

RECENT LEGISLATION AFFECTING OHIO PROBATE PRACTICE

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The following brief comments relate to the recently enacted Senate Bill 3, sponsored by the Committee on Probate and Trust Law, Senate Bills 381 and 415, and House Bills 96 and 288—legislation within the purview of the Committee. It is firmly believed that the resulting changes will prove of material value in improving probate practice in the applicable areas.

SENATE BILL 3

This bill amended Ohio Revised Code sections 1335.01, 2101.24, 2107.34, 2117.02, and 2127.20 and enacted sections 2107.63 and 2111.471. Especially noteworthy changes are created by Revised Code sections 1335.01 and 2107.63 which relate to living and testamentary trusts. These changes have long been needed and will clarify as well as modify existing probate practice. The effective date was October 5, 1961.

A. Section 1335.01

The new matter added to this section provides that a trust shall not be declared invalid because its corpus consists only of primary or contingent rights to receive the proceeds of life insurance contracts, endowment contracts, or other contractual interests payable at death or by reason of death or because the corpus consists of assets having only a nominal value. The amendment was expressly made applicable to trusts created both before and after the effective date of the section.

B. Section 2101.24

The amendment to this section expressly confers jurisdiction upon the probate court to terminate a testamentary trust in any case in which a court of equity may do so. This new provision clarifies and enlarges the jurisdiction of the probate court.

C. Section 2107.34

This section before amendment provided that if after making a will, the testator had a child born alive or adopted a child or designated an heir and no provision had been made for such child or heir

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in the will, the child or heir would nevertheless take his intestate share. Under the amended section, the pretermitted heir will still receive an intestate share, but if the testator is survived by a spouse, the amount subject to the heir's intestate share will be limited to the portion of the estate not devised or bequeathed to, or for the use of, the surviving spouse. In other words, property going to the surviving spouse is not subject to the section.

D. Section 2117.02

Instead of the previous three months time limit, the amendment to this section allows an executor or administrator four months after the date of his appointment in which to present any claim which he has against the estate to the probate court for an allowance. Thus, the permissible period for the presentation of claims is now the same for both creditors and executors or administrators.

E. Section 2127.20

The amendment (not sponsored by the committee) is a grammatical clarification of the statute which now reads:

"The probate court, with the consent of the mortgagee, may authorize the sale of lands subject to mortgage, but *the giving of any such consent shall release the estate of the decedent or ward should a deficit later appear.*" (*New matter in italics.*)

F. Section 2107.63

This new section incorporates in statutory form the doctrine of Facts of Independent Significance and validates testamentary additions or "pour overs" to the corpus of existing trusts, intervivos or testamentary. The law in Ohio was not clear and this section will have the long needed effect of clarifying the area.¹

Six specific issues are resolved by this section. First, it specifically validates a devise, bequest or appointment of real or personal property or any interest therein to a trustee of an existing trust identified in the will. Second, it specifies that the property so devised, bequeathed or appointed shall be added to or become a part of such trust and shall be administered as a part thereof, subject to the jurisdiction of the court having jurisdiction of such trust. Third, the bequest, devise or appointment shall be governed by the terms of such trust as they existed on the date of the testator's death even if such trust had been modified or amended after the execution of the testator's will which contained the "pour over" provisions unless the will specifically provides otherwise. Fourth, the devise, bequest or ap-

¹ See *Bolles v. Toledo Trust Co.*, 144 Ohio St. 195, 58 N.E.2d 381 (1944).

pointment shall be invalidated if the trust which was to receive the "pour over" is terminated or completely revoked prior to the testator's death. Fifth, the provisions of the section do not affect any of the rights of election accorded the surviving spouse under Revised Code section 2107.39. Finally, it is specifically stated that the section will apply to wills executed either before or after the effective date of the section.

The importance and effect of the amendment to Revised Code section 1335.01 discussed above, especially in relation to section 2107.63, is now obvious.

G. Section 2111.471

Under the provisions of this new section, a probate court can, on its own motion or the motion of the guardian or of any interested party, transfer its jurisdiction over the guardian and ward when the ward has moved to another county within the state and acquired a new residence or legal settlement in that county to the probate court of that county, with the latter court's consent, provided that to do so is in the best interests of the ward. The procedure to effectuate this transfer of jurisdiction is related in detail in the section.

SENATE BILL 381

The bill amends Section 5731.42 of the Revised Code in two ways. First, an exception to the general requirement of obtaining the tax commissioner's consent prior to delivery or transfer of property of the decedent is made where the surviving spouse of the decedent is the joint owner with rights of survivorship in any deposit of the decedent but only as to one-half of such jointly owned deposit. Second, the requirement of notice to the tax commissioner and the county auditor by an institution or person having securities or assets in possession, control or custody when no consent has been given in regard to the delivery or transfer of such securities, assets, deposits or property belonging to or standing in the name of the decedent or in the joint names of the decedent and another who is not the decedent's surviving spouse has been changed. The old section required the notice to be given at least ten days prior to such delivery or transfer while the amended section allows notice within thirty days from the date of such delivery or transfer. The effective date of this bill was September 12, 1961.

SENATE BILL 415

As a result of this bill, amending Revised Code section 5731.06, up to two thousand dollars of the proceeds from any employer death benefit plan which are payable upon the death of a participant in the

plan are not considered as property passing within the meaning of Revised Code section 5731.02 as long as the proceeds are not payable to the participant's estate. An employer death benefit plan is defined for the purpose of this section as "any uninsured plan, fund, or program either unfunded or funded which is established by any person, firm or corporation to provide the beneficiaries of a participating employee with benefits payable upon the death of such employee." This amendment has the effect of equating the proceeds of employer death benefit plans, at least as to the sum stated above, with the proceeds of life insurance policies insofar as inheritance taxes are concerned. The effective date was October 16, 1961.

HOUSE BILL 96

Section 2741.04 of the Revised Code, as amended by House Bill 96, now allows an entry of dismissal in a civil action brought to contest the validity of a will under Revised Code section 2741.01 if the entry has been approved by all the parties to the action or their counsel. Formerly, the issue once raised had to be tried by a jury. The effective date of this bill was August 11, 1961.

HOUSE BILL 288

Prior to the enactment of this bill, Revised Code section 2117.26 authorized the reimbursement of a surviving husband from his wife's estate for her funeral expenses paid by him to the extent that the rights of other creditors of her estate were not thereby prejudiced. The present section, as amended by House Bill 288, refers to "surviving spouse" and "deceased spouse." Thus, the surviving spouse, whether husband or wife, is entitled to reimbursement for the funeral expenses of the deceased spouse if the expenses were paid by the surviving spouse to the extent that the rights of other creditors will not be prejudiced. The effective date was August 4, 1961.