

ORIGINAL

IN THE SUPREME COURT OF OHIO

Ronald Blausey, *et al.*,) Case No. 2014-0165
Appellees,) On Appeal from the Ottawa County
vs.) Court of Appeals, Sixth Appellate District,
Decision of December 20, 2013
Richard VanNess, *et al.*,) Court of Appeals Case No. 13-OT-011
Appellants.)
)

APPELLEES' MEMORANDUM IN OPPOSITION TO JURISDICTION

Gary O. Sommer (0006257)
(Counsel of Record)

sommer@hsm-law.net

Kevin A. Heban (0029919)

heban@hsm-law.net

R. Kent Murphree (0065730)

murphree@hsm-law.net

John P. Lewandowski (0085657)

lewandowski@hsm-law.net

Heban, Sommer & Murphree, LLC

200 Dixie Highway

Rossford, Ohio 43460

Telephone: (419) 662-3100

Facsimile: (419) 662-6533

Counsel for Appellees,
Ronald and Jean Blausey.

Alan R. McKean (0031012)

(Counsel of Record)

amckean@mckeanandmckean.com

Martin D. Carrigan (029477)

mdcarrigan@hotmail.com

McKean and McKean

132 W. Water Street

Oak Harbor, Ohio 43449

Telephone: (419) 898-3095

Facsimile: (419) 898-1352

Counsel for Appellants,
Richard VanNess, individually
and as Executor of the Estate of
Verna VanNess.

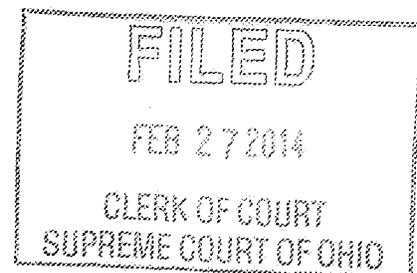
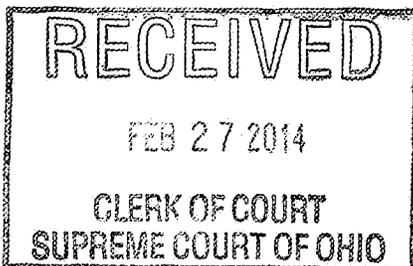


TABLE OF CONTENTS

TABLE OF AUTHORITIESii

I. STATEMENT OF THE CASE 1

II. EXPLANATION WHY THIS CASE DOES NOT INVOLVE A PUBLIC
OR GREAT GENERAL INTEREST 2

III. ARGUMENT *CONTRA* APPELLANTS’ PROPOSITIONS OF LAW 6

 A. The Unique Facts and Circumstances of this Case Justify a Constructive Trust..... 6

 B. The VanNess’ Ancillary Arguments 10

IV. CONCLUSION 12

CERTIFICATE OF SERVICE13

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Ament v. Reassure Am. Life Ins. Co.</i> , 8 th Dist.No. 91185, 2009-Ohio-36	12
<i>American Diabetes Ass’n, Inc. v. Diabetes Soc. of Clinton County</i> , 31 Ohio App.3d 136 (12 th Dist. 1986)	8
<i>Blausey v. VanNess</i> , 6 th Dist. No. OT-13-011, 2013-Ohio-5624	1-3, 5-6
<i>Boice v. Ottawa Hills</i> , 137 Ohio St.3d 412, 2013-Ohio-4769	6
<i>Carrel v. Allied Prods. Corp.</i> (1997), 78 Ohio St.3d 284	4, 8
<i>Estate of Cowling v. Estate of Cowling</i> (2006), 109 Ohio St.3d 276, 2006-Ohio-2418	3, 7-8
<i>Ferguson v. Owens</i> (1984), 9 Ohio St.3d 223	3, 6-8, 10
<i>Franks v. Rankin</i> , 10 th Dist. Case Nos. 11AP-934 and 11AP-962, 2012-Ohio-1920	10-11
<i>In re Estate of Scott</i> , 164 Ohio App.3d 464, 2005-Ohio-5917 (2 nd Dist.)	12
<i>In re Estate of Taylor</i> , 4 th Dist. No. 1957, 1991 WL 110230	8, 10
<i>Ludlow’s Heirs v. Cooper’s Devisees</i> (1844), 13 Ohio 552	3, 4
<i>Mattia v. Hall</i> , 9 th Dist. No. 23778, 2008-Ohio-180	12
<i>McGrew v. Popham</i> , 5 th Dist. 05 CA 129, 2007-Ohio-428	11
<i>Morris v. Investment Life Ins. Co. of America</i> (1966), 6 Ohio St.2d 185	4, 7
<i>Richards v. Washylyshyn</i> , 6 th Dist. No. L-11-1037, 2012-Ohio-3733	11
<i>State ex rel. Sawyer v. Cendroski</i> , 118 Ohio St.3d 50, 2008-Ohio-1171	5
<i>State v. Wirick</i> (1910), 81 Ohio St. 343	6
<i>Thomson’s Lessee v. White</i> (1789), 1 U.S. 424, (Supreme Court of Pennsylvania)	3
<i>Utah Junk Co. v. Porter</i> , 328 U.S. 39 (1946)	12
<i>Walden v. State</i> (1989), 47 Ohio St.3d 47	4

