

[Cite as *In re Estate of Boyd*, 2009-Ohio-5402.]

IN THE COURT OF APPEALS FOR CHAMPAIGN COUNTY, OHIO

IN THE MATTER OF THE ESTATE
OF M. BRIAN BOYD, DECEASED

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C.A. CASE NO. 2008 CA
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T.C. NO. 2006 ES 159B

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(Civil appeal from Common
Pleas Court, Probate

Division)

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OPINION

Rendered on the 9th day of October, 2009.

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DONOVAN, P.J.

{¶ 1} Plaintiff-appellant Melissa A. Boyd (hereinafter “Melissa”) appeals a
decision of the Champaign County Probate Court which equally divided the
\$40,000.00 family allowance, pursuant to R.C. § 2106.13(B)(4), between Michael

Brian Boyd's three children, Ashley Boyd, Briana Boyd, and Michael Ryan Boyd. Melissa filed a timely notice of appeal with this Court on November 6, 2008.

I

{¶ 2} On September 18, 2006, Michael Brian Boyd died intestate. At the time of his death, the decedent left three minor heirs: twins Ashley and Briana Boyd (hereinafter "Ashley and Briana"), born September 25, 1988; and Michael Ryan Boyd (hereinafter "Ryan"), born September 7, 1997. Ashley and Briana were the children of the decedent and Jean Ann Westfall. Westfall and the decedent divorced in 1988 or 1989. Ryan is the son of the decedent and Melissa, who were married in 1994, but subsequently dissolved their marriage in 1998 in Union County, Ohio.

{¶ 3} The probate court held a hearing on October 6, 2008, pursuant to R.C. § 2106.13(B)(4), in order to determine an equitable apportionment of the \$40,000.00 family allowance between the decedent's three minor heirs. On October 7, 2008, the probate court issued a decision which ordered the family allowance of \$40,000.00 to be distributed equally among the three children.

{¶ 4} It is from this judgment that Melissa now appeals.

II

{¶ 5} Although not phrased properly, Melissa's sole assignment of error is as follows:

{¶ 6} "THE ALLOWANCE OF SUPPORT FOR A NINE YEAR OLD CHILD OF A DECEDENT IS GREATER THAN THAT FOR A CHILD ONE WEEK FROM Plaintiff-appellant Melissa A. Boyd (hereinafter "Melissa") appeals a decision of the

Champaign County Probate Court which equally divided the \$40,000.00 family allowance, pursuant to R.C. § 2106.13(B)(4), between Michael Brian Boyd's three children, Ashley Boyd, Briana Boyd, and Michael Ryan Boyd. Melissa filed a timely notice of appeal with this Court on November 6, 2008.

{¶ 7} On September 18, 2006, Michael Brian Boyd died intestate. At the time of his death, the decedent left three minor heirs: twins Ashley and Briana Boyd (hereinafter "Ashley and Briana"), born September 25, 1988; and Michael Ryan Boyd (hereinafter "Ryan"), born September 7, 1997. Ashley and Briana were the children of the decedent and Jean Ann Westfall. Westfall and the decedent divorced in 1988 or 1989. Ryan is the son of the decedent and Melissa, who were married in 1994, but subsequently dissolved their marriage in 1998 in Union County, Ohio.

{¶ 8} The probate court held a hearing on October 6, 2008, pursuant to R.C. § 2106.13(B)(4), in order to determine an equitable apportionment of the \$40,000.00 family allowance between the decedent's three minor heirs. On October 7, 2008, the probate court issued a decision which ordered the family allowance of \$40,000.00 to be distributed equally among the three children.

{¶ 9} It is from this judgment that Melissa now appeals.

{¶ 10} Although not phrased properly, Melissa's sole assignment of error is as follows:

{¶ 11} MAJORITY UNDER R.C. SECTION 2106.13(B)(4)."

{¶ 12} In her only assignment of error, Melissa contends that the probate court abused its discretion when it divided the family allowance equally between the

decedent's three minor children. Specifically, Melissa argues that since Ashley and Briana were only one week from turning eighteen, the age of majority, when the decedent passed away, they should not be entitled to an equal division of the family allowance along with Ryan, who was nine-years old on the decedent's date of death. Rather, as Melissa asserts, the allocation of the family allowance should be based upon the length of time during which the decedent's legal obligation to support the minor child continues. According to Melissa, the correct allocation should have been to pay the value of one week's child support to the seventeen-year old twins, and distribute the remainder of the funds to nine-year old Ryan.

{¶ 13} R.C. § 2106.13(A) & (B)(4) state in pertinent part:

{¶ 14} "(A) If a person dies leaving a surviving spouse and no minor children, leaving a surviving and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive, subject to division (B) of this section, in money or property the sum of forty thousand dollars as an allowance for support. *** The money or property set off as an allowance for support shall be considered estate assets.

{¶ 15} "(B) The probate court shall order the distribution of the allowance for support described in division (A) of this section as follows:

{¶ 16} "****(4) If the person died leaving minor children and no surviving spouse, in equitable shares, as fixed by the probate court in accordance with this division, to the minor children. *In determining equitable shares under this division, the probate shall consider the respective needs of the minor children and allocate*

to each minor child the share that is equitable in light of the child's needs."

{¶ 17} Melissa places a great deal of emphasis on the fact that Ashley and Briana were only one week away from their eighteenth birthday when their father died. R.C. 2106.13(B)(4), however, makes no distinction between a minor aged nine or one aged seventeen. A minor is simply an individual who has not yet reached the age of eighteen. Thus, Melissa's theory regarding allocation of the family allowance is unpersuasive.

{¶ 18} Moreover, the record establishes that when his father died, Ryan received approximately \$500,000.00 in the form of proceeds from the decedent's life insurance, as well as other non-probate assets. The probate court, found that Ashley and Briana, on the other hand, "received substantially less" from their late father's estate. The probate court, therefore, found that "fairness requires the family allowance be divided equally among the decedent's three children."

{¶ 19} Initially, we note that the probate court correctly considered the additional monies received by Ryan when it assessed the "needs" of each of the decedent's minor children. We agree that it is significant that Ryan received such a substantial sum upon the decedent's passing in addition to his portion of the family allowance provided for by statute, while the record indicates that the decedent's twin daughters received a great deal less from the decedent's estate outside of their respective portions of the family allowance. Thus, the probate court did not abuse its discretion when it divided the family allowance under R.C. 2106.13(B)(4) equally between the decedent's three minor children.

{¶ 20} Melissa's sole assignment of error is overruled.

III

{¶ 21} Melissa's sole assignment of error having been overruled, the judgment of the probate court is affirmed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

- Ronald C. Tompkins
- Darrell L. Heckman
- Hon. Brett A. Gilbert
- Hon. Lori L. Reisinger