

OHIO FIFTH DISTRICT COURT OF APPEALS
DOCKETING STATEMENT

JAN 25 2017

WARNING: A time-stamped copy of the judgment entry or order which makes your cause appealable as well as a copy of all judgment entries or orders being appealed must be attached to this statement. **JUDGE DALE PARK STARK COUNTY PROBATE COURT**

WARNING: All requested information *must be provided*. Failure to file a fully completed docketing statement, typed or legibly printed, may result in this appeal being dismissed by the Court, *sua sponte*.

In Re: Ivan W. Flohr Guardianship

Appeal No. 2017 CA 00015

Faith Lanshe, Guardian of the Person of Ivan W. Flohr and

Trial Court No. 219330

John Prelac, Guardian of the Estate of Ivan W. Flohr

Trial Court Judge R.R. Denny Clunk

Plaintiff-Appellant Appellee (Circle Designation)

-vs-

JAN 25 2017
LOUIS P. GRAYASIS
Clerk of Court of Appeals
STARK COUNTY OHIO

Plaintiff's Counsel Randolph L. Snow and John Prelac

Phone (330)456-8341 and (330)455-0173

Defendant's Counsel See attached

Phone _____

Defendant-Appellant-Appellee (Circle Designation)

A. DATES: Of the judgment(s) being appealed 12-29-2016

Time to Appeal extended per App.R. () Yes () No
Specify Reason: No

B. PROBABLE ISSUES FOR REVIEW: (Including charges in criminal case) The trial court erred by apportioning attorneys' fees and costs to the Guardian of the Estate of Ivan W. Flohr when such fees were attributable to the conduct of Theresa Flohr and Mary James as stated in the Probate Court's ruling dated December 9, 2016.

C. THIS APPEAL SHOULD BE ASSIGNED TO: (Check One) (See Loc. App. R. 6(B) and App. R. 11.2)

The regular calendar,

The accelerated calendar, (See Loc. R. 6(B))

The expedited calendar. (See Section F(3) of this docketing statement, Loc. R. 7 and App. R. 11.2)

D. THE RECORD: This Docketing Statement will serve as a praecipe to the clerk to prepare and transfer the docket and journal entries.

Please Indicate the Type of Record to be Filed: (Check One).

Docket and Journal Entries Only, no transcript of proceedings.

Transcript has been prepared already. It is a Full or Partial Transcript. If partial, see App.R. 9(B)

Statement of the record pursuant to App.R. 9(C).

Agreed Statement of the Record pursuant to App.R. 9(D).

Transcript of Proceedings. Less than or Greater than 100 pages.

Full or Partial transcript has been ordered. If partial, see App.R. 9(B).

WARNING: If a transcript of proceedings is needed, a copy of the notice of appeal and an appropriate praecipe must be served by Appellant on the court reporter. A copy of the praecipe to the court reporter shall be filed with this Court showing service of the notice of appeal and praecipe upon the court reporter.

NAME OF COURT REPORTER, DATE SERVED _____

Please state with particularity which exhibits and/or evidence, other than paper exhibits or documentary evidence not of unusual bulk or weight, the parties request be transmitted as part of the record on appeal. (See APP.R. 10(B); Loc.App.R. 8(C)) _____

E. CRIMINAL CASE

- 1. CHARGE: _____
- 2. DEGREE: () Misdemeanor () Felony
- 3. Is this an appeal of probation revocation? Yes No. If yes, what was the original charge and sentence? _____
- 4. Is this an appeal of Post-Conviction Relief? (R.C. 2953.21) Yes No. If yes, was a hearing held in the trial court? Yes No. What was the original charge and sentence? _____
- 5. Type of Appeal: (Check One)
 - Appeal as of Right
 - Appeal by Leave of Court (App.R. 5)
 - State's Appeal as of Right (R.C. 2945.67(A))
 - State's Appeal by Leave of Court
- 6. Is this an appeal for review of sentencing pursuant to R.C. 2908? Yes No.
- 7. Was counsel appointed for trial? Yes No.
- 8. Was counsel appointed for appeal? Yes No.
- 9. Was a stay of sentence requested in trial court? Yes No If yes, stay was: GRANTED DENIED PENDING