<i>Weyand v. Barnes</i> , 10 th Dist. No. 08AP-857, 2009-Ohio-3239	8
---	---

Constitutional Provisions

Page

Article IV, Section 2(B)(2)	2
-----------------------------------	---

Statutes

Page

Evid.R. 803(3)	11, 12
----------------------	--------

R.C. 5302.22	4
--------------------	---

Other Authorities

Page

50 American Jurisprudence, Statutes, Section 599	4
--	---

S.Ct.Prac.R. 5.02	2
-------------------------	---

I. STATEMENT OF THE CASE

In its decision below, *Blausey v. VanNess*, 6th Dist. No. OT-13-011, 2013-Ohio-5624 (“*Blausey*”), the sixth appellate district accurately and succinctly portrays the facts necessary for this jurisdictional memorandum. (Appellants appended the decision to their Notice of Appeal).

Verna Blausey (“Decedent”) died on June 16, 2008, with no surviving spouse and no children. *Blausey*, ¶ 5, 6. In 2001, Decedent named her neighbors, Appellants Richard and Verna VanNess (“VanNess”), as grantees on a transfer on death deed to a valuable piece of farmland located in Graytown, Ohio (the “real estate”). *Id.* The VanNesses were also named in Decedent’s Will and as agents on her financial and healthcare powers of attorney. *Id.*

Sometime after 2001, Decedent began to believe the VanNesses were talking behind her back and mishandling her finances, which led to a falling out between Decedent and the VanNesses. *Id.*, ¶ 5. As a result of the falling out, Decedent and the VanNesses had absolutely no contact for the last six years of Decedent’s life. The VanNesses did not even attend the Decedent’s funeral.

In 2004, while in the hospital pending surgery, Decedent decided she needed to change her estate plan. *Id.* at ¶ 7, 16 -17. At the time she was seventy-eight (78) years old. Decedent had a meeting with her estate planning attorney (the same attorney who prepared the previous estate plan) where she expressed her intention that she wanted the VanNesses removed from her estate plan and she wanted Appellees Ron and Jean Blausey to “get everything.” *Id.* at ¶ 6-7, 16 -17. Ron and Jean Blausey (the “Blauseys”) were related to Decedent, took care of Decedent (both with finances and healthcare), and Ron Blausey farmed the farmland for Decedent. *Id.*

The attorney prepared and brought the following estate planning documents to the hospital for Decedent to sign: a Will, a healthcare power of attorney, financial power of attorney, and a revocation of prior powers of attorney. *Id.* at ¶ 6-7, 16 -17. All of Decedent’s new estate planning

documents favored the Blauseys. *Id.* The attorney mistakenly failed to prepare a subsequent transfer-on-death deed, or a revocation of the prior one, for Decedent to sign at the hospital. *Id.*, ¶ 7, 16-17. The attorney admitted that the omission was his oversight and contrary to Decedent’s expressed intentions. *Id.* Decedent died and the real estate in dispute (which comprises the entirety of Decedent’s estate) was automatically transferred to the VanNesses. *Id.*

On April 12, 2010, the Blauseys filed the underlying Complaint in the Ottawa County Court of Common Pleas. *Id.* at ¶ 9. The VanNesses filed a motion for summary judgment, which was granted by the trial court on August 15, 2012. *Id.* at ¶ 11. The Blauseys appealed the trial court’s summary judgment entry.

The sixth district court of appeals reversed the trial court’s disposition of the Blausey’s constructive trust claim because “reasonable minds could differ as to whether given the very unique facts and circumstances of this case *** [the VanNesses] could be found to, in a way that is against equity and good conscience, hold and enjoy the legal rights to the [real estate].” *Id.* at ¶ 18. The sixth district remanded the case to proceed to trial. *Id.* at ¶ 19. The VanNesses now appeal the sixth district’s decision.

II. THIS CASE DOES NOT INVOLVE A MATTER OF PUBLIC OR GREAT GENERAL INTEREST

S.Ct.Prac.R. 5.02, derived from Article IV, Section 2(B)(2) of the Ohio Constitution, prescribes the Supreme Court’s jurisdiction to hear appeals from appellate courts that: (1) involve a substantial constitutional question; (2) involve a felony; or, (3) “involve a question of public or great general interest.” The VanNesses concede this case does not involve a constitutional question or a felony. Thus, VanNess’ sole basis for their “jurisdictional appeal” is that this dispute involves a matter of “public or great general interest.” As explained below, it does not.

This dispute pits private individuals fighting over a piece of farmland they both believe is rightfully theirs. It does not involve a constitutional question, it does not infringe upon anyone's civil liberties, it does not involve government actors or government regulation, nor does it impact upon the health, safety, or welfare of Ohio's citizens. There is no reason why the public would be interested in this case at all.

This case is not of "great general interest" either. The VanNesses believe the sixth appellate district "created" some sort of exception to Ohio's transfer-on-death deed statute. (Appellants' Memorandum in Support of Jurisdiction ("Memo."), p. 1). No exception to any statute was created, the sixth district merely found enough factual dispute to reverse the trial court's summary judgment entry because reasonable minds could differ as to the whether the facts warrant the imposition of a constructive trust. *Blausey*, at ¶¶ 16-21. Courts of appeals reverse summary judgment decisions on a daily basis, there is nothing interesting about such an entry.

The first sentence of the VanNess' memorandum suggests that this case is one of first impression. (Appellants' Memo., p.1). That is not correct. Constructive trust and this Court have a long history, dating back to before the Civil War. *Ludlow's Heirs v. Cooper's Devisees* (1844), 13 Ohio 552, 564-565. Constructive trust has actually been an American principle of law since this country's founding. *Thomson's Lessee v. White* (1789), 1 U.S. 424, (Supreme Court of Pennsylvania). The modern Ohio Supreme Court is also very familiar with constructive trust. The oft-cited standard for constructive trust was expounded thirty years ago in *Ferguson v. Owens* (1984), 9 Ohio St.3d 223, was recently renewed in *Estate of Cowling v. Estate of Cowling* (2006), 109 Ohio St.3d 276, 2006-Ohio-2418 and, since *Ferguson*, constructive trust has been discussed by this Court no less than fifteen times. This is not a matter of first impression.

Last, the VanNesses terrifyingly predict that statutory language will hereinafter be destroyed “because any claim involving a constructive trust would plunge otherwise valid real estate transactions into protracted litigation.” (Appellants’ Memo., p.1). However, the VanNesses cite no support for such a petrifying proclamation. That’s because there is none, except for the instant action where the VanNesses, as appellants, are the architects of the very protraction against which they protest. Since the year 1844, undersigned counsel is unaware of any legal authority or empirical data that constructive trust has been “plung[ing] otherwise valid real estate transactions into protracted litigation.” Such hysteria is misplaced.

