

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' MERIT BRIEF

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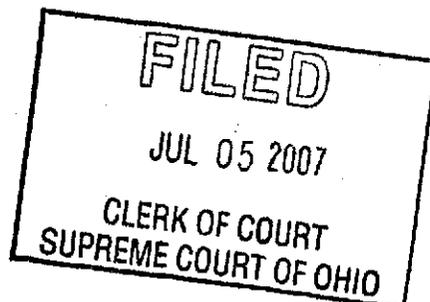


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STATEMENT OF FACTS

Andrea Helen Sangrik (hereinafter known as “Andrea”) was the only child of Andrew Sangrik and his wife, Helen Sangrik. Andrea’s mother, Helen Sangrik, died in 1993. After Andrea’s mother died, Andrea and her father, Andrew Sangrik, went to an attorney and executed Wills. Both Wills were executed on the same day, which was August 19, 1993.

Andrea’s Will contained a Testamentary Trust and left the entire Estate to her cousin, Carole M. Radey, “**in Trust**” for the benefit of Andrea’s father during his lifetime. The document was silent as to what should be done with any remaining Trust Corpus after Andrew Sangrik’s death.

Andrew Sangrik’s Will left his entire Estate to his only child Andrea, but went on to say that if Andrea should predecease him, then his Estate should pass to his niece, Carole M. Radey.

Andrea died on July 8, 1997, and her cousin, Carole M. Radey administered her Estate [*Estate of Andrea Helen Sangrik* (Case No. 1998 EST 283)], then closed said Estate, transferring the assets to a new entity, the *Andrea Helen Sangrik Trust* (Case No. 1998 TST 280). The Appellant, Carole M. Radey, then functioned as the Trustee of the Trust, for the benefit of Andrew Sangrik.

Andrew Sangrik died on June 26, 2003. It was this event, the death of Andrew Sangrik, that triggered the controversy over the remaining Trust Corpus, since the Trust no longer had a purpose after Andrew Sangrik’s death.

Andrea Helen Sangrik had twelve (12) first-cousins who survived both her and her father. The Appellant, Carole M. Radey, is only one of those twelve (12) first-cousins.

The first-cousins believe that, once Andrew Sangrik passed away, the remaining Trust Corpus should be divided equally among Andrea's twelve (12) cousins, that division to include an equal share for the Appellant, Carole M. Radey. The Appellees also bring the Court's attention to the fact that the Magistrate concurred with their interpretation of the facts and law in both adversarial cases.

STATEMENT OF THE CASE

The instant Appellate matter began on January 14, 2004 with the filing in the Cuyahoga County Probate Court of a Complaint for Declaratory Judgment which was captioned as *Carole M. Radey, et al. v. Andrew Sangrik, et al.* (Case No. 2004 ADV 84678) by the Appellant, Carole M. Radey. [Note: Technically, the case should have been captioned as *Carole M. Radey, et al. v. Andrea Helen Sangrik Trust, et al.*, rather than the first-named Defendant being listed as "Andrew Sangrik"]. The complaint was ultimately decided by a Magistrate's Decision granting the Motion for Summary Judgment filed by John K. O'Toole, Esq., who had been appointed Trustee for Suit in the matter. The Court then upheld the Magistrate's Decision. Attorney O'Toole's Motion for Summary Judgment favored the position of the Appellees that the Trust Corpus, which is the subject matter of this Appeal, should be divided equally among the twelve (12) first-cousins of Andrea Sangrik. The Appellant, however, had filed neither Objections to the Magistrate's Report with one of the Probate Judges, nor did she file an Appeal of the Court's decision.

The Magistrate hearing the matter then insisted, however, that before any distributions would be made from the Trust, "someone" must file a Complaint for Determination of Heirship, for the purpose of providing the actual identities of the

Settlor's twelve (12) first-cousins. Since the Appellant did not file such a Complaint for Determination of Heirship, the Appellees eventually did. That case, which was also filed in the Cuyahoga County Probate Court, was known as being *Jessica R. Stevens, et al. v. Carole M. Radey, et al.*, Case No. 2004 ADV 96385.

Once again in the second adversarial case, the Magistrate's Decision was in favor of the Appellees. This time, however, the Appellant filed Objections to the Magistrate's Decision. The matter was then heard by one of the Probate Judges. The Judge did not uphold the Magistrate, but instead decided in favor of the Appellant. In response, the Appellees appealed to the Eight District Court of Appeals.

An additional case, *Andrea Helen Sangrik Trust*, Case No. 1998 TST 280, was also appealed, due to the fact that the Appellees had filed more than one Motion Remove the Appellant as Trustee in that case, but the Probate Court never did so. In fact, although the Magistrate sided with the Appellees in both adversarial cases, his decision did not remove the Appellant as Trustee. Therefore the (6) Appellees, along with other of Andrea's first-cousins (who did not appeal) filed Joint "Contingent" Objections to the portion of the Magistrate's Decision which permitted Carole M. Radey to remain as Trustee. The trial Court overruled said Joint "Contingent" Objections, and again permitted Appellant Carole M. Radey to remain as Trustee. The decision in the matter of removal was also appealed by these Appellees.

The two (2) cases, *Jessica R. Stevens, et al. v. Carole M. Radey, et al.*, Case No. 2004 ADV 96385 and *Andrea Helen Sangrik Trust*, Case No. 1998 TST 280, were consolidated by the Eighth District Court of Appeals on November 17, 2005. The two (2) consolidated cases were known in the Court of Appeals as Case No 87273. During Oral Argument, however, any issue regarding the *Andrea Helen Sangrik Trust* was

dropped by these Appellees, given that Carole M. Radey had been bonded. Therefore, that case is irrelevant in the appeal to this Court.

LAW AND ARGUMENT

PROPOSITION OF LAW:

Where a Testamentary Trust does not have Residuary provision and the purposes of the trust have been fulfilled, the remaining assets of the trust pass to the testator's Heirs at law at the time the trust purposes were completed.

The heirs at law are fixed and determined under R.C. 2105.06 the Statute of Descent and Distribution at the time the trust purposes were completed.

The parties to this appeal agree on many facts and issues. For example, there is agreement that:

- Andrea Sangrik and her father Andrew had wills drafted by the same attorney.
- Andrea and Andrew executed their wills on the same day before the same witnesses.
- Andrea's will gave her entire estate to Carole Radey **in trust** and stated that it was Andrea's "express wish and desire to provide for my father, ANDREW SANGRIK, the care and benefits herein as I would give him were I to survive." (See Appendix for copy of Andrea's will).
- Andrea's will directed the Trustee (Carole Radey, Appellant in this case and cousin of Andrea and niece of Andrew) "...to administer the entire trust estate for the benefit of my father ANDREW SANGRIK, [**DURING HIS LIFE**] as follows: To use so much of the income and or principal of the trust estate for the support, care and maintenance of my father, ANDREW SANGRIK, to be

distributed to him in such proportion and at such times as my Trustee in his [sic] sole and absolute discretion, shall determine. The decision as to distribution by said Trustee shall be absolute and binding upon all persons.”

- Andrea’s will, including the portion establishing the testamentary trust, did not include any residuary provision.
- Andrew’s will left all of his estate to Andrea if she survived him, but if Andrea predeceased him, Andrew’s will left all of his estate to Carole Radey. (See Appendix for copy of Andrew’s will).
- Andrea predeceased Andrew on July 8, 1997
- The testamentary trust for Andrew was established and administered until Andrew’s death on June 26 2003, some six years after Andrea’s death.
- There were assets remaining in the trust at the time of Andrew’s death; these assets remaining at Andrew’s death must now be distributed by the Trustee.
- RC 2105.06, the Statute of Descent and Distribution, applies to the distribution of the remaining assets of the trust.

Appellees have been unable to locate a decision where this court examined a will that expressly created a testamentary trust that failed to provide for the disposition of the residue of the trust.

We must rely on cases that state an analogous rule of law. These admittedly analogous cases can also be interpreted to support Appellees’ proposition of law.

Analysis shows that Appellant’s proposition of law is incomplete and inapplicable to this case and that the cited cases are inapplicable to and inappropriate for the facts in this case.

Let us examine a few of the cases cited by the Appellant. For example, *Gilpin v. William* (1874), 25 Ohio St 283, is, as Appellant notes at page 8 of her brief, “One hundred and thirty- two years . . . [old].” Further, *Gilpin* concerns reversions and the interpretations of statutes modifying fee tail estates. *Matthews v. Krisher* (1899), 59 Ohio St 562, cited at page 9 of Appellant’s brief is one hundred and eight years old and concerns a partition action. *National Bank of Columbus v. Bolton* (1893), 50 Ohio St 290, cited at page 10 of Appellant’ brief is only fifty-five years old but it does not concern a testamentary trust. Similarly, *Tiedke v. Tiedke* (1952), 157 Ohio St 554, cited at pages 6, 7, 11 and 14 of Appellant’s brief is 55 years old and is basically concerned with the issue of the right of an adoptee to inherit.

Appellant also cites *Tiedke, supra.* on page 7 of her brief for the proposition that “The general rule is that heirs are to be determined as of the date of death, except where a testator indicates that the heirs are to be determined at a later date.” (citing *Barr v. Denny* (1909), 79 Ohio St 358), and *Tiedke, supra.* Appellees do not disagree with this general statement of the law (as announced in the cited cases) but contend that such general rule, though it is a better and more complete statement of Appellant’s proposition of law, is inapplicable in the case at bar. Interestingly, in *Barr v. Denny, supra.*, this Court reversed the circuit court and affirmed the trial court’s decision that the time for vesting under that particular Will was the time of distribution and not the date of the testator’s death.

There are “more recent appellate cases” cited by *Williams v. Ledbetter* (1950), First District, 87 Ohio App. 171. It is noteworthy that the portion of *Ledbetter, supra* that appears to support Appellant’s view is the last paragraph of a 12 page decision and the decision offers little or no analysis or rationale for its holding.

Appellant has not cited *Cleveland Trust v. Frost* (1957) 166 Ohio St 329, *Frost* like *Tiedke* and *Barr v. Denny*, offers a rendition of the proposition of law Appellees favors. In *Frost* the testator created a trust for the benefit of her son during his lifetime with the contingent remainder to vest in him/his estate if he had children. Testator's son died childless and his widow sought a declaration from the court that she was entitled to the remainder of the trust. This court upheld the decision of the lower courts to award the corpus of the trust to the heirs of the testator rather than the heirs of the trust beneficiary. The beneficiary, having been limited by the will to a beneficial interest in the trust property for life only, should not at the same time be accorded the right to succeed to the estate as the absolute owner of thereof, thereby causing devolution of the property contrary to the testatrix manifest wishes. *Id* 334. .

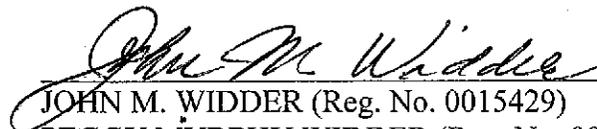
The parties to this appeal also agree that in construing a will a court's primary function is to implement the testator's intent. Appellant's interpretation of Andrea's will requires a complicated and strained interpretation of the facts and law, and produces a truly anomalous result. It is improbable that Andrea, when she executed her will on July 8, 1997, assumed that upon her father's death, her cousin Carole Radey would have become the sole beneficiary of the corpus remaining in the trust that Andrea established for the care of her father during his lifetime. Andrew, in his will, left all of his estate to Andrea, but if Andrea predeceased him, Andrew's will gave his entire estate to Carole Radey. Andrea Sangrik could have given her entire estate to her father or to Carole Radey in fee simple. Trust assets were never part of Andrew's estate; Andrea had established a trust for her father during his life. When her father died the purposes of the trust was complete.

The Eighth District Court of Appeals saw the complicated, strained interpretations required by Appellant's position and the anomalous results of Appellant's position. It also saw that the purposes of the trust were complete when Andrew Sangrik died, and that in fact and in law the remaining assets of the Trust the held in a resulting trust for the heirs at law as of the date of Andrew's death. The Eighth District crafted a just appropriate and equitable resolution of the issues in this case.

CONCLUSION

For the reasons stated above Appellees request this Court confirm the Judgment of the Eighth District Court of Appeals and to enter Judgment in their favor holding that the assets remaining in the trust be distributed to them pursuant to the Ohio Statute of Descent and Distribution.

Respectfully submitted,


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CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief of Appellees has been mailed via First Class

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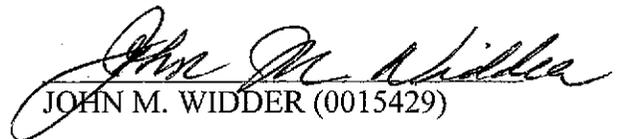
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LAST WILL AND TESTAMENT

OF

ANDREA HELEN SANGRIK

Andrea Helen Sangrik

I, **ANDREA HELEN SANGRIK** residing and domiciled in the City of Parma, County of Cuyahoga and State of Ohio, being of full age, sound mind and memory, and under no restraint, do publish this, my Last Will and Testament, and do hereby revoke and render null and void all other Last Wills, Testaments and Codicils thereto, by me heretofore made.

ITEM I

I direct that all enforceable just debts and funeral expenses first be paid out of my estate as soon as practical after my decease.

ITEM II

Any and all estate, inheritance and succession taxes, including interests and penalties thereof, if any, whether State or Federal, which may become payable by reason of my death, whether levied or assessed in respect of my estate, subject to the provisions of this Will or otherwise, shall be paid by my Executrix out of my estate, without any right or duty on my Executrix to seek or obtain contribution or reimbursement from any person or property on account of any payment made therefor.

ITEM III

I give, devise and bequeath my entire estate, whether real, personal or mixed, of every kind, nature and description, whatsoever and wheresoever situated, which I may now own or hereafter acquire, or have the right to dispose of at the time of my decease, by power of appointment or otherwise, to my cousin, CAROLE RADEY, IN TRUST, for the objects and purposes thereafter specified:

1. It is my express wish and desire to provide for and give to my father, ANDREW SANGRIK, the care and benefits herein as I would give him were I to survive. I, therefore, direct my Trustee to administer the entire trust estate for the benefit of my father, ANDREW SANGRIK, as follows:

To use so much of the income and/or principal of the trust estate for the support, care and maintenance of my father, ANDREW SANGRIK, to be distributed to him in such proportion and at such times as my Trustee, in his sole and absolute discretion, shall determine. The decision as to distribution by said Trustee shall be absolute and binding upon all persons.

2. I direct that no bond shall be required of my Trustee to guarantee the performance of his obligations and duties hereunder. I direct that said Trustee, during the life of his trust, shall have full power and authority therefore, to manage, control, improve, lease, rent, encumber, invest or reinvest, sell, assign and/or convey, and do any and all other things with

Carole Helen Sangrik

all of any part of said trust property and in such manner, form and character as my Trustee in his discretion shall deem advisable and best for the welfare of my beneficiary hereunder.

3. I direct that in the administration of this trust, my Trustee shall have full power to retain by ways of investment, any property or security coming to her at the inception of this trust, without being accountable for any loss resulting from the depreciation of said property so long as she shall continue in the exercise of good faith in the retention thereof. I further grant to my trustee in the care, management and preservation of this trust estate, full power and authority to apportion gains, losses and expenses, including compensation, to principal and/or income as she shall deem equitable, and her decision as to what is income and what is principal shall be final and conclusive.

In the event that CAROLE RADEY fails to qualify or act for any reason, I nominate and appoint RICHARD RADEY as Trustee in her stead with the same powers and immunities as hereinabove.

IV

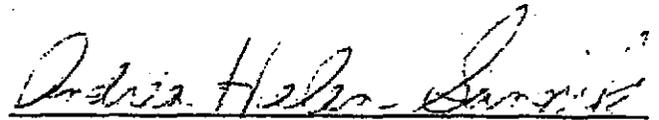
I hereby nominate and appoint my cousin, CAROLE RADEY, Executrix of this my Last Will and Testament, giving to my said Executrix full power and authority to sell, transfer, deed, compromise, manage and deal with any and all of my property, and with all obligations and claims against my estate, upon such terms and under such conditions as she may think proper without the order of any court. I desire that my said Executrix be

Carole Helen Saayuk

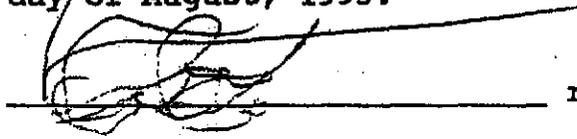
permitted to serve as such Executrix without bond, and I direct that no appraisalment of my household goods and furniture be made.

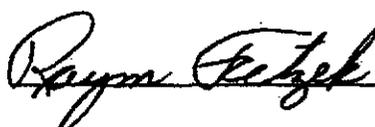
In the event Executrix CAROLE RADEY fails to qualify or act for any reason, I nominate and appoint RICHARD RADEY as such Executor in her stead with the same powers as hereinabove and without bond.

IN WITNESS WHEREOF, I have hereunto signed my name and acknowledged and published this instrument consisting of this and three (3) other typewritten pages identified by my signature, as my Last Will and Testament, in the presence of the undersigned witnesses, this 19th day of AUGUST, 1993.


ANDREA HELEN SANGRIK

The foregoing instrument was at the date thereof signed, published and declared by the said ANDREA HELEN SANGRIK as and for his Last Will and Testament, in the presence of each other, hereunto subscribed our names as attesting witnesses, this 19th day of August, 1993.


_____ residing at 5566 Pearl Rd
Parma, Ohio


_____ residing at 5566 Pearl Road
Parma, Ohio 44129

LAST WILL AND TESTAMENT

OF

ANDREW SANGRIK

I, **ANDREW SANGRIK** residing and domiciled in the City of Parma, County of Cuyahoga and State of Ohio, being of full age, sound mind and memory, and under no restraint, do publish this, my Last Will and Testament, and do hereby revoke and render null and void all other Last Wills, Testaments and Codicils thereto, by me heretofore made.

ITEM I

I direct that all enforceable just debts and funeral expenses first be paid out of my estate as soon as practical after my decease.

ITEM II

Any and all estate, inheritance and succession taxes, including interests and penalties thereof, if any, whether State or Federal, which may become payable by reason of my death, whether levied or assessed in respect of my estate, subject to the provisions of this Will or otherwise, shall be paid by my Executrix out of my estate, without any right or duty on my Executrix to seek or obtain contribution or reimbursement from any person or property on account of any payment made therefor.

Andrew Sangrik

ITEM III

I give, devise and bequeath my entire estate, whether real, personal or mixed, of every kind, nature and description, whatsoever and wheresoever situated, which I may now own or hereafter acquire, or have the right to dispose of at the time of my decease, by power of appointment or otherwise, to my beloved daughter, ANDREA HELEN SANGRIK, to be hers absolutely and in fee simple.

ITEM IV

Should, however, my said beloved daughter, ANDREA HELEN SANGRIK, predecease me, or fail to survive me by thirty (30) days, then ITEM III shall fail and be of no effect, and in that event, I give, devise and bequeath my entire estate, whether real, personal or mixed, of every kind, nature and description, whatsoever and wheresoever situated, which I may now own or hereafter acquire, or have the right to dispose of at the time of my decease, by power of appointment or otherwise, to my niece, CAROL RADEY, to be hers absolutely and in fee simple.

ITEM V

I hereby nominate and appoint my beloved daughter, ANDREA HELEN SANGRIK, Executrix of this my Last Will and Testament, giving to my said Executrix full power and authority to sell, transfer, deed, compromise, manage and deal with any and all of my property, and with all obligations and claims against my estate, upon such terms and under such conditions as she may think proper without the order of any court. I desire that my said Executrix be permitted

to serve as such Executrix without bond, and I direct that no appraisalment of my household goods and furniture be made.

In the event Executrix ANDREA HELEN SANGRIK, fails to qualify or act for any reason, I nominate and appoint my niece, CAROL RADEY, as such Executrix in her stead with the same powers as hereinabove and without bond.

IN WITNESS WHEREOF, I have hereunto signed my name and acknowledged and published this instrument consisting of this and two (2) other typewritten pages identified by my signature, as my Last Will and Testament, in the presence of the undersigned witnesses, this 19TH day of AUGUST, 1993.


ANDREW SANGRIK

The foregoing instrument was at the date thereof signed, published and declared by the said ANDREW SANGRIK as and for his Last Will and Testament, in the presence of each other, hereunto subscribed our names as attesting witnesses, this 19 day of _____, 1993.


residing at 5566 Pearl Pl
Parma, Ohio


residing at 5566 Pearl Road
Parma, Ohio 44129