

COPY

SUPREME COURT OF OHIO

CASE NO. 06-2343

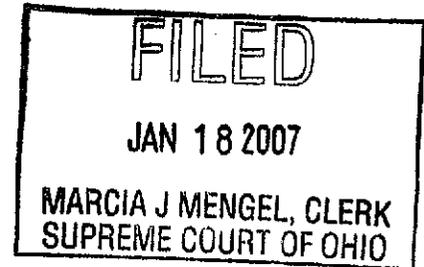
ANDREA HELEN SANGRIK, TRUST
CAROLE M. RADEY, TRUSTEE

Appellant

v.

JESSICA R. STEVENS, ET AL

Appellees



On Appeal from the Court of Appeals
Eight Appellate District
Cuyahoga County, Ohio
Case No. 87273

**APPELLEES' MEMORANDUM IN OPPOSITION TO APPELLANT'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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APPELLEES' POSITION THAT THIS CASE NEITHER CONTAINS A
CONSTITUTIONAL ISSUE, NOR IS IT OF PUBLIC
OR GREAT GENERAL INTEREST

In order for the Supreme Court of Ohio to accept jurisdiction in a civil appeal, it is generally required that it be shown that the case under consideration either contains a constitutional issue or is of public or great general interest. The case under consideration possesses neither a constitutional issue nor is it of public or great general interest.

The Appellant begins her Memorandum in Support of Jurisdiction with a phrase which seems intended to “frighten” this Honorable Court into believing that the future holds a deluge of probate litigation. That phrase is “the graying of Ohio.”

She further attempts to convince the Court that testamentary trusts and inter vivos trusts are fairly new entities, which will ultimately result in insurmountable problems for the courts. However, she contradicts herself on Page Eight of her Memorandum when she states “[i]n fact, Appellant is unable to locate a specific decision where this Court examined a Will which created a Testamentary Trust that failed to dispose of any remainder interest.” Therefore, if the Appellant is unable to find such a case, this type of case being an obvious rarity, then it can hardly be claimed that the case at bar is a case of “public or great general interest.” (There is, however, at least one case on-point which will be discussed in a later section of the Memorandum.)

The Appellant further reminds this Court that, in 2006, it accepted two (2) cases from the Probate Division. This fact is totally irrelevant to the Appellant’s argument. Further, neither of the cases accepted by this Court is on-point to the case at bar.

With regard to discretionary appeals to the Supreme Court of Ohio, the case of *Williamson v. Rubich* (1960), 171 Ohio St. 253, 168 N.E.2d 876, states the matter well by saying

It follows, of course, that the sole issue for determination at the hearing upon such motion is whether the case presents a question or questions of public or great general interest as distinguished from questions of interest primarily to the parties. Whether the question or questions argued are in fact ones of public or great general interest rests within the discretion of the court.

While certainly the Ohio Supreme Court is the final decision-maker as to the question of whether or not this case is of public or great general interest, the Appellees strenuously assert that the facts of the case are not of a nature that would often arise, nor be of a nature which would assist the general public in any meaningful way, and are primarily of concern to the Appellant—in her hope of receiving the entire trust remainder, and to the Appellees—in their hope of receiving merely what they believe to be their rightful shares of the trust remainder. Thus, the Appellees do not believe that the case is of public or great general interest to the population at large, nor to any significant portion of said population.

APPELLEES' RESPONSE TO APPELLANT'S RECITATION
OF THE STATEMENT OF THE CASE AND FACTS

The Appellees find no real problem with the Appellant's recitation of the Statement of the Case and Facts. They do, however, strenuously disagree with the decision of the Probate Court, making the Estate of Andrew Sangrik the recipient of the trust remainder. Andrew Sangrik was a Life Beneficiary of the trust, and at no point in time did he own the trust assets. Those assets were intended by Andrea Helen Sangrik to be used for her father's support, care, and maintenance—none of these purposes being

possible after his death. It was, in fact, his death which brought about the controversy which is being litigated at present.

Further, the Appellant cautiously suggests that the fact that Andrea's testamentary trust did not contain a residuary provision was perhaps a "scrivener's error." There is no basis in fact for this suggestion, especially given that the same attorney prepared both Andrea's will containing its testamentary trust, and Andrew's will on the very same day. One can, therefore, only guess at the reason that a residuary provision was not provided in Andrea's testamentary trust.

Also, the recital by the Appellant of the dissenting opinion in this case is of no probative value whatsoever. The dissenting opinion is not the official position of the Eighth District Court of Appeals in the matter.