In light of Ohio’s history with constructive trust, it is hard to believe statutes will hereinafter be “destroyed” as a result of the appellate court’s decision. The transfer-on-death deed is a device created by the Ohio legislature in 2000 (more than 150 years after *Ludlow’s Heirs*). When enacting legislation, the General Assembly is presumed to know the state of the law, including the development of common law. *Walden v. State* (1989), 47 Ohio St.3d 47, 56, 547 N.E.2d 962. “The General Assembly will not be presumed to have intended to abrogate a common-law rule unless language used in the statute clearly shows that intent.” *Carrel v. Allied Prods. Corp.* (1997), 78 Ohio St.3d 284, 287, 677 N.E.2d 795 (Citations omitted). There is no repeal of common law by mere implication. *Id.*

This interpretive maxim applies to equity too. “As a general rule, equitable remedies are not displaced by the enactment of statutory procedures unless legislative intention to supplant them is manifestly clear.” *Morris v. Investment Life Ins. Co. of America* (1966), 6 Ohio St.2d 185, 189, 217 N.E.2d 202, citing 50 American Jurisprudence, Statutes, Section 599. Because the General Assembly is presumed to know the law (including the development of both equitable and common law), and

because the transfer-on-death deed statute does not expressly abrogate the well-established equitable doctrine, it must be assumed constructive trust and R.C. 5302.22 can live harmoniously.

As uninteresting to the general public as this case is, it is even more innocuous. The Court need not worry about shattering past precedents, or even shaping future ones, upon which the validity of Title 53 (Real Estate) allegedly clings. The sixth district's decision itself emphasizes the "*very unique facts and circumstances of this case*, in which ***:

the decedent had a significant falling out with [VanNesses] prior to her death so as to declare her intent to her counsel that the Blauseys 'get everything,' such that new estate planning documents were thereafter executed excluding [VanNesses], and *** [VanNesses] took title and legal rights *** [to the real estate] through an oversight by counsel for decedent in failing to prepare a new transfer of deed upon death in favor of Blauseys ***."

(Emphasis added.) *Blausey*, at ¶ 18. The facts of this case are so exceptional, the need to expound some grandiose proposition of law to heed off "future protracted litigation" is truly unwarranted.

The appellate court's decision found a sufficient factual dispute to overcome summary judgment and grant the Blauseys their day in court – which they have yet to receive despite a May, 2010, filing date. The appellate court reversed the trial court's summary judgment entry and, as a result, no final appealable order is pending. Is this matter even ripe for a Supreme Court "jurisdictional appeal"? This Court does not generally indulge in the issuance of advisory opinions. *State ex rel. Sawyer v. Cendroski*, 118 Ohio St.3d 50, 2008-Ohio-1171, ¶10. It seems unnecessary for the VanNesses to seek guidance from this Court at this time. The decisional law on this case should develop through the traditional litigation process: trial on the merits, judgment/verdict at the trial court level, and then an appeal of the "final appealable order" issued as a result of trial. Even the VanNesses acknowledge that any conclusion of facts found by the appellate court was

“premature[sic] as the issue had not been decided in the trial court.” (Memo, p. 9). Who knows? Perhaps the VanNesses will prevail at trial, rendering this appeal a trifling exercise.

Along the same lines, the VanNess’ two propositions of law contained in their Memorandum were not raised at the sixth district court of appeals. (The VanNess’ six assignments of error in their cross-appeal are fully laid out in *Blausey*, ¶ 3). The issues raised by VanNesses have yet to be briefed in full. The Supreme Court is not a court of first impression, and assignments of error not raised in the intermediate court should not be considered in this Court. *Boice v. Ottawa Hills*, 137 Ohio St.3d 412, 2013-Ohio-4769, ¶ 47 (Lanzinger, J., dissenting), citing, *State v. Wirick*, 81 Ohio St. 343, 346-347.

In sum, the narrowly-tailored facts of this case scream for the judiciary to invoke its equitable powers to impose a constructive trust to “do that which ought to be done.” Anglospheric courts have been doing that for time immemorial (i.e., the Chancery Courts of England have heard petitions in equity since the 17th Century), there is nothing publicly or generally interesting about it. At the very least, the facts of this case overwhelmingly preclude summary judgment. The Blauseys urge this Court to refrain from exercising jurisdiction so this case can proceed to trial as directed by the sixth district court of appeals.

III. ARGUMENT CONTRA APPELLANTS’ TWO PROPOSITIONS OF LAW

A. The Unique Facts and Circumstances of this Case Justify a Constructive Trust

Today’s standard for constructive trust was expounded in *Ferguson v. Owens* (1984), 9 Ohio St.3d 223, wherein the per curiam opinion defined constructive trust as:

*** [A] trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, *or who in any way against equity and good*

conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice.

