

## Publications

**Case Note: *In re Estate of von Meyer*: Ohio Court Reluctant to Remove Fiduciary****Related Attorneys**

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A recent decision by the Court of Appeals for the Ninth Appellate District illustrates Ohio courts' reluctance in removing fiduciaries. *In re Estate of von Meyer*, 2017-Ohio-5839, decided on July 17, 2017, the court refuses to remove the fiduciary, despite ongoing litigation between the fiduciary and other interested parties.

Sylvia von Meyer died testate in 2011. The decedent had named three relatives and an endowment fund as beneficiaries of her estate, disinheriting her husband and indicating that she had otherwise provided for him. The decedent's sister, a beneficiary under the will, was appointed executor of the estate. The decedent's husband filed a motion to remove the sister as executor, and the motion was denied. On appeal, the court affirmed the lower court's adoption of the magistrate decision denying the motion.

Prior to the removal motion, decedent's husband and sister were entangled in three separate disputes. First, the husband had filed a lawsuit against the sister, claiming that she improperly withdrew funds from decedent's credit union account while decedent was living. Second, the sister filed a concealment action against the husband. Third, the parties disputed whether a bank account owned by the decedent and her sister was held in joint tenancy with rights of survivorship.

On appeal, the court addressed two issues with respect to removal: (1) whether the sister should be removed as executor under R.C. § 2113.18 because of ongoing litigation between her and the decedent's husband; and (2) whether the sister should be removed under R.C. § 2109.24 for failing to file an accurate inventory and other alleged misconduct.

With respect to the ongoing litigation, the court noted that "ongoing litigation alone does not necessarily warrant removal of an executor." In finding that the current litigation did not warrant removal, the court emphasized that two of the lawsuits had been resolved – the decedent's sister had paid the money owed pursuant to a settlement

agreement resolving the first claim and had voluntarily dismissed the concealment action. The court also observed that although an unresolved lawsuit was pending, “there had been no adjudication on the merits of any adverse findings against [the decedent’s sister].”

In affirming the lower court’s judgment against the husband regarding the sister’s alleged failure to file an accurate inventory, the appellate court found that the sister’s testimony provided credible evidence that her actions were made “pursuant to her understanding of the estate’s assets at that time,” rather than as a result of misrepresentations or an attempt to knowingly engage in misconduct.

*Von Meyer* provides insight into the high burden the moving party must meet in order to successfully remove a fiduciary. Although the Ohio Revised Code expressly allows for the removal of fiduciaries under certain circumstances, courts are hesitant to order the removal of a fiduciary barring severe misconduct or exceptionally serious disputes.