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Advanced Topics in Probate Law

Probate Case Law Update (Index)

Magistrate Steven S. Elliott

CASE LAW INDEX

COURTS OF APPEAL/TRIAL COURT OPINIONS

ADOPTION

PATERNITY

TOPIC: When an unmarried woman gives birth to a child, a father who appears on the birth certificate when he has voluntarily acknowledged paternity in writing cannot also claim to be a putative father.

TITLE: In re Adoption of B.G.F., 2018-Ohio-5063
COURT: Court of Appeals, Third District
COUNTY: Shelby County
DATE: December 17, 2018
PAGE: 1

CONTACT BY PARENT

TOPIC: The trial court must consider all of the domestic relations court evidence and the issue of justifiable cause for a father's failure to communicate when determining whether a father's consent is required for the adoption of his child by a stepfather.

TITLE: In re M.G.B.-E., 2019-Ohio-753 (On remand from Ohio Supreme Court)
COURT: Court of Appeals of Ohio, Twelfth District
COUNTY: Clinton County
DATE: March 4, 2019
PAGE: 2

TOPIC: The fact that police forced Father to leave Mother's property during a visit is not a justifiable cause for not contacting his children during the one-year look back period.

TITLE: In re Adoption of L.L.L., 2018-Ohio-4556
COURT: Court of Appeals, Twelfth District
COUNTY: Preble County
DATE: November 13, 2018
PAGE: 3

TOPIC: A judgment entry of the juvenile court suspending appellant's contact with the child until further order of the court provided justification for appellant's failure to contact the child.

TITLE: In re Adoption of B.V.K.M., 2019-Ohio-1173
COURT: Court of Appeals, Sixth District
COUNTY: Lucas County
DATE: March 29, 2019
PAGE: 4

TOPIC: Father's ignorance of the legal impact of the protection order that he and his counsel had signed did not provide justification for his failure to contact the children.

TITLE: In re J.L., 2019-Ohio-366
COURT: Court of Appeals, First District
COUNTY: Hamilton County
DATE: February 6, 2019
PAGE: 5

TOPIC: The fact that a father was in prison during the one-year look back period for is not justifiable cause for not contacting his children.

TITLE: In re Adoption of A.C.M.C., 2019-Ohio-879
COURT: Court of Appeals, Seventh District
COUNTY: Belmont County
DATE: March 13, 2019
PAGE: 6

MAINTENANCE AND SUPPORT OF CHILD

TOPIC: A court must consider evidence of the paternal grandparents' involvement when determining whether a father's consent to adoption is required based on his failure to provide maintenance or support for the child during the one-year look-back period when the DR order substitutes grandparents for father for visitation.

TITLE: In re Adoption of A.V.H., 2019-Ohio-369

COURT: Court of Appeals, Ninth District

COUNTY: Summit County

DATE: February 6, 2019

PAGE: 7

TOPIC: A natural father does not have a duty to provide child support separate from a judicial decree of support.

TITLE: In Re Adoption of B.I., 2017-Ohio-9116

COURT: Court of Appeals of Ohio, First District

COUNTY: Hamilton County

DATE: December 20, 2017

PAGE: 8

RIGHT TO COUNSEL

TOPIC: There is no presumption of a right to counsel in private adoption cases because the parent will not lose his/her personal freedom of physical liberty if he/she is unsuccessful and there is no state action.

TITLE: In re Adoption of M.M.F., 2019-Ohio-448

In re Adoption of Y.E.F., 2019-Ohio-449

COURT: Court of Appeals, 5th District

COUNTY: Delaware County

DATE: February 8, 2019

PAGE: 8

TOPIC: An indigent parent does not have a constitutional due process right to appointed counsel in a private adoption hearing.

TITLE: In re L.C.C., 2018-Ohio-4617

COURT: Court of Appeals, Tenth District

COUNTY: Franklin County

DATE: November 15, 2018

PAGE: 9

PROCEDURE

TOPIC: A request for a reasonable continuance should be granted when an attorney only gains access to the file the day of the consent hearing.

