



## Adult Adoption and Beneficiary Status: The Current State of Ohio Law

By Leon A. Weiss, Esq.; and Christine S. Reid, Esq.; Reminger Co., L.P.A.; Cleveland, Ohio. Reprinted with permission.

Consider the following hypothetical. Three adult children are potential beneficiaries to a Trust created in Ohio in 1936. The Trust contains the following language:

This Trust may be altered, amended or terminated in whole or in part at any time \* \* \*

Upon termination of this trust, the remaining assets shall be paid over to the said beneficiary \* \* \* or in the case of his prior death to his lineal descendants (if such there be) per stirpes \* \* \*.

All three children were adopted outside of Ohio. Two of the children were adopted prior to reaching the age of majority. The third child was adopted at age 18. This child had established a relationship with her adoptive parents while a minor. Is the third child a "lineal descendant" entitled to beneficiary status? To answer this question, one must analyze Ohio law regarding adult adoptions, out of state adoptions, and the beneficiary status of Adoptees.

### ***Does Ohio Recognize Adult Adoptions?***

Ohio first recognized adult adoptions in 1977 with the passage of [R.C. 3107.02](#), which provides as follows:

- (A) Any minor may be adopted.
- (B) An adult may be adopted under any of the following conditions:
  - (1) If the adult is totally and permanently disabled;
  - (2) If the adult is determined to be a mentally retarded person as defined in § 5123.01;
  - (3) If an adult had established a child-foster care or child-stepparent relationship with petitioners as a minor and the adult consents;
  - (4) If the adult was, at the time of the adult's eighteenth birthday, in the permanent custody of a public children services agency or private child placing agency and the adult consents

*(Continued on page 3)*

### **Inside this issue:**

<b>Adult Adoption</b>	<b>1</b>
<b>Tech Tip: Ohio Capitol Connection</b>	<b>2</b>
<b>Family Law: Program &amp; Resources</b>	<b>7</b>
<b>Upcoming Events</b>	<b>B A C K</b>

### **Hamilton County Law Library**

Hamilton County Courthouse  
1000 Main Street,  
Room 601  
Cincinnati, OH 45202  
T:513.946.5300  
F:513.946.5252

Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

## Tech Tip: Ohio Capitol Connection

By Julie Koehne, Systems Librarian



### Ohio Capitol Connection offers:

Legislative Service Commission Bill Analyses

Bill Texts

Bill Status and Legislative Activity

Synopsis of Committee Reports & Hearings

Ohio Constitution

Government Information

Ohio Register

Ohio Administrative Code

Ohio Revised Code

Legislative Pocket Directory

Ohio News and Media

Ohio Weather

Listen to Legislature Live

Google - U.S. Govt. Search

Executive Orders

State of the State Addresses

Ohio Supreme Court

U.S. Supreme Court

Ohio Court of Appeals

Attorney General Opinions

Ohio Elections Commission

State Auditor Opinions

Board of Commissioners on Grievances & Discipline

Digests of Enactments

Task Force Reports

Inspector General Reports

Contact our reference staff and we will be happy to retrieve the information you request. Contact us via email at [reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org) or by phone at 513.946.5300.

*(Adoption, continued from page 1)*

to the adoption.

### ***Does Ohio Recognize Out of State Adoptions?***

Ohio does recognize out of state adoptions. R.C. 3107.18 sets forth the standard for recognizing “foreign” adoptions:

- (A) Except when giving effect to such a decree would violate the public policy of this state, a court decree terminating the relationship of parent and child, or establishing the relationship by adoption, issued pursuant to due process of law by a court of any jurisdiction outside this state, whether within or outside the United States, shall be recognized in this state, and the rights and obligations of the parties as to all matters within the jurisdiction of this state, including, without limitation, those matters specified in section 3107.15 of the Revised Code, shall be determined as though the decree were issued by a court of this state. A decree or certificate of adoption that is issued under the laws of a foreign country and that is verified and approved by the immigration and naturalization service of the United States shall be recognized in this state. Nothing in this section prohibits a court from issuing a final decree of adoption or interlocutory order of adoption pursuant to section 3107.14 of the Revised Code for a person the petitioner has adopted pursuant to a decree or certificate of adoption recognized in this state that was issued outside the United States.

