

ORIGINAL

In the
Supreme Court of Ohio

IN THE MATTER OF THE
GUARDIANSHIP OF JOHN SPANGLER

: Case No. 2009-0121
:
:
: On Appeal from the
: Geauga County Court of Appeals,
: Eleventh Appellate District
:
:
: Court of Appeals Case
: Nos. 2007-G-2800/2802

REPLY BRIEF OF *AMICUS CURIAE* STATE OF OHIO IN SUPPORT OF
APPELLANT GEAUGA COUNTY BOARD OF DEVELOPMENTAL DISABILITIES

DAVID P. JOYCE (0022437)
Gauga County Prosecutor

RICHARD CORDRAY (0038034)
Attorney General of Ohio

J.A. MIEDEMA* (0076206)
Assistant Prosecuting Attorney
**Counsel of Record*

BENJAMIN C. MIZER* (0083089)
Solicitor General
**Counsel of Record*

Courthouse Annex
231 Main Street
Chardon, OH 44024
440-279-2100
440-279-1322 fax
miedej@odjfs.state.oh.us

DAVID M. LIEBERMAN (*pro hac vice*)
Deputy Solicitor
ELIZABETH G. HARTNETT (0084259)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215
614-466-8980
614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

FRANKLIN J. HICKMAN (0006105)
JUDITH C. SALTZMAN (0068901)
1300 East Ninth Street, Suite 1020
Cleveland, OH 44114
216-861-0360
216-861-3113 fax
fhickman@hickman-lowder.com

Counsel for *Amicus Curiae* State of Ohio

Counsel for Appellant Gauga County Board
of Developmental Disabilities

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CLERK OF COURT
SUPREME COURT OF OHIO

DEREK S. HAMALIAN* (0039378)

**Counsel of Record*

JASON C. BOYLAND (0082409)

Ohio Legal Rights Service

50 West Broad Street, Suite 1400

Columbus, OH 43215

614-466-7264

614-644-1888 fax

dhamalian@olrs.state.oh.us

Counsel for Appellee John Spangler

PAMELA W. MAKOWSKI* (0024667)

**Counsel of Record*

503 South High Street, Suite 205

Columbus, OH 43215

614-564-6500

614-564-6555 fax

Pam.Makowski@aol.com

Counsel for Appellees Gabriele Spangler
and Joseph Spangler

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INTRODUCTION

In their merit briefs, Appellees focus exclusively on the statutory powers of the county boards of developmental disabilities. It is beyond dispute, they say, that the boards have authority to intervene in guardianship proceedings under R.C. 5126.33 by filing a complaint for abuse, neglect, or exploitation against the guardian in probate court. But that, Appellees assert, is the boards' only remedy. Appellees argue that the Geauga County Board of Developmental Disabilities ("the Geauga DD Board") lacked standing in this case to file a motion in the probate court seeking the removal of Gabriele Spangler and Joseph Spangler as guardians.

Appellees' argument misses the point. They focus on the power and duties of the county DD boards in guardianship proceedings, whereas resolution of this case turns on the powers and duties of the probate court. This Court must decide whether the probate court had authority to entertain the Geauga DD Board's complaint about the suitability of Gabriele and Joseph Spangler to serve as guardians for one of the court's wards. The answer is yes.

The probate court is "the superior guardian" of all wards within its jurisdiction, R.C. 2111.50(A)(1), it has "exclusive jurisdiction" to remove court-appointed guardians like the Spanglers, R.C. 2101.24(A)(1), and it "has plenary power" over all matters under its probate jurisdiction, R.C. 2101.24(C). As such, the court has discretion to entertain any relevant information about the suitability or conduct of one its appointed guardians, no matter the source of the information. In this case, the Geauga DD Board filed a motion questioning the suitability of the Spanglers to continue in their role as guardians. Nothing in the Revised Code or this Court's case law precluded the probate court from reviewing, and then acting upon, the substance of the Board's motion.

Appellees' invocation of standing doctrine is misplaced. Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right against another party. At

issue in this case, however, is the probate court's own ability to review the competency of one of *its* officers. This Court has long recognized that the courts have inherent authority to regulate, discipline, and remove officers of the court—attorneys, special masters, guardians, and the like. This inherent authority necessarily includes the discretion to receive and review information about the competence of one of these officers.

Appellees have not (and cannot) establish that the probate court abused its discretion when it entertained the Geauga DD Board's motion. The Court should reverse the judgment below and remand the case to the Eleventh District with instructions to assess the merits of the central issue in dispute—the probate court's determination that the Spanglers are not suitable guardians.

