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# **Advanced Topics in Probate Law**

**Case Law Update**

**Magistrate Crystal Burnett**



Welcome to the 2018 Case Law Update



Presented by Magistrate Crystal Burnett

*(To book Crystal's Case Law Update for your next party email [cburnett@summitohioprobate.com](mailto:cburnett@summitohioprobate.com).)*

Magistrate Crystal Burnett

# A family's viral revenge obituary about their mother



- ❧ The obituary in the started off by stating that Kathleen Dehmlow was born on March 19, 1938, then married her husband Dennis Dehmlow in 1957 and had two children, Gina and Jay.
- ❧ Things then took a turn in the line: “In 1962, she became pregnant by her husband’s brother Lyle Dehmlow and moved to California.” It’s also revealed that she abandoned her children, who were later raised by her parents.



- ✧ It goes on to state “She passed away on May 31, 2018 and will now face judgment.” Her children dropped the final bomb with the line: “She will not be missed by Gina and Jay, and they understand that this world is a better place without her.”
- ✧ The obituary, which was placed by her son, was ultimately pulled from the online version of the Redwood Falls Gazette as well as Legacy.com.

## Kathleen Dehmlow

Kathleen Dehmlow (Schunk) was born on March 19, 1938 to Joseph and Gertrude Schunk of Wabasso.

She married Dennis Dehmlow at St. Anne's in Wabasso in 1957 and had two children Gina and Jay.

In 1962 she became pregnant by her husband's brother Lyle Dehmlow and moved to California.

She abandoned her children, Gina and Jay who were then raised by her parents in Clements, Mr. and Mrs. Joseph Schunk.

She passed away on May 31, 2018 in Springfield and will now face judgement. She will not be missed by Gina and Jay, and they understand that this world is a better place without her.



# Adoption



- ❧ **What Does It Mean to “Willfully Abandon” a Mother During Her Pregnancy?**
- ❧ Adoption – R.C. 3107.07(B)(2)(c) – Putative father’s consent to adoption is not necessary if he has “willfully abandoned” birth mother during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.
- ❧ *In re Adoption of P.L.H.*, 2017-Ohio-5824 Butler County decided July 18, 2017

# Adoption



❧ The biological parents were college friends from O.U. Mother got pregnant while visiting Biological Father in Louisiana during Mardi Gras 2015. This was the only time they were intimate. A few weeks after the visit, Mother informed Father she was pregnant and planned to place the child for adoption. Mother claimed that Father asked her to have an abortion; Father denied this. They did not see each other during the pregnancy, but exchanged several text messages wherein Father expressed his ambivalence about Mother's decision.



☞ They had limited communication over the next few months. However, Father did express a desire to see Mother on two occasions. Father registered with the putative father registry, offered (but never provided) financial support, and expressed his desire for custody. However, for a period of roughly three months, Father and Mother were not in contact. Father refused to sign papers consenting to the adoption. Mother went forward with the adoption anyway.

# Adoption



- ❧ The Butler County Probate Court held a hearing on all issues and found that Father had willfully abandoned Mother during her pregnancy, and up to the time of the adoption. They also found that Father had provided no financial support to Mother during her pregnancy, despite earning approximately \$70,000 during 2015, therefore Father's consent to the adoption was not required pursuant to R.C. 3107.07 (B)(2)(c). The court further found that the adoption was in the child's best interest and the Adoptive Parents were qualified to adopt the child. The Final Decree of Adoption was issued on September 7, 2016. Father appealed and the Twelfth District affirmed.

# Adoption



☞ Father appealed to the Ohio Supreme Court and the Adoptive Parents moved to dismiss his appeal on the grounds that Father never argued to the lower appeals court what he argued to the SCO; that R.C. 3107.07(B)(2)(c) does not include a requirement that a putative father failed to provide care and support to the mother. The SCO found that Father did not waive this argument, because that issue had to be resolved in order to resolve whether Father “willfully abandoned” Mother.

