

2024 ESTATE PLANNING AND LAW SYMPOSIUM

May 16, 2024

LEGISLATIVE UPDATE

Presenter

Hon. Kelly Badnell

STARK COUNTY BAR ASSOCIATION
2024 ESTATE PLANNING AND ELDER LAW SYMPOSIUM

LEGISLATIVE UPDATE

Honorable Kelly L. Badnell
Richland County Probate Court
May 16, 2024

134th General Assembly
(Jan. 4, 2021 – Dec. 31, 2022)
Enacted Legislation

Senate Bill 202 – Effective April 2, 2023

- **Disability Rights**
This bill enacted R.C. 2131.03 through R.C. 2131.036, which generally prohibit a person's disability from being used to deny or limit custody, parenting time, visitation, adoption, or service as a guardian or foster caregiver. The bill also states that this prohibition shall not be construed as a guarantee or granting a right to conduct the activities described (R.C. 2131.031(B)).

“Disability” and “supportive services” are defined in R.C. 2131.03. “Disability” has the same meaning as in the ADA of 1990, 42 U.S.C. 12102. “Supportive services” means any service provided through a program or agency at the federal, state or local level that is intended to assist a person with a disability with day-to-day responsibilities and activities, including those associated with the care and supervision of a minor.

Courts, public children service agencies, private child placing agencies or non-custodial agencies, when determining whether to grant a person a right to conduct activities listed in R.C. 2131.031(A), must determine whether modification or support services are necessary and reasonable. R.C. 2131.032. If modifications or supportive services are determined to be necessary and reasonable, the court or agency that made the determination may require the modification or services to be implemented to help the disabled person. The necessity of the services shall be reviewed after a reasonable amount of time. R.C. 22131.033. If the modification and services are determined not to be reasonable, the court or agency shall deny or limit the conduct or exercise of authority of the person with the disability. R.C. 2131.034. A person with a disability may bring an action or file a motion challenging the required modification or service or denial of limitation of the conduct or exercise of authority. R.C. 2131.035.

- **Right of Disposition**
The list of factors a probate court must consider when assigning the right of disposition was expanded by this bill. It also requires the probate court to make a finding of “compelling reasons” based upon the expanded factors prior to granting an application for disinterment. (R.C. 2108.82).
- **Disinterment**
R.C. 517.23 and 517.24, were revised to incorporate the statutory changes to the Ohio Right of Disposition Law (R.C. 2108.70- 2108.90) in the disinterment section. The amendment clarifies that the priority to disinter a body buried in a cemetery belongs to a person designed by the decedent under the Ohio Right of Disposition Law. If there is no designation, then the surviving spouse has priority under R.C. 517.23. The application process for disinterment has also been revised. R.C. 517.24.

Updated disinterment forms, Application for Order to Disinter Remains (SPF 25.0) and an Order to Disinter Remains (SPF 25.6), are forthcoming.

- **Anti-Lapse**
SB 202 amends the definition of “devise” to include a “primary devise”. The amendment specifies that it must be given retroactive effect to the fullest extent permitted under the Ohio Constitution, except in situations where real property has been transferred and recorded. (R.C. 2107.52).
- **Minor Beneficiary Nondisclosure**
S.B. 202, modified R.C. 2111.18 to state that if a beneficiary is a minor, records of the proceedings are not subject to disclosure to any person who is not a party to the settlement. Further, the records shall not be made available for publication or inspection, except upon a motion and show of good cause.
- **Presentment of Claims Against an Estate**
This amended R.C. 2117.06(A) to increase the ways in which a creditor has to present a claim against an estate after the appointment of a fiduciary and prior to the filing of a final account or certificate of termination. A creditor may now present the claim to the fiduciary’s attorney and to the probate court.
- **Irrevocable Trusts:**
Enacted new sections R.C. 5801.20 – 5801.24, which creates an optional process by which the trustee of an irrevocable trust may conclude the trustee’s administration of the trust. This new process does not apply to testamentary trusts subject to supervision of probate court. The new optional process applies in two situations: (1) when the trust is to terminate as a result of one or more “trust-terminating distributions” or (2) when the trustee is resigning, or has been removed, and will be delivering the trust assets to a successor trustee. The process may be used in combination with or in lieu of other options or proceedings available under law. A “trust-terminating” distribution means a distribution that, when complete, will distribute the remaining trust assets and effectively terminate the trust.

SB 210-Postnuptial Agreements

This bill was effective on March 23, 2023, establishes postnuptial agreements and treats them the same as antenuptial agreements. It allows for modification of antenuptial and postnuptial agreements. It establishes requirements for agreements entered into between spouses that alter legal relations and provides that these agreements meet the requirements are valid and enforceable, with or without consideration. Allows for a court to terminate a decree of legal separation on a motion signed by both spouses.

HB 279-Wrongful Death

This bill was effective April 4, 2023. This bill requires “other next of kin” to file a Notice of Claim with the probate court. This bill amended R.C. 2125.02 to define “other next of kin” which means “the nearest surviving relatives to the decedent after accounting for the parents, children, or spouse. R.C. 2125.02(I)(7). This change codifies the leading case on this issue *In re Estate of Payne*, 2005-Ohio-2391.

HB 279 also clarified who is an interested person entitled to notice pursuant to Sup.R. 70(B). R.C. 2125.02(B)(2). Whether “other next of kin” are interested persons entitled to notice now depends on the timing of the filing of the WD settlement application.