The courts have analyzed these statutory provisions in various cases. In *Fifth Third Bank v. Harris*, 127 Ohio Misc. 2d 1, 2003-

Ohio-7361, 804 N.E.2d 1044 (Prob. Ct. 2003), it was established that Ohio does not recognize “unfettered” adult adoptions and will not recognize an adoption which violates public policy. An adoption decree which intentionally dilutes or diminishes an established bequest will not be recognized. Moreover, for the courts to recognize an adult adoption, the relationship between the adoptive parent and child must be established during the minority of the person adopted. *Solomon v. Central Trust Co. of Northeastern Ohio, N.A.*, 63 Ohio St. 3d 35, 584 N.E.2d 1185, 36 A.L.R.5th 873 (1992). For further analysis of out of state adult adoptions, see also *Barrett v. Delmore*, 143 Ohio St. 203, 28 Ohio Op. 133, 54 N.E.2d 789, 153 A.L.R. 192 (1944).

### ***What Effect Does an Adoption Decree Have on Beneficiary Status?***

The effect of an adoption decree on beneficiary status is specifically set forth in [R.C. 3107.15](#):

- (A) A final decree of adoption and an interlocutory order of adoption that has become final as issued by a court of this state, or a decree issued by a jurisdiction outside this state as recognized pursuant to section 3107.18 of the Revised Code, shall have the following effects as to all matters within the jurisdiction or before a court of this state, whether issued before or after May 30, 1996:
- (2) To create the relationship of parent and child between petitioner and the adopted person, as if the adopted person were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and in-

*(Continued on page 4)*

struments, whether executed before or after the adoption is decreed, and whether executed or created before or after May 30, 1996, which do not expressly exclude an adopted person from their operation or effect;

(3) Notwithstanding division (A)(2) of this section, a person who is eighteen years of age or older at the time the person is adopted, and the adopted person's lineal descendants, are not included as recipients of gifts, devises, bequests, or other transfers of property, including transfers in trust made to a class of persons including, but not limited to, children, grandchildren, heirs, issue, lineal descendants, and next of kin, for purposes of inheritance and applicability of statutes, documents, and instruments, whether executed or created before or after May 30, 1996, unless the document or instrument expressly includes the adopted person by name or expressly states that it includes a person who is eighteen years of age or older at the time the person is adopted. R.C. 3107.15(A)(2) recognizes adopted children as beneficiaries unless the document or instrument at issue specifically excludes adopted persons. On the other hand, the legislature is more cautious with those persons adopted as adults. Under R.C. 3107.15(A)(3), an adult adoptee will not be provided beneficiary status unless the document or instrument expressly names the adopted person or includes adult adoptees as a class of beneficiaries. It should be noted that R.C. 3107.15(A)(2) was initially enacted on January 1, 1977, and then amended on May 30, 1996. R.C. 3107.15(A)(3) was enacted on March 14, 2003. Prior to the amendment of R.C. 3107.15(A)(2) and the enactment of R.C. 3107.15(A)(3), the courts analyzed the applicability of these provisions and the

effect on the "stranger to the adoption" doctrine. See *Ohio Citizens Bank v. Mills*, 45 Ohio St. 3d 153, 543 N.E.2d 1206 (1989); *First Merit, N.A. Trustee v. Kelly*, 2008-Ohio-303, 2008 WL 241259 (Ohio Ct. App. 9th Dist. Summit County 2008).

### ***Is the Retroactive Application of R.C. 3107.15(A)(3) Constitutional?***

The legislature intended R.C. 3107.15(A)(2) and (3) to be applied retroactively. The retroactive application of R.C. 3107.15(A)(3) may divest adult adoptees of their beneficiary status. Because of this potential result, the constitutionality of the retroactive application of this code section must also be addressed. The Ohio Supreme Court has set forth a two-part test to determine whether a statute should apply retroactively. Under this test,

### **Subscriber benefits**

Are you familiar with the many benefits included in your subscription to the Hamilton County Law Library? By joining the library, you can:

**Access:** to databases, including **LexisNexis**, **Shepards'**, **CCH**, **Hein Online**, and over 70 **Aspen /LOISLaw** treatises in 16 substantive areas

**Connect:** to the wireless network throughout the Law Library, videoconferencing capabilities, and 5 conference rooms, equipped with speaker phones, are available to our subscribers

**Learn:** Free CLE opportunities offered throughout the year: Visit our Law Library Subscriber Services page to find out more. <http://www.hamilton-co.org/cinlawlib/services.html>

*(Adoption, continued from page 4)*

the court needs to determine the following:

- (a) Whether there is an express intention to apply the statute retroactively;
- (b) Whether the statute affects an accrued substantive right or whether it is merely remedial in nature. *Bielat v. Bielat*, 87 Ohio St. 3d 350, 2000-Ohio-451, 721 N.E.2d 28 (2000).

The constitutionality of R.C. 3107.15 has been specifically addressed in several cases. Because there is an express intention to apply the statute retroactively, the question addressed is whether the statute affects a substantive, vested right. In *Bank One Trust Co. N.A. v. Reynolds*, 173 Ohio App. 3d 1, 2007-Ohio-4197, 877 N.E.2d 342 (2d Dist. Montgomery County 2007), the issue was whether or not an adult adoptee was a “lineal descendant” as defined to include “in every instance both blood and adoption relationships.” The trial court held that R.C. 3107.15(A)(3) precluded the adopted adult from obtaining beneficiary status because the trust did not expressly define “lineal descendants” as including adopted adults or name the adopted adult by name.

The Second District Court of Appeals reversed the trial court holding that the retroactive application of R.C. 3107.15(A)(3) was unconstitutional because it deprived the adopted adult of his contingent interest in the Trust. The court analyzed the fact that an adopted adult would be included as a “lineal descendant” prior to the enactment of the subsection, but not after the enactment. Moreover, they found that sub-section (A)(3) “directly and materially affected substantive rights.” As a result, the court held that the retroactive application of this subsection vio-

lated the Ohio Constitution. In another decision, the Cuyahoga County Common Pleas Court held that the retroactive application of R.C. 3107.15(A)(3) was constitutional. *Borrello v. Chisholm*, Case No. CV 598719 (Cuyahoga Cty. C.P. Aug. 5, 2008). In ordering summary judgment against the adult adoptee, the court focused on the trust language, which provided that the trust could be “altered, amended, or terminated in whole or in part at any time.” Because the Trust could be terminated at any time, the court held that there was no vested interest and therefore, the retroactive application did not affect a substantive right.

### **Conclusion**

Back to our hypothetical. Under [R.C. 3107.02](#) and [3107.18](#), the out of state adult adoption of the third child is recognizable in Ohio. However, R.C. 3107.15(A)(3) prohibits beneficiary status. The Trust document did not expressly include this child by name or expressly state that children adopted at age 18 or older are included in a class of beneficiaries. Moreover, based upon the language of the Trust, the retroactive application of R.C. 3107.15(A)(3) is constitutional.

Ultimately, estate planners and probate litigators should be familiar with the Revised Code sections regarding adult adoptions, out of state adoptions, and the effect of adoption decrees on beneficiary status. To insure beneficiary status of an adult adoptee, the document or instrument must contain the name of the adult adoptee or include adult adoptees as a class of beneficiaries. Otherwise, the adopted adult may only be left with an argument that the retroactive application of R.C. 3107.15(A)(3) is unconstitutional.

## Staff Changes

Glenna Herald, our capable Reference Librarian and editor of this newsletter, resigned in August to pursue other opportunities. Our patrons may remember that Glenna worked here first in 2000-2001 and then returned in 2007. We're grateful for her service to library users and wish her the best. A search has begun for a new reference librarian. Once hired, the reference librarian will provide research guidance, edit the newsletter, coordinate the CLE and training schedule, offer training, lead the reference team, prepare email news flashes by practice area, and more. We hope to announce our new hire in September. In the meantime, Julie Koehne and Chuck Kallendorf are staffing reference more hours and, collectively, we are making every effort to cover the bases.

## Statewide Law Library Consortium

The law that created the county law library resources board (CLLRB) as the library's governing board also created a statewide consortium of CLLRBs. Mary Jenkins is a county commissioners association's appointee to the consortium's board. The board held its first two meetings and is planning to attend to its statutory obligations which include negotiating contracts that each county law library resources board may use for purchasing or obtaining access to legal research materials, cataloging and facilitating the sharing of resources, developing library collection guidelines, and providing consultation. The Hamilton County Law Library expects that the new consortium's mandate to negotiate contracts will result in cost savings and efficiencies over the next couple of years. Especially since our revenue has decreased over the past two years, we will appreciate group purchasing.

## What Are The Blue Tags For?

You may have noticed blue slips of paper in many books in the Library's Main Room. Library staff are engaged in a year-long review of that part of the collection. We are identifying books that need to be withdrawn, replaced, or updated. The slips of paper are an invitation to our patrons to offer comments. Let us know if you think a book, though dated, is still essential or suggest an alternative. We also offer quite a few treatises online through Aspen/Loislaw and Lexis so please ask for a librarian's guidance if you find a particular area of the collection lacking. Sources might be available online instead.

