

STRATEGIES FOR LITIGATION-PROOFING ESTATE PLANS

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INTRODUCTION

It is often said that an ounce of prevention is worth a pound of cure. This is certainly true when it comes to estate planning.

A solid estate plan is designed to accomplish two key goals: preserve the testator's intentions (and assets) and protect against uncertainty. And when it comes to estate planning, one of the biggest uncertainties is whether any disgruntled family members or (would-be) beneficiaries may attempt to invalidate the plan later. If so, a significant portion of the client's hard-earned assets could end up being consumed by substantial attorney's fees. It is therefore worthwhile—even with the most optimistic clients—to discuss strategies for litigation-proofing from the outset.

STRATEGY #1: ACTION TO VALIDATE WILL/TRUST DURING LIFETIME¹

We generally think of will and trust contests coming after death. These cases are entirely circumstantial, and unfortunately, by the time the testator/grantor has died, the best evidence of their true intentions has died with them. Therefore, if a client anticipates that someone may try to contest their will and/or trust after death, the testator/grantor themselves can initiate a proceeding to validate such document(s) during their lifetime. These pre-death validation procedures are set forth in depth in R.C. 5817.01 et seq.

First, a complaint must be filed in the probate court.² For will validation actions, the venue is the county in which the testator is domiciled or, if a non-resident, the county in which any of the testator's real or personal property is located.³ For trust validation actions, the venue is the county in which the settlor resides or is domiciled or, if a non-resident, the county in which the trust's principal place of administration is located.⁴ Notably, the filing of such a complaint is personal only to the testator or grantor; neither an attorney-in-fact nor a guardian may file such a complaint on the creator's behalf.⁵

Lifetime validation proceedings essentially operate as declaratory judgment actions, meaning there is no right to a jury.⁶ This is a notable difference from post-death will contests, for which a right to a jury trial is statutorily guaranteed.⁷

There are no hard and fast rules for the exact contents of a complaint to declare validity. However, R.C. 5817.05(C) (wills)

and 5817.06(C) (trusts) provide various elements that may be included in the complaint, as applicable.⁸ For instance, the complaint should include a statement that the will/trust has been filed with the court, that it complies with the necessary formalities, that the testator/settlor had testamentary capacity, that the testator/settlor was free from undue influence, and that the will/trust has not been modified or revoked, among other elements.⁹ In conjunction with the complaint, the testator/settlor must also file an express written waiver of the their physician-patient privilege.¹⁰

The following individuals are necessary defendants¹¹ to a will/trust validation action: (1) spouse; (2) children; (3) heirs who would take under intestacy, had the testator/grantor died intestate at the time the complaint is filed; (4) trustee(s) of the trust; (5) beneficiaries under the will/trust; and (6) beneficiaries under the most recent prior will/trust (if any).¹² In addition to these necessary defendants, the testator/settlor may also name as a permissive defendant "any other person that the [testator/settlor] believes may have a pecuniary interest in the determination of [] validity."¹³

After the complaint is filed, an adversarial hearing is scheduled.¹⁴ At the hearing, the testator/settlor bears the burden of establishing "prima facie proof of the execution of the will or trust, as applicable."¹⁵ Any person who opposes the determination of validity then bears the burden of establishing one or more of the following: (1) lack of intent; (2) lack of capacity; (3) undue influence, restraint, or duress; (4) fraud or mistake in the execution; or (5) revocation.¹⁶ The statute itself does not set

forth the specific burden of proof that any lifetime contestant bears to establish one or more of these invalidating factors. However, case law throughout Ohio makes clear that the burden to invalidate a will or trust is clear and convincing evidence.¹⁷

After the evidentiary hearing, the court is required to declare the will/trust valid if it finds all of the following: (1) the will/trust complies with all of the applicable legal formalities; (2) the testator/settlor had the requisite capacity to create the will/trust; (3) the creation of the will/trust was free from undue influence, restraint, and duress; and (4) the execution of the will/trust was not the product of fraud or mistake.¹⁸ Unless the will/trust is subsequently modified or revoked, the document(s)—once declared valid—are generally not subject to contest following the testator's/grantor's death.¹⁹

If a will that has been declared valid is later amended by codicil, all provisions in the underlying will that are not affected by the codicil remain validated.²⁰ The same applies to all provisions in a trust that has been declared valid, if certain portions are later modified by amendment.²¹ However, neither a codicil to a validated will nor an amendment to a validated trust is considered validated itself without going through the procedures set forth in R.C. 5817.01 et seq.²²

Finally, if a document purportedly revoking, reforming, or otherwise modifying a validated will/trust is itself declared to be invalid—whether due to lack of capacity, undue influence, or otherwise—the validation of the underlying will/trust remains in effect.²³ In other words, the later instrument ceases to exist and the administra-

tion reverts back to the prior (validated) will/trust.

STRATEGY #2: DESIGNATION OF HEIR(S) AT LAW

Under R.C. 2105.15, a person may declare another to be their “heir at law” for purposes of intestate succession. First, the person must be “of sound mind and memory and free from restraint.”²⁴ The person must then file a written declaration designating their heir(s) at law by name and address, which must be attested by two disinterested persons and subscribed by the declarant as a free and voluntary act.²⁵ Finally, the declarant and two disinterested persons must appear before the probate court.²⁶

If these requirements are satisfied, the person(s) so designated “will stand in the same relation, for all purposes, to the declarant as the person designated could if a child born in lawful wedlock.”²⁷ Thus, “[t]he rules of inheritance will be the same between the person designated and the relations by blood of the declarant, as if so born.”²⁸

This procedure may be less expensive than a full estate plan, and will certainly be less expensive than litigation to declare a will and/or trust valid during lifetime under Revised Code Chapter 5817. However, this procedure is likely more complicated than simply having an affirmative estate plan in place (especially one that may avoid probate altogether). Moreover, to the extent an individual wishes to designate a nonbiological child as their heir at law, this is not a replacement or shortcut for legal adoption. (And to the extent an individual wishes to designate someone

else—such as an unmarried partner—as their heir at law, the resulting treatment as the decedent’s child could be off-putting to some.) Finally, it is important to note that, once made, a designation under R.C. 2105.15 cannot be vacated or changed for one year.²⁹

STRATEGY #3: NO-CONTEST CLAUSES

No-contest clauses—sometimes called forfeiture or in terrorem clauses—have been enforceable in Ohio since 1869.³⁰ And since then, courts throughout Ohio have made clear that such clauses are strictly enforced as written; unlike other states, Ohio does not recognize any exceptions for unsuccessful will or trust contests filed in good faith or with probable cause.³¹

These clauses are straightforward and simple to include in will and trust documents. It is important to understand, however, that no-contest clauses do not deter all types of litigation. Rather, as the name suggests, they are meant to prevent only *contests* as to the document’s actual validity. By contrast, actions for construction, breach of fiduciary duty, accounting, and/or removal do not trigger a no-contest clause.³²

No-contest clauses are also only as good as the interest at stake. If a contestant has been completely disinherited under the instrument at issue,³³ then they do not stand to lose anything even if their contest fails. Therefore, if a testator/grantor anticipates that someone may attempt to contest the plan, they should consider leaving that person just enough of an inheritance to make them think twice about risking it.

STRATEGY #4: INCORPORATION BY REFERENCE³⁴

Oftentimes clients have both a will and a revocable trust. The statutes of limitation applicable to will and trust contests, however, are vastly different.

For revocable trusts made irrevocable by the settlor’s death, the default statute of limitations to contest any of the following is two years from the settlor’s death: (1) the validity of the trust; (2) the validity of any amendment to the trust; (3) revocation of the trust; and/or (4) the validity of any transfer to the trust.³⁵ This deadline can be accelerated to six months “from the date on which the trustee sends the person bringing the action a copy of the trust instrument and a notice informing the person of the trust’s existence, of the trustee’s name and address, and of the time allowed under this division for commencing an action.”³⁶

For will contests, on the other hand, the statute of limitations is three months from the filing of the Certificate of Service of Notice of Probate of Will.³⁷ Full stop. Therefore, depending on how quickly the estate is opened and the Certificate of Service of Notice of Probate of Will is filed, will contest actions have the potential to become time-barred far quicker than trust contest actions.

To properly incorporate a trust into a will, several requirements must be met. First, the trust must already be in existence, and must be referred to as being in existence, at the time the will is executed.³⁸ Second, the referenced trust must be deposited in the probate court when the will

is probated or within 30 days thereafter.³⁹ Finally, the will must clearly manifest the testator's intent to incorporate the trust into the will "through the use of the term 'incorporate,' 'made a part of,' or similar language."⁴⁰ The third element—explicit and unequivocal intent to incorporate—is the key. Simply identifying the trust in the will is not enough.

If these elements are satisfied and the trust is properly incorporated by reference into the will, then the three-month statute of limitations applicable to will contests applies to both documents. In other words, if a trust is properly incorporated by reference into a will, both the will and the trust must be contested within three months from the filing of the Certificate of Service of Notice of Probate of Will. The ordinary two-year or accelerated six-month deadlines otherwise applicable to non-incorporated trusts no longer apply.

The incorporation by reference doctrine has an interesting history in Ohio statutory and common law. In *Linney v. Cleveland Trust Co.*, the Eighth District considered whether a provision in the decedent's will effectively incorporated another document by reference.⁴¹ Because Ohio did not have a statute covering incorporation by reference at the time, however, the court established the following elements for incorporation by reference based on treatises and other state law: (1) will must refer to the instrument which is to be incorporated as one already in existence; (2) reference is clear and explicit enough to identify the document; (3) language shows testator's intention to incorporate the document into the will; (4) document was actually in existence at the time of the will;

and (5) document aligns with the description in the will.⁴²

In October 1953, Ohio's first version of R.C. 2107.05 took effect. Notably, however, the language of the statute was not nearly as stringent as the test set forth in *Linney* several decades prior. Specifically, the statute at that time permitted incorporation by reference of "[a]n existing document, book, record, or memorandum . . . if referred to as being in existence at the time the will is executed." In other words, existence and simple identification of the trust were sufficient; there was no statutory requirement that the testator use explicit language clearly evidencing their intent to incorporate the trust into the will.

In 1976, the Ohio Supreme Court considered the case of *Hageman v. Cleveland Trust Co.*⁴³ In that case, the decedent's brother filed two lawsuits: one to invalidate his brother's will, and another to invalidate his brother's trust. The will contest was dismissed. The trust contest was then dismissed as well, based on the previously-dismissed will contest. The executor/trustee argued that the will incorporated the trust by reference under R.C. 2107.05, meaning that once the will contest failed, a separate trust contest could no longer be maintained. The decedent's brother, on the other hand, argued that R.C. 2107.63 (pour-over bequests) controlled, rather than R.C. 2107.05 (incorporation by reference). Ultimately, the Ohio Supreme Court concluded that the elements of R.C. 2107.05—as in effect at the time—were satisfied, the will validly incorporated the trust by reference, and the trust contest was thus barred and properly dismissed.⁴⁴

The next major case to consider incorpo-

ration by reference was *Gehrke v. Senkiw*, in the Second District Court of Appeals.⁴⁵ In considering whether a particular provision in the decedent's will complied with Ohio's statutory requirements for incorporation by reference, the Second District stated as follows: "The statute [R.C. 2107.05] requires that (1) the will refer to the trust as one already in existence; (2) the will's reference to the trust clearly identifies the trust; and (3) the language in the will demonstrates an intent on the part of the testator to incorporate the trust into, and make it a part of, the will."⁴⁶ In so stating, the Second District cited to the Eighth District's 1928 opinion in *Linney*. Curiously, however, the version of R.C. 2107.05 in effect at the time of the *Gehrke* decision did not actually contain each of these recited elements (namely, the clear manifestation of intent element).

Because the will provision at issue in *Gehrke* was so similar to the will provision at issue in *Hageman*, the Second District concluded that incorporation by reference was satisfied, making dismissal of the plaintiff's trust contest proper. The Second District did note, however, that it "might not otherwise conclude" that incorporation by reference was satisfied had it not been bound by the Ohio Supreme Court's decision in *Hageman*.⁴⁷

This prompted action from the General Assembly. In 2019, R.C. 2107.05 was overhauled to include new subsections (B), (C), and (D). The most notable of these additions is subsection (C), which makes clear that a trust is not incorporated by reference into a will unless the testator "manifest[s] that intent" through clear and explicit language—something more than "only identif[ying] a trust" by name.⁴⁸ This

amendment finally brings R.C. 2107.05 into alignment with the elements first set forth by the Eighth District in *Linney* in 1928. Indeed, the notes to 2018 House Bill 595, which amended R.C. 2107.05, state that the amendment "is intended to abrogate the holdings of the Ohio Supreme Court in *Hageman* . . . and the Ohio Second District Court of Appeals in *Gehrke*."⁴⁹

Given the more stringent requirements now reflected in R.C. 2107.05, drafters must make sure that the language in a will is sufficient to effectively incorporate a testator's trust by reference. The benefits of doing so are substantial, however, as the statute of limitations for a trust contest will be greatly accelerated.

STRATEGY #5: EXECUTION OF REPEATED ITERATIONS

If a will, trust, or beneficiary designation is invalidated, it is as though the document never existed in the first place. The terms of administration then revert to the previous iteration of the instrument at issue, if any.

There are several potential benefits to executing successive iterations of estate planning documents. First, having a prior version of an invalidated document to fall back on helps ensure that the client's intentions are preserved. For example, if there is only one version of a beneficiary designation on the client's large brokerage account, invalidation of that document would result in the account falling into probate. Or, if there is only one version of the client's will, invalidation of that document would result in the client's estate passing via intestacy. This is certainly not

what any client wants if they are going through the process (and expense) of creating an estate plan in the first place.

Second, if a client executes multiple copies of the same document over a series of days, months, or even years, it will be significantly more challenging for a contestant to prove—by clear and convincing evidence—that the client lacked the requisite capacity and/or was subject to undue influence on each of those dates. In short, the more layers exist, the harder it is to undo them all.

Third, having successive iterations helps insulate the client's estate plan from attack by limiting who has standing to contest the plan in the first place. Under R.C. 2107.71, only "[a] person interested in a will or codicil admitted to probate that has not been declared valid by judgment of a court pursuant to [R.C. 5817.10(A)(1)] may contest its validity by filing a complaint in the probate court in the county in which the will or codicil was admitted to probate."⁵⁰ In turn, R.C. 2107.73 makes clear that the necessary parties to a will contest action include only those persons "designated in a will to receive a testamentary disposition of real or personal property," heirs who would inherit by law under R.C. 2105.06 "had the testator died intestate," the fiduciary of the estate, the attorney general (if applicable under R.C. 109.25), and "[o]ther interested parties."⁵¹ In other words, only those individuals with a direct, pecuniary interest in the decedent's estate—either by statute as determined at the time of the decedent's death and/or as impacted by this particular will being admitted to probate—may file a will contest action.⁵² This same requirement of

a direct, pecuniary interest has been applied to trust contests as well.⁵³

In practice, this means that a non-relative contestant who would not be entitled to inherit via intestacy must challenge every version of the instrument that disinherits or otherwise impacts their pecuniary interest, until they reach the version that included them (if any).⁵⁴ With respect to blood relative contestants, their potential standing to contest under the intestacy prong should be assessed as of the time the decedent died. As such, those blood relatives who would not actually be entitled to inherit via (theoretical) intestacy—as determined at the time of the decedent's death—and whose pecuniary interests were not changed or otherwise impacted by the most recent iteration of the document at issue, still would not have standing to contest only the most recent version. Rather, such blood relatives must contest each version of the instrument at issue until they reach the version that included them (if any), like their non-blood relative counterparts.

CONCLUSION

Unfortunately, even the best laid plans may end up in court. To the extent such litigation can be avoided, however, it is certainly prudent to do so.

The list of potential litigation-proofing strategies set forth herein is not exhaustive. Nor are these options mutually exclusive. Indeed, clients who are especially concerned about potential future litigation should consider employing several of these options (and potentially others), to further increase the chances of

their goals, intentions, and hard-earned assets being preserved for years to come.

ENDNOTES:

¹For additional insight on this topic, see Lehman, *Determining the Validity of Wills and Trusts—Before Death*, 21 No. 6 Ohio Prob. L.J. 7 (July/August 2011); Lehman, *Ohio Provides New Tool to Protect The Client's Will And Trust*, 29 No. 3 Ohio Prob. L.J. NL 2 (January/February 2019); Brucken, Kolb, Lehman, *Forms for Pre-death Validation of Wills and Trusts*, 29 No. 4 Ohio Prob. L.J. NL 2 (March/April 2019).

²R.C. 5817.02; R.C. 5817.03. Although such actions must first be filed in the probate division, the probate court may transfer the proceedings to the general division. R.C. 5817.04(B)-(C); R.C. 2101.24(B)(3).

³R.C. 5817.04(B).

⁴R.C. 5817.04(C).

⁵R.C. 5817.02(A); R.C. 5817.03(A).

⁶R.C. 5817.08(C) (citing R.C. 2101.31 and R.C. 2721.10).

⁷R.C. 2107.72(B)(1).

⁸A testator seeking a determination of validity for their will must also seek a determination of validity for any related trust. R.C. 5817.02(B). Likewise, a settlor seeking a determination of validity for their trust must also seek a determination of validity for any related will. R.C. 5817.03(B). For purposes of Revised Code Chapter 5817, a will and trust are “related” when both of the following criteria are satisfied: (1) the testator is the settlor of the trust; and (2) the trust is named as a beneficiary in the will in accordance with R.C. 2107.63. R.C. 5817.01(D)-(E).

⁹R.C. 5817.05(C); R.C. 5817.06(C).

¹⁰R.C. 5817.02(D); R.C. 5817.03(D).

¹¹Notably, the failure to name a necessary party is not jurisdictional, meaning any resulting declaration of validity shall still be binding upon all defendants who

were named/represented and properly served. R.C. 5817.11(B)-(C). However, any *necessary* defendant who was not properly named/served may contest the will/trust after the testator/grantor's death. *Id.* There is no such allowance for *permissive* defendants to contest a will/trust after death, as they were not strictly required to be named in the first place. R.C. 5817.11(A).

¹²R.C. 5817.05(A); R.C. 5817.06(A).

¹³R.C. 5817.05(B); R.C. 5817.06(B).

¹⁴R.C. 5817.08.

¹⁵R.C. 5817.09(A).

¹⁶R.C. 5817.09(A).

¹⁷See, e.g., *Sigler v. Burk*, 2017-Ohio-5486, 2017 WL 2729890 (Ohio Ct. App. 3d Dist. Crawford County 2017); *Wood v. Fernandez*, 2023-Ohio-2435, 2023 WL 4552809 (Ohio Ct. App. 12th Dist. Butler County 2023); *Lah v. Rogers*, 125 Ohio App. 3d 164, 707 N.E.2d 1208 (11th Dist. Lake County 1998).

¹⁸R.C. 5817.10(A)(1), (B)(1).

¹⁹R.C. 5817.11(A). For potential caveats for necessary defendants that were not properly named and/or served, see R.C. 5817.11(B)-(C).

²⁰R.C. 5817.12(C). For example, assume the testator's will has been declared valid. The testator subsequently executes a codicil naming a different person as executor. The codicil does not make any other changes to the will. Under R.C. 5817.12(C), everything else in the will—including the beneficiary scheme—remains validated. The executor designation, however, is no longer validated (unless and until the codicil itself is validated under R.C. 5817.01 et seq.).

²¹R.C. 5817.13(C).

²²R.C. 5817.12(C); R.C. 5817.13(C).

²³R.C. 5817.12(B); R.C. 5817.13(B).

²⁴R.C. 2105.15.

²⁵R.C. 2105.15.

²⁶R.C. 2105.15.

²⁷R.C. 2105.15.

²⁸R.C. 2105.15.

²⁹R.C. 2105.15.

³⁰*Bradford v. Bradford*, 19 Ohio St. 546, 1869 WL 90 (1869).

³¹See, e.g., *Bender v. Bateman*, 33 Ohio App. 66, 168 N.E. 574 (5th Dist. Muskingum County 1929); *Modie v. Andrews*, 2002-Ohio-5765, 2002 WL 31386482 (Ohio Ct. App. 9th Dist. Summit County 2002).

³²See, e.g., *Kirkbride v. Hickok*, 155 Ohio St. 293, 44 Ohio Op. 297, 98 N.E.2d 815 (1951); *Kasapis v. High Point Furniture Co., Inc.*, 2006-Ohio-255, 2006 WL 173131 (Ohio Ct. App. 9th Dist. Summit County 2006); *Natl. City Bank v. de Laville*, 2009-Ohio-5725, 2009 WL 3494219 (Ohio Ct. App. 6th Dist. Lucas County 2009); *Foelsch v. Farson*, 2020-Ohio-1259, 153 N.E.3d 601 (Ohio Ct. App. 5th Dist. Knox County 2020).

³³Rather than simply devising everything to other people and leaving nothing for the likely contestant by default, a testator/grantor should instead consider including specific language affirmatively *disinheriting* the individual(s) in question. This could take the form of an added provision in the will/trust itself, and/or a standalone memorandum or other document—incorporated into the will/trust by reference—that explains the testator’s/grantor’s explicit intention to disinherit the individual(s) at issue. This will provide even stronger evidence against a potential future contest.

³⁴For additional insight on this topic, see Lehman, *Incorporation of Trust Into Will Requires Specific Language*, 29 No. 3 Ohio Prob. L.J. NL 6 (January/February 2019).

³⁵R.C. 5806.04(A).

³⁶R.C. 5806.04(A).

³⁷R.C. 2107.76.

³⁸R.C. 2107.05(A).

³⁹This 30-day deadline may be extended by the court “for good cause shown.” R.C. 2107.05(A). Additionally, “[n]otwithstanding division (A) of this section, if a will incorporates a trust instrument only in the

event that a bequest or devise to the trust is ineffective, the trust instrument shall be deposited in the probate court not later than thirty days after the final determination that such bequest or devise is ineffective.” R.C. 2107.05(B). Fiduciaries and counsel should always make their best efforts to comply with these deposit requirements (or seek an extension if necessary), as the language in the statute is mandatory, not permissive. However, there have been instances of incorporation by reference being upheld despite failure to strictly comply with the deposit requirement, especially when the opposing party(ies) otherwise had knowledge of the incorporated trust and its contents already. See *Bolles v. Toledo Trust Co.*, 144 Ohio St. 195, 29 Ohio Op. 376, 58 N.E.2d 381, 157 A.L.R. 1164 (1944) (overruled on other grounds by *Smyth v. Cleveland Trust Co.*, 172 Ohio St. 489, 18 Ohio Op. 2d 42, 179 N.E.2d 60 (1961)); *Gehrke v. Senkiw*, 2016-Ohio-2657, 63 N.E.3d 773 (Ohio Ct. App. 2d Dist. Montgomery County 2016) (abrogated on other grounds by legislative action in 2018 HB 595, § 1).

⁴⁰R.C. 2107.05(C).

⁴¹*Linney v. Cleveland Trust Co.*, 30 Ohio App. 345, 165 N.E. 101 (8th Dist. Cuyahoga County 1928).

⁴²*Linney v. Cleveland Trust Co.*, 30 Ohio App. at 353.

⁴³*Hageman v. Cleveland Trust Co.*, 45 Ohio St. 2d 178, 74 Ohio Op. 2d 295, 343 N.E.2d 121 (1976) (abrogated by legislative action in 2018 HB 595, § 1).

⁴⁴*Hageman v. Cleveland Trust Co.*, 45 Ohio St. 2d at 182.

⁴⁵*Gehrke v. Senkiw*, 2016-Ohio-2657, 63 N.E.3d 773 (Ohio Ct. App. 2d Dist. Montgomery County 2016) (abrogated by legislative action in 2018 HB 595, § 1).

⁴⁶*Gehrke v. Senkiw*, 2016-Ohio-2657, at ¶ 14, 63 N.E.3d at 777, citing *Linney v. Cleveland Trust Co.*, 30 Ohio App. 345, 165 N.E. 101 (8th Dist. Cuyahoga County 1928).

⁴⁷*Gehrke v. Senkiw*, 2016-Ohio-2657, at ¶ 17, 63 N.E.3d at 777.

⁴⁸R.C. 2107.05(C).

⁴⁹2018 HB 595, § 3, uncodified note to amendment of R.C. 2107.05.

⁵⁰R.C. 2107.71(A).

⁵¹R.C. 2107.73.

⁵²See *State ex rel. Abraitis v. Gallagher*, 143 Ohio St. 3d 439, 443, 2015-Ohio-2312, 39 N.E.3d 491 (2015), quoting *Bloor v. Platt*, 78 Ohio St. 46, 49-50, 84 N.E. 604 (1908) (“A ‘person interested’ for purposes of a will contest is ‘[a]ny person who has such a direct, immediate, and legally ascertained pecuniary interest in the devolution of the testator’s estate as would be impaired or defeated by the probate of the will, or be benefited by setting aside the will.’ ”).

⁵³See *Matter of Estate of Carte v. Bringardner*, 2023-Ohio-4286, 229 N.E.3d 763 (Ohio Ct. App. 10th Dist. Franklin County 2023), appeal not allowed, 173 Ohio St. 3d 1433, 2024-Ohio-984, 229 N.E.3d 1202 (2024).

⁵⁴See, e.g., *Cook v. Everhart*, 2019-Ohio-3044, 2019 WL 3412434 (Ohio Ct. App. 8th Dist. Cuyahoga County 2019); *Matter of Estate of Carte v. Bringardner*, 2023-Ohio-4286, 229 N.E.3d 763 (Ohio Ct. App. 10th Dist. Franklin County 2023), appeal not allowed, 173 Ohio St. 3d 1433, 2024-Ohio-984, 229 N.E.3d 1202 (2024).

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