

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
OTTAWA COUNTY

Vicki Biro

Court of Appeals No. OT-10-017

Appellee

Trial Court No. 04DR058A

v.

James Biro

**DECISION AND JUDGMENT**

Appellant

Decided: October 22, 2010

\* \* \* \* \*

John Klaehn, for appellee.

George C. Wilber, for appellant.

\* \* \* \* \*

SINGER, J.

{¶ 1} This accelerated case comes before the court on appeal from the Ottawa County Court of Common Pleas, Domestic Relations Division, wherein the court dismissed the case for lack of jurisdiction. For the reasons that follow, we affirm.

{¶ 2} Appellant, James M. Biro and appellee, Vickie L. Biro, were divorced on January 5, 2006. At the time, the parties' son, Michael, was 18 years of age but was suffering from mental and physical disabilities which rendered him unable to care for himself. Appellee was awarded legal custody of Michael. Appellant was ordered to pay \$1000 per month in child support. The court also ordered Michael to be annually examined by medical and mental health professionals to evaluate his ability to be capable of maintaining himself.

{¶ 3} On September 23, 2008, appellee filed an application with the Ottawa County Court of Common Pleas, Probate Division, seeking to be appointed Michael's guardian. On September 28, 2009, appellant also filed an application with the probate court seeking to be named Michael's guardian. On November 13, 2009, appellant filed a motion in the probate court seeking to dismiss appellee's application for a guardianship arguing that the probate court lacked jurisdiction. On December 28, 2009, appellant filed, in the Ottawa County Court of Common Pleas, Domestic Relations Division, a "motion to determine jurisdiction over the care, custody and control of Michael Biro." Appellant argued that only the Ottawa County Common Pleas Court, Domestic Relations Division, had jurisdiction over all matters in this case. On March 31, 2010, the common pleas court denied appellant's motion finding that the Ottawa County Probate Court has jurisdiction over the care, custody and control of Michael. Appellant now appeals setting forth the following assignments of error:

{¶ 4} "I. The trial court erred as a matter of law in declining jurisdiction over Michael Biro and in finding that the Ottawa County Probate (sic) is the proper jurisdiction over the care, custody and control of Michael Biro.

{¶ 5} "II. Appellant is not precluded from raising the errors assigned in this appeal due to failure to object to the magistrate's decision because the magistrate's decision failed to comply with the requirements of Civ.R 53(D)(3)(a)(iii)."

{¶ 6} In his first assignment of error, appellant contends that the Ottawa County Court of Common Pleas, Domestic Relations Division, erred in declining jurisdiction.

{¶ 7} A trial court's ruling dealing with subject matter jurisdiction is reviewed de novo on appeal. *Burns v. Daily* (1996), 114 Ohio App.3d 693, 701. The jurisdiction of the probate court is provided in R.C. 2101.24:

{¶ 8} "(A)(1) Except as otherwise provided by law, the probate court has exclusive jurisdiction:

{¶ 9} "\* \* \*

{¶ 10} "(e) To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;

{¶ 11} "\* \* \*

{¶ 12} "(g) To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship[.]"

{¶ 13} Where a matter falls within the exclusive jurisdiction of the probate court, no other court may exercise jurisdiction over the matter. *Caudill v. Caudill* (1986), 29 Ohio App.3d 51, 52. Although the domestic relations court has jurisdiction over child custody and support matters, R.C. 3105.011 and 3109.05, Michael's guardianship is within the exclusive jurisdiction of the probate court. *In re Guardianship of Constable* (June 12, 2000), 12th Dist. No. CA99-05-039. Accordingly, the Ottawa County Court of Common Pleas, Domestic Relations Division, did not err in declining jurisdiction in this matter. Appellant's first assignment of error is found not well-taken.

{¶ 14} In his second assignment of error, appellant contends that the magistrate's decision did not contain the proper Civ.R. 53(D)(3)(a)(iii) language informing a party that no error may be assigned on appeal unless the party timely and specifically objects to that factual finding. Appellant contends that he should not be precluded from assigning error based on the fact that the magistrate's decision lacked said language. In that appellant was not prevented from assigning error, his second assignment of error lacks merit and is not well-taken.

{¶ 15} The judgment of the Ottawa County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R.24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

\_\_\_\_\_  
JUDGE

Arlene Singer, J.

\_\_\_\_\_  
JUDGE

Thomas J. Osowik, P.J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.