

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-550

MAY TERM, 2003

	}	APPEALED FROM:
	}	
John Goodhue	}	Windham Superior Court
	}	
v.	}	DOCKET No. 401-0-01 WmC
	}	
Landmark Trust U.S.A., Inc.	}	Trial Judge: John P. Wesley
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff John Goodhue appeals the trial court's dismissal of his probate court appeal. He argues that the trial court erred in dismissing his appeal because: (1) the probate court's order partially disallowing his interim accounting was a final, appealable order; and (2) his claim to be reinstated as Frederick Holbrook's guardian was not moot despite Holbrook's death. We affirm in part and reverse in part.

Goodhue began serving as Frederick Holbrook's guardian in 1996. In August 2001, Landmark Trust U.S.A., Incorporated, filed a motion to remove Goodhue from this position. The probate court was also asked to consider whether Goodhue's expenditures for July through December 2000 should be allowed. After a hearing, the court removed Goodhue as Holbrook's financial guardian. The court explained that removal was warranted because Goodhue had "repeatedly demonstrated increasing unsuitability to serve" as guardian and had sought unsupportable charges of hundreds of thousands of dollars of Holbrook's funds. The court also disallowed \$49,594.28 of Goodhue's disbursements from 1995 through December 31, 2000, and denied Goodhue's "guardian fees" in the amount of \$316,670.00 for the period June 1, 1999 to December 31, 2000." The court explained that it disallowed these expenditures because they were "untimely and unreasonable."

Goodhue appealed, and Landmark filed a motion to dismiss. While this appeal was pending, Landmark moved for immediate execution of the probate court's removal order pursuant to V.R.P.P. 62(b). The probate court denied this motion in an October 2001 omnibus order, explaining that its removal order was stayed by V.R.P.P. 62(c) and V.R.C.P. 72(b) during the pendency of Goodhue's appeal. In December 2002, the trial court granted Landmark's motion to dismiss after concluding that the probate court's disallowance of certain interim accounting figures was not a "final order" subject to appeal. The court also dismissed Goodhue's request to be reinstated as Holbrook's guardian as moot because Holbrook had died while the appeal was pending. This appeal followed.

We first address Goodhue's argument that the trial court erred in dismissing his request to be reinstated as Holbrook's guardian. Goodhue maintains that his request is not moot because the probate court's removal order could provide a basis for denying his claims for disbursements and fees "whenever those issues are tried." We agree that the guardianship issue is not moot. See State v. Fernald, 168 Vt. 620, 621 (1998) (mem.) (case is moot when issues presented are no longer live or parties lack a legally cognizable interest in the outcome). A guardian's responsibilities do not end on the day their ward dies. There is a final accounting to be rendered, see 14 V.S.A. § 2921 (at the expiration of his trust, guardian "shall render and settle with the probate court his account of the property of his ward . . . and pay over and deliver to persons entitled to the same the estate and effects remaining in his hands, or due from him on such

settlements"); burial expenses may need to be paid, see 14 V.S.A. §2928; and transfers of property may need to be accomplished. Further, resolution of this issue will impact Goodhue' s final accounting of Holbrook' s affairs. The trial court' s conclusion will determine whether Goodhue' s final accounting will include the period up until his removal by the probate court, thus affirming the probate court' s order of removal, or whether it will include the final settlement of Holbrook' s estate. See 14 V.S.A. §917a. We therefore reverse and remand this issue for a determination of whether Goodhue' s guardianship of Holbrook was properly terminated by the court.

Goodhue next argues that the trial court erred in dismissing his appeal because the probate court' s order disallowing certain expenses was a final, appealable order. We disagree. In In re Estate of Webster, 117 Vt. 550, 553 (1953), we concluded that a probate court order addressing interim accounting figures was not a final appealable order. See also, Reporter' s Notes, V.R.P.P. 66 (citing Estate of Webster for the proposition that " [a]llowance or disallowance of an interim account is not appealable). We explained that an appeal of a probate court order would be properly taken when " a final account has been filed and all the material matters and questions therein presented are passed upon." Estate of Webster, 117 Vt. at 553. In this case, Goodhue challenged the probate court' s disallowance of certain expenses filed as part of an interim account. As noted above, Goodhue has not yet filed a final accounting in this matter as required by 14 V.S.A. §2921. He will not be able to do so until the trial court determines when his guardianship terminated. Until that time, we decline to judge this case piecemeal. See id. We therefore conclude that the trial court properly dismissed Goodhue' s appeal of the probate court' s partial disallowance of his interim accounting figures.

Affirmed in part, and reversed and remanded in part.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned