

SUPREME COURT OF OHIO

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CASE NO. 2006-2343

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ANDREA HELEN SANGRIK, TRUSTEE  
CAROLE M. RADEY, TRUSTEE

Appellant

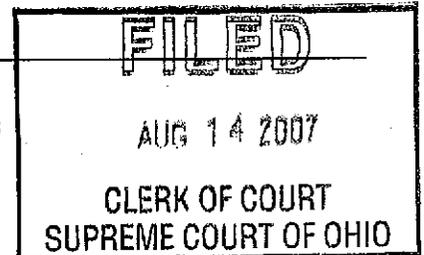
v.

JESSICA R. STEVENS, ET AL

Appellees

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



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REPLY BRIEF OF APPELLANT,  
CAROLE M. RADEY, TRUSTEE

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## LAW AND ARGUMENT

### I. **PROPOSITION OF LAW: 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.**

When does precedent get set aside simply because of a passage of time? Old law is not by definition bad law. Rather, the fundamental principles of our jurisprudence, including the doctrine of *stare decisis*, were derived and created under the salient notion that similar matters addressed by courts across a period of time are treated consistently. Moreover, past decisions, while not always clear for the modern day, provide current readers with the framework and analytical path to address current factual disputes.

Appellant stands steadfast that this Court's "old" decisions support Appellant's suggested Proposition of Law and requires the Eighth District decision in this matter to be reversed. Conversely, Appellees rest on nothing more than a belief that this Court's case law should be disregarded because it is old. Appellees do nothing to explain why nearly identical facts here should be treated differently than the Court addressed in *Matthews v. Krisher* (1899), 59 Ohio St. 562. Nor do the Appellees address why the rules set forth in *Gilpin v. Williams* (1874), 25 Ohio St. 283 or *Ohio Nat. Bank of Columbus v. Boone*, 139 Ohio St. 361 should be disregarded.

In this case, Andrea's Will specified and directed that her father, Andrew, was to receive her *entire* trust estate. Andrea did not limit her father to just the interest portion of the trust estate (as the testator in *Frost, infra*), nor did she place qualifications or conditions upon his right to receive, use, or dispose of any portion of the trust estate. Thus, at Andrea's death, Andrew received everything: the principal, the interest, and residue. Stated

differently, the principal and interest was conveyed testate through Andrea's Will. The residue follows to Andrew through intestacy, R.C. 2105.06, the Statute of Descent and Distribution. In sum, Andrew, upon Andrea's death, obtained an immediate property right in the principal, interest, and residue of the trust immediately upon Andrea's death:

The law favors the vesting of estates at the earliest possible moment, and a remainder after a life estate vests in the remainderman at the death of the testator, in the absence of a clearly expressed intention to postpone the vesting to some future time.

*Boone, supra* at syllabus.

Whether the question is one of testamentary trust, life estate or some other transfer which involves a residue or remainder interest, the result is the same--the remainder or residue vests *immediately* subject to divestiture only if there is a condition:

In our opinion, it descended to the heirs; subject, however, to be divested, by force of the will, in the event that Euretta shall die leaving children; but subsisting in the meantime in the heirs, for the purpose of drawing the possession to them in the event of her death without children. This right in the heirs is an estate in reversion. It is the residue of the whole estate as owned by their father not disposed of by his will. When the reversion takes place, the heirs will hold by virtue of the title which descended to them at the time of his death, and not by virtue of any new title acquired by purchase. And although their estate may be divested upon the happening of an uncertain event, it is now, nevertheless, a vested right.

*Gilpin, supra* at 296.

Appellees assert a single case to support their position, *Cleveland Trust Co. v. Frost* (1957), 166 Ohio St. 329. Appellees' reliance is misplaced. In *Frost*, the testator conveyed to her son only the interest portion of her trust estate. The son did not receive the principal.

Moreover, the testator did include a residuary clause in her documents (unlike the instant case) which permitted this Court to determine Ms. Frost's intent with regard to any residue.

Had Andrea drafted her Will differently and directed either that her heirs at law were to be determined at a later date, like in *Barr v. Denney* (1909), 79 Ohio St. 358,<sup>1</sup> or only conveyed part of the trust interest like in *Cleveland Trust Co. v. Frost* (1957), 166 Ohio St. 329, then under those different facts, Appellees may then be the heirs at law under such hypothetical. *Matthews v. Krisber*, 59 Ohio St. 562, 574. However, neither *Barr* nor *Frost* is relevant or controlling since Andrea intended to give her father everything with no qualifications in her testamentary trust provisions in her Will.

Finally, it must be noted that the Appellees have not even argued that the Eighth District's decision is properly reasoned or legally supported. Appellees appear to be in agreement with Appellant's position that Andrea's Will must be interpreted in accordance with legal rules of construction and not equitable principles like a resulting trust. The only fair conclusion one can reach from a review of Appellees' Brief is that the Eighth District's use of the equitable remedy, a resulting trust, was inappropriate, confusing, and failed to support its decision.

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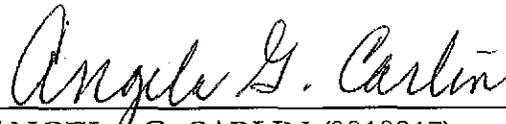
<sup>1</sup> In *Barr v. Denney*, this Court did reverse the Circuit Court and determined that the heirs at law were to be determined at the time of distribution and not the date of the testator's death because the testator's Will specifically required the later vesting and determination of the heirs at law.

## CONCLUSION

The path this Court should follow is a legal one based in decisional law as well as statute. This Court's decisions in *Gilpin*, *Matthews*, *Boone*, and *Tiedtke* stand for the proposition that a Will which conveys an entire interest in property, although subject to divestment, vests a property interest immediately at the time of the Will's Testator's death.

As this Court stated in *Matthews*, "The heir at law can be disinherited only by a devise of the property to another." *Matthews v. Krisber* (1899), 59 Ohio St. 562, 574. Upon Andrea's death, she had one heir at law, her father Andrew. All of her property she devised specifically to Andrew, her father. Any other property which existed at the time of Andrea's death, tangible or intangible, was conveyed by statute, the Statute of Descent and Distribution, R.C. 2105.06, to Andrew. Accordingly, at Andrew's death all of Andrea's property, having already passed by Will or intestacy to Andrew, passes through his Will to the Appellant, Carole Radey.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing Reply Brief of Appellant, Carole M. Radey, Trustee, has been mailed via First Class United States Mail, this 13<sup>th</sup> day of August, 2007, to:

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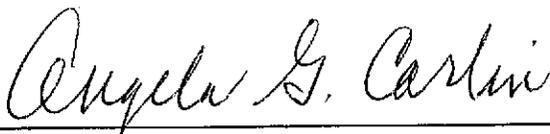
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