

No. 2017-1031

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT
WARREN COUNTY, OHIO
CASE NO. CA2016-08-072

EMBASSY HEALTHCARE,
Appellee,

v.

CORA SUE BELL,
Appellant.

MEMORANDUM IN SUPPORT OF APPELLEE EMBASSY HEALTHCARE'S MOTION FOR RECONSIDERATION/CLARIFICATION OF AMICUS CURIAE OHIO HEALTH CARE ASSOCIATION

Under S.Ct.Prac.R. 18.02(C), Amicus Curiae Ohio Health Care Association (“Amicus Curiae”) supports the motion for reconsideration/clarification of Embassy Healthcare, which asks this Court to clarify and reconsider its December 12, 2018 decision finding that a creditor’s claim for unpaid necessities must first be presented to the estate of a decedent under R.C. 2117.06 before that creditor can pursue a claim for necessities under R.C. 3103.03.

Amicus Curiae is concerned that the Court’s decision creates an ambiguity that will lead to further confusion among its members. Specifically, the Court’s decision did not overrule *Ohio State University Hospital v. Kinkaid*, 48 Ohio St.3d 78 (1990). Thus, *Kinkaid*

remains good law and appears to provide an exception to the rule created by the majority – that all claims for unpaid necessities are claims that must be first presented to a decedent’s estate before pursuing a claim for necessities under R.C. 3103.03.

Under *Kinkaid*, a health care creditor is permitted to pursue a R.C. 3103.03 claim against a surviving spouse as long as it can establish through a judicial finding that no estate was opened because the decedent passed without any probatable assets. In the present case, however, the majority decision requires health care creditors to present their claims even when there are no probatable assets and no estate is opened. Thus, the majority decision appears to be in conflict with *Kinkaid*.

Conclusion

The Court’s December 12 decision appears to be in conflict with its previous decision in *Kinkaid*, and both clarification and reconsideration are needed for the two decisions to coexist. Without guidance by this Court, courts and litigants will be confused which law to follow and how to follow it.

Amicus Curiae respectfully asks this Court to clarify and reconsider its decision.

Respectfully submitted,

/s/ David S. Brown

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PROOF OF SERVICE

A copy of the foregoing was served on December 24, 2018 per S.Ct.Prac.R. 3.11(C)(1) by electronic mail to:

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