

CASTLE CHILDREN: DOWN THE RABBIT HOLE

**By: George
Wertz, Chief
Magistrate
Summit
County
Probate Court**

CASTLE PROVIDES A LEGAL DUTY TO SUPPORT ADULT CHILDREN WITH DISABILITIES.

- “The domestic relations court retains jurisdiction over parties in a divorce, dissolution or separation proceeding to continue or to modify support payments for a mentally or physically disabled child, who was so disabled before he or she attained the statutory age of majority, as if the child were still an infant.” *Castle v. Castle*, 15 Ohio St. 3d 279 (1984).
- [A] domestic relations court has jurisdiction to order a noncustodial parent to continue to provide support after the age of majority if the child is physically or mentally disabled to the extent of being incapable of maintaining himself or herself.” *Id.* at 283.

**IN MY HOUSE I'M THE
BOSS, MY WIFE IS JUST
THE DECISION MAKER**

THE LEGISLATION LATER ADOPTED *CASTLE*:

- R.C. 3119.86(A)(1)(a) has been deemed to effectively codify the *Castle* decision. *Geygan v. Geygan*, 2012-Ohio-1965, ¶ 10
- “The duty of support to a child imposed pursuant to a court child support order shall continue beyond the child's eighteenth birthday” only in certain circumstances, including where “[t]he child is mentally or physically disabled and is incapable of supporting or maintaining himself or herself.” R.C. 3119.86(A)(1)(a).

WHAT IF THERE IS A GUARDIANSHIP?

- **Custody and visitation fall under the jurisdiction of the probate court when a *Castle* kid has an established guardianship, but DR court retains jurisdiction of child support.**
- “[T]he probate court maintains jurisdiction to address matters involving visitation between a child ward and the ward's parent, but that the probate court lacks jurisdiction to order parents of a child subject to a guardianship to pay child support or health care coverage costs.” *In guardianship of B.I. C.*, 2009-Ohio-4800, ¶ 21
- [W]hile the probate court had exclusive jurisdiction over the son's guardianship, the domestic relations court retained jurisdiction over child support. *In re Edgell*, 2010-Ohio-6435, ¶ 22

**I AM THANKFUL FOR
LAUGHTER, EXCEPT
WHEN MILK COMES OUT
OF MY NOSE**

GUARDIANSHIP IS NOT STATUTORILY REQUIRED FOR CASTLE KIDS

- “When the *Castle* child is not subject to a guardianship...there are limited, if any, protections with regard to the funds ordered to be paid by either parent for the benefit of the adult child...” *Fenstermaker v. Fenstermaker*, 2015-Ohio-5524, ¶¶ 25-27
- “[I]t would seem that it would be in the best interest of the adult child to have a guardianship established in order to ensure the adult child receives the protections of the guardianship laws. However, if that was to be a requirement, it would need to be resolved by the legislature.” *Id.*

DISTRICT SPLIT

- **There is a district split as to whether jurisdiction for DR courts under *Castle* applies only to orders existing at the time the child reached the statutory age of majority.**

**MY ONE REGRET IN LIFE
IS THAT I AM NOT
SOMEBODY ELSE**

DISTRICTS ARE SPLIT

10th District:

- **Only child support orders in place before the child turned 18 allow DR court jurisdiction under *Castle*, except in cases where the parties agree.**

6th, 7th and 11th Districts:

- ***Castle* kids never reach the age of majority and therefore the DR court retains jurisdiction regardless of the child's chronological age.**

10TH DISTRICT

- “This is not a case where the domestic relations court is exercising *continuing* jurisdiction to modify or enforce custody or child support orders entered before John turned 18. Instead, the court exercised jurisdiction over an individual who was 38 years old at the time the final divorce decree was issued.” *Geygan v. Geygan*, 2012-Ohio-1965, ¶ 11
- “In *Castle*, the domestic relations court initially had jurisdiction over the parties' incompetent *minor* child...once jurisdiction was properly asserted over the minor child, the domestic relations court retained jurisdiction... after the child attained majority... In this case, the domestic relations court never had jurisdiction... Thus, the holding of *Castle* is inapposite. Nevertheless ... the domestic relations court did have jurisdiction to enforce the parties' agreement reached by them during their divorce which required defendant to provide support for Laurie.” *O'Connor v. O'Connor*, 71 Ohio App. 3d 541, 544, 594(1991).

11TH DISTRICT

- “[D]espite her chronological age, Jaime never reached the age of majority as defined by law and remains a minor..” *In re Edgell*, 2010-Ohio-6435, ¶ 39
- “The text of R.C. 3119.86(A) does not support Gary's contention that a support order must be in existence to be continued beyond the child's eighteenth birthday. Rather, the statute states that it is the “duty of support,” not the support order itself, that “shall continue” where the “child is mentally or physically disabled.” *In re Palcisco*, 2012-Ohio-6134, ¶ 22

7TH DISTRICT

- “In this case, although Jenna Magazzino has reached her eighteenth birthday, she is legally disabled and, therefore, is not considered to have reached the age of majority.” *In re Magazzino*, 2006-Ohio-6680, ¶ 19
- “By granting custody of James, age twenty-five at the time, to appellant, the court was essentially asserting that James had not reached the age of majority. Therefore, the court maintained continuing jurisdiction over James, appellant, and appellee..” *Abbas v. Abbas*, 128 Ohio App. 3d 513, 517(1998)

6TH DISTRICT

- “Stated otherwise, Jeffrey, because of his mental condition (and despite his chronological age), was properly found by the trial court to be a minor.” *Wiczynski v. Wiczynski*, 2006-Ohio-867, ¶ 23
- (child was 20 yrs. of age at the time of divorce, but had Down’s syndrome)

**IT'S NOT THAT I AM
AFRAID TO DIE. I JUST
DON'T WANT TO BE
THERE WHEN IT
HAPPENS!**

WHO CAN BE A GUARDIAN?

- **SUITABLE, COMPETENT AND REASONABLY DISINTERESTED**
- Guardian of Person can be non-resident
- Guardian of the estate must be a resident of the state of Ohio
R.C. 2109.21
- Guardian of the estate must be bondable R.C. 2109.04
- BCI Required, Rule of Supplementation 66.05
- Co-Guardians
- Neutral 3rd party Guardian
- Appointment of Guardian is within sound discretion of the probate court

NO STATUTORY PREFERENCE FOR WHO APPOINTED AS GUARDIAN

- “Although courts generally select the next of kin or those with familial ties or someone acceptable to such persons on the theory they will be the ones most concerned with the ward’s welfare, they have great discretion in this matter and are not required to do so. Courts may appoint a stranger as guardian if it is in the best interest of the incompetent.” *In re Guardianship of Terzano* (Dec.7, 1990), Lake App. No. 90-L-14-050
- In *Terzano*, the probate court concluded that an independent guardian “who would objectively administer the affairs of the ward” was in the ward’s best interest because of “familial acrimony.” *In re Estate of Collins*, 2007 WL 475422

**MONEY IS BETTER THAN
POVERTY, IF ONLY FOR
FINANCIAL REASONS**

HOW DOES THE COURT DETERMINE THAT A PERSON NEEDS A GUARDIAN?

- “Incompetent” means:

Any person who is so mentally impaired, as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person’s self or property or fails to provide for the person’s family or other persons for whom the person is charged by law to provide; *A statement of expert evaluation, regarding the ward’s mental and physical condition, from a treating physician, psychiatrist, or licensed psychologist must be included.*

HOW A GUARDIAN IS APPOINTED

- A hearing is conducted by the Judge or Magistrate to determine if the guardianship is necessary, suitable, and the guardian understands his/her duties.
- The degree of proof required for the establishment of a guardianship is clear and convincing evidence. *In re Corless* (1981), 2 Ohio App. 3d 92.
- See R.C. 3109.01 All persons of the age of eighteen years or more, who are under no legal disability, are capable of contracting and are of full age for all purposes.
- See *In Re Santrucek*, (2008) 120 Ohio St.3d 67, A person who has not filed an application to be appointed guardian, or who otherwise has not been made a party to the guardianship proceedings, has no standing to appeal.

**THE FOOD HERE IS
TERRIBLE, AND THE
PORTIONS ARE SMALL.**

TYPES OF ADULT GUARDIANSHIPS

- **Person and/or Estate:** A guardian may be appointed either a guardian of the person, a guardian of the estate, or both. A guardian of the person has custody of, controls, and protects the person of the ward. A guardian of the estate controls and protects the assets or property of the ward.
- **Limited:** A guardian may be appointed with limited powers to make restricted or specific decisions for the ward,
- **No authority for Probate Court to order child support**

WHO HAS JURISDICTION?

- Under 18 at Divorce?
- Over 18, no Guardian established?
- Over 18, Guardian of Person and Estate established?
- Over 18, Guardian of estate only?
- Over 18, Guardian of person only?
- Over 18, Co-Guardians?

**LIFE IS DIVIDED INTO
THE HORRIBLE AND THE
MISERABLE.**

MEDICAID TRUSTS AND PROBATE LAW

MILLER TRUSTS

- QIT (1634)
- Filing Fee \$21.10
- Forms TR 10, TR 11, TR 12

POOLED TRUSTS

- Existing Case Estate, Guardianship
- Sample Motion/Order by request
- Filing Fee \$6.50

**I DON'T BELIEVE IN THE
AFTERLIFE, ALTHOUGH I
AM BRINGING A CHANGE
OF UNDERWEAR.**

MEDICAID PAYBACK TRUST

- 1396 (d) (4) (a)
- Trust Packet
- Filing Fee \$250.00 if monitored by Court

BOND ALTERNATIVES

- A) 2x personal property R.C. 2109.04
- Deposit in lieu of bond R.C. 2109.13

**HIS LACK OF EDUCATION
IS MORE THAN
COMPENSATED BY HIS
KEENLY DEVELOPED
MORAL BANKRUPTCY.**

COURT SUPERVISION

- i.e. Accountings, Application to expend
- A) Pooled TrustNo
- B) Under \$25k.....Probably No
- C) \$25-100k..... Maybe
- D) Over \$100k..... Yes

**THE GOOD PEOPLE
SLEEP MUCH BETTER AT
NIGHT THAN THE BAD
PEOPLE. OF COURSE,
THE BAD PEOPLE ENJOY
THE WAKING HOURS
MORE.**