TITLE: In re Adoption of A.R.M.R., 2019-Ohio-253
COURT: Court of Appeals, Eighth District
COUNTY: Cuyahoga County
DATE: January 24, 2019
PAGE: 11

TOPIC: A fraudulent affidavit will not be considered as evidence for an objection to a magistrate's decision.

TITLE: In re adoption of N.D.D., 2019-Ohio-727
COURT: Court of Appeals, Tenth District
COUNTY: Franklin County
DATE: February 28, 2019
PAGE: 12

CLAIMS AGAINST AN ESTATE

TOPIC: Executors and administrators of estates are not considered creditors for purposes of R.C. 2117.06. The time period for executors and administrators to file claims against an estate is three months from the date of appointment as an executor or administrator, rather than six months from the date of death.

TITLE: In re Estate of Curc, 2019-Ohio-416
COURT: Court of Appeals, Eleventh District
COUNTY: Trumbull County
DATE: February 8, 2019
PAGE: 13

TOPIC: A plaintiff must file a complaint against an estate within six months after the defendant's death under R.C. 2117.06(C).

TITLE: Smith v. Estate of Knight, 2019-Ohio-560
COURT: Court of Appeals, Tenth District
COUNTY: Franklin County
DATE: February 14, 2019
PAGE: 13

TOPIC: Substantial compliance with R.C. 2117.06 is not permitted. A creditor must procure the appointment of an administrator against whom he can proceed, when no administrator has been appointed.

TITLE: Shepherd of the Valley Lutheran Retirement Servs., Inc. v. Cesta, 2019-Ohio-415
COURT: Court of Appeals, Eleventh District
COUNTY: Trumbull County
DATE: February 8, 2019
PAGE: 14

TOPIC: The Ohio Department of Medicaid can record a lien against property owned by a decedent for recovery of benefits paid on behalf of decedent during her lifetime. The claim represented by the lien should be paid prior to a nursing home's claim against the estate

TITLE: Wiesenmayer v. Vaspor, 2019-Ohio-1805
COURT: Court of Appeals, Second District
COUNTY: Montgomery County
DATE: May 10, 2019
PAGE: 15

ESTATES

TOPIC: Although minors are entitled to prior notice for appointment of administrators to their mother's estate, the absence of notice is harmless error since minors are not qualified for appointment.

TITLE: In re Estate of Hudson, 2018-Ohio-2436
COURT: Court of Appeals, Twelfth District
COUNTY: Preble County
DATE: June 25, 2018
PAGE: 16

TOPIC: An executor of an estate who has fraudulently conveyed property from the estate should be removed. Requiring her to first provide notice to the court before entering a contract of sale was not a viable alternative to removal.

TITLE: In re Estate of Brate, 2019-Ohio-446
COURT: Court of Appeals, Twelfth District
COUNTY: Warren County
DATE: February 11, 2019
PAGE: 18

TOPIC: The word "cooperate" with Medicaid approval in a nursing home contract does not require an Executor to ensure the Medicaid application will be approved.

TITLE: HCF of Findlay, Inc. v. Bishop, 2019-Ohio-319
COURT: Court of Appeals, Third District
COUNTY: Hancock County
DATE: February 4, 2019
PAGE: 19

TOPIC: A witness to a “non conforming” will under R.C. 2107.24 may inherit thus protecting a testators intent over formalities.

TITLE: In re Estate of Shaffer, 2019-Ohio-234
COURT: Court of Appeals, Sixth District
COUNTY: Lucas County
DATE: January 25, 2019
PAGE: 20

TOPIC: The Court will look at the plain language of the annuity beneficiary designation form to determine beneficiaries. If the language is ambiguous, the Court will look to extrinsic evidence, including the decedent’s will to determine intent.

TITLE: In re Estate of Harris, 2018-Ohio-3725
COURT: Court of Appeals, Seventh District
COUNTY: Belmont County
DATE: September 13, 2018
PAGE: 21

TOPIC: The trial court erred in ruling that the decedent’s siblings were not beneficiaries of her investment account because the weight of the evidence demonstrated the clear intent of the decedent was to name the siblings as beneficiaries.

TITLE: Murphy v. Hall, 2019-Ohio-188
COURT: Court of Appeals, Eleventh District
COUNTY: Trumbull County
DATE: January 22, 2019
PAGE: 22

TOPIC: The attorney who created a will and is counsel for the executor of the estate can testify to resolve a latent ambiguity in a will when neither party moves to disqualify the testimony during the evidentiary hearing.

TITLE: Bogar v. Baker, 2019-Ohio-1762
COURT: Court of Appeals, Seventh District
COUNTY: Mahoning County
DATE: April 29, 2019
PAGE: 23

FRIVOLOUS CONDUCT

TOPIC: A trial court's findings of frivolous conduct will be upheld without proof of abuse of discretion through the review of the transcripts.

TITLE: Taneff v. Lipka, 2019-Ohio-887
COURT: Court of Appeals, Tenth District
COUNTY: Franklin County
DATE: March 14, 2019
PAGE: 24

TOPIC: An appeal is deemed frivolous when it does not present a reasonable question for review.

TITLE: Waller v. Menorah Park Ctr. For Senior Living, 2019-Ohio-671
COURT: Court of Appeals, Fifth District
COUNTY: Stark County
DATE: February 19, 2019
PAGE: 25

TOPIC: A satisfaction of judgment renders an appeal from that judgment moot. A law firm does not have standing to appeal a Civ.R. 11 judgment against an attorney. If a party persists in relying on allegations or factual contentions with no evidentiary support, the party has engaged in frivolous conduct under R.C. 2323.51(A)(2)(a)(iii).

TITLE: Hoover Kacyon, L.L.C. v. Martell, 2018-Ohio-4928
COURT: Court of Appeals, Fifth District
COUNTY: Stark County
DATE: December 3, 2018
PAGE: 26

GUARDIANSHIPS

TOPIC: To vacate a final account pursuant to R.C. 2109.35(B), appellant must demonstrate that it was a person affected by the order, it was not a party to the proceeding in which the order was made, it had no knowledge of the proceeding in time to appear in it, and there is good cause to vacate the order.

TITLE: In re Stropky, 2018-Ohio-5371
COURT: Court of Appeals, Fifth District
COUNTY: Stark County
DATE: December 28, 2018
PAGE: 27

TOPIC: The appointment of a guardian is not clearly erroneous when the ward consented to the appointment at the magistrate's hearing and did not file objections.

TITLE: In re Guardianship of Ronald Foster, 2019-Ohio-1649
COURT: Court of Appeals, Eighth District
COUNTY: Cuyahoga County
DATE: May 2, 2019
PAGE: 28

TOPIC: A father was appropriately held in indirect contempt for forging his attorney's signature on a guardianship application.

TITLE: In Re Guardianship of Polete, 2018-Ohio-5275
COURT: Court of Appeals, Second District
COUNTY: Montgomery County
DATE: December 28, 2018
PAGE: 29

TOPIC: A trial court's duty to issue findings of fact and conclusions of law is mandatory when such request complies with Civ.R. 52.

TITLE: In re Guardianship of Bernie, 2019-Ohio-334
COURT: Court of Appeals, Twelfth District
COUNTY: Butler County
DATE: February 4, 2019
PAGE: 30

TOPIC: A probate court's determination concluding a guardianship is warranted is not an abuse of discretion, even if the Appellant's health has improved and a less restrictive alternative to a guardianship exists.