# Adoption



Under R.C. 3107.07(B), the consent of the putative father is not required if the probate court finds either that the father has willfully abandoned or failed to care for and support the minor (subsection (b), not the basis of the decision here) or has willfully abandoned the mother during her pregnancy and up until the time of placement (subsection (c) which is at issue here.) Unlike subsection (b), subsection (c) has no requirement for “failure to care for and support.”

# Adoption



- ❧ The majority rejected the reliance on lack of financial support as the basis for finding willful abandonment under subsection (c), specifically noting that the words “care for and support” are not in that part of the statute, and courts cannot add words to statutes.
- ❧ While the SCO held that if a father does provide care and support to the mother, the probate court can consider that as a factor to refute the allegation of willful abandonment, but the failure to do so cannot be the basis for a finding of willful abandonment.

# Adoption



☞ Normally a determination that the court below used the wrong legal standard results in a remand. But in this case the SCO found that the record contained no evidence to support a finding of willful abandonment, so this case was sent back to the probate court with the mandate to vacate the decree of adoption and dismiss the adoption petition.

# Adoption



Justice DeWine filed a separate concurrence joined by Chief Justice O'Connor. He agreed that failure to provide financial support cannot be dispositive of the issue of willful abandonment, but he sees it as a relevant factor in the analysis. He didn't agree with the majority position that if a father provided financial support to the mother, that could be considered in his favor, but if a father failed to provide financial support to the mother, that could not be considered against the father.



**"I would like a will prepared... nine to be exact."**

# Adoption



- ❧ *In re Adoption of M.G.B.-E.*, Slip Opinion No. 2018-Ohio-1787 decided May 9, 2018 Clinton County
- ❧ Does the probate court have authority to proceed on an adoption petition – specifically, to determine whether parental consent is required for the adoption – when preexisting matters concerning the parenting of the child are pending in another court?

# Adoption



- ❧ **The Ohio Supreme Court says yes, but the Probate Court Must Consider Domestic Relations Court Proceedings Before Granting an Adoption**
- ❧ The SCO stated that the legal issues raised in the appeal were relatively straightforward. But their analysis was complicated by the factual record, which was replete with contradictory testimony, allegations of abuse from both sides, regular failures to comply with court orders, and a 13-year history of animosity between two parents.
- ❧ (sounds like just another day in DR Court to me)

# Adoption



- ❧ The parties were married for about five years, had two children and divorced in 2004 in Montgomery County. The DR Court granted the mother custody of the children and the father parenting time. The Court noted that Mother impeded the father's parenting time from the start.
- ❧ After many post-decree allegations of abuse and interference with parenting time, Court ordered counseling fell through. Mother changed addresses and telephone numbers multiple times without informing the DR Court or Father, as required by the divorce decree and Father went nearly six years without having contact with his children.

# Adoption



- ☞ Once Father learned where his children were living, he filed a motion in DR Court to re-establish parenting time with the children. Four days later, the stepfather filed for adoption of the children in Clinton County Probate Court.
- ☞ The Ohio Supreme Court ruled that a probate court's authority to grant an adoption is blocked when an issue of paternity is pending in another court. But the court is not impeded if a "parenting matter," such as a parenting time dispute, is pending.

# Adoption



Even though it can proceed with an adoption, a probate court must consider the effect of the “parenting matter” when determining whether a parent’s consent for the adoption is required.

# Adoption



- ❧ The 5-2 decision clarifies a 2006 Supreme Court opinion, which stated that a “probate court may not proceed with an adoption petition if any pending parenting matter is proceeding in another court.” Writing for the majority, Justice Judith L. French stated that a father who opposes a Clinton County adoption cannot rely on his attempt to reestablish parenting time in Montgomery County to stop the adoption. However, the probate court should consider the father’s efforts to reestablish parental rights through the DR Court and the mother’s attempts to block him from interacting with the children when determining whether the adoption may proceed without the father’s consent.