If the WD settlement application is filed before or on the that is 2 years from the date of the decedent’s death, then ALL “other next of kin” are interested persons entitled to Notice. R.C. 2125.02(B)(2).

If the WD settlement application is filed after 2 years from the date of decedent’s death, then no ”other next of kin” are interested persons, UNLESS they filed a Notice of Claim with the probate court prior to or on the date that is 2 years from the decedent’s date of death to remain interested persons.

The amendment does not clarify where the Notice of Claim is to be filed. Should it be filed in the probate court in the county of residence of the decedent or in the county where the accident occurred?

This amendment is prospective. Therefore, it only applies to deaths after its effective date April 4, 2023.

135th General Assembly
(Jan. 3, 2023 – Dec.31, 2024)
Introduced Legislation

HB 5 - Adoption Modernization

This bill was introduced in the Ohio House on February 15, 2023 and was passed by the House on June 27, 2023. It was introduced in to Ohio Senate on September 12, 2023, and was referred to the Senate judiciary committee the next day. However, there has been no further action on this bill since that time. There are currently discussions on changes to this bill with the Ohio Adoption Roundtable.

The bill consists of the OAPJ's modernization committee's proposal which includes new statutory definitions, consistent language and a few new additions including increasing birth parent reimbursement up to \$6,000.00.

HB 172/SB 46 – Electronic Wills (Electronic Estate Planning / Remote Witnessing)

These bills would allow for remote witnessing of electronic wills and other estate planning documents. HB 172 was introduced May 16, 2023, and was referred to the Civil Justice Committee on May 23, 2023. HB 172 has had no hearings. In the Ohio Senate, SB 46 was introduced February 7, 2023, and referred to the judiciary committee the next day. Similar bills were previously introduced in the 134th General Assembly and were not passed. The OAPJ is opposed to these bills.

HB 249 – Psychiatric Deterioration Standard

This bill was reintroduced in the House on August 1, 2023. It was referred to the behavioral health committee on September 12, 2023. This bill would create a new mental illness standard for psychiatric deterioration. The previous version, from the 134th General Assembly, passed out of the House by a vote of 75-17 on November 16, 2022, but was not heard in the Senate.

SB 83/HB 151 – Ohio Higher Education Enhancement Act

This bill would modify the law on endowments, potentially creating an action to reopen estates. This bill was passed out of the Senate on May 17, 2023. It was introduced in the house on May 22, 2023, and had hearings in the House Higher Education Committee. On January 3, 2024, it was re-referred to the House Rules and Reference Committee. A companion bill was introduced in the House on April 6, 2023, and was referred to the Higher Education Committee, on April 18, 2023.

HB 33-Biennial Budget (Passed Legislation)

This bill changes language on out-of-state fiduciaries in R.C. 2109.21, by adding a private trust company or family trust company organized under the laws of any state. This bill was signed by the Governor, July 4, 2023, and the non-fiscal provisions took effect on October 3, 2023.

Pending Legislation

Guardianship Modernization

This is a reintroduction of HB 488 from the Ohio 134th General Assembly is pending. This bill contains the OAPJ's recommendation for modernizing Chapter 2111 of the Ohio Revised Code.

HR 4366 – Consolidated Appropriations Act, 2024 118th Congress March 13, 2024

The Veterans' Administration has required that veterans who were determined to be unable to manage their finances and were appointed a fiduciary to be reported to the NICS system. The VA also has required that for a veteran to be admitted to their facilities that they had to be appointed a guardian. However, Congress passed this act which included a Veterans Administration funding bill. The VA bill contained a provision that now requires the VA to seek a separate court order declaring a veteran is a danger to themselves or others before they can be reported to NICS.

Ohio Supreme Court Proposed Rule Changes.

The Ohio Supreme Court has submitted its proposed rules changes for this year. The proposed changes include the following Rules:

- Ohio Criminal Rules 4 – Amends the time to hold a probable cause review, on an arrest without a warrant when the person remains in custody, to within 48 hours of the arrest. It also amends the time for the defendant to have a hearing to no later than two court days after arrest.
- Ohio Appellate Rule of Procedure 26 – Amends the rule to expand the category of people who may apply for a reopening of their appeal based upon ineffective assistance of counsel. It would add delinquent children in juvenile cases to this process.

- Ohio Rules of Civil Procedure 4, 4.7, and 45 – multiple amendments to these rules include: Clarifies who may sign for service by certified or express mail (the person accepting delivery is required to sign the receipt); updated language for people serving subpoenas; for civil waivers of service it clarifies that a waiver signed by a party’s attorney is presumed to be authorized; anyone signing a waiver must provide an address, e-mail or mailing, for future service; clarifies waiver of service guidelines for domestic relations and civil protection orders.
- Ohio Rule of Civil Procedure 30 – depositions
Limits the duration of a deposition on one day to 7 hours. This amendment would align the Ohio rule with its federal counterpart Fe. R. Civ. P. 30(d).
- Ohio Rule of evidence 702 – Expert Witness Qualification
Rule 702 sets forth the criteria which must be met for a witness to testify as an expert. This amendment would add that the criteria must be proven under a “more likely than not” standard.
- Juvenile Rules of Procedure 1
This amendment will exclude all private child related matters (CPS not involved) from the juvenile rules, leaving the civil rules to govern all private child related matters for custody, parenting time, companionship, visitation, and child support cases.