APPELLEES' RESPONSE TO THE APPELLANT'S PROPOSITION OF LAW

The Appellant raises only one Proposition of Law, stating that a Testamentary Trust with no Residuary Clause, upon the death of the Trust Beneficiary, passes to the heirs at law as determined at the death of the Testator. The Appellees vehemently disagree with the Appellant's reasoning.

She strongly relies upon several cases to bolster her Proposition of Law, none of which cases can be found to be on-point to the case at bar. She cites *Oglesbee v. Miller* (1924), 111 Ohio St. 426. That case, however, deals with situations where a decedent failed to leave a Last Will and Testament, or where there are remaining assets not specifically devised by a testator's will. In the instant matter, however, Andrea Helen Sangrik neither died intestate, nor did she fail to dispose of all of her assets. Those assets

were disposed of by being transferred to her Testamentary Trust. In fact, the *Oglesbee* case does not even mention the word “trust.”

The Appellant also strongly bases her hopes on the cases of *Gilpin v. Williams* (1874), 25 Ohio St. 283; *Matthews v. Krisher* (1899), 59 Ohio St. 562; *Foreman v. Medina County National Bank* (1928), 119 Ohio St. 17; and *In Re Estate of Underwood*, 1990 WL 54865, 4th Dist. No. 1838 (April 26, 1990). None of these cases are on-point factually to the case at bar. In fact, in *Underwood*, due to the fact that the Life Beneficiary predeceased the testator, no trust was ever created.

She states that there is confusion due to differing decisions by various Courts of Appeal, but fails to mention that this Honorable Court officially resolved any confusion in its opinion in *Cleveland Trust v. Frost* (1957), 166 Ohio St. 329, 334 by holding that “a life beneficiary of a testamentary trust has no vested interest in the remaining assets of the trust and his heirs are not entitled to receive them.” [Emphasis supplied], and further held:

“It would seem incongruous indeed if [the trust beneficiary], having been limited by the will to a beneficial interest in the trust property for life only, should at the same time be accorded the right to succeed to the estate as the absolute owner thereof, thereby causing a devolution of the property contrary to the testatrix’ s manifest wishes.” *Cleveland Trust Co. v. Frost, Ibid.*

Cleveland Trust, Id. at 333, further holds that interests in heirs of the testator do not vest until the death of the life tenant. [Emphasis supplied]

The Court of Appeals, far from making a confusing decision, as the Appellant claims, has made a common sense decision that properly analyzed the case before it. Rather than admitting this, the Appellant “hangs her hat” on the dissenting opinion in the case, a dissent which provides no new insights whatsoever, but merely “parrots” the Probate Judge.

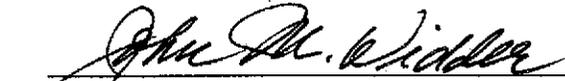
The Appellant further states at Page Nine of her Memorandum that “[w]hen Andrew died, Andrea’s Estate still contained assets, but no instruction or direction as to how to distribute them.” This statement is untrue. Andrea’s Estate had been closed for several years prior to Andrew’s death (was only recently reopened as a “posture” to the current litigation, then was once again closed). Further, all of the assets of Andrea’s Estate had long-since been transferred to her Trust (which was a totally separate entity). In other words, her Will disposed of all of her assets by giving them to the Trust. The fact that the Life Beneficiary had died was not a valid reason to return the Trust assets to the Estate. It was Andrew’s death in 2003, rather than Andrea’s death in 1997, that was the triggering event that initiated the controversy.

Andrew never owned the Trust assets, but was merely provided for, during his lifetime, by the use of those assets. Once the Life Estate ended, those living next-of-kin of Andrea (including the Appellant herself) should take.

CONCLUSION

The Appellees strenuously assert that the Eight District reached the only reasonable decision possible, given the facts of the case at bar. Further, the Appellate Court’s decision concerned a case with a series of facts not likely to occur very often. Thus, this atypical case is certainly not one which could be considered a “case of public or great general interest.” Therefore, the Ohio Supreme Court should not accept Jurisdiction in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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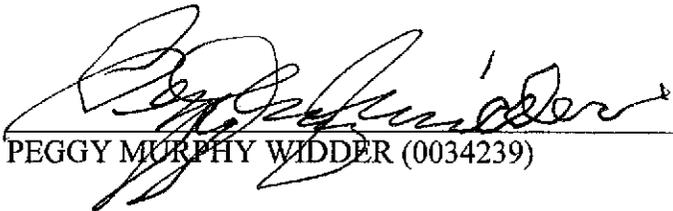
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