# Adoption



- Because the Probate Court did not do this, the case was remanded so the Probate Court could consider the DR Court Proceedings in its analysis.
- Justice French's opinion was joined by Chief Justice Maureen O'Connor and Justices Sharon L. Kennedy and Patrick F. Fischer. Sixth District Court of Appeals Judge Mark L. Pietrykowski, sitting for former Justice William M. O'Neill, also joined the opinion.

# Adoption



✧ Justice Terrence O'Donnell, in a dissenting opinion joined by Justice R. Patrick DeWine, wrote that R.C. 3107.07(A) does not require the probate court to consider the existence of pending matters in other courts, and that interpretation is a new burden on probate courts that was not imposed by the state legislature. Justice O'Donnell believes that this requirement increases the complexity of problems probate courts face in adoption cases and opens a new field of interpretation of the phrase "without justifiable cause."



" I don't need a Will, I've spent it all. Draft me a won't"

# Concealment



- ❧ Who owns the proceeds of a fundraiser that was held for the decedent after decedent passes?
- ❧ *Reigert v. Ruscin*, 2018-Ohio-2087 (Lorain County)

# Concealment



❧ Lori A. Reigert passed away in March 2016, and her father, John L. Reigert, was appointed as executor of the estate. In June 2016, Mr. Reigert filed a complaint alleging concealment of assets against Kevin A. Ruscin, who had been decedent's fiancé. The assets at issue included an engagement ring, a bike rack, a space heater, and two card tables. At a hearing before the magistrate in November 2016, Mr. Reigert also disputed ownership of the proceeds of a fundraiser held at the Willoughby Brewing Company. Also at the hearing, Mr. Ruscin was questioned with regard to a proposed release of claims drafted by his attorney and presented to Mr. Reigert.

# Concealment



✧ The magistrate found Mr. Ruscin not guilty of concealing assets, that the engagement ring and bike rack were Mr. Ruscin's property, denied Mr. Reigert's claims as to the remaining tangible personal property, and divided the proceeds of the fundraiser equally between Mr. Ruscin and Ms. Reigert's estate.

# Concealment



- ✧ In his assignment of error, Mr. Reigert raised multiple arguments that he divided into six categories: bias, the release, the ring, fundraiser proceeds, the bike rack, and miscellaneous personal property.
- ✧ The Appellate Court disposed of Mr. Reigert's argument regarding bias as something not within their purview, and his arguments about the release and the ring as being based on issues that were not raised during the hearing.

# Concealment



- ✧ Mr. Reigert next argued that dividing the proceeds from the fundraiser between Mr. Ruscin and the estate was “inexplicable and unreasonable” and against “the manifest weight and sufficiency of the evidence.”
- ✧ Mr. Ruscin testified that the fundraiser had been advertised for approximately two months before Ms. Reigert’s passing but took place after her death. He also testified that it was attended primarily by his family and friends and was for the benefit of both Ms. Reigert and himself, in part to help him financially to take care of Ms. Reigert and to cover the costs of travel, bills, food, and missed work during her illness.

# Concealment



✧ The Court held that the trial court did not abuse its discretion by finding that there was sufficient evidence to equally divide the proceeds of the fundraiser as well as deny Mr. Reigert's claims regarding the remaining items.



"We're the Meeks and we're here to see about our inheritance of the Earth."

# Contempt



- ❧ Can a Court find a person in contempt without a hearing?
- ❧ *In re Durkin*, 2018-Ohio-2283 Summit County decided June 13, 2018

# Contempt



✧ In September 2015, an application to probate Virginia Durkin's will was filed in Summit County Probate Court of, Ohio. John Durkin, the son of Virginia Durkin, was the executor of the estate. His sister, Patricia O'Halloran, had predeceased Virginia Durkin and her son Daniel O'Halloran was a beneficiary of the estate, along with his two sisters. Ms. Durkin's will divided her estate one-half to Mr. Durkin and one-half to Patricia O'Halloran's three children.

