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Probate Case Law Update
June 1, 2019 – June 11, 2020

Jessica S. Forrest, Esq.

Estate Planning, Probate, Trust & Elder Law Case Data

June 1, 2019 – June 11, 2020

Jessica S. Forrest, Esq., Reminger Co., L.P.A., (216) 430-2204, jforrest@reminger.com

	Adopt	Appeal	Fees	Conceal	Estate	Guard.	Misc.	Name	Non-Prob	POA	Trust	Will	WD	Tot
OSC	2	-	-	-	-	-	-	-	-	-	-	-	-	2
1st	1	-	-	-	1	-	-	-	-	-	3	-	-	5
2nd	3	-	2	-	-	2	1	-	1	-	-	1	-	10
3rd	5	-	-	-	-	1	-	1	-	-	-	1	-	8
4th	5	2	-	-	2	-	1	1	-	1	-	-	-	12
5th	6	-	1	1	1	1	1	2	-	-	3	-	1	17
6th	1	-	-	-	1	-	-	-	1	-	1	1	-	5
7th	-	1	-	2	-	2	-	-	-	-	1	-	-	6
8th	2	1	-	-	2	1	-	-	-	-	1	2	-	9
9th	-	-	-	-	-	1	-	-	-	-	-	2	-	3
10th	-	-	1	-	1	2	-	-	-	-	-	-	-	4
11th	2	1	1	1	2	1	1	-	-	-	1	-	-	10
12th	2	-	-	-	1	1	1	-	-	-	-	1	-	6
TOT	29	5	5	4	11	12	5	4	2	1	10	8	1	<u>97</u>

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Aff	26	1	4	3	7	10	4	4	2	1	6	7	1	76
Rev	3	-	1	1	3	2	1	-	-	-	3	1	-	15
Dis	-	4	-	-	-	-	-	-	-	-	-	-	-	4
Rem	-	-	-	-	1	-	-	-	-	-	1	-	-	2
Tot	29	5	5	4	11	12	5	4	2	1	10	8	1	<u>97</u>

	OSC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	Tot
Aff	2	3	9	8	8	15	3	3	8	2	3	6	6	76
Rev	-	1	1	-	2	2	2	2	1	1	-	3	-	15
Dis	-	-	-	-	2	-	-	1	-	-	-	1	-	4
Rem	-	1	-	-	-	-	-	-	-	-	1	-	-	2
Tot	2	5	10	8	12	17	5	6	9	3	4	10	6	<u>97</u>

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Citation	Ct.	Dec.	Topic	Sub-topic	Caption	Description
2019-Ohio-3635	1	A	Adoption	Jurisdiction	In re N.D.	In case where adoption was set aside by another state's court on reasoning that adoption was carried out under fraudulent circumstances by a third party and adoptive parents sought relief in Ohio, trial court did not err in dismissing case for lack of jurisdiction since Ohio court is to accord full faith and credit to the custodial determinations of the other state's courts in this case, Parental Kidnapping Prevention Act, 28 U.S.C. 1738A.
2020-Ohio-2959	2	A	Adoption	Parental consent not required	In re C.D.G.	In stepparent adoption action, trial court did not err in finding father's consent was not required where father had no contact with children for more than a year, he could have contacted mother through email or discovered her phone number or address, and it was primarily paternal grandmother and not father who made attempts to communicate with children, R.C. 3107.07(A).
2019-Ohio-4701	2	A	Adoption	Parental consent required	In re Adoption of J.R.J.	Dismissal of petition for adoption was not error since trial court correctly determined that child's father needed to consent to the adoption because there was justifiable cause for father's failure to have contact with child where recorded telephone conversations establish that mother consistently made visitation difficult for father, including mother's refusal to let father see child for a period of nine months, and where mother failed to comply with local rule requiring her to provide written notice of a change of address to both father and the juvenile court, R.C. 3107.07.

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2019-Ohio-3001	2	A	Adoption	Parental consent not required	In re Adoption of L.B.R.	In adoption action initiated by stepfather of children, trial court did not err in finding biological father's consent was not required for adoption since father failed without justifiable cause to provide more than de minimis contact with the children for the year preceding the filing of the petition where, inter alia, after father was released from jail, he made no effort to write to the children and did not attempt to attend any of the children's sports or dance activities and did not contact their school, R.C. 3107.07.
2020-Ohio-979	3	A	Adoption	Parental consent not required	In re Adoption of C.H.B.	Granting maternal grandparents' petition for adoption of child without the consent of father is affirmed where father's incarceration and the absence of a support order did not obviate father's independent obligation to provide support, and orders prohibiting father from contact with child as a result of father's convictions for child endangering did not provide justifiable cause for father's failure to provide more than de minimis contact with child, R.C. 3107.07.
2020-Ohio-976	3	A	Adoption	Parental consent not required	In re Adoption of K.R.S.	Ordering stepfather's petition for adoption of child to proceed without the consent of father on reasoning that father failed to support child for the year preceding the adoption action was not error where father did not notify the proper authorities in his home state to reinstate his child support obligation within 28 days of his release from prison, as required by law, and the failure to make this notification constituted failing to support the child, R.C. 3107.07(A).

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2020-Ohio-224	3	A	Adoption	Parental consent not required	In re Adoption of L.S.	Granting petition for adoption without the consent of the biological father was not error because father admitted that he had no contact at all with child in the one-year period before the petition for adoption was filed, and the contempt motion father filed with the court asserting that mother was interfering with his visitation, prompted by her concern about father's substance abuse, did not qualify as contact with child under the R.C. 3107.07(A) standard.
2019-Ohio-5380	3	A	Adoption	Failure to object	In re Adoption of N.F.	Granting petition for stepfather to adopt children of appellant-biological father without his consent is affirmed since appellant failed to file an objection to the proposed adoption within 14 days after receiving notice of the filing of the petitions for adoption, and R.C. 3107.07(K) is not unconstitutional where, inter alia, the private interest involved is the right to withhold consent to the adoption of a child and provision does not constitute consent to the adoption of the child, but only cuts off the statutory right of a parent to withhold consent to the adoption of the child whose best interest may result in denial of adoption.
2019-Ohio-5383	3	A	Adoption	Failure to object	In re Adoption of A.B.	Granting petition for stepfather to adopt appellant-biological father's child without his consent is affirmed since appellant failed to file an objection to the proposed adoption within 14 days after receiving notice of the filing of the petition for adoption, and appellant's argument that R.C. 3107.11(B) violates his constitutional right to due process because it is confusing, misleading and inaccurate is without merit because it can only be concluded from reading the provision as a whole that to contest an adoption, a person must both file a timely objection to the adoption petition and also appear at the hearing.

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2020-Ohio-936	4	A	Adoption	Parental consent not required	In re Adoption of F.L.S.	Determination that mother's consent to adoption of her child was not required under R.C. 3107.07(A) was not error since mother failed, without justifiable cause, to have more than de minimis contact with child during the relevant time period, so it was not necessary for the court to find that mother failed to provide support where mother worked for only a short period of time during the year prior to the filing of the adoption petition.
2019-Ohio-2680	4	A	Adoption	Best interests	In re Adoption of P.K.H.	Denial of petition for adoption of stepson was in child's best interest where, inter alia, father and child lived near each other in the same school district, father continued to provide health insurance coverage to the child, father had paid support for child during a period when he had no formal obligation to do so, father was twice deployed in the military after child's birth, and child had established a loving relationship with father and his family, R.C. 3107.161(B).
2019-Ohio-2451	4	A	Adoption	Parental consent not required	In re K.M.F.	Granting petition to adopt children without father's consent was not error where father had the means to communicate with the children during the one-year period preceding the filing of the adoption petitions, father did not appear at the hearing or present any evidence to support his claim that the petitioners frustrated his attempts to have contact with the children, and father sent the children letters and a Christmas card only after the petitioners filed the petitions to adopt, R.C. 3107.07.
2020-Ohio-1484	4	R	Adoption	Best-interest hearing	In re Adoption of T.C.W.	In adoption action where trial court found father's consent was not required, judgment granting the adoption was error where father was excluded from the best-interest part of the hearing, depriving him of his last and only opportunity to be heard regarding the termination of his parental rights.

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2019-Ohio-3884	4	R	Adoption	Standing of Grandparent	In re G.M.B.	Dismissal of grandmother's petition for adoption of child on reasoning that grandmother lacked standing was error since R.C. 5103.16(E) explicitly exempts grandparents from the pre-adoptive approval process and grandmother was not required to obtain pre-adoptive approval for placement in order to give her standing to file an adoption petition.
2020-Ohio-2812	5	A	Adoption	Paternity not established	In re L.M.S.	In great-grandparents' adoption action, trial court did not err in denying father's motion for stay and for dismissal where father and mother were not married, no father was listed on child's birth certificate, father did not register with the putative father registry on child's behalf nor establish paternity before the adoption action was filed, and therefore father could not be legally recognized as father or putative father and his consent to adoption was not required, R.C. 3107.06, 3107.07.
2020-Ohio-2685	5	A	Adoption	Parental consent required	In re Adoption of B.T.R.	In step-parent adoption petition, trial court did not err in denying petition and requiring consent of father where father's paternity was established and he was current on child support payments, mother's address was sealed in court orders so father could not mail letters he had written to child, and father filed for child visitation rights, R.C. 3107.07(A).
2020-Ohio-1260	5	A	Adoption	Parental consent required	In re Adoption of C.A.H.	Denial of grandparents' petition for adoption of child claiming father's consent was not required was not error where father-inmate provided more than de minimis contact with child as evidenced by consistently sending Christmas gifts to child through a gifting project, mailing a letter to child every month since the beginning of father's incarceration, mailing drawings to child and making child support payments through paycheck withholdings, R.C. 3107.07(A).

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2019-Ohio-4988	5	A	Adoption	Best-interest	In re Adoption of K.M.T.	Denial of petition for adoption of stepson and finding that the adoption was not in the best interest of minor child was not error where father and paternal grandmother stated they would like to continue current placement of the child with child's mother, with visitation by father and grandmother several times per year in person and with additional contact by phone as had been the pattern until mother did not respond to their inquiries and child's mother did not let father and grandmother know of her whereabouts, R.C. 3107.161.
2019-Ohio-4410	5	A	Adoption	Parental consent required	In re Adoption of L.G.	Determination that mother's consent was required for adoption of children by stepmother was not error since mother's failure to support children was justified where she had been through treatment for drug addiction, obtained employment and then began paying on her support obligations, R.C. 3107.07(A).
2019-Ohio-5389	5	R	Adoption	Judicial Notice	In re Adoption of P.R.K.	In denial of petition to adopt step-grandson, probate court erred in taking judicial notice of holding by juvenile court which determined that mother failed to provide more than de minimis contact with child, but that the failures were with justifiable cause, R.C. 3107.07(A), since it is well-established that a court may take judicial notice of proceedings in the immediate case, but not in other cases, even though between the same parties and even though the same judge presided.
2019-Ohio-2422	6	A	Adoption	Best interests	In re Adoption of L.G.	Denial of stepfather's petition for adoption as not being in the best interest of the child was not error since trial court stated that it was best for the child to maintain a relationship with both sides of her family where, inter alia, father and his family had frequent contact with child and had a good relationship with her, father and grandmother expressed a willingness to play a role in child's life, and they were denied the opportunity to spend time with child by mother, R.C. 3107.17(B).

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Citation	Ct.	Dec.	Topic	Sub-topic	Caption	Description
2020-Ohio-679	8	A	Adoption	Parental consent not required	In re Adoption of J.J.P.	Adoption of child by paternal grandparents without mother's consent was not error where mother failed to provide monetary or other support to child for more than a one year period prior to grandparents' petition where, inter alia, child's aunt attempted to communicate with mother to coordinate visits with child's father and mother, but after child's first birthday, mother did not answer communications and mother did not present evidence of a justifiable cause for the failure to support, R.C. 3107.07(A).
2020-Ohio-495	8	A	Adoption	Parental consent required	In re Adoption of S.L.P.	Dismissal of petition for adoption of minor child for lack of consent of biological mother was not error since petitioners failed to prove a lack of justifiable cause on the part of mother for not supporting child where mother had been employed, her employment was terminated, she was unemployed and receiving unemployment compensation while seeking work, her tax return reflected her low income, and she was never asked to pay support, R.C. 3107.06(A) and 3107.07(A).
2019-Ohio-4412	11	A	Adoption	Parental consent not required	In re Adoption of N.I.B.	In stepfather's petition for adoption of child, determination that father's consent was not required for adoption was not error where father failed to maintain more than de minimis contact with child for at least one year before the adoption petition was filed, even though father did pay child support, where father, who was incarcerated, was informed of former wife's address and did not send cards or any other communication to child, R.C. 3107.07.

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Citation	Ct.	Dec.	Topic	Sub-topic	Caption	Description
2019-Ohio-4320	11	A	Adoption	Parental consent not required	In re Adoption of A.L.R.	Granting petition to adopt child without the consent of child's father was not error since father acknowledged that he failed to provide for child's maintenance and support during the year before the petitioners filed the adoption petition, and father's claim that he was justified in not supporting child on reasoning that there was no child support order is without merit since, in the absence of a child support order, a natural parent has an independent obligation to provide support for his child regardless of whether a request is made, R.C. 3107.07(A).
2020-Ohio-534	12	A	Adoption	Failure to object	In re A.M.G.H.	Granting adoption of child by maternal grandparents without the consent of father is affirmed where father did not file an objection to the adoption petition in a timely manner or attend the hearing and therefore his consent was no longer required, R.C. 3107.07(K); unfair or untrue allegations in the adoption petition do not alter the procedural requirements to object in a timely manner.
2019-Ohio-3055	12	A	Adoption	Parental consent not required	In re S.A.N.	Granting paternal grandmother's petition to adopt child without requiring consent of child's mother is affirmed since mother had no contact with child for five years following award of legal custody of child to grandmother, mother did not establish justifiable cause on the basis of loss of her phone, and there was no evidence that grandmother interfered with or significantly discouraged mother from communicating with the child, R.C. 3107.07(A).
2020-Ohio-629	OSC	A	Adoption	Parental consent not required	In re Adoption of A.C.B.	Granting stepfather's petition for adoption without the consent of biological father, affirmed by court of appeals, is affirmed since father failed to provide maintenance and support of child as required by law or judicial decree for a year prior to date petition was filed where father made only a single payment toward his child support obligation and father did not establish justifiable cause, R.C. 3107.07(A).

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2019-Ohio-2450	OSC	A	Adoption	Parental consent required	In re Adoption of B.I.	In certified-conflict case, dismissal of stepfather's adoption petition on reasoning that natural father's consent was required was not error where natural father had a zero child-support order and, under the plain language of R.C. 3107.07(A), a parent cannot fail without justifiable cause to provide maintenance and support of a minor when that parent has a zero child-support order.
2020-Ohio-563	4	D	Appeal	Lack of FAO - inventory	In re Guardianship of Sammons	In action asserting exceptions to inventory of mother's guardianship estate where father divorced mother, father died during the proceeding, son withdrew funds from father's account and trial court ordered son to repay funds, son's appeal is dismissed for lack of a final appealable order since the court's order failed to order son to pay the withdrawn funds to a specific party, and thus the court order did not affect his substantial rights, R.C. 2505.02.
2020-Ohio-374	4	D	Appeal	Lack of FAO - inventory	Newman v. Jones	In action to determine whether certain items were probate assets or non-estate assets, and where defendants' motion for summary judgment was granted for only two of the assets in question, appeal is dismissed because, although trial court's entry purports to be a final appealable order, it does not address all the claims in the underlying case, does not include language specified in Civ.R. 54(B), and appropriate relief can be afforded once the trial court makes a full determination as to what assets belong to the estate.
2019-Ohio-2719	7	D	Appeal	Lack of FAO - Inventory	In re Estate of DeVore v. Malone	In dispute about amendments to estate inventory, appeal is dismissed for lack of a final appealable order where judgment did not include a final inventory of all assets relative to the decedent's estate.

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2020-Ohio-1601	8	A	Appeal	Timeliness	In re Lee	In case where appellant's two applications to administer estate were denied on the basis that estate was relieved from administration because the value of its assets did not meet the R.C. 2113.03(A)(1) threshold, trial court's judgment is affirmed since if the denial of application was a final appealable order, appeal was filed untimely under App.R. 4(A); if the denial was not a final appealable order, then court of appeals lacks jurisdiction.
2019-Ohio-4319	11	D	Appeal	Lack of FAO - App to Administer	In re Estate of Adams	In case where decedent's son applied to administer the estate of his father and attempted to file a copy of father's California last will and testament with trial court, which gave him a deadline to obtain and file original will with the court, son's appeal is dismissed for lack of a final appealable order since there was no entry dismissing or terminating the case, R.C. 2505.02(B).
2020-Ohio-1527	2	A	Attorney Fees	Fees allowed - estate	In re Estate of Weiner	In dispute over estate devised by will, probate court did not err in authorizing estate to pay attorney fees incurred by executor where court reviewed fees on remand based on transcript from original hearing, appellant does not allege that a new hearing would have offered new information, and court considered attorney services individually.
2019-Ohio-2354	2	R	Attorney Fees	Fees denied - estate	In re Estate of Weiner	In action arising from administration of estate, trial court erred in categorically denying authorization to use assets of the estate to pay attorney fees incurred after certain date where court must evaluate all services rendered after that date and indicate in each instance the reason for which payment is authorized or not authorized, whether in part or whole. On another matter, it was not error to allow the executor to demand a liability release in exchange for voluntary resignation

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2019-Ohio-2862	5	A	Attorney Fees	Contingent fee agreement	In re Estate of Green v. Alter	In case in which appellant-wife of decedent signed a probate fee contract to open estate and later signed a contingent fee contract which stated that attorneys would receive one-third of the gross amount recovered whether by settlement, arbitration, civil suit, trial or any other manner, trial court did not err in awarding attorneys one-third of insurance proceeds where, inter alia, expert witness testified that the contract was standard, and the contract was properly filed with the probate court, Prof.Cond.R. 1.5(a).
2019-Ohio-2581	10	A	Attorney Fees	Fees allowed - estate	In re Estate of Schwenker	Court did not err in overruling Co-Executor's objections to magistrate's decision, which granted fee application with some reductions. A poor relationship between the beneficiaries or the executors can support an award of higher attorney fees in probate case
2019-Ohio-3548	11	A	Attorney Fees	Extraordinary Fees - denied	In re Estate of Brunger	Denial of attorney's motion for extraordinary fees for services performed during the administration of estate was not error since trial court granted attorney the minimum reasonable fee for full estate administration pursuant to local rule, and the fee was based on the small size of the estate and the time attorney spent on services that benefited the estate itself, rather than the exact amount submitted in her fee request or on services that may have benefited third parties.
2019-Ohio-3078	5	A	Concealment	Evidence	Estate of DeChellis v. DeChellis	In a R.C. 2109.50 concealment of assets action by estate against decedent's romantic partner and their son where decedent's will provided that cash assets be divided equally among his children, trial court did not err in denying defendants' counsel's hearsay objections to testimony of executrix and of other witnesses for the estate since the purpose of Evid.R. 804(B)(5) is to benefit a decedent's representative by allowing the decedent to "speak from the grave" to rebut testimony by an adverse party, and it is not intended to apply to the party opposing the decedent.

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2019-Ohio-4083	7	A	Concealment	Estate	In re Estate of Bolog	In complaint brought by daughter of decedent alleging that son of decedent concealed, embezzled and conveyed away assets of decedent's estate, probate court did not err in declining to grant judgment on the pleadings to son where money was owed to decedent on date of his death, loan obligations constitute assets of estate, verified complaint sought return of estate assets under R.C. 2109.50, and probate court had subject matter jurisdiction over the complaint.
2019-Ohio-3475	7	A	Concealment	Estate	Vari v. Coppola	In action by executor of decedent's estate asserting that defendant concealed estate assets under R.C. 2109.50, trial court did not err in issuing judgment in favor of defendant since the funds at issue were never estate assets where the money was raised at a spaghetti dinner in honor of decedent, who placed funds in a safety deposit box, and decedent added defendant's name to the box, gave her a key and instructed her to use the money for the benefit of decedent's children, which defendant did.
2020-Ohio-869	11	R	Concealment	Evidence	Pirock v. Crain	In family dispute concerning father's estate where plaintiffs filed an action claiming concealment of estate assets, granting defendants' motion in limine to exclude plaintiffs' prior testimony regarding father's alleged statements on reasoning that the testimony was hearsay was error since a decedent's statements regarding a party's future inheritance has been held to be admissible under Evid.R. 803(3) as reflecting the decedent's then existing state of mind and intent for the future.

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2019-Ohio-4280	1	R	Estate	Real Property	Estate of Neal v. White	In quasi-contract unjust enrichment action by estate to recover rent from defendant who continued to reside at estate's property without paying rent after death of decedent, with whom defendant had lived, trial court erred in ruling in favor of defendant on reasoning that no landlord-tenant relationship existed since that relationship was not necessary for the quasi-contract claim for unjust enrichment.
2019-Ohio-3480	4	A	Estate	Inventory	In re Estate of Wright	In dispute about estate assets, trial court did not err in placing the burden on appellant-beneficiary to prove that assets identified as estate assets were in fact estate assets where the trial court held an inventory hearing pursuant to R.C. 2115.16 concerning an amended inventory to which appellant filed exceptions and, as a party disputing the inventory, appellant had the burden of going forward with evidence supporting his challenges to the estate's inventory.
2019-Ohio-4559	4	A	Estate	Separation agreement	In re Estate of Lodwick	In will contest action, trial court did not err in granting estate's motion to enforce separation agreement between husband and his now deceased spouse, which provided that neither of them would make an election to take against the other party's will, since the separation agreement was presumed valid, even though it had not been incorporated into a court order, where husband did not challenge the agreement within four months after the appointment of the executor, as required by R.C. 2106.22.

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Case Law Update
June 1, 2019 - June 11, 2020

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Citation	Ct.	Dec.	Topic	Sub-topic	Caption	Description
2020-Ohio-1213	5	A	Estate	Law of the Case	Bringman v. McGann	Denial of appellant's complaint for interpleader regarding the estate of his former wife is affirmed where appellant's assertion that a series of events in his and former wife's divorce case returned him to the status of former wife's surviving spouse, entitling him to proceed as the executor of her estate, is without merit since appellant's claim that he is the surviving spouse of the decedent was already rejected on appeal, and the law of the case doctrine bars revisiting the question of appellant's legal relationship to his deceased former wife.
2020-Ohio-1156	6	R	Estate	Claim Against Estate	Hatfield v. Heggie	Rejection of plaintiff's claim to recover money expended for funeral of woman with whom plaintiff had a romantic relationship was error where trial court reasoned that plaintiff failed to meet the presentment requirement under R.C. 2117.06, but plaintiff testified that he submitted a written claim for reimbursement of the funeral expenses and defendant acknowledged that the funeral expenses were paid by plaintiff and that a written claim was submitted to the attorney for the estate.
2019-Ohio-2112	8	A	Estate	Appointment of Fiduciary	In re Estate of Jenkins	Appointment of administrator of estate was not error where decedent's designated executor was removed due to failure to file an inventory, alternate executor predeceased decedent, and no other family members filed an application to be appointed as administrator, while administrator at issue filed application and court held a hearing before determining that administrator was a suitable and competent person to execute the trust, R.C. 2113.06(C).

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2019-Ohio-4165	8	A	Estate	Frivolous conduct	In re Estate of O'Toole	In claims initiated by appellant-beneficiary of estate alleging that administrator of estate engaged in, inter alia, hiding assets, concealing evidence of misappropriations and other acts, trial court did not err in ordering appellant to pay estate's attorney fees as a sanction for engaging in frivolous conduct where appellant failed to offer evidence for claims, Civ.R. 11, R.C. 2323.51.
2019-Ohio-3384	10	N	Estate	Claim Against Estate	In re Estate Lacey	In administration of estate in which nursing facility sought payment on balance due for decedent's care, cause is remanded to probate court to evaluate the statutory argument raised by nursing facility regarding denial of its Civ.R. 60(B) motion for relief from judgment entries that relieved estate from administration, R.C. 2117.06(A)(2) based on argument that creditor properly served the beneficiary after distribution under 2117.06(B). On remand, trial court reaffirmed denial of 60(B) and no appeal was taken
2020-Ohio-163	11	A	Estate	Distribution	Murphy v. Hall	In action by six plaintiffs-siblings of decedent against defendant-seventh sibling, executrix of estate, for a declaration that they were owners of the decedent's investment plan account, it was not error to treat defendant's affirmative defense of setoff in amount of insurance distribution to plaintiffs as a counterclaim where defendant was mistaken as to the estate plan of decedent and court concluded that if it failed to grant the counterclaim, plaintiffs would receive a windfall, with the inequitable result that defendant would not receive the bulk of decedent's assets, as intended by decedent's estate plan.

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2019-Ohio-4135	11	R	Estate	Statutory Allowance	Estate of Kuzman	After husband died intestate, trial court erred in holding that his wife waived her right to statutory allowance in R.C. 2106.13 on reasoning that wife waived the allowance by cashing husband's stock dividend checks where it was not established that wife had both knowledge of the right to the spousal allowance and an intention to forgo it.
2019-Ohio-3538	12	A	Estate	Spousal rights	Chambers v. Bockman	In action by decedent's wife to purchase mansion house owned solely by decedent, trial court did not err in granting summary judgment to wife since it was not necessary for wife to have resided at the house in question where R.C. 2106.16 does not impose a residency requirement.
2019-Ohio-4295	2	A	Guardianship	Competency	In re Guardianship of Weimer	In case where daughter of elderly father filed an application for guardianship of father and moved for an independent evaluation of him, trial court did not err in vacating order granting evaluation motion and in dismissing application where the court had received two expert evaluations from physicians, both of which were performed after daughter's application was filed and both of which concluded that elderly father was competent and that guardianship was not necessary, R.C. 2111.03.
2019-Ohio-3526	2	A	Guardianship	Appointment of Fiduciary	In re Guardianship of Cooper	Appointment of neutral third-party guardian rather than retaining ward's fiancé was in ward's best interest where ward was determined to be incompetent based on his poor decisions and poor safety awareness, there were a number of issues with ward's safety while fiancé was his guardian, and neutral guardian had experience in that role, had several other wards for whom he was caring at the time of the hearing and did not want to be a guardian for ward's money, R.C. 2111.02(A).

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2020-Ohio-3223	3	A	Guardianship	Removal of Fiduciary	In re Guardianship of Rahbek	Denial of ward's daughter's motion to replace attorney as guardian of her father's estate was not error where attorney competently managed ward's assets, attorney worked well with daughter in the past, his execution of medical power of attorney to daughter did not represent an abdication of his responsibilities as guardian, he did not delegate any responsibilities over ward's estate, and attorney's fees complied with VA regulations and were not excessive, R.C. 2111.06, Sup.R. 66.09.
2020-Ohio-1482	5	A	Guardianship	Guardian compensation	In re Guardianship of Vacca	In guardianship action where ward objected to the probate court's entry authorizing payment of guardian's compensation following termination of guardianship, trial court did not err in ordering the guardianship and authorizing the fees where the guardian submitted a detailed invoice with date, descriptions of services performed, time expended and hourly rate charged for services provided for the period of the guardianship, and the guardianship was required and was in the best interest of ward.
2020-Ohio-1105	7	A	Guardianship	Appointment of Fiduciary	In re Guardianship of Keane	Appointment of daughter as guardian of father's person and co-guardian of father's estate was in father's best interest where daughter made it possible for father to return to his own home following hospitalization, she protected father's need for routine by requesting family members to schedule visits in advance, and court placed financial conditions on co-guardians to prevent any children from taking father's money and ordered that father be re-evaluated every six months to determine his safety, Sup.R. 66.09.

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2020-Ohio-1150	7	R	Guardianship	Sequestered vs. Unrestricted Account	In re B.M.	In motion by minor seeking order requiring bank to return all funds withdrawn by guardian-mother from the guardianship account, probate court erred in granting motion and in finding that bank had duty to flag and restrict guardianship account where settlement entry and distribution entry given to bank by guardian indicated that the funds were to be held unrestricted, and bank created a guardianship account, not a sequestered account.
2019-Ohio-4584	8	R	Guardianship	Visitation with Ward	In re Guardianship of Gelsing	In guardianship proceeding for alleged incompetent child instituted by father, trial court erred in granting visitation to child's mother, father's estranged wife, as a condition of the guardianship since court granted and conducted a hearing on mother's request for visitation prior to the filing of a motion for visitation and without proper notice to father.
2019-Ohio-2806	9	A	Guardianship	Competency	Estate of Gravis v. Coffee	In complaint for declaratory judgment brought by estate on issue of ownership of real property, trial court did not err in finding that appointment of guardian created irrebuttable presumption of incompetence to sign transfer on death designation affidavit where court had all powers conferred upon it as superior guardian pursuant to R.C. 2111.50(B)(1), and attorney had no authority to procure transfer on death designation affidavit.
2019-Ohio-3794	10	A	Guardianship	Removal of Fiduciary	In re Guardianship of Bowers	Denial of ward's motion to remove guardian of estate was not error since retention of guardian was in ward's best interest where, inter alia, guardian planned to sell some of ward's property so ward would have money on which to live, the cost of repairing real property owned by ward was prohibitive, and court investigator recommended retaining a guardian.

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2019-Ohio-3066	10	A	Guardianship	Removal of Fiduciary	In re Guardianship of A.R.R.	Removal of mother as guardian of her adult son and appointment of county guardianship service board was not error where son's psychiatrist filed a complaint seeking mother's removal due to her alleged failure to comply with medical recommendation that son resume taking the prescribed medication, resulting in a re-admittance to the hospital with significant symptoms, and evidence supported finding that mother often acceded to son's wishes rather than making decisions based on guidance provided by medical professionals and in son's best interest, R.C. 2109.24.
2019-Ohio-3153	11	A	Guardianship	Removal of Fiduciary	In re B.E.V.	Denial of paternal grandmother's application for appointment of (successor) guardian was not error where grandmother sought to replace her daughter as guardian of minor, but did not establish good cause to remove guardian where, inter alia, claim that guardian's husband's drunk driving convictions showed that he was a danger to child is meritless since the primary focus is on the actions of the guardian, and the court ordered husband not to drive child under any circumstances.
2019-Ohio-2276	12	A	Guardianship	Appointment of Fiduciary	In re Guardianship of Atkins	In case where parties divorced and mother objected to the appointment of father as guardian of their autistic 18 year-old child, the appointment was in child's best interest since, inter alia, child had been in father's custody for six years and had progressed in his behavioral issues after father placed child in a public school program, and father continually assisted with son's education, along with enlisting several experts to help in the process.

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2020-Ohio-509	2	A	Miscellaneous	Minor Settlements	Carter v. Children's Emergency Svcs.	Several minors brought claims against medical providers for violation of consumer sales practices acts and improperly seeking payment directly from patients instead of health insurance companies (R.C. 1751.60). The trial court properly ruled that where the probate court had authorized a settlement on behalf of the minor that included payment to the medical provider, the minor was collaterally estopped from challenging the probate court's approval of the settlement.
2019-Ohio-2757	4	A	Miscellaneous	Criminal	State v. Woodburn	Daughter withdrew over \$113,000 from joint account with mother that came from mother's annuity and surrendering of insurance policies. The nature of the joint account meant that daughter had legal access to withdraw the funds and thus could not be convicted under R.C. 2913.02(A)(1), however the mother testified that she never gave daughter permission to use funds on daughter's own expenses and thus daughter was properly convicted of exceeding scope of use of funds in violation of R.C. 2913.02(A)(2). Sentencing is set for June 18, 2020 in Pike County Common Pleas
2019-Ohio-3335	5	R	Miscellaneous	Annulment	Nixon v. Day	In declaratory judgment action in probate court to annul ward's marriage in Indiana, probate court erred in issuing a judgment annulling marriage after death of ward since any action seeking marriage annulment for a guardian's ward must be brought as a statutory domestic relations complaint under R.C. Ch. 3105 in domestic relations division, or if none, the general division, and probate court's invocation of its general declaratory judgment powers does not supplant the legislative intent to have such matters heard as domestic relations cases.

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2019-Ohio-2790	11	A	Miscellaneous	Landlord - Tenant	Hurton v. Boyer	Landlord was entitled to maintain action to collect rent because landlord inherited house via statute of descent and distribution. R.C. 2105.06. A subsequent certificate of transfer only memorialized the fact that title transferred to landlord as of death of prior intestate owner. R.C. 2113.61.
2020-Ohio-425	12	A	Miscellaneous	Divorce	Bauer v. Bauer	John inherited his father's entire estate, mostly through non-probate transfers and some through a relief from administration. John did not tell the estate lawyer that John removed cash and jewelry from the home. During John's divorce to Gail, John alleged that Gail removed the jewelry and cash from a joint safe deposit box. The divorce court believed that Gail took the cash and jewelry but stated it could not order its return because they remained assets of John's father's estate and thus John had to pursue them through a concealment (R.C. 2109.50) or other action as they were the sole jurisdiction of probate court
2019-Ohio-2065	3	A	Name change	Contact by Parent	In re Name Change of M.J.	Denial of mother's application to change surname of her minor child was not error where father opposed petition because sharing a common last name was his only bond with child, father financially supported child, father claimed mother interfered with father's parenting time, and mother failed to demonstrate that a name change would be in child's best interest, R.C. 2717.01(A).
2019-Ohio-4666	4	A	Name change	Notice	In re Name Change of Rowe	Granting mother's application for change of name of minor is affirmed since mother complied with service by publication requirements in R.C. 2717.01 which provides for one publication in a newspaper of general circulation in name change special statutory proceeding, mother checked box on application that father or alleged father is unknown and cannot with reasonable diligence be ascertained, and statute prevails over Civil Rules.

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2020-Ohio-2834	5	A	Name change	Best interests	In re C.M.	Granting application for name change of child so that child's last name matched her mother's name, her stepfather's name and the last name of her siblings is affirmed since the trial court determined that there was reasonable and proper cause for changing the name of child and that it was in child's best interest under R.C. 2717.01, and since no transcript was provided, the regularity of the proceeding below is presumed.
2019-Ohio-5182	5	A	Name change	Contact by Parent	In re K.C.M.	Granting mother's application to change surname of her child to her surname by marriage was not error where, inter alia, trial court found that the child's relationship with mother would be enhanced by the child having the same surname as her mother, with whom she was bonded, while father's relationship with the child would not be negatively impacted since he had no contact with child and child associated with mother, her husband and the child's little sister, all who had the same surname, R.C. 2717.01.
2020-Ohio-1645	2	A	Non-Probate Transfers	TODDA	Lomelino v. Lomelino	In claim to quiet title to real property arising from dispute over transfer of the real property from decedent's estate, summary judgment for defendants was not error where decedent had requisite testamentary capacity and the transfer-on-death designation affidavit vested title of the property in defendants.
2020-Ohio-1536	6	A	Non-Probate Transfers	Competency	Krohn v. Ostafi	In action by son of decedent claiming that decedent had agreed to transfer properties to him on death and that decedent was incompetent when he conveyed interest in properties to others or made transfer on death changes, trial court did not err in dismissing claim since there was no evidence that decedent was completely incapable of formulating an intention to convey his properties as he deemed best, but court erred in dismissing with prejudice rather than without prejudice, Civ.R. 12(B)(6).

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2019-Ohio-3210	4	A	Power of Attorney	Competency	Isaac v. Malott	In dispute between siblings regarding sister's management of decedent father's affairs pursuant to power of attorney (POA) prior to father's death, trial court did not err in finding that father signed POA where there was credible testimony that father was alert and aware when he signed POA, and signing of POA was witnessed by notary public.
2019-Ohio-2812	1	A	Trust	Duty to inform and report	Hasselbring v. Bernard	In action by beneficiary of revocable trust to obtain from the trustee information pertaining to the trust property, liabilities, receipts and disbursements, trial court did not err in granting summary judgment to trustee since for revocable trusts, the trustee's duties are owed exclusively to the settlor—as opposed to a beneficiary—while the settlor is living, R.C. 5808.13(G).
2019-Ohio-5208	1	N	Trust	Duty to diversify	Helton v. Fifth Third Band	Court did not err in dismissing siblings claim for breach of duty to diversify where siblings brought claim more than four years after they had constructive knowledge that the Trustee was in breach of duty. R.C. 5810.05(C). Court <i>did</i> err in dismissing unjust enrichment claims because those claims were based on improper fees taken by the trustee and not based on the failure to diversify. Remanded for further proceedings. Denied cert. to OSC 2020-Ohio-1393 and now back in Hamilton Probate for proceedings re: unjust enrichment
2020-Ohio-1583	1	A	Trust	Removal of Fiduciary	Doran v. Doran	Removal of defendants-trustees of family trust from their fiduciary positions was not error where they continued to administer the trust for nearly 10 years after the established termination date, they did not provide any written communication with plaintiffs-beneficiaries regarding administration of the trust for several years, they did not answer plaintiffs' requests for information until required by the court, and they continued to enter into lease agreements with respect to trust assets, R.C. 5807.06(B)(3).

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2020-Ohio-560	5	A	Trust	Fiduciary Duty	Schwab v. Schwab	In action in which both plaintiff and defendant are beneficiaries of family trust where plaintiff asserted that defendant breached his fiduciary duty by accepting payments, trial court did not err in directing a verdict in favor of defendant since personal jurisdiction was not established when defendant, a resident of Florida, received on behalf of the trust an unsolicited check with an Ohio address and there is no evidence the trust suffered any damages as a result of payments in question, and no evidence was presented with regard to fiduciary duties owed or breached by defendant.
2019-Ohio-5227	5	A	Trust	Termination of Trust	McCoy v. McCoy	In plaintiff-wife of decedent's action asserting that she was entitled to an order declaring that she validly terminated trust pursuant to terms of trust and that she validly transferred to herself all of the assets of trust consisting of stock in decedent's hardware business, trial court did not err in finding in favor of plaintiff on reasoning that the trust spoke for itself and granted plaintiff the authority to proceed exactly as she did.
2020-Ohio-1259	5	A	Trust	in terrorem clause	Foelsch v. Farson	In plaintiff's action challenging parties' mother's trust, summary judgment in favor of defendants was not error where the trust included two forfeiture provisions stating that a beneficiary challenging the trust shall be treated as predeceased without children, the forfeiture clause applied to the trust and also to the amendments pursuant to R.C. 5801.01(W), and an exception to enforcing a forfeiture clause based on public policy or good faith was not available where the validity of the trust document was attacked directly.

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2019-Ohio-5362	6	R	Trust	Conversion	Hutchings v. Hutchings	In plaintiff-brother's action for conversion against defendant-brother arising from distribution of assets pursuant to gift-balancing provision of irrevocable trust, executed by defendant as expressly authorized by his power of attorney, judgment in favor of plaintiff was error since there was no evidence of undue influence or other wrongful conduct, inclusion of the gift-balancing provision in the trust was expressly authorized, there was no evidence that plaintiff owned or possessed trust assets, and the distribution was not wrongful.
2019-Ohio-3955	7	R	Trust	Settlement agreement	In re Roudebush Trust	In dispute regarding encroachment of trust property on property of appellee-neighbor resulting in appellee's declaratory judgment action against trust and trespass and nuisance claims against individual appellants, trial court erred in granting permission to enter into a settlement agreement concerning trust property since the settlement agreement was disproportionate on its face and did not reasonably benefit any beneficiary, R.C. 5808.01.
2019-Ohio-2910	8	A	Trust	Construction	Keybank N.A. v. Firestone	Court properly determined that in executing an irrevocable trust in 1960, settlor could not have intended the trust terms to include adult-adoptees, which were no legal until years later. Settlor signed a trust in 1960, remarried in 1974 and legally adopted in adult stepdaughters in 1984. The 1960 trust did not specifically allow for adult adoptees and thus they are not included. R.C. 3170.15(A)(3). OSC denied discretionary appeal. 2019-Ohio-4600

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2020-Ohio-204	11	R	Trust	Quiet title	Catley v. Boles	After death of mom and dad, son and daughter took steps to distribute real estate evenly among themselves pursuant to terms of a "trust mill" trust. The real estate did not transfer out of trust before daughter died. Administrator for daughter's estate brought quiet title action, which the court resolved in favor of son citing mom and dad's trust's language for default provisions "upon the death of a beneficiary" and granted full interest to son. Appellate court reversed noting that Administrator had standing to maintain quiet title action R.C. 5303.01 and an ejection action R.C. 5303.03 and noted questions of fact as to who was entitled to possession noting that son was cooperating in transfer of land to daughter after parents' deaths.
2019-Ohio-2841	2	A	Will	testamentary capacity	Stanek v. Stanek	In dispute among siblings regarding decedent-father's estate, trial court did not err in finding father had testamentary capacity to change will and transfer on death beneficiary designation where physician testified he had no concerns with father's mental competency and lawyer who prepared will testified he would not have let father execute the will if lawyer questioned father's competency.
2019-Ohio-4936	3	A	Will	Construction	In re Estate of Gaskill	A will left estate to three stepchildren noting that if one "predeceases the others, his or her share shall be divided equally by the other two." All 3 stepchildren survived and one died 10 months after decedent. Trial court did not err in holding the one-third interest vested at death of decedent and the now-deceased stepchild's interest passes to her estate/heirs. Nothing in the will delayed the vesting of the one-third interest or created survivorship as opposed to tenancy in common.

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2019-Ohio-3924	6	A	Will	Construction	Bills v. Babington	In will construction action where will devised remainder of estate to step-granddaughter "in fee simple, absolutely and forever, per stirpes" and step-granddaughter predeceased testator, summary judgment for defendants-heirs of step-granddaughter was not error where will contained no other bequests and made no mention of any other person or class of persons including testator's own lineal descendants, anti-lapse statute, R.C. 2107.52(B), did not apply, and court found that testator intended a secondary gift to step-granddaughter's heirs if she predeceased testator.
2019-Ohio-3044	8	A	Will	contest - standing	Cook v. Everhart	In action by plaintiff challenging decedent's last will and seeking a judgment that the last will was not valid in light of decedent's mental incapacity, trial court did not err in granting summary judgment to defendant-executor since plaintiff lacked standing where executor introduced an interim will that did not mention plaintiff and plaintiff was unable to demonstrate that if the probated will were invalidated, he would have an interest in the decedent's estate by virtue of a prior will that had not been validly revoked, R.C. 2107.71(A).
2020-Ohio-3283	8	A	Will	Contest - evidence	Young v. Kaufman	Trial court did not err in granting directed verdict to defendant in contest action, affirming the 2010 Estate Plan of decedent. Trial court did not abuse its discretion in denying admission of certain evidence not relevant to the validity of the 2010 Estate Plan and did not abuse its discretion in denying admission of certain hearsay statements of decedent, which did not qualify for the Evid. R. 803(3) exception of then-existing mental, emotional, or physical state

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Citation	Ct.	Dec.	Topic	Sub-topic	Caption	Description
2020-Ohio-93	9	A	Will	Contest - undue influence	Wallace v. Davies	In will contest action by plaintiff-daughter of decedent claiming that defendant unduly influenced decedent when she executed new will shortly before her death, summary judgment for defendant was not error where, inter alia, decedent's estate-planning attorney testified that decedent's intentions were clear and that she knew exactly what she was doing, and decedent expressed her wishes to attorney in the presence of one of her daughters, other than plaintiff, and her grandson.
2019-Ohio-3873	9	R	Will	Admission - burden of proof	In re L.M.W.	In admitting to probate a will dated later than the date of a will previously admitted to probate, trial court erred in ruling that that executor under the first will failed to meet her burden of showing that the later will was not properly executed and should not have been admitted to probate since the proponent of the later will should have had the burden of establishing a prima-facie case in favor of its validity.
2019-Ohio-5031	12	A	Will	Contest - undue influence	Holden v. Holden	In brother's action against sister to contest their mother's will, probate court did not err in setting aside the will for undue influence where, inter alia, mother was a susceptible testator based on doctor's testimony that mother suffered from dementia, memory loss, anxiety and depression, all exacerbated by husband's death only months before she changed her will, sister had the opportunity to exert undue influence over mother because she was living in mother's house, and sister acted to exclude brother and his wife from access to information about mother's finances and personal affairs.

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2020-Ohio-3264	5	A	Wrongful Death	Evidence	Smathers v. Glass	In wrongful death action against defendants-children's services workers where plaintiff's granddaughter died while in custody of mother, summary judgment in favor of defendants based on political subdivision immunity was not error where defendants found no evidence of abuse or neglect on visits to mother's home, hospital records indicating suspected neglect and abuse were not available to defendants until later when they believed child was in plaintiff's custody, and no evidence shows defendants acted with willful indifference or recklessness.