

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

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| IN THE MATTER OF THE | : | MEMORANDUM OPINION |
| GUARDIANSHIP OF LEONE BURROWS | : | |
| | : | CASE NO. 2006-P-0105 |
| | : | |

Civil Appeal from the Court of Common Pleas, Probate Division, Case No. 2005 GD 081.

Judgment: Appeal dismissed.

Michael J. McGee, Harrington, Hoppe & Mitchell, Ltd., 108 Main Street, S.W., #500, P.O. Box 1510, Warren, OH 44482-1510 (For Appellant, Charles Burrows).

Paula C. Giulitto, Giulitto & Berger, L.L.C., 222 West Main Street, P.O. Box 350, Ravenna, OH 44266-0350 (For Appellee, Teresa Beery).

CYNTHIA WESTCOTT RICE, J.

{¶1} On October 20, 2006, appellant, Charles Burrows, filed a notice of appeal with this court from a September 26, 2006 judgment of the Portage County Court of Common Pleas, Probate Division.

{¶2} In the September 26, 2006 entry, the trial court merely adopted the magistrate's decision, but did not issue its own judgment entry separate from the magistrate's decision. On October 10, 2006, before appellant filed his notice of appeal,

he filed objections to the magistrate's decision. Appellant did not wait for the trial court to rule on his objections, instead he filed this appeal.

{¶3} Appellee, Teresa Beery, filed a motion to dismiss the appeal on December 21, 2006. In that motion, appellee argues that there is no final appealable order because the September 26, 2006 entry merely adopted the magistrate's decision and made it an order of the court. Appellee further indicates that on October 10, 2006, appellant filed objections to the magistrate's decision prior to the filing of this appeal.

{¶4} Appellant filed a memorandum in opposition to appellee's motion to dismiss on January 5, 2007.

{¶5} The mere adoption of a magistrate's decision does not constitute a final appealable order. *In re Castrovince* (Aug. 16, 1996), 11th Dist. No. 96-P-0175, 1996 WL 1056815, at 1. This court further stated that based on Civ.R. 54(A), it is not sufficient for a final appealable order that a trial court merely incorporate by reference the recommendations of a magistrate's decision. *Id.* Rather, the magistrate's decision and the trial court's judgment must be "separate and distinct instruments which are complete and independent of each other." *Id.*

{¶6} In the case at bar, the September 26, 2006 entry merely adopted the decision of the magistrate. The trial court did not issue its own "separate and distinct" order setting forth the court's ruling on the matter. Furthermore, appellant filed objections to the magistrate's decision on October 10, 2006, and then filed a notice of appeal on October 20, 2006, before the trial court ruled on the objections. Therefore, this appeal was prematurely filed. Consequently, it appears from a review of the docket that on November 27, 2006, the trial court issued a new judgment overruling appellant's

objections to the magistrate's September 26, 2006 decision. The November 27, 2006 judgment entry sets out its own ruling regarding the guardianship and is being appeal by appellant in Portage App. No. 2006-P-0118. It also appears to be the final appealable order. Since the final judgment can now be properly reviewed in 2006-P-0118, this appeal is dismissed as being premature.

{¶7} Based upon the foregoing analysis, appellee's motion to dismiss is granted, and this appeal is dismissed.

{¶8} Appeal dismissed.

WILLIAM M. O'NEILL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.