ARGUMENT

A. The Probate Court has plenary authority to supervise and remove a court-appointed guardian.

The Spanglers claim that “the Probate Court d[id] not even have the authority to entertain the motion that the Board filed” questioning the Spanglers' competency to serve as guardians. (Br. 26). To the contrary, a plain reading of the Revised Code demonstrates that the probate court did have such authority.

First, the probate court is “the superior guardian of wards who are subject to its jurisdiction.” R.C. 2111.50(A)(1). In this supervisory role, the court is empowered to review the decisions and determinations of court-appointed guardians like the Spanglers “[a]t all times.” *Id.*; accord *In re Guardianship of Hollins*, 114 Ohio St. 3d 434, 2007-Ohio-4555, ¶ 17 (holding that the probate court possesses “ultimate authority to approve and direct the actions of guardians subject to their jurisdiction”).

Second, the probate court has “exclusive jurisdiction” “[t]o appoint and remove guardians.” R.C. 2101.24(A)(1)(e); accord R.C. 2111.50(A)(2)(c); *In re Guardianship of Love* (1969), 19

Ohio St. 2d 111, 113. That discretion is substantial. The court may remove a guardian “for habitual drunkenness, neglect of duty, incompetency, or fraudulent conduct, because the interests of the [ward] that the fiduciary is responsible for administering demands it, or for any other cause authorized by law.” R.C. 2109.24. Or, stated more simply, the probate court “need only find that the best interests of the ward will be served by the guardian’s removal.” *In re Guardianship of Escola* (5th Dist. 1987), 41 Ohio App. 3d 42, 44.

Third, “[t]he probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court.” R.C. 2101.24(C). The court can therefore take all necessary steps incident to its power to appoint and remove court-appointed guardians. It can review any objections to or concerns about the suitability of a guardian, schedule a hearing, and direct the submission of evidence or testimony. In fact, there is only one statutory limitation on the probate court’s plenary power to remove a guardian: the court must give the guardian ten days notice before ordering removal. R.C. 2109.24.

This statutory framework mirrors well-established precedent. This Court has long stated that a court-appointed guardian “is deemed to be an officer of the court.” *In re Guardianship of Jadwisiak* (1992), 64 Ohio St. 3d 176, 180 (citing *In re Clendenning* (1945), 145 Ohio St. 82, 93). As an officer of the court, the guardian is “charged with enforcing the court’s rules and orders.” *State ex rel. Gordon v. Zangerle* (1940), 136 Ohio St. 371, 382. Furthermore, as an officer of the court, the guardian is “subject to the court’s inherent power” to regulate and discipline their conduct. *Shimko v. Lobe*, 103 Ohio St. 3d 59, 2004-Ohio-4202, ¶ 41 (citation omitted).

In this case, the probate court acted well within its statutory discretion and inherent power when it entertained the Geauga DD Board’s complaint about the suitability of the Spanglers to

function as court-appointed guardians. As the State explained in its merit brief, the fact that the complaint was styled as a “motion,” as opposed to a memo, letter, or fax, is of no relevance. The probate court’s “plenary power” to supervise guardians in its stead necessarily includes the ability to receive relevant information about the competence of those guardians, no matter the source or the format.

B. Standing doctrine does not limit or impair the probate court’s authority to supervise a court-appointed guardian.

Appellees fail to acknowledge, much less discuss, the probate court’s broad statutory authority to monitor and remove court-appointed guardians. Instead, their briefs are consumed by repeated invocations that the Geauga DD Board lacked standing to request the removal a court-appointed guardian. But standing doctrine is not relevant to this case.

In civil litigation, “‘standing’ is defined . . . as a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *Ohio Pyro, Inc. v. Ohio Dep’t of Commerce*, 115 Ohio St. 3d 375, 2007-Ohio-5024, ¶ 27 (internal quotation marks, citation, and alteration omitted). At bottom, the doctrine requires the moving party to have “a personal stake in the outcome of the controversy.” *Id.* (citation omitted).

In this case, however, the Geauga DD Board is not attempting to raise a legal claim against the Spanglers, nor is the board seeking enforcement of a duty or right. Rather, the Board is simply asking the probate court to exercise its inherent authority to dismiss an officer of the court due to a lack of competence. This Court has never applied standing doctrine in this situation. Rather, any person or entity has a right to register objections to the conduct of an officer of the court with the supervising court.

