
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

**MEMORANDUM OF APPELLEES ALICE I. RICHARDSON
AND NORMA LOUISE LEACH
OPPOSING MOTION FOR RECONSIDERATION**

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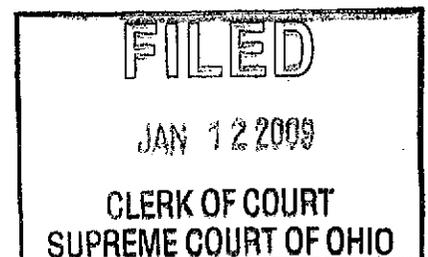


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MEMORANDUM

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 ("Ledford") as guardian of the person of Appellee Alice I. Richardson ("Richardson"), determined that the probate court lacked jurisdiction because the ward was not a resident of Ohio at the time the application was granted. 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 *Entry* of the Court accepting appeal on Appellant's Proposition of Law No. II was issued on December 12, 2007. Appellant's Proposition of Law No. II provided as follows:

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.

The Court in Slip Opinion No. 2008-Ohio-6696 issued December 24, 2008, determined that "[t]he portion of the court of appeals' judgment holding that appellee (appellant below) Norma Leach has standing to appeal the creation of a guardianship over Alice Richardson is reversed on the authority of our decision in *In re Santrucek*, 120 Ohio St.3d 67, 2008-Ohio-4915, 896 N.E.2d 683. This reversal does not affect other portions of the court of appeals' judgment on issues not accepted for review by this court."

On January 2, 2009, the *Motion for Reconsideration of Appellant, Alice E. Ledford, Applicant for Appointment as Guardian of the Person of Alice I. Richardson, An Incompetent* (“Motion for Reconsideration”), was filed. In her *Motion for Reconsideration* Ledford requests “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.”

Per its *Entry* of December 12, 2007, the Court did not accept for appeal Ledford’s Proposition of Law No. III, on the very issue which she again seeks consideration by this Court, which provided as follows:

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.

In the *Merit Brief of Appellant, Alice E. Ledford, Applicant for Appointment of Guardian of the Person of Alice I. Richardson, An Incompetent*, filed on February 29, 2008, Ledford advised the Court that she had argued on appeal that “in the absence of objection pursuant to Civ. R. 53(D)(3)(b) by Mrs. Richardson or her Guardian Ad Litem * * * Mrs. Richardson had waived her right to assign its adoption by the Probate Court as error on appeal”, noting that Richardson’s waiver was “advanced and briefed by Ledford as Proposition of Law No. III in her Memorandum in Support of Jurisdiction” which “has not been accepted for review by this Court.” *Appellant’s Merit Brief* at p. 16. At oral argument on June 3, 2008, counsel for Ledford argued that, although not accepted for review, the Court had the inherent power to decide the third

proposition of law; and, when asked if the issue had been adequately briefed, advised that the record was clear that there was a clear cut waiver issue.

In her *Motion for Reconsideration* Ledford yet again asks the Court to reverse and remand this case to the court of appeals for review and ruling on whether Richardson “waived her right to appeal under Civ. R. 53(D)(3)(b)(iv)”. *Motion for Reconsideration* at p. 1. Even after having three bites at the apple, in her memorandum in support of jurisdiction, in her merit brief, and at oral argument, it appears that Ledford just won’t take no for an answer. What is clear is that Ledford’s underlying proposition is without merit. Ledford’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 contrary to long established legal precedent. In reality Ledford 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.*

Furthermore, Ledford's claims are moot. Richardson had lived in her home in Mercer County, West Virginia, since August 12, 2006. Unfortunately, she passed away on January 3, 2009. See *Suggestion of Death* filed simultaneously herewith. If it was not clear before, it is clear now, that any issue relating to Ledford being appointed guardian of Richardson's person are moot. There simply is not a person over whom Ledford can be appointed guardian. Ledford's motion for reconsideration should be denied.

CONCLUSION

For the foregoing reasons, Appellees respectfully request that the Court issue an order overruling the *Motion for Reconsideration of Appellant, Alice E. Ledford, Applicant for Appointment as Guardian of the Person of Alice I. Richardson, An Incompetent*, filed January 2, 2009.

Respectfully submitted,



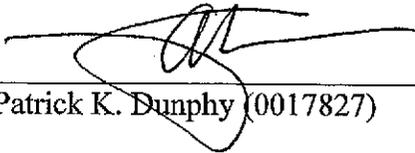
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon counsel of record by mailing a copy to them via ordinary U.S. mail, this 9th day of January, 2009, addressed as follows:

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