

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| IN RE: GUARDIANSHIP OF ELIZABETH WALLER | : | APPEAL NO. C-110636 TRIAL NO. 2010005245 |
| | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
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We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Appellant Abraham Stiggers appeals the judgment of the Hamilton County Probate Court appointing Tawn Fichter the guardian of the estate and person of Elizabeth Waller and permitting Lewis H. Seiler to serve as Fichter’s attorney.

In 2010, Beverly Shears filed an application for the appointment of a guardian of Elizabeth Waller under R.C. 2111.03. Shears, who is Waller’s daughter, sought the appointment because Waller was suffering from dementia.

A number of family members, including Shears and Stiggers, vied for the position of guardian. A hearing was held before a magistrate, who recommended that Fichter be appointed as Waller’s guardian. Stiggers then filed objections to the decision of the magistrate.

Stiggers did not file a transcript of the magistrate’s hearing with the probate court, although he did file a copy of the transcript with this court after the instant appeal had been filed. Following objections to the magistrate’s decision, the probate court adopted the recommendations of the magistrate.

In his first assignment of error, Stiggers contends that the probate court abused its discretion in appointing Fichter as Waller's guardian.

An appellate court will not reverse a judgment appointing a guardian if it is supported by competent, credible evidence. See *In re Guardianship of Waller*, 192 Ohio App.3d 663, 2001-Ohio-313, 950 N.E.2d 207 (1st Dist.), ¶ 16. But because Stiggers failed to file a transcript of the hearing before the magistrate with the probate court, we are precluded from considering the transcript that was subsequently filed with this court. Civ.R. 53; *Cwik v. Cwik*, 1st Dist. No. C-090843, 2011-Ohio-463, ¶ 52. Accordingly, as Stiggers's objections were not supported by any evidence, we must presume regularity in the proceedings and conclude that the probate court did not err in its adoption of the magistrate's decision. *Id.*

In his second and final assignment of error, Stiggers argues that the probate court erred in permitting Seiler to serve as the attorney for Fichter. Stiggers contends that Seiler's representation of Fichter is improper because he had formerly represented Shears, a person whom Stiggers characterizes as a "competing" applicant for the guardianship.

As a general rule, a stranger to an attorney-client relationship has no standing to complain of a conflict of interest in that relationship. *Morgan v. N. Coast Cable Co.*, 63 Ohio St.3d 156, 586 N.E.2d 88 (1992), syllabus. Still, a court has the inherent authority to supervise attorneys appearing before it, and that authority includes the power to disqualify counsel in specific cases. *Kala v. Aluminum Smelting & Refining Co., Inc.*, 81 Ohio St.3d 1, 4, 688 N.E.2d 258 (1992). Disqualification is a drastic measure that a court should impose only when absolutely necessary. *Perin v. Spurney*, 10th Dist. No. 05-AP-428, 2005-Ohio-6811, ¶ 15. The decision whether to disqualify an attorney will not be reversed absent an abuse of discretion. *Id.*

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In this case, we find no abuse of discretion. First, in the absence of a transcript of the evidentiary hearing, we cannot fully discern the nature of the alleged conflict of interest. Second, as Fichter correctly notes, guardianship proceedings are intended to be non-adversarial, with the sole focus of the proceedings being the welfare of the ward. *See, e.g., In re Guardianship of Spangler*, 126 Ohio St.3d 339, 2010-Ohio-2471, 933 N.E.2d 1067, ¶ 53. Thus, we fail to see how Stiggers could be prejudiced by Seiler's representation of Fichter. Third, a probate court retains jurisdiction over the guardian under R.C. 2111.50(A)(1), and thus possesses the authority to correct any impropriety should it arise. *Id.* at ¶ 52.

Accordingly, we overrule the second assignment of error and affirm the judgment of the probate court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on July 3, 2012

per order of the court _____.
Presiding Judge