(Emphasis added.) *Id.* at 225-227 (Citations omitted); See also, *Estate of Cowling v. Estate of Cowling* (2006), 109 Ohio St.3d 276, 2006-Ohio-2418.

In discussing constructive trust, the *Ferguson* court quoted Justice Benjamin Cardozo, who in 1919 commented:

*** A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee. *** A court of equity in decreeing a constructive trust is bound by no unyielding formula.

Ferguson, at 225-226 (Citations omitted). At the end of the day, in considering a constructive trust, courts apply the well known equitable maxim “equity regards done that which ought to be done.” *Id.*

The central thesis of the VanNess’ two propositions of law can really be compressed into one (and also serves as their basis for why this case is “publically important”): that the “[TOD deed] statute does not permit any equitable theories such as *** constructive trust to vary the TOD deed statute.” (Memo., p. 6). The VanNesses argue that because there is no expressed exception for constructive trust in the TOD deed statute, the equitable doctrine should not be considered.

First of all, the VanNesses provide no legal support or citation that their reading of the TOD deed statute precludes application of any equitable doctrine. More important, and as discussed above at pp. 3-4, the silence of a “constructive trust exception” within the TOD deed statute is equally matched by the statute’s silence on whether the 14 year old TOD deed statute abrogates 150 years of accepted Ohio common law. Again, “equitable remedies are not displaced by the enactment of statutory procedures unless legislative intention to supplant them is manifestly clear.” *Morris v.*

Investment Life Ins. Co. of America (1966), 6 Ohio St.2d 185, 189, 217 N.E.2d 202,; *Carrel v. Allied Prods. Corp.* (1997), 78 Ohio St.3d 284, 287, 677 N.E.2d 795 (There is no repeal of the common law by mere implication).

There are many cases in which a constructive trust has been imposed in direct contravention of the expressed language of either a statute or a contract. For example, see: *Ferguson v. Owens, supra* (constructive trust imposed, in favor of decedent's children, over the proceeds of a life insurance policy that expressly named decedent's girlfriend as beneficiary, even though no wrongdoing was asserted against the girlfriend); *Estate of Cowling, supra* (constructive trust imposed, in favor of plaintiffs, over assets of joint and survivor financial accounts even though the Decedent expressly named defendants joint and survivor on the signature cards); *Weyand v. Barnes*, 10th Dist. No. 08AP-857, 2009-Ohio-3239 (Constructive trust imposed over the proceeds of various payable-on-death accounts in favor of individuals not named as beneficiaries, because court found joint owner of account was inequitably withdrawing money. Court imposed constructive trust even though joint account owner had unambiguous contractual and statutory authority under R.C. 1109.07 to withdraw money.); *American Diabetes Ass'n, Inc. v. Diabetes Soc. of Clinton County*, 31 Ohio App.3d 136 (12th Dist. 1986) (Constructive trust imposed in favor of charitable organization not named in decedent's Will. "Cardinal rule is to ascertain decedent's intent," and a constructive trust can be imposed when it is found one's property was acquired by a mistake.); *In re Estate of Taylor*, 4th Dist. No. 1957, 1991 WL 110230, at * 6 (Constructive trust imposed in favor of decedent's company where the decedent forgot to change life insurance beneficiary designation from his wife to the company. No fraud or wrongdoing was found on behalf of either decedent or his wife.).

And it is not just constructive trust. Equitable remedies circumvent unambiguous statutory language all the time. For example, the revised code sections concerning Wills (Title 21), Trusts

(Title 58), and Deeds (Title 53) also do not contemplate expressed exceptions for setting aside those instruments on the basis of undue influence, duress, lack of capacity, mistake, and so forth. Yet, these theories have been used for over a century to successfully attack such instruments. How? Because throughout the ages equity has continued to evolve, which, in turn, allows Ohio's common law to flourish and encourage justice. There comes a point in certain fact patterns where equity must intervene to avoid the absurd and harsh consequences of viewing statutory text in a draconian vacuum.

This case presents such a fact pattern. With the utmost respect to the General Assembly, it is impossible for it to fathom every possible factual scenario and create legislation in response to the various scenarios. Thus, courts today retain their equitable powers to do justice when no statutory remedy is available. Case law is not static, it evolves to create exceptions to various rules and exceptions to those exceptions. Equity, common law, and case law, in turn, continue to develop and progress. Fortunately, in the case sub judice, Ohio allows for equity to do what Decedent desired, but her attorney failed to perform.

When the facts of this case are overlaid against the well-established doctrine of constructive trust, it becomes evident that equity must intervene to avoid an unconscionable result. The VanNesses fell out of favor with the Decedent sometime after she had executed a TOD deed naming them as transfer on death beneficiaries. The Decedent contacted her attorney, the same attorney that had previously prepared the estate plan in favor of the VanNesses, to entirely renounce the VanNesses from her estate plan and, instead, to arrange for the Blauseys to "get everything." The attorney admits to incompletely performing his assignment and neglecting to prepare a document to transfer Decedent's farmland to the Blauseys, as Decedent so requested. The attorney further admits that, but for his mistake, the disputed real estate would today belong to the Blauseys.

When analyzing the disposition of one's assets upon death, the goal should always be to ascertain and carry out the decedent's intent. The VanNesses admit they had no contact with Decedent for the last six years of her life and did not even attend her funeral. The VanNesses do not dare suggest that Decedent intended for them to get the real estate, her sole asset, upon her death because the answer is so obviously "no." The attorney's affidavit and notes are clear: the Blauseys were to "get everything." So, instead, the VanNesses turn a blind eye to the facts and try to re-characterize the issue of this case as one of strict statutory construction. This approach allows the VanNesses to ignore Decedent's intent while staking claim to her sole asset. Luckily, the equitable doctrine of constructive trust illuminates such a myopic vision of the facts.

B. The VanNess' Ancillary Arguments

There remain a few extraneous items in the VanNess' memorandum that merit a response.

First, the VanNesses continue to clamor that they "did nothing wrong." (Memo, p. 10). That does not matter. As cited above, in decreeing a constructive trust "a court is bound by no unyielding formula." *Ferguson*, at 225-226. The *Ferguson* court acknowledged that a constructive trust is *usually* invoked when property is obtained by fraud or unjust enrichment, but that it "may also be imposed where it is against the principles of equity that the property be retained by a certain person even though the property *was acquired without fraud.*" (Emphasis added.) *Id.*, at 226. In *Ferguson*, a constructive trust was imposed, in favor of decedent's children, over the proceeds of a life insurance policy that expressly named decedent's girlfriend as beneficiary. No wrongdoing was ever alleged against the girlfriend. *Id.* In *Franks v. Rankin*, 10th Dist. Case Nos. 11AP-934 and 11AP-962, 2012-Ohio-1920, the tenth appellate district decided that unjust enrichment is also not a necessary predicate and that a constructive trust can be imposed simply for "mistake *** or through the wrongful disposition of another's property." *Rankin*, at ¶ 57. See also, *In re Estate of Taylor*, 4th Dist.

No. 1957, 1991 WL 110230, at * 6 (Constructive trust can be imposed even if defendant did nothing wrong).

Though the VanNesses may not have “done anything wrong,” they did not do anything right either. They did not talk to Decedent (their elderly neighbor) for over six years after she believed the VanNesses to be mishandling her finances and talking about her behind her back. They did not even attend Decedent’s funeral! Instead, they rid themselves totally from Decedent’s life and now claim the “right” to Decedent’s land as a result of an attorney’s admitted mistake.

Along the same lines, the VanNesses brandish as their second proposition of law that the Blauseys’ claim fails because they never had an interest in the property. (Memo., p. 9). Neither did the VanNesses. As transfer-on-death beneficiaries, the VanNess’ interest was inchoate until Decedent’s death. After all, Decedent could have, and in fact thought she did, named the Blauseys as beneficiaries of her farmland upon death. If anyone had any sort of equitable interest in the real estate, it was the Blauseys. Ron Blausey farmed and took care of the real estate from 2002 - 2009, and the Blauseys were Decedent’s caregivers for the last six years of her life. The VanNesses lived next door, yet did nothing to help Decedent.

