THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

ESTATE OF : **MEMORANDUM OPINION**

NORMAN J. HANSLIK, DECEASED :

CASE NO. 2009-A-0056

Civil Appeal from the Ashtabula County Common Pleas Court, Probate Division, Case No. 2009 ES 0221.

Judgment: Appeal dismissed.

John W. Hickey, 3794 Pearl Road, Cleveland, OH 44109 and *Valentine Schrowliew*, The Marion Building, 1276 West Third Street, #411, Cleveland, OH 44113 (For Appellant, Sharon Mastro).

Abraham Cantor, Johnnycake Commons, 9930 Johnnycake Ridge Road, #4-F Concord, OH 44060 (For Appellee, Jane Glavan).

Martha Van Hoy Asseff, Dinsmore & Shohl, L.L.P., 191 West Nationwide Boulevard, #300, Columbus, OH 43215-2569 (For Appellee, American Cancer Society).

Russell J. Meraglio and *Franklin C. Malemud*, Reminger & Reminger Co., L.P.A., 1400 Midland Building, 101 Prospect Avenue, West, Cleveland, OH 44115-1093 (For Appellee, Cleveland Clinic Foundation).

COLLEEN MARY O'TOOLE, J.

{¶1}   On December 23, 2009, appellant, Sharon Mastro, filed a notice of appeal from a November 30, 2009 entry of the Ashtabula County Court of Common Pleas, Probate Division. In that entry, the trial court ordered that the last will and testament of

Norman J. Hanslik, deceased, be admitted to probate and ordered recorded. The trial court also appointed appellee, Jane Glavan, as executor.

{¶2} On February 1, 2010, appellee, Cleveland Clinic Foundation, filed a motion to dismiss the appeal for lack of a final appealable order. Subsequently, on February 4, 2010, appellee Glavan filed a motion to dismiss for lack of a final appealable order. Appellee, American Cancer Society, also filed a motion to dismiss for lack of a final appealable order with this court on February 10, 2010.

{¶3} In all three motions to dismiss, appellees argue that the appeal should be dismissed for lack of a final appealable order since an order admitting a will to probate is not a final and appealable order.

{¶4} On February 4, 2010, appellant filed a response in opposition to the motion to dismiss filed by appellee, Cleveland Clinic Foundation. In her response, appellant contends that even though an order admitting a will to probate is not a final appealable order, the circumstances in this case make the trial court's ruling a final one. Appellant alleges that the only issue is the constitutionality and/or applicability of R.C. 2107.24 to Mr. Hanslik's will.

{¶5} According to Section 3(B)(2), Article IV of the Ohio Constitution, an appellate court can immediately review a judgment of a trial court only if it constitutes a "final order" in the action. *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02.

{¶6} It is well-settled that "an order admitting a will to probate is not a final, appealable order, 'since it [does] not prevent a judgment or determine the action.'" *Mattax v. Moore* (1991), 72 Ohio App.3d 647, 650, citing *Roth v. Siefert* (1908), 77 Ohio St. 417, 422. Opponents can challenge the admission of a will through a subsequent will contest action. *In re: Hooks* (Feb. 24, 1995), 2d Dist. No. 14498, 1995 Ohio App. LEXIS 633, at *3.

{¶7} In the instant matter, appellant may still obtain relief through a will contest action to challenge the validity of the will and file an appeal from any adverse decision to that action. Therefore, the judgment entry of the probate court admitting the will to probate is not a final appealable order.

{¶8} Based upon the foregoing analysis, this court does not have jurisdiction to review the order at this time. Accordingly, appellees' motions to dismiss are granted, and this appeal is hereby dismissed for lack of a final appealable order.

{¶9} Appeal dismissed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.