

OHIO COURT OF APPEALS, FIFTH APPELLATE DISTRICT

In re Estate of Tullos

2012 Ohio 1114 (Ohio Ct. App. 2012) · No. 11CAF090084 · Decided March 16, 2012

SUMMARY

The Fifth District Court of Appeals held that the appointment of an estate administrator was premature because the surviving spouse and next of kin were not provided the notice required by Ohio Revised Code sections 2113.06 and 2113.07. The court reversed the probate court's judgment and remanded for notice and a determination regarding priority to administer the estate. It also held that the filing of the application was not void and did not deprive the probate court of jurisdiction.

CASE DETAILS

COURT	Ohio Court of Appeals, Fifth Appellate District
WRITING FOR THE COURT	Sheila G. Farmer; W. Scott Gwin, P.J.; William B. Hoffman, J.; Sheila G. Farmer, J.
JURISDICTION	Ohio
DECIDED	March 16, 2012
DOCKET	11CAF090084
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Delaware County Court of Common Pleas, Probate Division, after the probate court denied the surviving spouse's and next of kin's motion to set aside the appointment of an administrator.
STANDARD OF REVIEW	The court reviewed the probate court's legal determination concerning statutory notice and the validity of the administrator's appointment as a matter of law.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Shirley Tullos, William Tullos v. J. Michael Evans, Administrator, American Postal Workers' Union

TOPICS

- probate procedure
- estate administration
- probate
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the probate court erred by appointing an administrator without giving the surviving spouse and next of kin the notice required by Ohio Revised Code 2113.07 or obtaining a waiver of notice.
2. Whether the failure to provide statutory notice made the appointment premature and required reversal and remand.
3. Whether the filing of the application for authority to administer the estate was void or deprived the probate court of jurisdiction.

HOLDINGS

1. Under R.C. 2113.07, before appointing an executor or administrator, the probate court must obtain a waiver from persons having priority to administer or serve those persons with notice for the purpose of determining whether they wish to accept or renounce administration.
2. Because the surviving spouse and next of kin were not given the notice required by statute, the appointment of the administrator had to be reversed and the matter remanded for notice and a determination under R.C. 2113.06 and 2113.07.
3. The filing of the application for authority to administer the estate was not void and did not deprive the probate court of jurisdiction; the defect was the premature appointment without statutory notice.

KEY QUOTATIONS

“Because appellants were not given notice as required by statute, the appointment of the administrator was premature.” (¶18)

“the filing of the application for authority to administer the estate was not void because the commencement of the action began with the December 30, 2010 filing and did not divest the trial court of jurisdiction to determine the appointment of the administrator.” (¶19)

FACTUAL BACKGROUND

William Lawrence Tullos died on July 10, 2010. On December 30, 2010, J. Michael Evans applied for authority to administer the estate based on a creditor's claim, but the application did not list or provide notice to Tullos's surviving spouse and next of kin. The probate court appointed Evans administrator on January 3, 2011, without notice or a waiver of notice. Tullos's wife and son later moved to set aside the appointment.

PROCEDURAL HISTORY

After William Lawrence Tullos died, J. Michael Evans applied for authority to administer the estate based on a creditor's claim. The probate court appointed Evans administrator without listing or notifying the surviving spouse and next of kin. The surviving spouse and son moved to set aside the appointment, but the probate court denied the motion. The court of appeals reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Delaware County Probate Court to provide notice to the surviving spouse and next of kin and determine the appointment under Ohio Revised Code §§ 2113.06 and 2113.07.

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