# Contempt



- ⌘ During the pendency of this case, Daniel O'Halloran filed various motions, including a motion to remove John Durkin as the fiduciary for the estate, a motion to remove the attorney for the estate, and a motion to compel.
- ⌘ The attorney for the estate filed a motion to require Mr. O'Halloran to produce copies of documents received in response to subpoenas issued to various banks and two motions for contempt.

# Contempt



☞ In February 2017, the Magistrate denied Mr. O'Halloran's motions, granted \$500.00 for contempt against Mr. O'Halloran, and addressed exceptions to the inventory of the estate. Mr. O'Halloran filed objections to the magistrate's decision, which were overruled by the trial court. Mr. O'Halloran appealed.

# Contempt



Mr. O'Halloran appealed, raising eight assignments of error. The appellate court overruled Mr. O'Halloran's first, second, third, fourth, fifth, sixth, and eighth assignments of error. His seventh assignment of error addressing the contempt finding was sustained.

# Contempt



- ❧ The contempt motions against Mr. O'Halloran were both filed after the hearing took place but before the Magistrate's decision was issued. The Ninth District found that the Magistrate's decision ruled on the contempt motions and allowed a \$500.00 sanction stating "the magistrate held [Mr. O'Halloran] in contempt for failing to comply with his previous orders."
- ❧ The Court addressed that statutory requirements of R.C. 2705 that when a person is charged with contempt under the provisions of R.C. 2705.02, R.C. 2705.03 sets forth the procedure and requires that the person accused of contempt be given notice and a hearing.

# Contempt



☞ In sustaining Mr. O'Halloran's seventh assignment of error, the Court found no indication in the record that a hearing was conducted on the contempt charges against Mr. O'Halloran, and remanded the matter back to the trial court for further proceedings on the contempt charges.



Leo  
Collins

*"Everything I have, son, I have because your grandfather left it to me. I see now that that was a bad thing."*

AN  
COLLECTION

# Settlement



- ❧ ***Teague v. Schmeltzer*, 2018-Ohio-76 Summit County Decided January 10, 2018**
- ❧ Constance and Julius Schmeltzer passed away in 2012 and 2013, leaving behind, three adult children as the beneficiaries of two living trusts: Kathleen Teague, Steven Schmeltzer, and Ernest Schmeltzer.
- ❧ Kathleen Teague, Executrix of the Estate of Julius Schmeltzer, filed a complaint against Steven Schmeltzer demanding he return certain assets to the estate. Steven Schmeltzer then filed a complaint for declaratory judgment against Kathleen Teague and Ernest Schmeltzer that was consolidated along with other related probate cases.

# Settlement



- ❧ The Court granted a partial summary judgment, finding a distribution agreement among the three adult children to be valid.
- ❧ The parties went to mediation and entered into a preliminary settlement agreement. The agreement provided, in pertinent part, that the business entity of Old Portage Company was to pay Ernest Schmeltzer \$30,000.00 within 14 days of entering into a final agreement, and that all litigation was to be dismissed with prejudice upon the execution of the final agreement.

# Settlement



- ✧ All parties subsequently signed a final settlement agreement. On January 13, 2017, Ernest Schmeltzer filed a motion for the enforcement of the settlement agreement and for sanctions.
- ✧ In her response brief, Ms. Teague attached a copy of a notice of lien sent to Old Portage Company from the Office of the Attorney General of Texas, Child Support Division, detailing the attachment of a lien to any and all funds payable to Ernest Schmeltzer.

# Settlement



- ❧ On January 31, 2017, Ernest Schmeltzer filed a “motion and notice of withdrawal of signature to settlement agreement and motion for contempt” based upon the placement of the lien and alleging that the other parties had improperly contacted the Office of the Attorney General of Texas.
- ❧ The Court denied Ernest Schmeltzer’s motions and notice of withdrawal of signature to settlement agreement, noting that his unrelated debts did not relate to his voluntary signature upon the settlement agreement. The order also denied Ms. Teague’s request for an oral hearing as moot. Ernest Schmeltzer appealed.

