in Black’s Law Dictionary (6th Ed.), is “To overthrow, vacate, set aside, make void, annul, repeal or revoke; as to reverse a judgment, sentence or decree of a lower court by an appellate court, or to change to the contrary or to a former condition. [Citations omitted]. To reverse a judgment means to overthrow it by contrary decision, make it void, undue or annul it for error. [Citations omitted].” (Bracket language added).

Cf. *General Telephone Co. v. Pub. Util. Comm.* (1972), 30 Ohio St.2d 271, 285 N.E.2d 34. In the case at bar, this Court has “reversed” only the Montgomery County Court of Appeals’ holding based on the absence of Leach’s standing to appeal; however, the net effect of this Court’s December 24, 2008, holding is to actually affirm the case, a result emphasized in the Court’s Slip Opinion at ¶1 that “This reversal does not affect other portions of the court of appeals’ judgment on issues not accepted for review by this Court.” The dissenting opinion more explicitly approved the Montgomery County Court of Appeals’ holding with the observation that “Fortunately, the majority’s ruling does not affect the ultimate outcome of the court of appeals’ decision, since it does not reverse the court of appeals’ decision regarding Richardson’s ability to appeal.”¹

Now that this Court has declared, on authority of *In Re: Santrucek*, 120 Ohio St. 3d 67, 2008-Ohio-4915, 896 N.E. 2d 683, that Leach had no “standing” to appeal in Richardson’s guardianship proceeding, the Montgomery County Court of Appeals’ holding in the case at bar is underpinned entirely on the legal sufficiency of Richardson’s appeal. Ledford’s appeal on virtually the same issue raised and favorably considered by this Court in the *Santrucek* case ought not fail in its final effect merely because of the pendent issue of Richardson’s right to appeal in the court below.

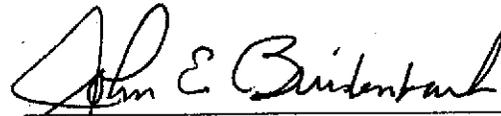
The fairest and most logical course for this Court is to remand this appeal to the Montgomery County Court of Appeals for review and determination of the issue of Richardson’s “waiver” of her appeal under Civ. R. 53 and R.C. 2111.02(C)(2) based on the arguments set forth

¹ In fact, the Montgomery County Court of Appeals’ opinion in *In the Matter of the Guardianship of Alice I. Richardson, An Incompetent*, 172 Ohio App. 3d 410, 2007-Ohio-3462, 875 N.E.2d 129, made no reference, despite Ledford’s briefing, to the issue of Richardson’s “waiver” under Civ. R. 53 and R.C. 2111.02(C)(2) of her right to appeal on her assignments of error.

in the Brief of Appellee-Guardian, Alice E. Ledford (Supp. 78-80; Brief pp. 12-14). Ledford is entitled to review and decision by the court of appeals on that issue especially in view of this Court's December 24, 2008, holding that the Montgomery County Court of Appeals acquired no jurisdiction to hear and decide the related Leach appeal.

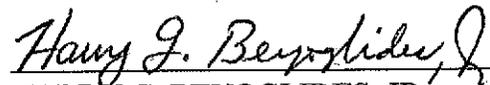
III. CONCLUSION

Ledford respectfully requests the reconsideration by this Court of its December 24, 2008, Judgment with holding that this Court reverse the judgment of the Montgomery County Court of Appeals for the reasons set forth in the Slip Opinion and, in addition thereto, remand the case to the Montgomery County Court of Appeals for review and ruling on the issue whether Richardson "waived" her right of appeal under Civ. R. 53(D)(3)(b)(iv) and R.C. 2111.02(C)(2) on her assignments of error made in the Montgomery County Court of Appeals.



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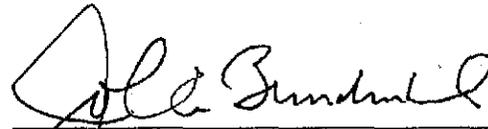


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LEDFORD, APPLICANT FOR APPOINTMENT
AS GUARDIAN OF THE PERSON OF ALICE I.
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IV. CERTIFICATE OF SERVICE

I certify that a copy of this Motion for Reconsideration of Appellant, Alice E. Ledford, Applicant for Appointment as Guardian of the Person of Alice I. Richardson, an Incompetent, was served by regular U.S. Mail, postage prepaid, upon Lee C. Falke and Patrick K. Dunphy, counsel for Appellees, Falke & Dunphy, LLC, 30 Wyoming Street, Dayton, Ohio 45409, this 31st day of December, 2008.



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PERSON OF ALICE I. RICHARDSON, AN
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