

OHIO COURT OF APPEALS, SIXTH APPELLATE DISTRICT

In re Estate of Busch

2026-Ohio-1881 · No. WD-25-073 · Decided May 22, 2026

SUMMARY

The Sixth District Court of Appeals of Ohio affirmed the denial of HCF of Perrysburg’s objections to the inventory and appraisal of Kathleen Anelia Busch’s estate. The court held that funds remaining in a joint bank account passed to the surviving joint owner, Richard Miller, and were not estate assets, finding no demonstrated breach of fiduciary duty or basis for a constructive trust. The court also concluded that certain arguments were waived because they were not raised in the probate court.

CASE DETAILS

|                       |                                                                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Ohio Court of Appeals, Sixth Appellate District                                                                                                                                      |
| WRITING FOR THE COURT | Thomas J. Osowik, P.J.; Gene A. Zmuda, J.; Charles E. Sulek, J.                                                                                                                      |
| JURISDICTION          | Ohio Court of Appeals, Sixth Appellate District                                                                                                                                      |
| DECIDED               | May 22, 2026                                                                                                                                                                         |
| DOCKET                | WD-25-073                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                             |
| PROCEDURAL POSTURE    | HCF appealed the Wood County Court of Common Pleas, Probate Division's judgment denying its objections to the estate's inventory and appraisal and approving the inventory as filed. |
| STANDARD OF REVIEW    | A probate court's determination regarding an objection to an inventory is generally reviewed for abuse of discretion; legal questions are reviewed de novo.                          |
| PRECEDENTIAL VALUE    | Published Ohio Court of Appeals opinion                                                                                                                                              |
| PARTIES               | HCF of Perrysburg, Inc. dba The Manor at Perrysburg v. Richard Miller, executor of the Estate of Kathleen Anelia Busch                                                               |

TOPICS

- probate procedure
- probate
- creditor claims
- constructive trust
- appellate procedure

PRACTICE AREAS

- Probate
- Estate administration
- Trusts and equitable remedies
- Appellate procedure

## QUESTIONS PRESENTED

1. Whether the probate court abused its discretion by finding that Richard did not breach fiduciary duties as Kathleen's attorney-in-fact.
2. Whether the probate court erred in finding that Richard took no improper action for his own benefit during Kathleen's lifetime concerning the joint accounts.
3. Whether the remaining balance in the joint savings account was Richard's property rather than an estate asset.
4. Whether the appellate court should impose a constructive trust on the joint savings account for the benefit of estate creditors.

## HOLDINGS

1. HCF waived its fiduciary-duty argument by failing to raise it in the trial court. In any event, the trial court acted within its discretion in finding no breach of Richard's fiduciary duties to Kathleen, because Richard owed no fiduciary duty to HCF and HCF was not an implied third-party beneficiary of the mother-son fiduciary relationship.
2. The balance remaining in Kathleen's joint and survivorship savings account transferred to Richard upon Kathleen's death and was not an asset of Kathleen's estate.
3. HCF was not entitled to a constructive trust over the joint savings account because it failed to establish any entitlement to the funds remaining after Kathleen's death.

## KEY QUOTATIONS

*“The opening of a joint and survivorship account in the absence of fraud, duress, undue influence or lack of capacity on the part of the decedent is conclusive evidence of his or her intention to transfer to the surviving party or parties a survivorship interest in the balance remaining in the account at his or her death.”* (§ 33)

## FACTUAL BACKGROUND

Kathleen Busch added her son, Richard Miller, to her Huntington Bank checking and savings accounts as a joint owner with rights of survivorship. After Kathleen entered a skilled nursing facility, proceeds from the sale of her solely owned home were deposited into the preexisting joint savings account, and Richard paid two nursing-home invoices from the account. Kathleen later died, leaving Richard as the surviving joint owner and sole beneficiary under her uncontested will. The nursing facility claimed that the remaining account balance belonged in the estate or should be held in constructive trust for estate creditors.

## PROCEDURAL HISTORY

HCF filed a claim against Kathleen Busch's estate and objected to the estate inventory, asserting that funds in a joint savings account should have been included as estate assets or subjected to a constructive trust. The probate court denied the objections, finding that the funds belonged to the surviving joint owner, Richard Miller, and were not estate assets. The Sixth District affirmed.

## DISPOSITION

affirmed

#### CASES CITED

- Estate of Grossman, 2020-Ohio-5236, ¶ 16 (11th Dist.)
- In re Wright, 2019-Ohio-3480, ¶ 16 (4th Dist.)
- In re Estate of Shelton, 2003-Ohio-4593, ¶ 8 (11th Dist.)
- In re Estate of Scott, 2005-Ohio-5917, ¶ 2 (2d Dist.)
- Dana Ltd. v. TACS Automation, LLC, 2021-Ohio-2555, ¶ 50 (6th Dist.)
- Cawley JV, LLC v. Wall St. Recycling, LLC, 2015-Ohio-1846, ¶ 17 (8th Dist.)
- Aristocrat Lakewood Nursing Home v. Mayne, 133 Ohio App.3d 651 (8th Dist. 1999)
- O'Dell v. Vrable III, Inc., 2022-Ohio-4156, ¶ 75 (4th Dist.)
- Wright v. Bloom, 69 Ohio St.3d 596 (1994)
- Fields v. Brackney, 2011-Ohio-1128, ¶¶ 19, 24, 26 (2d Dist.)
- In re Estate of Case, 1998 WL 151141, \*3 (2d Dist. Apr. 3, 1998)
- Estate of Haynes v. Gaines, 2023-Ohio-208, ¶ 30 (6th Dist.)
- Estate of Cowling v. Estate of Cowling, 2006-Ohio-2418, ¶ 19