## CLE Suggestions

One of the tremendous benefits of a law library subscription is free or low-cost CLEs. If you have a suggestion for a CLE topic or speaker, please let [Mary Jenkins](#) know. We have several CLEs planned for the fall. Watch for details.

## Social Media @ The Law Library

We're practicing what we preach: Our latest foray into social media is a Facebook fan page. Look for us on Facebook as [Hamilton County Law Library](#) and, even better, become a fan. (We know you are a fan already, but announce it to the world!) We're your "embedded law library", offering connections, announcements and news in a setting where many of our patrons spend time each day. We promise we won't go crazy with posts. We're all too busy for that!

And follow us on Twitter, too, if you're so inclined. You'll receive up-to-the-minute news and information. We are @HCLawLib.

## Family Law Resources

We suggest the following resources for your family law research. Ask a librarian for additional guidance. Our strong collection in family law also includes onsite computer lab access to FinPlan: Divorce Planner, BNA's Family Law Reporter, Baldwin's Domestic Relations Domestic Violence Law, plus online treatises that you can access 24/7 off-site.

The 1040 handbook : a guide to income and asset discovery / Jack Zuckerman ... [et al.].

*KF6369 .A715 2008*

Collaborative family law. *Reference*  
*KFO94 .F354 O35 2008*

Divorce in the golden years : estate planning, spousal support, and retirement issues for clients at midlife and beyond / Leslie Ann Shaner.  
*KF535 .S49 2010*

The domestic violence civil law manual : protection orders and family law cases / American Bar Association, Commission on Domestic Violence  
*KF505 .J67 2007*

Handling divorce cases from start to finish [in Ohio] *KFO100.A75 H36 2010*

A judge's guide to divorce : uncommon advice from the bench / by Roderic Duncan. *KF535.Z9 D857 2007*

Lesbian, gay, bisexual and transgender family law / Courtney G. Joslin, Shannon P. Minter.  
*KF505 .J678 2010*

The special needs child and divorce : a practical guide to evaluating and handling cases / Margaret "Pegi" S. Price. *KF547 .P73 2009*

Understanding QDROs : and Divorce and tax : a practical approach. / OSBA *KFO100 .U56 2009*

## A Better Way to End a Marriage

As a public service, the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service, will present *You and the Legal System: A Better Way to End a Marriage* on Friday, September 10, 2010 at 12:00 noon at the Hamilton County Law Library. This program is free and open to the public. Attorneys are welcome to attend but please note that the session is intended primarily for the non-lawyer citizen. It will last one hour. Please pass the information along to clients and colleagues as desired.

John L. Heilbrun, a Cincinnati attorney and HCLL subscriber with over 30 years of experience helping clients with family and marital law problems, will speak about collaborative divorce, including the following points:

- ◆ Use of common goals and interests to resolve disputes related to terminating a marriage;
- ◆ Spouses' control and decision-making about the most important issues;
- ◆ Benefits of the Collaborative approach as opposed to the adversarial/litigation process;
- ◆ The Collaborative process as a team approach to resolution of issues;
- ◆ Open and full disclosure and communication;
- ◆ Working together for the benefit of all, particularly the children;
- ◆ Collaborative law as a self respecting, client-centered approach.

Please call 513.946.5300 at the Hamilton County Law Library to reserve a seat.

### What are we missing?

Please contact the library director, Mary Jenkins, with any suggestions you have to improve our print and electronic resources. 513.946.5300 or [mjenkins@cms.hamilton-co.org](mailto:mjenkins@cms.hamilton-co.org)

## Upcoming Events

September 10: Collaborative Law: A Better Way to End a Marriage

September 27: CLE . Watch for details.

October 7: Hamilton County Law Library Resources Board meets

October 22: You and the Legal System: Immigration Law

November 10: Two Westlaw CLE opportunities. Watch for details.

## Labor Day Holiday

The law library will be closed on Monday, September 6, 2010 in observance of Labor Day.

# September 2010 Law Library Newsletter

### INSIDE THIS MONTH

- Adult Adoption
- Tech Tip: Ohio Capitol Connection
- Family Law program & resources
- Calendar

ADDRESS CORRECTION REQUESTED

Hamilton County Law Library  
Hamilton County Courthouse  
1000 Main Street, Room 601  
Cincinnati, OH 45202