

[Cite as *Fhiaras v. Boyko*, 2010-Ohio-2353.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93641**

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**GEORGE P. FHIARAS**

PLAINTIFF-APPELLANT

vs.

**TIMOTHY A. BOYKO, GUARDIAN, ET AL.**

DEFENDANTS-APPELLEES

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the

Cuyahoga County Court of Common Pleas  
Probate Court Division  
Case No. 2008 ADV 141597

**BEFORE:** Dyke, J., Gallagher, A.J., and Boyle, J.

**RELEASED:** May 27, 2010

**JOURNALIZED:**  
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's

decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

ANN DYKE, J.:

{¶ 1} Plaintiff-appellant, George P. Fhiaras ("appellant"), appeals the trial court's dismissal of his complaint to transfer real estate. For the reasons that follow, we affirm.

{¶ 2} The pertinent facts to this appeal are as follows. Betty M. Fhiaras owns the entire interest in real estate located at 4719 Forestwood Drive in Parma, Ohio. Since 2006, however, she has been a resident of Century Oak Care Center, a long-term nursing care facility. To pay the costs of such residency, Ms. Fhiaras received Medicaid assistance.

{¶ 3} On July 23, 2007, Timothy A. Boyko was appointed as Guardian of the Estate of Ms. Fhiaras. Because Ms. Fhiaras continuously resided in the Century Oak nursing home for more than 13 months, her Medicaid benefits would cease unless her interest in the Forestwood Drive real estate was sold. Accordingly, Boyko, as Guardian of her Estate, filed a complaint for land sale in guardianship on October 30, 2007 in Cuyahoga County Court of Common Pleas, Probate Division, Case No. 2007 ADV 0130713. The complaint was granted on August 29, 2008 and an appraiser was appointed to value the property.

{¶ 4} On October 24, 2008, appellant, Ms. Fhiaras's son, initiated this original action in Cuyahoga County Court of Common Pleas, Probate Division, by filing a Complaint to Transfer Real Estate (the "Complaint"). In the Complaint, he

asserted that the Forestwood property should not be sold and counted as an asset but rather transferred to him under Ohio Adm. Code (“OAC”) 5101:1-39-31(C)(2). This portion of the Code provides that a home is not a countable resource for purposes of Medicaid when an applicant’s child resides in the home and is disabled.

{¶ 5} On April 9, 2009, the matter proceeded to a magistrate’s hearing in which appellant and his counsel failed to appear despite prior notice of the date and time. Following the hearing, on June 2, 2009, the magistrate issued its recommendation in which it dismissed appellant’s Complaint to Transfer Real Estate, finding he lacked standing to file the Complaint, the court lacked jurisdiction to entertain the Complaint, or in the alternative, the sale of the Forestwood Drive property was in the best interests of Ms. Fhiaras so that she can continue to receive long-term nursing home care. Appellant objected to the magistrate’s findings on June 10, 2009. The court adopted the magistrate’s decision and denied appellant’s objections on July 6, 2009.

{¶ 6} Appellant now appeals and presents seven assignments of error for our review. In the interests of convenience, we will review the trial court’s dismissal of appellant’s Complaint for lack of jurisdiction before addressing the substantive merits of the assignments of error.

{¶ 7} In his Complaint, appellant asserted that his mother’s house should be exempt from being counted as an asset pursuant to OAC

5101:1-39-31(C)(2)(b) because he resides in the house and he is an adult disabled child. This section of the Code provides in relevant part:

{¶ 8} “(2) The home is no longer considered to be the principal place of residence if the individual resides in a nursing facility, intermediate care facility for the mentally retarded (ICF-MR), or other medical institution for a continuous period of thirteen months or longer. The administrative agency must consider the home a countable resource when the individual has continuously resided in a nursing facility, ICF-MR, or other medical institution for thirteen months or longer; however, the home is not a countable resource if any of the following individuals are residing in the home:

{¶ 9} “\* \* \* (b) The individual’s child who is under age twenty-one, or blind or disabled as defined in Chapter 5101:1-39 of the Administrative Code \* \* \*.”

{¶ 10} Because we agree with the trial court that decisions regarding the Medicaid program must first be formally addressed by the Ohio Department of Job Family Services (“ODJFS”), we affirm the trial court’s dismissal of appellant’s Complaint to Transfer Real Estate.

{¶ 11} The Medicaid program was established in 1965 under Title 19 of the Social Security Act, 42 U.S.C. 1396 et seq., to provide “federal financial assistance to States that chose to reimburse certain costs of medical treatment for needy persons.” *Harris v. McRae* (1980), 448 U.S. 297, 301, U.S., S.Ct., 65 L.Ed.2d 784, 100 S.Ct. 2671. As a condition for federal funding, each participating state must develop its own plans setting forth reasonable eligibility requirements and

these plans must comply with the general requirements provided under Title 19, 42 U.S.C. 1396a(a)(17). In Ohio, these eligibility requirements are set forth in R.C. 5111.01 et seq. See, also, OAC 5101:1-39. In R.C. 5111.01, the ODJFS is authorized to supervise the administration of Ohio's Medicaid program.

{¶ 12} Thus, when applying for Medicaid, or in this case, challenging a decision regarding a Medicaid recipient's "countable resources" under OAC 5101:1-39, the individual must first make a request with the ODJFS that a state hearing be conducted pursuant to the rules provided in R.C. 5101.35. R.C. 5101.35(B). Then, should the individual disagree with the decision reached by the ODJFS hearing officer, his or her next avenue is to administratively appeal to the director of job and family services pursuant to R.C. 5101.35(C). Finally, should a complainant disagree with that decision, then, and only then, can he or she file an action in the common pleas court pursuant to R.C. 119.12. R.C. 5101.35(E). In summation, a complainant must exhaust all administrative remedies with the ODJFS before filing an action in the court of common pleas.

{¶ 13} In this case, appellant admittedly has yet to receive a decision from a hearing officer at the ODJFS. Rather, he skipped the hearing, administrative appeal, and instead, erroneously filed an action in Probate Court rather than the General Division of the Court of Common Pleas. Accordingly, because appellant failed to exhaust all administrative remedies and filed in the wrong division of the common pleas court, the trial court lacked jurisdiction to entertain his Complaint.

{¶ 14} Having determined that the trial court appropriately dismissed the case based upon a lack of jurisdiction, appellant's seven assignments of error<sup>1</sup> directed at the substantive merits of his Complaint are rendered moot and we need not address them pursuant to App.R. 12(A). See *State v. Haschenburger*, Mahoning App. No. 08-MA-223, 2009-Ohio-6527.

Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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<sup>1</sup> "1. The Magistrate's Decision was against the manifest weight of the evidence."

"2. The Magistrate's Decision did not follow the law."

"3. It was error for the Court to rule before it had the final official decision of Medicaid regarding whether or not the house would be exempt."

"4. The Court erred when it decided that Plaintiff Appellant could not compel the Guardian to transfer the Property."

"5. The Court erred when it decided that 'There are no specific statutory proceedings for authority to "transfer" real estate owned by a ward.'"

"6. The Court erred in finding that the transfer of the Property to Plaintiff/Appellant would not be in the Ward's best interests."

"7. It was error for the Court to decide that George had no standing to file his Complaint to Transfer Real Estate."



ANN DYKE, JUDGE

SEAN C. GALLAGHER, A.J., and  
MARY J. BOYLE, J., CONCUR