An analogy can be drawn to the regulation and discipline of attorneys. Like guardians, attorneys are officers of the court. They are subject to discipline for any misconduct, whether or

not it occurs during the course of their occupation. See Prof. Cond. R. 8.4. For that reason, *any* person with knowledge of an attorney's misconduct may file a grievance with this Court's disciplinary commission. See Gov. Bar R. V, § 4(C) ("The Disciplinary Counsel and a Certified Grievance Committee shall investigate any matter filed with it or that comes to its attention."). Such authority to supervise and discipline attorneys "is an inherent and incidental power in courts of record, and one which is essential to an orderly discharge of judicial functions." *In re Thatcher* (1909), 80 Ohio St. 492, 655.

The same is true of court-appointed guardians like the Spanglers. They are appointed by the probate court, and their authority is derived entirely from the probate court. The probate court "may confer upon a guardian any power that this section grants to the probate court," R.C. 2111.50(A)(2)(b), and it also "may limit or deny, by order or rule, any power that is granted to a guardian," R.C. 2111.50(A)(2)(c). Put simply, the guardian is an officer of the probate court and he serves at the pleasure of the court.

The Geauga DD Board's motion in this case is akin to the filing of a grievance against a licensed attorney. The board presented information to the probate court questioning the fitness of one of its guardians. The probate court had clear discretion, both under its inherent authority and the Revised Code, to review that information, order a response from the guardian, and schedule a hearing. And ultimately, the probate court had authority to remove the guardian if it found good cause.

To be clear, the State recognizes the dispute between the parties on the merits of the probate court's finding that the Spanglers are not suitable guardians. The State takes no position on the merits of that finding. It simply objects to the Eleventh District's refusal to reach the merits. The appeals court erroneously incorporated the doctrine of standing into its analysis and,

in doing so, unduly restricted the probate courts' ability to supervise court-appointed guardians. The ruling ignores the plain language of the Revised Code and the well-worn authority of courts to oversee their own officers.

Finally, it is important to emphasize that, as a general matter, the Court has never transplanted traditional rules of standing into guardianship proceedings. Unlike ordinary civil cases, guardianship proceedings are “nonadversar[ial] in nature,” “involv[ing] no one but the court and [the ward].” *In Guardianship of Love*, 19 Ohio St. 2d at 113. To that end, the Spanglers are just as much guests in this litigation as the Geauga County DD Board. Therefore, were the Court to accept the Spanglers' invitation to incorporate conventional standing doctrine into this case (and it should not), the Court should also question whether the Spanglers themselves have standing to prosecute this appeal. Court-appointed guardians like the Spanglers “ha[ve] no pecuniary interest in any right sense in being continued as guardian[s].” *Id.* at 114 (citation omitted). Rather, the guardian “is a creature and agent of the Probate Court.” *Id.* at 115. And for that reason, this Court has previously indicated that “the guardian has no right to appeal from the order of the Probate Court, from which she received her appointment.” *Id.*

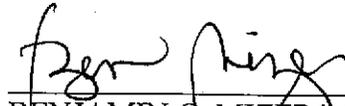
Thus, either (1) the traditional rules of standing do not apply in this case, and the probate court acted within its supervisory authority to review the competency of its appointed officers; or (2) the traditional rules of standing do apply, and the Spanglers never should have been allowed to appeal the probate court's order removing them as guardians. Under either scenario, the Eleventh District's judgment must be reversed.

CONCLUSION

For these reasons, the State of Ohio asks the Court to reverse the judgment of the Eleventh District.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Attorney General of Ohio



BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

DAVID M. LIEBERMAN (*pro hac vice*)
Deputy Solicitor

ELIZABETH G. HARTNETT (0084259)
Assistant Attorney General

30 East Broad Street, 17th Floor
Columbus, OH 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

Counsel for *Amicus Curiae* State of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of *Amicus Curiae* State of Ohio in Support of Appellate Geauga County Board of Developmental Disabilities was served by U.S. mail this 2nd day of October, 2009, upon the following counsel:

J.A. Miedema
Assistant Prosecuting Attorney
Courthouse Annex
231 Main Street
Chardon, OH 44024

Franklin J. Hickman
Judith C. Saltzman
1300 East Ninth Street, Suite 1020
Cleveland, OH 44114

Counsel for Appellant Geauga County
Board of Developmental Disabilities

Derek S. Hamalian
Jason C. Boyland
Ohio Legal Rights Service
50 West Broad Street, Suite 1400
Columbus, OH 43215

Counsel for Appellee John Spangler

Pamela W. Makowski
503 South High Street, Suite 205
Columbus, OH 43215

Counsel for Appellees Gabriele Spangler
and Joseph Spangler



Benjamin C. Mizer
Solicitor General