F. CIVIL CASE

1. ACTION BROUGHT IN LOWER COURT: Action to appoint a guardian for the person.

- 2. Did this action originate in a Trial Court or in an Administrative Agency? Indicate which.
 - County Court Municipal Court Common Pleas Court Administrative Agency
 - Probate Court Family Court Juvenile Court Other _____
- 3. Must this case be expedited as being one of the following types: Yes No. If yes, check one of the following:
 - Appeal under determination of local fiscal emergency brought by municipal corporation R.C. 118.04(C)
 - Appeal brought by minor child under R.C. 2505.073
 - Appeal involving matters of child custody, allocation of parental rights or responsibilities, or designation of a child's place of residence and legal custodian under R.C. 3109.04(H) and R.C. 3109.06.
 - Appeal from orders granting or denying (1) termination of parental rights or (2) adoption of a minor child. (See App. R. 11.2 effective July 1, 2000) See Loc. R. 7
 - Appeal from orders regarding dependent, abused, neglected, unruly, or delinquent children. (See App. R. 11.2 effective July 1, 2000) See Loc. R. 7
 - Election contests as provided in R.C. 3515.08
- 4. Do you know of another case pending in this Court which raises the same issue(s)? Yes No. If yes, please cite case(s).

- 5. Have you determined in good faith that the judgment appealed from is a final appealable order? (R.C. 2505.02) Yes No.
- 6. Did the judgment dispose of all claims by and against all parties? Yes No.
- 7. If not, is there an express determination that there is "no just reason for delay"? (Civ.R. 54(B)) Yes No.
- 8. Was a stay of judgment requested in trial court? Yes No If yes, stay was: GRANTED DENIED PENDING

CERTIFICATION

I certify that the information provided on this docketing statement is accurate.

Randolph L. Snow

Signature of Counsel (or Party if not represented by Counsel)
& Supreme Court Reg. No. 0015846

(Revised Effective April 30, 2014)

The following persons are interested parties in the case appealed from.

Margaret Lehner
9229 Frazee Road
Marshallville, Ohio 44645
Daughter of Ward

Mary M. James, *pro se*
1461 Echo St NE
Canton, Ohio 44721
Daughter of Ward

Peter Flohr
3984 Manchester Road
Akron, Ohio 44319
Son of Ward

Sheila Harvey
3400 Ashton Drive
Uniontown, Ohio 44685
Daughter of Ward

Gerard Flohr
5246 Taylor Road
Norton, Ohio 44203
Son of Ward

Grace Demaree
827 Denshire Drive NW
Canal Fulton, Ohio 44614
Daughter of Ward

Jude Flohr, *pro se*
2358 Traian Circle
Akron, OH 44312
Son of Ward

Theresa Flohr, *pro se*
571 Crestview
Akron, OH 44320
Daughter of Ward

Ruth Drouhard
624 Hillsdale Ave.
Akron, Ohio 44303
Daughter of Ward

William Flohr
2701 Oak Park Blvd.
Cuyahoga Falls, Ohio 44221
Son of Ward

Joseph Flohr
1887 Caroline Ave.
Norton, Ohio 44203
Son of Ward

FILED
DEC 29 2016

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

JUDGE DIXIE PARK
STARK COUNTY PROBATE COURT

IN RE: GUARDIANSHIP OF IVAN W. FLOHR

CASE NUMBER: 219330

Judge R.R. Denny Clunk
Sitting by Assignment

JUDGMENT ORDER APPROVING ATTORNEY FEES AND COSTS

This Court found by its Judgment Order, dated December 9, 2016 and filed December 12, 2016 that both Theresa Flohr and Mary James have by their filings subsequent to the Court's Judgment Order filed August 17, 2016 committed frivolous conduct that has caused needless costs of litigation and has required Faith Lanshe (hereinafter "FL") as Guardian of the Person of Ivan W. Flohr to respond to duplicate filings by her attorney.

In the same Judgment Order of December 9, 2016, the Court ordered Randolph L. Snow, as Attorney for FL, to file his fee statement in compliance with R.C. 2323.51 (B)(5)(a) on or before December 14, 2016 and Theresa Flohr and Mary James to file their objections on or before December 28, 2016.

On December 13, 2016, FL filed "Supplemental Filing of Evidence in Support of Motion for Sanctions Against Mary James for Frivolous Conduct filed on September 6, 2016." Attached as an Exhibit to the filing was a detailed statement for attorney fees and costs by Black, McCuskey, Souers & Arbaugh, LPA (hereinafter "BMSA"), dated December 12, 2016 in the amount of \$3,205.00. Also on December 13, 2016, FL filed "Supplemental Filing of Evidence in Support of Guardian's Brief in Opposition to Theresa Flohr's Second Motion for the Court to Review Placement of the Ward and Request for Attorney Fees filed September 6, 2016." Attached as an Exhibit to the filing was a detailed statement for attorney fees and costs by BMSA, dated December 12, 2016 in the amount of \$438.50.

On December 16, 2016, John M. Prelac, Guardian of the Estate of Ivan Flohr (hereinafter "JP") filed an "Application to Pay Attorney Fees" to Buckingham, Doolittle & Burroughs, LLC (SIC) in the amount of \$4,656.90. Attached to the Application was the statement of BMSA, dated October 19, 2016 in that amount, however, the Court finds that the statement only details \$4,533.45 as being due. On December 22, 2016, JP filed "Application to Pay Attorney Fees - Nunc Pro Tunc" that corrected the payee to be BMSA.

The Court finds that there is significant duplicity in the two statements dated December 12, 2016 and the one filed by JP, dated October 19, 2016.

Specifically, all of the detailed items for legal services of BMSA, dated December 12, 2016 for fees against Mary James, are included in the October 19, 2016 statement except services on 10/31/2016, 12/06/2016 and 12/07/2016, and all of the detailed items for legal services of BMSA, dated December 12, 2016 for fees against Theresa Flohr are included in the October 19, 2016 BMSA statement.

Therefore, the Court has the option of either approving the fees in the December 12, 2016 statements of BMSA and charging reasonable attorney fees to Mary James and Theresa Flohr for frivolous conduct or in the alternative charging the Estate of Ivan Flohr for reasonable attorney fees detailed in the October 19, 2016 BMSA statement including those fees that are applicable to the frivolous conduct of Theresa Flohr and Mary James.

Irrespective how the Court apportions the requested attorney fees and costs enumerated on the two BMSA December 12, 2016 statements and the one statement dated October 19, 2016, the Court must find that the attorney fees are both reasonable and necessary. The Court finds the following:

1. No minimum or maximum fee will automatically be approved by this Court. Sup. R. 71 (H).
2. Attorney fees in all matters shall be governed by Rule 1.6 of the Ohio Rules of Professional Conduct.
3. On January 27, 2016, this Court approved a prior fee Application of BMSA that set forth hourly rates for various attorneys providing legal services. The Court finds that those hourly

rates assigned to the various attorneys rendering services for the period of 04/14/2016 to 12/07/2016 are identified and the hourly rates charged are approved.

4. The following are adjustments to fees charged on the aforementioned three (3) fee statements of BMSA:

- a. Deduct 08/01/2016, 08/02/2016 and 08/05/2016 - \$195.50
- b. Deduct 08/31/2016 - \$246.50
- c. Add 10/31/2016, 12/06/2016 and 12/07/2016 - \$875.00.

October 19, 2016 BMSA, is adjusted, \$4,875.50.

On December 23, 2016 Theresa Flohr filed a "Motion In Opposition to Attorney Snow's Supplemental Motion for Sanctions Against Movant." The Court finds the Motion to be well taken and is granted and that the requested fees of BMSA in its statement of December 12, 2016 shall be charged to the Estate of Ivan W. Flohr.

On December 27, 2016, Mary M. James filed a "Motion In Opposition To The Supplemental Filing of Evidence In Support Of Motion for Sanctions Against Mary James For Alleged Frivolous Conduct Filed on September 6, 2016." This filing consisted of 5 ¼ pages of text plus an Exhibit A of 15 pages and Exhibit B of 6 pages.

The text portion of this "Motion" is replete with Movant's incorrect interpretations of R.C. 2323.51 as well as the findings that are contained in this Court's Judgment Orders filed August 17, 2016 and December 12, 2016. It is not practical or beneficial to his guardianships to comment on the inaccurate statements in the text portion of the Motion or the spurious billing in Exhibit B.

This Court reaffirms its ruling in its December 9, 2016 Judgment Order filed December 12, 2016 that Mary James' filings subsequent to August 17, 2016 constituted frivolous conduct, however, in order to resolve the issue of attorney fees due BMSA, the Court finds that JP, as Guardian of the Estate of Ivan W. Flohr shall pay to BMSA for attorney fees and costs the sum of \$4,875.50.

IT IS SO ORDERED.

December 28, 2016



Judge R.R. Denny Clunk
Sitting by Assignment

Copies: Randolph L. Snow, Esq.
John M. Prelac, Esq.
Mary M. James
Theresa M. Flohr