TITLE: In re Guardianship of Mannies, 2019-Ohio-430
COURT: Court of Appeals, Sixth District
COUNTY: Wood County
DATE: February 8, 2019
PAGE: 31

TOPIC: There are circumstances in which a non-party next-of-kin can intervene in a guardianship proceeding as a matter of right, pursuant to Civ.R. 24(A)(2).

TITLE: In re Guardianship of Bakhtiar, 2019-Ohio-581
COURT: Court of Appeals, Ninth District
COUNTY: Lorain County
DATE: February 19, 2019
PAGE: 32

NAME CHANGES

TOPIC: When granting an application for a name change for a minor child from the child's female birth name to a male name, the probate court must consider seven factors in determining whether the name change serves the child's best interest and give special weight to the parents' assessment of their child's best interest.

TITLE: In re H.C.W., 2019-Ohio-757
COURT: Court of Appeals of Ohio, Twelfth District
COUNTY: Warren County
DATE: March 4, 2019
PAGE: 33

TOPIC: A probate court has no authority to amend a birth certificate to add race and nationality classifications in a name change.

TITLE: In re Easterling, 2019-Ohio-1516
COURT: Court of Appeals, First District
COUNTY: Hamilton County
DATE: April 24, 2019
PAGE: 34

PROCEDURE

TOPIC: An affidavit may not be disregarded simply because the person providing the affidavit has an interest in the outcome of the litigation. There is not a requirement of a "susceptible testator" if the will is not being contested.

TITLE: Estate of Henderson v. Henderson, 2018-Ohio-5264
COURT: Court of Appeals, Ninth District
COUNTY: Lorain County
DATE: December 28, 2018
PAGE: 34

TOPIC: When the motion on which the probate court ruled was filed in a different court and had already been ruled upon, the ruling is void.

TITLE: Estate of Welch v. Taylor, 2018-Ohio-4558
COURT: Court of Appeals, Twelfth District
COUNTY: Clinton County
DATE: November 13, 2018
PAGE: 35

TOPIC: The probate court does not have jurisdiction over claims based on contract law.

TITLE: Wiggins v. Safeco, 2019-Ohio-312
COURT: Court of Appeals, Second District
COUNTY: Montgomery County
DATE: February 1, 2019
PAGE: 36

TOPIC: A meritorious claim or defense must be alleged to require the trial court to hold an evidentiary hearing for a Motion for Relief from Judgment under Civ.R. 60(B).

TITLE: RiverPark Group, LLC v. City of Dublin, 2019-Ohio-723
COURT: Court of Appeals, Tenth District
COUNTY: Franklin County
DATE: February 28, 2019
PAGE: 37

TRUSTS

TOPIC: A Trust has standing to bring a claim for declaratory judgment concerning the ownership rights of a property when it is the residuary beneficiary of an estate.

TITLE: Gerston v. Parma VTA, L.L.C., 2018-Ohio-2185
COURT: Court of Appeals, Eighth District
COUNTY: Cuyahoga County
DATE: June 7, 2018
PAGE: 38

TOPIC: A grantor of an irrevocable trust does not have standing to bring an action to modify the trust terms to obtain more favorable tax terms.

TITLE: Millstein v. Millstein, 2018-Ohio-2295
COURT: Court of Appeals, Eighth District
COUNTY: Cuyahoga County
DATE: June 14, 2018
PAGE: 39

TOPIC: A creditor is able to enjoin a trustee from making prospective distributions from the spendthrift trust to the beneficiary when the beneficiary has an unqualified right to withdraw from the trust.

TITLE: Fahey Banking Co. v. Carpenter, 2019-Ohio-679
COURT: Court of Appeals, Tenth District
COUNTY: Franklin County
DATE: February 26, 2019
PAGE: 40

TOPIC: A beneficiary does not have a choice between occupying any of the settlor's properties when the language of the trust stipulates a specific property.

TITLE: Wyper v. DuFour, 2019-Ohio-1035
COURT: Court of Appeals, Sixth District
COUNTY: Wood County
DATE: March 22, 2019
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