

[Cite as *In re Estate of Davis*, 2010-Ohio-2131.]

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

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IN THE MATTER OF THE ESTATE : C.A. CASE NO. 2010-CA-1
OF WILLIAM LEE DAVIS, DECEASED : T.C. CASE NO. 39475
: (Civil Appeal from
Common Pleas Court,
: Probate Division)

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O P I N I O N

Rendered on the 14th day of May, 2010.

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Jennifer B. Casto, Atty. Reg. No. 0078800, 3011 Falcon Bridge Drive,
Columbus, OH 43232
Appellant Guardian for Beneficiary Steffan V. Davis

Lawrence A. Belskis, Atty. Reg. No. 0024244, 300 Spruce Street,
Floor One, Columbus, OH 43215
Appellee Administrator W.W.A. of the Estate of William L.
Davis

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GRADY, J.:

{¶ 1} This appeal involves the question of whether a person
nineteen years of age for whom a guardianship of the person has
been established is considered a minor for purposes of the family
allowance statute, R.C. 2106.13. We answer this question in the
affirmative.

{¶ 2} William Lee Davis died on August 3, 2009. Shortly thereafter, his Last Will and Testament was admitted for probate.

Lawrence Belskis was appointed Administrator, W.W.A. On December 7, 2009, Belskis filed an Application for Apportionment of Family Allowance pursuant to R.C. 2106.13. William D. Davis, age six, and Jared V. Davis, age three, were identified in the Application as minor children of the decedent. On that same day, the probate court issued an entry apportioning the family allowance to William D. Davis and Jared V. Davis. Steffan V. Davis, at that time a 19-year old disabled child of the decedent who was under a legal guardianship, was not included in the apportionment.

{¶ 3} Jennifer B. Casto, guardian of Steffan Davis, filed a motion for reconsideration and stay of the entry of apportionment.

The probate court overruled that motion. Casto filed a timely notice of appeal, and raises one assignment of error on appeal.

ASSIGNMENT OF ERROR

{¶ 4} "THE PROBATE COURT ERRED FINDING STEFFAN V. DAVIS DID NOT QUALIFY FOR AN APPORTIONMENT OF THE FAMILY ALLOWANCE PURSUANT TO OHIO REV. CODE § 2106.13."

{¶ 5} R.C. 2106.13(A) states, in pertinent part:

{¶ 6} "If a person dies . . . leaving minor children and no surviving spouse, the . . . minor children . . . 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. . . ."

{¶7} The probate court found that Steffan Davis is not entitled to share in the family allowance ordered pursuant to R.C. 2106.13 because he had reached eighteen years of age and therefore is no longer a minor child. The probate court relied on R.C. 3109.01, which is entitled "Age of majority" and states: "All persons of the age of eighteen years or more, *who are under no legal disability*, are capable of contracting and are of full age for all purposes." (Emphasis supplied.)

{¶8} It is undisputed that Steffan Davis was eighteen years of age or more at the time of his father's death. However, if he at that time was also under a "legal disability" within the meaning of R.C. 3109.01, then he had not reached the age of majority and, by default, would be considered a minor, entitling him to a portion of the available family allowance pursuant to R.C. 2106.13(A).

{¶9} "[L]egal disability" is not defined in R.C. 3109.01. But "legal disability" is defined in R.C. 2131.02, which states:

{¶10} "'Legal disability' as used in Chapters 2101., 2103., 2105., 2107., 2109., 2111., 2113., 2115., 2117., 2119., 2121., 2123., 2125., 2127., 2129., and 2131. of the Revised Code includes the following:

{¶ 11} "(A) Persons under the age of eighteen years;

{¶ 12} "(B) Persons of unsound mind;

{¶ 13} "(C) Persons in captivity;

{¶ 14} "(D) *Persons under guardianship of the person and estate, or either.*" (Emphasis supplied.)

{¶ 15} If the definitions of legal disability in R.C. 2131.02 (D) were applicable to R.C. 3109.01, which defines age of majority, then Steffan Davis, because he is under a guardianship of the person, would be under a legal disability. We acknowledge that R.C. 2131.02 does not identify R.C. 3109.01 as one of the several sections of the Revised Code to which it applies. Arguably, the omission could manifest an intent on the part of the General Assembly to not apply the definition in R.C. 2131.02 to a term in R.C. 3109.01.

{¶ 16} The Sixth District Court of Appeals faced a similar dilemma in *Wiczynski v. Wiczynski*, Lucas App. No. L-05-1128, 2006-Ohio-867. There, the Sixth District had to determine whether a 19-year old with Down's syndrome had reached the age of majority within the meaning of R.C. 3109.01, for purposes of his parents' child support obligation in a divorce action. The Sixth District explained; "Because the term 'legal disability' is not defined at R.C. Chapter 3109, we look to R.C. 2131.02, which although specifically applicable to probate matters, nevertheless aids in

our analysis." *Wiczynski*, at ¶22.

{¶ 17} The holding in *Wiczynski* is supported by the Ohio Supreme Court's analysis in *Castle v. Castle* (1984), 15 Ohio St.3d 279.

There, the Supreme Court was faced with the question of whether the domestic relations court retained jurisdiction over parties in a divorce to continue or to modify support payments for a mentally or physically disabled child who was so disabled before she turned 18 years of age, as if the child were still an infant. *Id.* The Court found that the parents' duty of support, in such a case, continued beyond the child reaching age eighteen. The Court explained:

{¶ 18} "Increasingly, courts have recognized a legal duty on the part of parents to provide support to a child with some infirmity of body or mind who is unable to support himself or herself after reaching the age of majority. For compelling moral and public policy reasons this court concurs with the enlightened path other states have followed in finding such a duty.

{¶ 19} "***

{¶ 20} "In the case of mentally or physically disabled children there must exist a duty both morally and legally on parents to support and maintain such children. The common-law duty imposed on parents to support their minor children may be found by a court of domestic relations having jurisdiction of the matter to continue

beyond the age of majority if the children are unable to support themselves because of mental or physical disabilities which existed before attaining the age of majority." Id. at 281-83.

{¶ 21} Given the Supreme Court's analysis in *Castle*, and the lack of a definition of "legal disability" in R.C. 3109.01, we find that the inclusion of guardianship in the definition of "legal disability" in R.C. 2131.02 should be applied to the facts before us. Because Steffan Davis is legally disabled, he has not reached the age of majority, and is therefore a minor for purposes of R.C. 2106.13, the family allowance section. The judgment of the probate court is reversed and the cause is remanded for the probate court to determine the portion of the family allowance to which Steffan Davis may be entitled.

{¶ 22} Further, we urge the General Assembly to amend R.C. 2131.02 to include R.C. 3109.01 as one of the sections of the Revised Code to which the definition of "legal disability" in R.C. 2131.02 applies.

DONOVAN, P.J. and FAIN, J. concur.

Copies mailed to:

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Hon. Robert A. Hagler