

PUBLICATION UPDATE

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Ohio Probate

Publication 68950 Release 18

September 2018

HIGHLIGHTS

Chapter Changes and Revisions

- Completely updated to discuss recent judicial decisions and statutory amendments.

Current Developments in Case and Statutory Law—There were several changes in the Ohio Statutes, reflected in this Release 18. The release also reflects recent case law.

Chapter 2: JURISDICTION OF PROBATE COURTS—ACTIONS GENERALLY

Even though cases have been appealed, trial courts retain jurisdiction over judgments and proceedings in aid of their judgments unless supersedeas bonds are posted or stays are granted. *Dibert v. Carpenter*, 2018-Ohio-1054 (Ct. App. 2018).

The probate court's jurisdiction over the guardianship extends to all matters touching the guardianship under R.C. 2101.24. R.C. 2111.13(A)(4) directs a guardian to obey all the orders and judgments of the probate court touching the guardianship.

Sosnoswsky v. Koscianski, 2018-Ohio-1409 (Ct. App.2018).

In *Hodge v. Callinan*, 2018-Ohio-227, 2018 Ohio App. LEXIS 247 (Ohio Ct. App., Warren County 2018), because the probate court had neither approved and settled the final account nor discharged the administrator, the estate remained open and the questions posed in the declaratory judgment action arose in the administration of the pending estate. The probate court did not abuse its discretion in rendering relief because it had statutory authority to grant or deny declaratory relief.

Chapter 3: DESCENT AND DISTRIBUTION

A surviving spouse's rights to elect to receive and to purchase a decedent's interest in the mansion house constitutes a substantial right for purposes of appellate jurisdiction. *Mayberry v. Chevalier*, 2018-Ohio-781 (Ct. App. 2018).

Chapter 5: TRUSTS

A trustee who fails to perform his duties as a trustee is not liable to the beneficiary for breach of contract because the creation of a trust is a conveyance of the beneficial

interest in the trust property rather than a contract. *Hammon v. Huntington Nat'l Bank*, 2018-Ohio-87 (Ct. App.2018).

In *Ross Sinclair & Assocs., LLC v. Huntington Nat'l Bank*, 2018-Ohio-661, 2018 Ohio App. LEXIS 680 (Ohio Ct. App., Franklin County 2018), a bondholder's claims for breach of fiduciary duty and breach of trust against an indenture trustee were held time-barred because the claims accrued sometime in 2008 when the bondholder either knew or should have known facts that would have alerted it to the trustee's breach of allegedly failing to timely initiate foreclosure, not when the property securing the investment sold in foreclosure; the bondholder filed the complaint in July 2013.

The trial court was held not to have erred when it granted summary judgment to the trustee because the Trust Declaration made a distinction between what the beneficiaries were entitled to and what the grantor, the trustee's father, was entitled to. Under the trust in *Millstein v. Millstein*, 2018-Ohio-1204, 2018 Ohio App. LEXIS 1378 (Ohio Ct. App., Cuyahoga County 2018), the father was entitled to "a full financial report of the trust assets" but not entitled to a "fiduciary accounting" of the trusts, which would have included not only trust assets but also details of the trust administration and liabilities as well.

Chapter 6: EXECUTORS AND ADMINISTRATORS

In accordance with Ohio Revised Code Section 2101.24, a probate court has jurisdiction in probate and testamentary matters, the appointment of administrators, and the settlement of accounts of executors and administrators. Legal malpractice claims, however, are not listed in Ohio Revised Code Section 2101.24. *Cain v. Panitch*, 2018-Ohio-1595 (Ct. App. 2018).

Ohio Revised Code Section 2127.12 provides that the following "shall be made parties defendant" in an action by an executor or administrator to obtain authority to sell real property: (A) The surviving spouse; (B) The heirs, devisees, or persons entitled to the next estate of inheritance from the decedent in the real property and having an interest in it, but their spouses need not be made parties defendant; (C) All mortgagees and other lienholders whose claims affect the real property or any part of it; (D) If the interest subject to sale is equitable, all persons holding legal title to the interest or any part of it, and those who are entitled to the purchase money for it, other than creditors; (E) If a fraudulent transfer is sought to be set aside, all persons holding or claiming under the transfer; (F) All other persons having an interest in the real property. *Houtz v. Houtz*, 2018-Ohio-1738 (Ct. App. 2018).

A court may also remove a fiduciary under Ohio Revised Code Section 2109.24: The court may remove any fiduciary, after giving the fiduciary not less than ten days notice, for habitual drunkenness, neglect of duty, incompetency, or fraudulent conduct, because the interest of the property, testamentary trust, or estate that the fiduciary is responsible for administering demands it, or for any other cause authorized by law. *Estate of Sarunas v. Abraitis*, 2018-Ohio-584 (Ct. App. 2018).

Chapter 7: GUARDIANS AND CONSERVATORS

When parents have established an order of preference for guardianship, the court must determine, under Ohio Revised Code Section 2111.121(B), whether there is either "good cause" not to appoint the primary nominee or the primary nominee is "disqualified." In the absence of either determination, the court must appoint the primary nominee. *In re A.E.R.*, 2018-Ohio-

1685 (Ct. App. 2018).

Chapter 8: PROBATE PROCEDURE

Ohio appellate districts are split on the issue of whether probate estate administration proceedings are “special proceedings” under Ohio Revised Code Section 2505.02(A)(2). *Mayberry v. Chevalier*, 2018-Ohio-781 (Ct. App. 2018).

Domicile is established by physical presence in a place in connection with a certain state of mind concerning one’s intent to remain there. *Smith v. Queener*, No. 17-5770, 2018 U.S. App. LEXIS 346 (6th Cir. Jan. 4, 2018).

Chapter 9: SALE OF ESTATE PROPERTY

In *Hodge v. Callinan*, 2018-Ohio-227, 2018 Ohio App. LEXIS 247 (Ohio Ct. App., Warren County 2018), the probate court was held not to have erred in finding the administrator met the statutory requirements to dispose of the property because, since the approved inventory listed the property at \$163,060, and the buyers purchased the property for \$160,000, the sale price was at least 80 percent of the appraised value in the approved inventory.

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