The VanNesses also suggest the attorney’s statements concerning Decedent’s expressed intentions during the estate planning meeting in 2004 are barred as inadmissible hearsay. (Memo., p. 4, fn. 1; p. 6). This is the first time such an objection has been raised, but it is meritless nevertheless. Evid.R. 803(3) clearly allows “a statement of the declarant’s then existing state of mind, *** (such as intent, plan, motive ***).” See, *McGrew v. Popham*, 5th Dist. 05 CA 129, 2007-Ohio-428, ¶ 30 (finding the decedent’s hearsay statement regarding her intent to transfer property was admissible under Evid.R. 803(3)); *Richards v. Washylyshyn*, 6th Dist. No. L-11-1037, 2012-Ohio-3733, ¶ 28 (statements made by decedent that he would “take care of” plaintiff were admissible under Evid.R.

803(3); *Ament v. Reassure Am. Life Ins. Co.*, 8th Dist.No. 91185, 2009-Ohio-36, ¶¶ 24-31 (decedent's statements regarding why he named beneficiary on life insurance policies admissible per Evid. R. 803(3)).

Last, the VanNesses thoroughly discuss two cases in their memorandum: *In re Estate of Scott*, 164 Ohio App.3d 464, 2005-Ohio-5917 (2nd Dist.) and *Mattia v. Hall*, 9th Dist. No. 23778, 2008-Ohio-180. (Memo., pp. 7-8). Both of these cases involve TOD deeds that were not properly recorded, lacked requisite formalities, and were determined ineffective. In the captioned matter, the Blauseys do not attack the formalities of the 2001 TOD deed to VanNesses at the time it was created. Rather, they simply assert that the VanNesses should not "in equity and good conscience hold and enjoy legal title to the property" and that equity should do that which ought to be done. The VanNess' two cited cases are irrelevant.

IV. CONCLUSION

The sixth district court of appeals found, based on the unique facts and circumstances of this case, that reasonable minds could indeed find a constructive trust should be imposed upon the subject real estate to satisfy the demands of justice. In essence, all the appellate court did was reverse the trial's court's summary judgment entry and remand this case to proceed to trial. It remains a mystery how such a run-of-the-mill decision involves "a question of public or great general interest."

In reality, the VanNesses are trying desperately to avoid a review of the facts at trial because they cannot withstand the scrutiny. Hence, they continue to declare "too bad, we have the last deed" and now frame the issue as one of literal statutory interpretation. Warning against the "tyranny of literalness," the great Justice Felix Frankfurter correctly observed that "literalness may strangle meaning." *Utah Junk Co. v. Porter*, 328 U.S. 39, 44 (1946). Here, it suffocates justice. The evidence in the record (which consists entirely of the attorney's uncontroverted affidavit that he made a

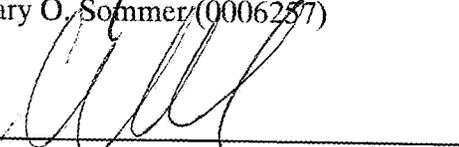
mistake) is clear and convincing that Decedent intended for the Blauseys to receive her farmland upon her death.

Based on the foregoing, the Blauseys respectfully ask this Court to leave undisturbed the sixth district's decision reversing summary judgment and remanding this case to proceed to trial.

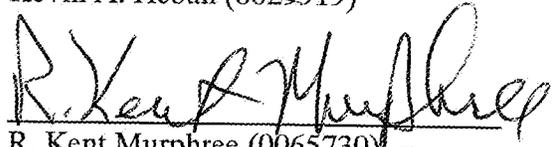
Respectfully submitted,



Gary O. Sommer (0006287)



Kevin A. Heban (0029919)



R. Kent Murphree (0065730)



John P. Lewandowski (0085657)
HEBAN, SOMMER & MURPHREE, LLC
200 Dixie Hwy.
Rossford, Ohio 43460
Telephone: (419) 662-3100
Facsimile: (419) 662-6533
Counsel for Appellees,
Ronald and Jean Blausey

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by ordinary U.S. Mail, postage prepaid, upon Alan R. McKean and Martin D. Carrigan, Counsel for Appellants, at 132 W. Water Street, Oak Harbor, Ohio 43449 this 25th day of February, 2014.



An attorney for Appellees,
Ronald and Jean Blausey.