# Settlement



Ernest Schmeltzer argued that the trial court erred in denying his motion for enforcement and sanctions and his motion for the withdrawal of his signature to the settlement agreement and for contempt without holding an evidentiary hearing. He also argued that the trial court erred in issuing an order of dismissal without holding an evidentiary hearing on his claims against Ms. Teague and her counsel.

# Settlement



- ⌘ The Ninth District looked to *Rulli v. Fan Co.*, 79 Ohio St. 3d 374, 377(1997) which held “Where the meaning of terms of a settlement agreement is disputed, or where there is a dispute that contests the existence of a settlement agreement, a trial court must conduct an evidentiary hearing prior to entering judgment.” “In the absence of such a factual dispute, a court is not required to conduct such an evidentiary hearing.” *Id.* at 377.
- ⌘ The Court went on to cite *Shetler v. Shetler*, 9th Dist. Wayne No. 00CA0070, 2001 Ohio App. LEXIS 2289, \*4-5 (May 23, 2001) for the holding that parties cannot repudiate a settlement agreement when, in hindsight, they find that they no longer agree with the terms.

# Settlement



✧ The Court found that the parties signed a preliminary agreement that provided for a final settlement agreement to be drafted by the attorneys, there was a report of mediation signed by the mediator and the parties that also indicated that a settlement agreement had been reached and that a dismissal of all litigation was to be filed upon execution of a final agreement. Further, a final settlement agreement was eventually signed by all parties, and Ernest Schmeltzer admitted to signing the final agreement, and at one time he sought to enforce it.

# Settlement

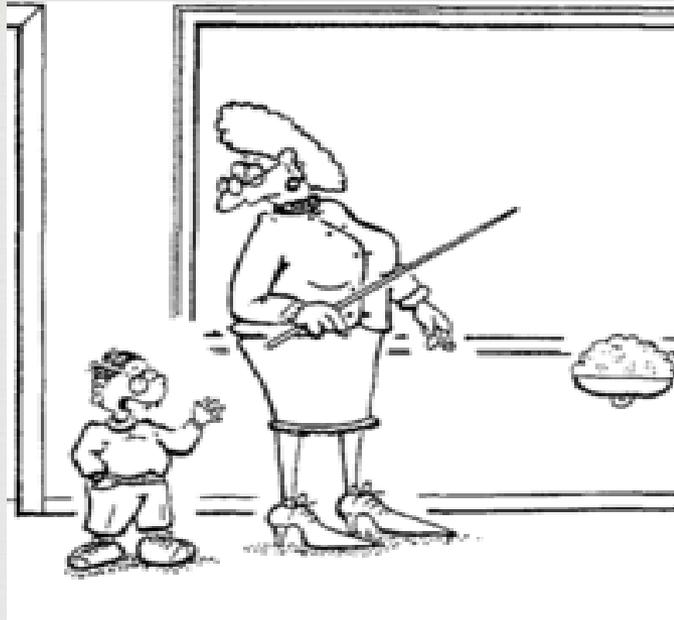


✧ The Court concluded that crux of Ernest Schmeltzer's argument is the placement of a lien by the Texas Attorney General's Child Support Division. There was no factual dispute that would necessitate an evidentiary hearing, and the placement and effect of the lien is beyond the scope of the trial court and the parties to the settlement agreement. Ernest Schmeltzer has other remedies to contest the lien if it was not lawfully placed. The Judgment of the trial court was affirmed.

# Audience Participation



☞ Any questions or cases that you would like to share?



- ❧ Mrs. Jones, the 5th grade teacher, posed the following problem to one of her arithmetic classes:
- ❧ "A wealthy man dies and leaves ten million dollars. One-sixth is to go to his wife, one-fifth is to go to his son, one-fourth to his butler, and the rest to charity. Now, what does each get?"
- ❧ After a very long silence in the classroom, Little Johnny raised his hand.
- ❧ The teacher called on Little Johnny for his answer.
- ❧ With complete sincerity in his voice, Little Johnny answered, "A lawyer!"

∞ The End!