VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 23-CV-01451

In re: Riley, Samuel

Decision on Appeal

This case is an appeal by Mr. Daniel Riley (Father) from a March 14, 2023, decision of the probate division in the adult guardianship of Mr. Samuel Riley, who is nonverbal. *In re Riley*, No. 21-PR-2856. Katherine Porter (Mother) serves as guardian. The original guardianship order provides for contact between Samuel and Father subject to Samuel's assent. Following a long period with no contact, Father filed a motion to enforce the guardianship order in the probate court, claiming that Mother was violating it by preventing contact. After a hearing, the probate division ordered a forward-looking process by which a neutral third party—not Mother—would be appointed to discern Samuel's true intent as to whether he wishes to have contact with Father. Father promptly appealed that March 14, 2023, order to this Court. Though proceedings have continued in the probate division, to date, no appropriate third party has been identified and appointed to determine Samuel's intent and next steps remain under consideration. The matter remains unresolved in that venue.

This Court expressed concern as to its jurisdiction given the questionable finality of the probate division's March 14 order, the parties briefed the matter, and a hearing was held on July 30, 2024. The Court now concludes that this appeal was filed

prematurely and that the Court lacks appellate jurisdiction to determine on a *de novo* basis the issues presented.

The Vermont Supreme Court most recently has described the murky nature finality for appeal purposes in the unique setting of ongoing probate cases as follows:

> "'Subject[-]matter jurisdiction' refers to the power of a court to hear and determine a general class or category of cases." A necessary predicate for appellate jurisdiction is the order appealed from must be a final order. "An order is final if 'the decree or judgment disposed of all matters that should or could properly be settled at the time and in the proceeding then before the court.'" Though no statute or rule defines what constitutes a final, appealable probate order, this Court has "frequently treated probate orders as final even where they did not dispose of the entire probate proceeding," because the "proceedings are frequently lengthy and involve a series of decisions on discrete issues that may be appropriate for immediate review." Nevertheless, probate division orders are "not final [if] . . . broadly speaking . . . something remained to be done before the subject matter therein involved was finally disposed of and that further proceedings must be had before a final disposition."

In re Est. of Thomas, 2022 VT 59, ¶ 7, 217 Vt. 368, 370–71 (citations omitted).

The subject matter of Father's motion to enforce and the probate division's March 14 order is Father's contact with Samuel. As everyone is acutely aware, the March 14 order did not resolve that matter. Instead, it has led to a protracted and unproductive process that to date still has not resolved the issue and, no doubt, has created substantial stress and expense for the parties. While some aspects of the probate division's order appear more final than others, from the Court's view, key and material issues remain to be addressed in the probate division that may impact even those issues. Proceeding to an appeal of only portions of the case is not advisable. Until the probate division resolves the matter of Father's contact with Samuel, appeal of that matter to the civil division is premature and impractical. And placing the full matter in the probate division allows that forum the power to proceed as it deems appropriate in light of current

circumstances.[1] This Court determines that, at present, it lacks jurisdiction over Father's appeal of the March 14 order.[2]

By this ruling, the Court does not mean to encourage any additional delays. Father, Mother, and Respondent have all raised important issues. The Court encourages all involved to make all reasonable efforts to bring the matters in dispute to a close as promptly as possible in the probate division.[3]

[1] Indeed, one concern the Court has in proceeding in piecemeal fashion to review a decision from 2023 is that it may not be able to consider intervening events that are now before the probate division.

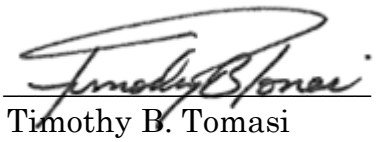
[2] Counsel for Respondent and Father appear to contend that the Court has the power to "correct" alleged legal errors made by the probate division. It does not. Any review in the civil division is *de novo*. 12 V.S.A. § 2553. To the extent review of pure legal questions is sought based on an existing probate division proceeding and record, the Supreme Court is the appropriate location for an appeal. *See, e.g., In re Estate of Johnson*, 158 Vt. 557, 559–60 (1992); 12 V.S.A. § 2553.

[3] The Court also notes that some departures and appearances of counsel have been made since the beginning of this case. Such changes may warrant renewed discussions of alternative resolutions among the parties, and the Court encourages such conversations. While the courts will use best efforts to resolve even the most difficult issues set before them, lasting solutions are sometimes able to be found through constructive interactions among those closest to and most involved in the underlying dispute.

Conclusion

For the foregoing reasons, this appeal is dismissed.[4] The motion filed by Samuel's counsel seeking the appointment of a guardian *ad litem* is moot in this venue.

Electronically signed on Wednesday, July 31, 2024, per V.R.E.F. 9(d).



Timothy B. Tomasi
Superior Court Judge

[4] The dismissal is not on the merits, however. If future events do not resolve the matter, an appeal to this Court for *de novo* review, or to the Supreme Court for pure questions of law on the record are not precluded.