[Cite as *In re Guardianship of Snyder*, 2010-Ohio-3899.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

In the Matter of:	:	Case Nos. 09CA21 09CA22
The Guardianship of Eugene Snyder,	:	
and	:	DECISION AND JUDGMENT ENTRY
The Guardianship of Iva Jean Snyder.	:	**Released 8/18/10**

APPEARANCES:

David K. Lowe, Clark & Lowe, LLC, Columbus, Ohio, for appellants.[1]

Harsha, J.

{¶1} In 2007 Eugene and Iva Snyder -- the parents of Cheryl Clark, Kevin Snyder, and Larry Snyder -- were placed in guardianships. Cheryl and Kevin (Appellants) appeal from the decision of the probate court that approved the final accounts filed by Larry, who was guardian of Eugene and Iva (the Wards). Appellants did not receive either a copy of the accounts or notice of the hearing on the accounts. Citing the lack of notice, Appellants sought a continuance to allow them to file exceptions to the accounts. The trial court subsequently denied that motion and issued a judgment entry approving Larry's final accounts.

{¶2} Appellants assert that the probate court violated their due process rights by approving the final accounts over their exceptions and without notice. R.C. 2109.32(A) requires the probate court to hold a hearing before approving a fiduciary's account. And R.C. 2109.33 authorizes the probate court to require notice of the hearing be served upon persons it designates. Here, Hocking County Loc.R. 32(B) required

[1] Appellants were the only party to enter an appearance and file a brief in this case.

that Appellants, who are "interested" parties, be served with notice of the hearing on Larry's final accounts. Consequently, the probate court abused its discretion when it overruled Appellants' motion to continue the case and erred as a matter of law when it approved Larry's final accounts.

I. Facts

{¶3} In 2007 the probate court appointed Cheryl as guardian of both the estates and of the persons of the Wards. Unfortunately, an extremely adversarial relationship developed between Appellants and Larry. The probate court removed Cheryl as guardian of the estates and replaced her with Larry after he alleged some discrepancies in Cheryl's accounting. The probate court also named Larry guardian of the persons of the elder Snyders after he alleged that Appellants verbally and physically attacked him.

{¶4} Later in his capacity as guardian of the Wards, Larry filed a separate civil complaint alleging that certain real estate owned jointly by all three siblings should be transferred back to the Wards. This case was subsequently consolidated with both guardianships in the probate court.

{¶5} The parties reached a settlement agreement concerning the consolidated cases. The agreement resolved the status of the real estate and provided that Larry would resign in July 2009 as guardian. It also provided that if the Wards died and there were funds remaining in the guardianship accounts, the guardian would distribute all remaining funds equally among the siblings. The settlement agreement became part of the judgment entry issued by the court.

{¶6} After Larry filed his final accounts in August 2009, the court set a hearing to consider their approval for September 16, 2009. However, Appellants did not receive a copy of the final accounts or notice of the hearing.

{¶7} On September 16, the date of the hearing, Appellants first learned that Larry filed his final accounts. On September 18, Appellants filed a "Motion for Extension of Time to File Exceptions" and "Abbreviated Exceptions to Reimbursement of Guardian, Larry Snyder." In their exceptions they argued that Larry's request for $23,000 in remuneration for payments he made out-of-pocket to his attorney did not match documentation provided by Larry's lawyer, which indicated that Larry had paid only $5,000.

{¶8} On September 23, Appellants filed a "Supplemental Motion for Continuance" in which they argued that the court should allow them to file exceptions to the accounts, and to which they attached their affidavits attesting that they did not receive notice of the hearing on the accounts. But on September 29 the court overruled the "Supplemental Motion for Continuance" without comment. Several days later it issued judgment entries approving Larry's final accounts after stating that no exceptions had been filed. Appellants have appealed from the orders overruling the motion for a continuance and the judgment entries approving the final accounts.

II. Assignments of Error

{¶9} Appellants have presented two assignments of error:

Assignment of Error No. 1

> THE COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEN IT APPROVED THE FINAL ACCOUNTING OF GUARDIAN LARRY SNYDER WITHOUT AFFORDING NOTICE TO APPELLANTS PURSUANT TO RC 2109.33 WHICH VIOLATES DUE PROCESS.

Assignment of Error No. 2

THE COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEN IT DENIED APPELANT'S (sic) REQUEST FOR CONTINUANCE OF HEARING ON THE FINAL ACCOUNT

III. The Final Accounting Procedure

{¶10} In their first assignment of error Appellants argue that the court violated their due process rights when it approved Larry's final accounts without providing them notice of the hearing or allowing them to file exceptions. Appellants contend that they are "interested" persons under R.C. 2109.33 and that pursuant to that statute, Larry was required to serve them notice of hearings on the Wards' accounts.

{¶11} In their second assignment of error, Appellants contend that the probate court abused its discretion when it denied their request for a continuance to file exceptions on Larry's accounts. Because Appellants' first and second assignments of error involve similar issues, we merge them for purposes of our review.

A. Standard of Review

{¶12} Under R.C. 2101.24(A)(1)(e) the probate court is vested with the exclusive jurisdiction to appoint and remove guardians, to direct and control their conduct, and to settle their accounts. Because of a probate court's broad authority to manage guardianships and settle their accounts, we review such decisions under the abuse of discretion standard. See generally, *In re Guardianship of Larkin*, Pike App. No. 09CA791, 2009-Ohio-5014, at ¶19; *In re Langenderfer*, Fulton App. No. F-03-031, 2004-Ohio-4149, at ¶18. An abuse of discretion constitutes more than an error of judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. See *Landis v. Grange Mut. Ins. Co.*, 82 Ohio St.3d 339, 342, 1998-

Ohio-387, 695 N.E.2d 1140; *Malone v. Courtyard by Marriott L.P.*, 74 Ohio St.3d 440, 448, 1996-Ohio-311, 659 N.E.2d 1242; *State ex rel. Solomon v. Police & Firemen's Disability & Pension Fund Bd. of Trustees*, 72 Ohio St.3d 62, 64, 1995-Ohio-172, 647 N.E.2d 486.

B. Hearing and Exceptions on Accounts

{¶13} Appellants frame the failure to receive notice as a violation of procedural due process under both the federal and state constitutions. Regardless of the merits of their constitutional due process argument, we believe the issues involved in this appeal can be resolved without resorting to a constitutional analysis.

{¶14} R.C. 2109.302(A) requires every guardian to render a final account within thirty days after completing the administration of a ward's estate or within any other period of time that the probate court may order.

{¶15} R.C. 2109.32 provides:

> (A) Every fiduciary's account required by section * * * 2109.302 * * * of the Revised Code shall be set for hearing before the probate court. The hearing on the account shall be set not earlier than thirty days after the filing of the account.

Thus, the final account filed by a guardian must be set for a hearing.

{¶16} R.C. 2109.33, Notice of hearing; exception to account provides:

> A fiduciary may serve notice of the hearing upon his account to be conducted under section 2109.32 of the Revised Code, or may cause the notice to be served, upon any person who is interested in the estate or trust.
>
> The notice shall set forth the time and place of the hearing and shall specify the account to be considered and acted upon by the court at the hearing and the period of time covered by the account. It shall contain a statement to the effect that the person notified is required to examine the account, to inquire into the contents of the account and into all matters that may come before the court at the

> hearing on the account, and to file any exceptions that the person may have to the account at least five days prior to the hearing on the account, and that upon his failure to file exceptions, the account may be approved without further notice.
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> * * *
>
> The notice of the hearing upon an account shall be served at least fifteen days prior to the hearing on the account.
>
> Any person interested in an estate or trust may file exceptions to an account or to matters pertaining to the execution of the trust. All exceptions shall be specific and written. Exceptions shall be filed and a copy of them furnished to the fiduciary by the exceptor, not less than five days prior to the hearing on the account. The court for cause may allow further time to file exceptions. If exceptions are filed to an account, the court may allow further time for serving notice of the hearing upon any person who may be affected by an order disposing of the exceptions and who has not already been served with notice of the hearing in accordance with this section.
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> * * *

{¶17} Finally, Loc. R. 32 of the Hocking County Probate Court, titled "ACCOUNTS," states in part:

> NOTICE: Upon filing of an Account, the fiduciary *shall certify* that Notice of Hearing on Account has been served upon any person with *interest* in the estate of trust. The Notice shall be served at least 15 days prior to hearing. Any competent person may waive service of notice and consent to the approval of the Account. (Emphasis supplied.)

{¶18} Thus, Loc.R. 32(B) supplements the requirements of R.C. 2109.302(A) and R.C. 2109.33. The local rule requires the fiduciary to provide notice at least fifteen days prior to the hearing on the account to anyone with an interest in the estate. Thus, Loc.R. 32 required Larry to serve Appellants with notice of the hearing on the accounts if they are persons "with an interest" in the trust.

D. "Interested Persons" under R.C. 2109.33

{¶19} Appellants claim that they are "interested persons" to the Wards' guardianship estates because the settlement agreement provides that they share equally in any funds remaining in the estates if the Wards die. We agree.

{¶20} R.C. 2109.33 and Loc.R.32(B) do not define who is an "interested person." But we have previously construed R.C. 2109.33 and held that a "interested person" is one who holds a "direct, pecuniary interest" in the trust or estate. *In re Estate of Boll* (1998), 126 Ohio App.3d 507, 510, 710 N.E.2d 1139.

{¶21} In *Boll* we held that a granddaughter was an interested person in the probate estate of her grandmother. Id. at 510. Although *Boll* interpreted R.C. 2109.33 in the context of a probate estate, the statute is generally applicable to both estates and guardianships. In *Boll* the grandmother died and her will named her daughter the primary beneficiary. Id. at 508. An inter vivos trust was the residual beneficiary under the will. The granddaughter was the primary beneficiary of the inter vivos trust. Id.

{¶22} The probate court appointed the daughter to act as executor. After the daughter filed her final account, the granddaughter filed exceptions. The daughter filed a motion to dismiss, arguing that the granddaughter lacked standing to file exceptions because she was not "a creditor, legatee or devisee" under the will. Id. at 508-509. We concluded that the granddaughter was an "interested" person under R.C. 2109.33 because she had an equitable interest in any residual property directly transferred from the probate estate to the inter vivos trust. Id. at 510.

{¶23} In contrast to *Boll*, see *In re Guardianship of AL.K.*, Summit App. Nos. 23338, 23339, 2007-Ohio-509, where the grandmother filed exceptions to an account in the guardianship of her two minor granddaughters. Id. at ¶3. The guardian claimed that

the grandmother was not an "interested person" and thus without standing to file exceptions. Id. The grandmother asserted that she had standing to file exceptions because she was currently the primary beneficiary of a trust and the granddaughters were the named residual beneficiaries. Id. at ¶5. Thus, if she died, the property in the trust would flow into the guardianship.

{¶24} The court in *AL.K.* held that the grandmother did not have a "direct, pecuniary interest" in the guardianship. Id. at ¶11. The court explained: "She is not the beneficiary of the guardianship nor is the trust of which she is the beneficiary funded by any guardianship assets. Appellant is simply a beneficiary of a trust, the assets of which will flow to the Wards, among others, upon [her] death." Id.

{¶25} Here, Appellants have a direct, pecuniary interest in the guardianship accounts. The settlement agreement, entered into prior to the filing of the final accounts, provides that the Appellants and Larry share equally the proceeds of the guardianship estate should the Wards die. As in *Boll* and *AL.K.*, this interest is merely equitable – the Appellants do not hold legal title to the funds. Like *AL.K.*, the Appellants' equitable interest is contingent (upon the Wards' death and upon any funds remaining in the guardianship estate). But, unlike *AL.K*., their pecuniary interest is currently in the guardianship accounts – not funds that may flow in at a later date. An equitable interest in an existing estate or guardianship asset is sufficient to demonstrate a direct, pecuniary interest for purposes of R.C. 2109.33. *Boll*, supra. Consequently, we hold that appellants are "interested persons" under R.C. 2109.33.

IV. Appellants' Right to File Exceptions

{¶26} As interested persons under R.C. 2109.33, Appellants had the right to file exceptions to the accounts. The statute provides that exceptions must be filed at least five days prior to the hearing on the account. There is no dispute that Appellants filed their "Abbreviated Exceptions" in an untimely fashion -- two days after the scheduled hearing on the account. However, there is no evidence in the record that Appellants received proper notice of the filing of the accounts or the date of the hearing.

{¶27} Probate courts, like all trial courts, inherently possess discretion in managing their docket. See generally, *State ex rel. Charvat v. Frye,* 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, at ¶23. Within that discretion is the power to dismiss untimely motions and filings. But here, it was clear that the Appellants' failure to file exceptions within the time constraints of R.C. 2109.33 was based on Larry's failure to serve notice of the hearing as required by Local Rule. Under these circumstances, the probate court should have continued the hearing on the Exceptions before approving the final account. Failure to do so was unreasonable. See *In re Estate of Reinhart*, Mahoning App. No. 05 MA 36, 2005-Ohio-4894, at ¶27. Accordingly, we hold that the probate court abused its discretion by denying the motion for a continuance and erred as a matter of law by approving the final account without conducting a hearing.

V. Conclusion

{¶28} Appellants were interested parties to the guardianship accounts and had the right to receive notice and file exceptions. Under Loc.R. 32(B), Larry was required to provide them with notice of a hearing on the account. The probate court should have allowed Appellants an extension of time to file exceptions to the accounts when the undisputed evidence showed that Larry failed to notify them of the hearing on his final

accounts. Accordingly, we reverse the decisions of the trial court denying the continuance and approving the final accounts. We remand the matter with instructions to the probate court to hold a hearing on Appellants' exceptions.

JUDGMENT REVERSED
AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS REVERSED and that the CAUSE IS REMANDED. Appellee shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking County Common Pleas Court, Probate Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

McFarland, P.J. & Kline, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.