

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2018-308 & 2018-309

SEPTEMBER TERM, 2018

In re A.C. (Douglas Clithero* & Toni Hamburg Clithero*)	} APPEALED FROM: } } } Superior Court, Washington Unit } Probate Division } } DOCKET NO. 174-3-18 Wnpr
In re Guardianship of A.C. (Douglas Clithero* & Toni Hamburg Clithero*)	} APPEALED FROM: } } } Superior Court, Washington Unit, } Family Division } } DOCKET NO. F8-12-17 WnGs

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

In the above-captioned matters, Toni and Douglas Clithero seek to challenge orders of the probate and family divisions concerning petitions for involuntary guardianship of their daughter A.C.*

In April 2018, the probate division granted the State’s petition in docket number 174-3-18 Wnpr to have the Commissioner of the Department of Disabilities, Aging, and Independent Living appointed as temporary guardian of A.C., an adult with developmental disabilities. Under 18 V.S.A. § 9303, the family court has exclusive jurisdiction over such proceedings, except that the probate court has concurrent jurisdiction to appoint a temporary guardian. In June 2018, the family court appointed the Commissioner as a guardian pursuant to 18 V.S.A. § 9309 in docket number F8-12-17 WnGs. Accordingly, on July 27, 2018, the probate court dismissed the probate court proceeding for lack of jurisdiction.

The Clitheros filed a notice of appeal pursuant to Vermont Rule of Appellate Procedure 13 from the probate court’s July 27, 2018 order in docket number 174-3-18 Wnpr. The superior court interpreted this notice as an appeal to the civil division from that probate case as well as a related case, 177-4-18 Wnpr, and assigned docket number 503-9-18 Wncv. The notice clearly states that

* The notices of appeal purport to appeal on A.C.’s behalf. Insofar as the Clitheros are not A.C.’s guardians, they cannot represent her interests on appeal.

the Clitheros seek direct review in this Court for docket number 174-3-18 Wnpr only. There is therefore no appeal pending in the civil division from docket number 174-3-18 Wnpr.

As to the appeal from 174-3-18 Wnpr, we conclude that there is no right to appeal that matter as a final judgment. Chapter 215 of Title 18 does not provide an avenue for appeal of a probate court order involving a temporary involuntary guardianship, either to this Court or to the civil division. Further, the probate order is temporary by designation in the statute. The statute contemplates that the interim probate order will be followed by proceedings in the family division. Therefore, we conclude that the July 27, 2018 order is not a final order that is appealable to this Court or to the civil division. See In re Estate of Webster, 117 Vt. 550, 552 (1953). We need not consider whether interlocutory review of such an order is available because the Clitheros did not request or receive permission to take an interlocutory appeal. The appeal from docket number 174-3-18 Wnpr is therefore dismissed.

The Clitheros also filed a separate notice of appeal from the family division's August 2, 2018 order denying their motion for an expedited hearing in docket number F8-12-17 WnGs. That appeal is also dismissed insofar as there is no final judgment and the Clitheros have not requested or received permission to file an interlocutory appeal.

In conclusion, the only remaining active proceeding is the involuntary guardianship proceeding in family division (docket number F8-12-17 WnGs). The civil division shall dismiss docket number 503-9-18 Wncv.

We note that on October 1, 2018, the Clitheros requested from this Court a copy of the confidential June 2018 evaluation submitted to the family division by the Commissioner pursuant to 18 V.S.A. § 9306. Insofar as the above-captioned appeals are being dismissed, the family division is directed to address the Clitheros' request on remand.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice