

**IN THE SUPREME COURT OF OHIO**

EMBASSY HEALTHCARE,

Appellee,

v.

CORA SUE BELL

Appellant

Case No.: 2017-1031

On Appeal from the  
Warren County Court of Appeals,  
Twelfth Appellate District

Court of Appeals Case No. CA2016-08-072

---

MERIT BRIEF OF APPELLANT, CORA SUE BELL

---

Miriam H. Sheline (0018333)  
Pro Seniors, Inc.  
7162 Reading Road, Suite 1150  
Cincinnati, Ohio 45237  
(513) 345-4160  
(513) 345-4169 (Fax)  
[msheline@proseniors.org](mailto:msheline@proseniors.org)

COUNSEL FOR APPELLANT,  
CORA SUE BELL

Daniel A. Friedlander (0011909)  
Jeffrey Sobeck (0080076)  
Weltman, Weinberg & Reis Co., L.P.A.  
323 West Lakeside Avenue, Suite 200  
Cleveland, Oh 44113  
(216)685-1169  
Fax: (216)363-6913  
[dfriedlander@weltman.com](mailto:dfriedlander@weltman.com)  
[jsobeck@weltman.com](mailto:jsobeck@weltman.com)

COUNSEL FOR APPELLEE,  
EMBASSY HEALTHCARE

# TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
I. STATEMENT OF THE CASE AND FACTS .....	1
II. ARGUMENT .....	2
<b>A. <u>Proposition of Law No. 1</u>:</b> The plain language of R.C. 2117.06(C) mandates a claim under R.C. 3103.03 for necessities supplied to a decedent must be presented to the estate and failure to do so bars the claim against both the estate and the spouse.....	3
<b>B. <u>Proposition of Law No. 2</u>:</b> By definition, a creditor who fails to timely present its claim to the decedent’s estate cannot prove, as a matter of law, the decedent is unable to pay the claim such that a claim cannot be brought against the spouse under R.C. 3103.03.....	13
III. CONCLUSION .....	17
CERTIFICATE OF SERVICE .....	18
APPENDIX	
Notice of Appeal to the Ohio Supreme Court .....	App. 1
Entry of the 12 <sup>th</sup> District Court of Appeals Denying Application for Reconsideration (June 16, 2017) .....	App. 3
Judgment Entry of the 12 <sup>th</sup> District Court of Appeals (April 24, 2017) .....	App. 5
Opinion of the 12 <sup>th</sup> District Court of Appeals (April 24, 2017) .....	App. 6
Decision of Franklin Municipal Court (June 7, 2016) .....	App. 21
Magistrate’s Decision of Franklin Municipal Court (Feb. 25, 2016) .....	App. 24
R.C. 3103.03 .....	App. 28
R.C. 2117.06 .....	App. 29
R.C. 2117.25 .....	App. 32

## TABLE OF AUTHORITIES

### CASES

<i>D'Amore v. Mathews</i> , 193 Ohio App.3d 575, 2011-Ohio-2853, 952 N.E.2d 1212, (12th Dist.).....	4, 5
<i>Edwin Shaw Hosp. v. Mulloy</i> , 9th Dist. Summit No. 16723, 1995 WL 283784 .....	15, 16
<i>Fifth Third Bank/Visa v. Gilbert</i> , 17 Ohio Misc.2d 14, 16, 478 N.E.2d 1324 (M.C.1984) .....	3
<i>Home Helpers/Direct Link v. St. Pierre</i> , 196 Ohio App.3d 480, 2011-Ohio-4909, 964 N.E.2d 41 .....	4, 10, 15
<i>In re Croke's Estate</i> , 155 Ohio St. 434, 99 N.E.2d 483 (1951).....	11
<i>In re Estate of Cooke</i> , 5th Dist. Ashland No. 10-COA-024, 2011-Ohio-1637 .....	15
<i>In re Estate of Curry</i> , 10 <sup>th</sup> Dist. Franklin No. 09AP-469, 2009-Ohio-6571 .....	5
<i>In re Estate of Cvanciger</i> , 2015-Ohio-4318, 42 N.E.3d 783, (11 <sup>th</sup> Dist.).....	11, 12
<i>In re Estate of Greer</i> , 197 Ohio App.3d 542, 2011-Ohio-6721, 968 N.E.2d 55, (1 <sup>st</sup> Dist.).....	5, 7, 16
<i>In re Estate of Heider</i> , 3rd Dist. Auglaize No. 2-10-14, 2010-Ohio-4820.....	5
<i>Kelley v. Ferraro</i> , 188 Ohio App.3d 734, 2010-Ohio-2771, 936 N.E.2d 986, (8 <sup>th</sup> Dist.).....	15, 16
<i>LaCourse v. Fleitz</i> , 28 Ohio St.3d 209, 503 N.E.2d 159 (1986) .....	14
<i>Metrohealth Ctr. for Skilled Nursing Care v. Parnell</i> , 8th Dist. Cuyahoga No. 98211, 2012-Ohio-4725 .....	10
<i>Norwood-Hyde Park Bank &amp; Tr. Co. v. Howard</i> , 32 Ohio N.P.(N.S.) 191, 1934 WL 1931 (C.P.1934).....	11
<i>Obergefell v. Hodges</i> , ___ U.S.___, 135 S.Ct. 2584, 2601,192 L.Ed.2d 609 (2015) .....	2
<i>Ohio State Univ. Hosp. v. Kinkaid</i> , 48 Ohio St.3d 78, 549 N.E.2d 517 (1990) .....	3, 4, 15
<i>Ohio State Univ. Med. Ctr. v. Calovini</i> , Ct. of CI No. 2001–05564–PR, 2002-Ohio-5756 .....	10

<i>Orchard Villa v. Suchomma</i> , 6th Dist. Lucas No. L-12-1213, 2013-Ohio-3186 .....	10
<i>Reid v. Premier Health Care Services Inc.</i> , 2nd Dist. Montgomery No. 17437, 1999 WL 148191 .....	5
<i>Riffle v. Physicians &amp; Surgeons Ambulance Serv., Inc.</i> , 135 Ohio St.3d 357, 2013-Ohio-989, 986 N.E.2d 983 (2013) .....	12
<i>Smith v. Sutter</i> , 90 Ohio App. 320, 323, 106 N.E.2d 658 (6th Dist.1951).....	3
<i>THC Piketon v. Edwards</i> , 10th Dist. Franklin No. 07AP-554, 2007-Ohio-6601 .....	10, 15
<i>Union Hosp. v. Beach</i> , 5th Dist. Tuscarawas No. 2016 AP 05 0027, 2016-Ohio-7058 .	10
<i>Wilson v. Lawrence</i> , 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242 (2017).....	2, 7, 8
<i>Wrinkle v. Trabert</i> , 174 Ohio St. 233, 237–38, 188 N.E.2d 587 (1963) .....	5

**STATUTES**

R.C. 2106.13 .....	9, 10
R.C. 2117.06 .....	2, 3, 4, 5, 6, 7, 8, 12, 14, 16, 17, 18
R.C. 2117.25 .....	9, 10, 12, 13, 15, 17
R.C. 3103.03 .....	2, 3, 4, 9, 12, 13, 14, 16, 17

## I. STATEMENT OF THE CASE AND FACTS

The Appellant, Cora Sue Bell was married to Robert Bell. Mr. Bell suffered from an aneurysm in his legs which ultimately required amputation. He also required a feeding tube. (T.d. 30). Because of his illnesses, Mr. Bell began residing at the Appellant's nursing facility in January, 2014. Mr. Bell passed away on May 22, 2014. *Id.* At the time of his death, Mr. Bell had medical insurance coverage through Medicare and a Medicare supplemental policy, which would cover 100 days of skilled nursing care. *Id.* As of April 5, 2016, he had 54 days of skilled nursing care coverage remaining. *Id.*, (t.d. 31, exhibit A, p. 7).

On November 25, 2014, more than 6 months after Mr. Bell's death, Appellee first contacted Mrs. Bell about Mr. Bell's account by letter addressed to the estate of Robert Bell. (T.d. 31, exhibit C). Mrs. Bell was not the executor or administrator of Mr. Bell's estate. (T.d. 30, p. 2). Further, the Appellee filed no action in Probate Court in order to present its claim prior to that date. (T.d. 32, p. 2). Then, on June 29, 2015, Appellee demanded payment of its account from Mrs. Bell by filing its complaint against her 13 months after Mr. Bell's death. In that complaint, the Appellee claimed Mrs. Bell was liable for her husband's nursing home debt under the necessities statute, R.C. 3103.03. (T.d. 42, p. 2).

In deciding the Appellant's Motion for Summary Judgment, the Magistrate recommended the motion be granted because of the absence of any evidence of Mr. Bell's inability to pay the Appellee's account. (App. 26). In its ruling on the Appellee's objections to the Magistrate's decision, the Trial Court determined that the Appellee's

claim was time barred from recovering the alleged debt because it failed to present its claim to the decedent's estate within 6 months as required by R.C. 2117.06. (App. 23).

On April 24, 2017, the 12<sup>th</sup> District Court of Appeals reversed the Trial Court by deciding the claim against the spouse under R.C. 3103.03 was an independent claim against the surviving spouse, not prohibited by the probate provisions in R.C. 2117.06(C). (App. 11, ¶ 17).

The Appellant filed an Application for Reconsideration on May 17, 2017 based on this Court's decision in *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242 (2017). (C.A. d. 47). The Court of Appeals denied the Application for Reconsideration on June 16, 2017 finding *Wilson* was limited to whether a claim is presented to an estate upon delivery to a third party who later gives it to the executor. (App. 4). The Court of Appeals concluded that *Wilson* did not apply to the issue whether the mandatory language in R.C. 2117.06(C) barred a claim against a spouse under R.C. 3103.03 when it is not timely presented to the executor or administrator of the debtor's estate. *Id.* On July 28, 2017, Appellant filed her Notice of Appeal, (app. 1), and Memorandum in Support of Jurisdiction. This Court accepted jurisdiction of this appeal on January 31, 2018.

## **II. ARGUMENT**

The U.S. Supreme Court enunciated the public policy relating to marriage in *Obergefell v. Hodges*, \_\_\_U.S.\_\_\_, 135 S.Ct. 2584, 2601,192 L.Ed.2d 609 (2015): “[J]ust as a couple vows to support each other, so does society pledge to support the couple, offering symbolic recognition and material benefits to protect and nourish the union.” Ohio’s Legislature has passed statutes that codify both of these interests. The

first is the spouse's support of the other with "necessaries" when the other is unable to support himself, codified in R.C. 3103.03. The second is to provide material benefits to the surviving spouse from the deceased spouse's estate, as set out in the probate statutory scheme. By finding a creditor's claim against the surviving spouse under R.C. 3103.03 is a claim independent from the probate provisions, the 12<sup>th</sup> District has placed these two policies in direct conflict. The Court of Appeals' decision raises a creditor's claim for medical expenses above the claim of other creditors. It also allows the medical creditor to by-pass the protections the Legislature has provided for the surviving spouse under probate law. Indeed, said decision elevates the marital obligation of support above the statutory provisions of financial protections for the surviving spouse.

**A. Proposition of Law No. 1: The plain language of R.C. 2117.06(C) mandates a claim under R.C. 3103.03 for necessities supplied to a decedent must be presented to the estate and failure to do so bars the claim against both the estate and the spouse.**

R.C. 3103.03 is the Legislature's recognition that spouses support each other by providing certain "necessaries" such as food, medicines, clothing, shelter, or personal services as are "reasonably essential for the preservation and enjoyment of life." *Smith v. Sutter*, 90 Ohio App. 320, 323, 106 N.E.2d 658 (6th Dist.1951).<sup>1</sup> This court in *Ohio State Univ. Hosp. v. Kinkaid*, expanded the definition to include medical expenses. "Finally, implicit in our decision, without saying more, is that medical expenses are necessities and, as such, are included as part of any definition of 'support.'" 48 Ohio St.3d 78, 80, 549 N.E.2d 517 (1990). R.C. 3103.03 does not impose upon the spouse

---

<sup>1</sup> Not all of the individual's debts can be assessed against a spouse. For instance, credit card debts are not assessable against the spouse. *Fifth Third Bank/Visa v. Gilbert*, 17 Ohio Misc.2d 14, 16, 478 N.E.2d 1324 (M.C.1984)

joint liability for the individual's debts. Instead, it recognizes the duty of support first falls on the individual.

- (A) Each married person must support the person's self and spouse out of the person's property or by the person's labor. *If a married person is unable to do so*, the spouse of the married person must assist in the support so far as the spouse is able.

*Id.* (Emphasis added). Thus, the individual debtor must first support himself from his property and his labor. It is only after he is unable to do so does the spouse's obligation arise. As this Court noted in *Kinkaid*: "Where a husband is unable to provide for his own support, pursuant to R.C. 3103.03 a wife must aid in the support of her husband to the extent that she is able." 48 Ohio St. at 80, 549 N.E.2d 517 (1990). In fact, the 12<sup>th</sup> District, in a previous decision, determined "...that the plain language of R.C. 3103.03(A) requires that the married person be unable to support himself before the spouse of the married person must assist." *Home Helpers/Direct Link v. St. Pierre*, 196 Ohio App.3d 480, 2011-Ohio-4909, 964 N.E.2d 41, ¶ 16 (12<sup>th</sup> Dist).

In this case, Mrs. Bell's husband, Robert Bell, who incurred the nursing home debt, passed away May 22, 2014. However, the Appellee presented no claim to his estate as required by R.C. 2117.06. Instead, on June 29, 2015, over a year after Mr. Bell's death, the Appellee sued Mrs. Bell claiming she was personally liable under R.C. 3103.03 because its debt was for providing necessities to her spouse. (T.d. 42). As the Appellee's claim was for nursing home services provided to Mr. Bell, said claim became a claim of his estate. As the 12<sup>th</sup> District noted in a prior decision:

Thus, the cornerstone, and relevant consideration, of D'Amore's cause of action is simply a claim for money due based upon a contract formed with a person now deceased. Following Crow's death, his contractual obligations became a debt of the estate. See *In re Estate of Cooke*, Ashland App. No. 10-COA-024, 2011-Ohio-



1637, 2011 WL 1233222, ¶ 15 (“Obligations incurred by a deceased during [his] lifetime become debts of [his] estate by operation of law.” *Osborne v. Osborne* (1996), 114 Ohio App.3d 412, 414, 683 N.E.2d 365. Both kinds of debts must be presented in claims to the deceased's personal representative); *Willis v. McDermott* (June 30, 1988), Cuyahoga App. No. 53820, 1988 WL 87625, at \*1.

*D'Amore v. Mathews*, 193 Ohio App.3d 575, 2011-Ohio-2853, 952 N.E.2d 1212, ¶ 19 (12th Dist.). Thus, the debt is governed by probate law. R.C. 2117.06 requires the Appellee's claim be presented to the executor or administrator for Mr. Bell's estate.

(B) Except as provided in section 2117.061 of the Revised Code, all claims *shall be presented within six months after the death of the decedent*, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period. Every claim presented shall set forth the claimant's address.

(Emphasis added).

Case law has been clear that, when no estate has been filed within 6 months of death, the decedent's creditor must do so in order to timely present its claim to the estate representative. As this Court noted in *Wrinkle v. Trabert*, “where one has a claim against an estate, it is incumbent upon him, if no administrator has been appointed, to procure the appointment of an administrator against whom he can proceed.” 174 Ohio St. 233, 237–38, 188 N.E.2d 587 (1963). See also *In re Estate of Greer*, 197 Ohio App.3d 542, 2011-Ohio-6721, 968 N.E.2d 55, ¶ 12(1<sup>st</sup> Dist.); *In re Estate of Curry*, 10<sup>th</sup> Dist. Franklin No. 09AP-469, 2009-Ohio-6571, ¶ 16; *In re Estate of Heider*, 3rd Dist. Auglaize No. 2-10-14, 2010-Ohio-4820, ¶ 16; *Reid v. Premier Health Care Services Inc.*, 2nd Dist. Montgomery No. 17437, 1999 WL 148191, \*4. This requirement has been applied to nursing home debts, *In re Estate of Curry* at ¶ 11, and to debts claimed to be the decedent's “last sickness” expenses. *In re Estate of Greer* at ¶ 20.

The Court of Appeals incorrectly determined that R.C. 2117.06 did not apply:

[T]he trial court erred in its conclusion that the failure to present a claim against an estate within the time requirements set forth in R.C. 2117.06 precludes a creditor from pursuing a claim for necessities against a decedent debtor's spouse under R.C. 3103.03. The plain language of R.C. 2117.06 makes clear that it is applicable only to claims against an estate. *Embassy's claim under R.C. 3103.03* is not a claim against Robert's estate but *is a personal claim against Bell*.

(App. 17). (Emphasis added). The Court of Appeals' decision bypasses the requirement to present its claim within 6 months of death, applicable to all claimants of the estate, by stating the necessities claim was a special claim against a spouse "independent" of the claim against the estate. Said determination specifically ignores the clear language of R.C. 2117.06(B): "Except as provided in section 2117.061 of the Revised Code, all claims shall be presented within six months after the death of the decedent...." There is no exception for necessities claims. The statutory language states "all claims shall" be presented. Further, the fact that no one opened an estate is no defense. R.C. 2117.06(C) then specifies the effect of failing to comply with (B):

Except as provided in section 2117.061 of the Revised Code, a claim that is not presented within six months after the death of the decedent shall be *forever* barred as to *all parties*, including, *but not limited to*, devisees, legatees, and distributees. No payment *shall* be made on the claim and no action *shall* be maintained on the claim, except as otherwise provided in sections 2117.37 to 2117.42 of the Revised Code with reference to contingent claims.

(Emphasis added). The Court of Appeals limited R.C. 2117.06(C) to claims in the probate estate and against "beneficiaries." However, R.C. 2117.06(C) states the claim is barred against all parties, including, "but not limited to" beneficiaries. The 12<sup>th</sup> District's decision makes meaningless the term "but not limited to." If the Legislature intended the bar to be personal to the beneficiaries, the statute could have stated failure

to present a claim “discharges the beneficiaries from their obligation to the creditor.” Instead, the plain language of 2117.06(C) specifies it is applicable to “the claim” not the beneficiary. No payment *shall* be made *on the claim* and no action *shall* be maintained *on the claim*. Further, the claim “*shall* be forever barred”. As this Court noted in *Wilson v. Lawrence*:

“‘Shall’ means must.” *Application of Braden*, 105 Ohio App. 285, 286, 148 N.E.2d 83 (1st Dist.1957). See also *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 107, 271 N.E.2d 834 (1971), citing *Cleveland Ry. Co. v. Brescia*, 100 Ohio St. 267, 126 N.E. 51 (1919) (“The word ‘shall’ is usually interpreted to make the provision in which it is contained mandatory, \* \* \* especially if frequently repeated”). And “[t]he word ‘must’ is mandatory. It creates an obligation. It means obliged, required, and imposes a physical or moral necessity.” *Willis v. Seeley*, 68 N.E.2d 484, 485 (C.P.1946). Thus, we repeatedly have recognized that use of the term “shall” in a statute connotes a mandatory obligation unless other language evidences a clear and unequivocal intent to the contrary. *State ex rel. Cincinnati Enquirer v. Lyons*, 140 Ohio St.3d 7, 2014-Ohio-2354, 14 N.E.3d 989, ¶ 28. Here, there is absolutely no indication in the statutory scheme that the General Assembly meant “shall” to mean anything other than “must.”

150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶ 13 (2017). *Wilson* was specifically addressing the mandatory provisions of R.C. 2117.06(A), but its analysis is equally applicable here. R.C. 2117.06(B) & (C) specify the creditor of the estate must present its claim within 6 months of death and, if it does not do so, the creditor’s claim must be barred against all parties forever. In fact, if an executor erroneously pays the claim not timely presented, the executor can be held personally liable to repay the estate. *In re Estate of Greer*, 197 Ohio App.3d 542, 2011-Ohio-6721, 968 N.E.2d 55 at ¶ 1.

Although brought to the Court’s attention in the Appellant’s Motion for Reconsideration, (CA d. 47), the 12<sup>th</sup> District Court of Appeals disregarded the

mandatory language of R.C. 2117.06, and this Court's decision in *Wilson*, by finding that R.C. 2117.06 was limited to claims against an estate and not subsequent claims brought against the spouse under R.C. 3103.03. (App. 4). However, the court also recognized:

If a creditor can prove every necessary element under R.C. 3103.03, it can maintain a cause of action for the recovery of "necessaries" against a debtor's spouse regardless of whether it timely presented a claim against the deceased debtor's estate. However, the creditor pursuing a necessities claim must prove that a deceased debtor was unable to support himself. If the creditor cannot prove that element of the claim and fails to timely present a claim against the debtor's estate, *it runs the risk of losing the ability to pursue the debt entirely.*

(App. 11) (emphasis added). The Appellate Court then attempts to explain the difference by stating: "A creditor's right to pursue such a claim does not depend on whether the debtor is living or whether an estate exists. In the context of this case, a claim brought under the necessities statute is simply not within the purview of R.C. 2117.06." (App. 11). This explanation ignores the plain language of R.C. 2117.06(C) that the bar applies to *any* action on the claim and further prohibits *any* payment on that claim.

The lower Court's ruling also creates a conflict between the legislative policies recognizing spouses are to support each other and the efficient management of an estate. As this Court noted in *Wilson* at ¶ 15:

[W]e recognize that the requirements of R.C. 2117.06 are not arbitrary ones that elevate form over substance. Rather, they protect the vital interests of the estate and its beneficiaries, as well as the estate's creditors, by ensuring the orderly, efficient, and legally proper administration of the estate by "a probate fiduciary, an officer of the Probate Court." *Beacon Mut. Indemn. Co. v. Stalder*, 95 Ohio App. 441, 445, 447, 120 N.E.2d 743 (9th Dist.1954); see, e.g., *Fortelka* at 479, 200 N.E.2d 318; *Beach*, 131 Ohio St. at 485, 3 N.E.2d 417.

If R.C. 3103.03 were an independent claim, it would disrupt the orderly administration of the estate by allowing necessities creditors to collect outside the administration of the decedent's estate, which includes the payment of claims in order of priority. R.C. 2117.25 determines the priority of creditors' claims as follows:

- (1) Costs and expenses of administration;
- (2) An amount, not exceeding four thousand dollars, for funeral expenses ...
- (3) *The allowance for support made to the surviving spouse*, minor children, or both under section 2106.13 of the Revised Code;
- (4) Debts entitled to a preference under the laws of the United States;
- (5) Expenses of the last sickness of the decedent;
- (6) If the total bill of a funeral director for funeral expenses exceeds four thousand dollars, then . . . an amount, not exceeding two thousand dollars, for funeral expenses that are included in the bill and that exceed four thousand dollars;
- (7) *Expenses of the decedent's last continuous stay in a nursing home* as defined in section 3721.01 of the Revised Code, residential facility as defined in section 5123.19 of the Revised Code, or hospital long-term care unit as defined in section 5168.40 of the Revised Code.

(Emphasis added). Part of the Legislature's intent expressed in R.C. 2117.25 is to provide the surviving spouse with the support allowance of \$40,000. R.C. 2106.13. Thus, in this section the Legislature has weighed the societal needs of preserving assets for a surviving spouse against the decedent's creditors, including "necessaries" claims for nursing home expenses, and determined the spousal allowance takes precedence over the decedent's nursing home bill. The 12<sup>th</sup> District's decision, however, eviscerates this protection by determining that the same creditor, whose claim was discharged in probate can later sue, under the necessities statute, R.C. 3103.03, against that same spouse for which the Legislature has statutorily provided allowances.

The 12<sup>th</sup> District seems to be suggesting that, if a creditor can prove there was no assets in the estate, it can pursue the spouse. However, this would also mean if there were an estate with insufficient assets to pay the creditor's claim in order of priority, the nursing home could sue the surviving spouse later. Such an interpretation totally disregards the language of R.C. 2117.25:

(E) No payments shall be made to creditors of one class until all those of the preceding class are fully paid or provided for. If the assets are insufficient to pay all the claims of one class, the creditors of that class shall be paid ratably.

(F) If it appears *at any time that the assets have been exhausted* in paying prior or preferred charges, allowances, or claims, those payments *shall be a bar to an action on any claim* not entitled to that priority or preference.

(Emphasis added). In the case in which there were minimal assets that would only pay the spouse her allowance of \$40,000<sup>2</sup>, the 12<sup>th</sup> District's decision would make this provision meaningless by allowing a creditor, whose claim is barred by R.C. 2117.25(F) to still pursue its claim personally against the surviving spouse under R.C. 3103.03 and potentially collect its claim against the spouse's allowance. When it comes to nursing home costs, the debts could be extremely high, even to eliminating the spouse's allowance entirely. For instance, in *Ohio State Univ. Med. Ctr. v. Calovini*, Ct. of Cl No. 2001-05564-PR, 2002-Ohio-5756, ¶ 2, the hospital sued the spouse for \$51,826.72.<sup>3</sup>

---

<sup>2</sup> R.C. 2106.13

<sup>3</sup> See also *Union Hosp. v. Beach*, 5th Dist. Tuscarawas No. 2016 AP 05 0027, 2016-Ohio-7058, ¶ 3, surviving spouse sued for \$12,103.27; *Orchard Villa v. Suchomma*, 6th Dist. Lucas No. L-12-1213, 2013-Ohio-3186, ¶ 6, surviving spouse sued for \$20,692.80; *Metrohealth Ctr. for Skilled Nursing Care v. Parnell*, 8th Dist. Cuyahoga No. 98211, 2012-Ohio-4725, ¶ 2, surviving spouse sued for \$11,755.66; *Home Helpers/Direct Link v. St. Pierre*, 196 Ohio App.3d 480, 2011-Ohio-4909, 964 N.E.2d 41, ¶ 4 (12<sup>th</sup> Dist.), surviving spouse sued for \$37,780; *THC Piketon v. Edwards*, 10th Dist. Franklin No. 07AP-554, 2007-Ohio-6601, ¶ 4, surviving spouse sued for \$37,355.

The courts, however, have recognized the Legislature's intent to provide protected property right in the form of the spousal allowance to prevent the impoverishment of the spouse. For instance, in *In re Croke's Estate*, this Court stated:

The widow's 'year's allowance' is as broad as the grant of the statute and may not be limited except by specific terms of the statute creating it or by some other statutory enactment of equal efficacy. As a vested right of property such right may not be taken away except by a waiver or surrender thereof by the widow herself or her personal representative in case of her death.

155 Ohio St. 434, 442, 99 N.E.2d 483 (1951). In fact, the spousal allowance "is of such high character that . . . it is preferred over common creditors of the estate and is subordinate in preference only to the costs of the administration and funeral expenses of the husband to the extent of \$350. Section 10509-121, General Code." *Id.* at 443–444, 99 N.E.2d 483 (1951). A similar question was addressed in *Norwood-Hyde Park Bank & Tr. Co. v. Howard*, 32 Ohio N.P.(N.S.) 191, 1934 WL 1931 (C.P.1934). The Court explored the question whether the Legislature intended through the spousal allowance to remove this portion from the reach of creditors, including the surviving spouse's creditor and concluded:

[T]he legislative intent in providing a widow's allowance for her support for twelve months after the death of her husband was to *hold sacred* the amount for her allowance against execution for her debts, other than for her necessary support during said twelve months; that the debt upon which this judgment was founded was primarily the debt of the husband, and that the bank cannot levy upon this allowance to satisfy a judgment on such debt.

*Id.* at 200. (Emphasis added). Thus, the spousal allowance under this provision is exempt from attachment by creditors. As the court in *In re Estate of Cvanciger*, citing *Howard* at 193, explained: "[T]he statutory allowance is based on the public policy aimed at protecting the surviving spouse and children from the distress and economic

need often caused by the recent loss of their supporter and protector.” 2015-Ohio-4318, 42 N.E.3d 783, ¶ 40 (11<sup>th</sup> Dist.). In order to adequately protect the surviving spouse, therefore, “the right to the statutory allowance is absolute and automatic.” *Id.* at ¶ 35. Implicit in the 12<sup>th</sup> District’s decision is the suggestion that perhaps no estate was opened because there were no assets. There is no evidence in the record to this effect, but assuming, *arguendo*, that this were true, this means the spouse received no allowance either. To determine that the surviving spouse who received no allowance could be held personally liable for medical debts under R.C. 3103.03, whereas the surviving spouse who received the full allowance would not be liable would be nonsensical. In fact, such a result would defeat the very public policy for which the Legislature created the spousal allowance, protecting the surviving spouse from the economic need created by the loss of the other spouse.

The 12<sup>th</sup> District opined, as R.C. 3103.03 did not reference R.C. 2117.06, it did not need to consider the probate provisions. A basic rule of statutory construction, however, required the court to consider both:

As explained in *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522, “ [i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law.’ ” *Id.* at ¶ 24, quoting *State v. Moaning*, 76 Ohio St.3d 126, 128, 666 N.E.2d 1115 (1996)

*Riffle v. Physicians & Surgeons Ambulance Serv., Inc.*, 135 Ohio St.3d 357, 2013-Ohio-989, 986 N.E.2d 983, ¶ 21 (2013).

Reading R.C. 2117.06, 2117.25 and 3103.03 together makes it clear, contrary to the 12<sup>th</sup> District Court’s decision, R.C. 3103.03 is not independent from the probate statutory provisions. Instead, after death, the public policy is to support the surviving



spouse. Otherwise, the 12<sup>th</sup> District's approach that the creditor's claim is "independent" of the probate statutory scheme has the effect of gutting the protections the Legislature intended to provide the surviving spouse. The 12<sup>th</sup> District's decision would allow the decedent's creditors to avoid probate entirely, thereby avoiding the statutorily mandated list of priority claims, and allow the creditor to sue the surviving spouse personally. This would make the mandated list of priority claims set out in R.C. 2117.25 meaningless and allow a medical creditor to collect against the surviving spouse's statutory allowance.

The correct analysis, balancing both statutory schemes, and both policies, is to require the necessaries creditor to present its claim to the estate representative as all creditors are required to do. As the Appellee failed to do so timely, its claim is barred against both the estate and the Appellant.

**B. Proposition of Law No. 2: By definition, a creditor who fails to timely present its claim to the decedent's estate cannot prove, as a matter of law, the decedent is unable to pay the claim such that a claim cannot be brought against the spouse under R.C. 3103.03.**

As noted previously, R.C. 3103.03 imposes liability on a spouse if the debtor who incurred the necessaries debt is unable to pay for the debt. The Court of Appeals recognized that the creditor bringing a claim under R.C. 3103.03 must first show that the individual who incurred the debt was unable to pay the debt before liability can be imposed on the spouse. However, because the Court of Appeals determined R.C. 3103.03 "creates a personal and independent cause of action against a spouse who neglects to pay for the other spouse's 'necessaries,'" the fact that a claim was not presented to the decedent's estate did not bar the claim against the spouse:

R.C. 3103.03 makes no reference to R.C. 2117.06. Nor can we reasonably interpret the claim to be dependent upon the timely presentation of a separate claim against the debtor spouse's estate. If a creditor can prove every necessary element under R.C. 3103.03, it can maintain a cause of action for the recovery of "necessaries" against a debtor's spouse regardless of whether it timely presented a claim against the deceased debtor's estate. However, the creditor pursuing a necessities claim must prove that a deceased debtor was unable to support himself. If the creditor cannot prove that element of the claim and fails to timely present a claim against the debtor's estate, it runs the risk of losing the ability to pursue the debt entirely.

(App. 11, ¶17). The Court reaches this conclusion by determining R.C. 2117.06(C) does not apply to the Appellee's necessities claim as the claim against the spouse is an "independent" claim under R.C. 3103.03, although the creditor "runs the risk of losing the ability to pursue the debt entirely." The plain language of R.C. 3103.03 states otherwise. Because liability is being imposed on the spouse by statute, the claim must be strictly governed by the language of the statute. A duty created by statute is limited to the language of that statute. Further, "liability imposed by statute shall not be extended beyond the clear import of the terms of the statute." *LaCourse v. Fleitz*, 28 Ohio St.3d 209, 212, 503 N.E.2d 159, (1986). The creditor's claim is a derivative one, as the claim does not accrue against the spouse unless the debtor is unable to pay the debt. The essential elements of the creditor's necessities claim against a spouse for which the creditor bears the burden of proof are:

- a) The debtor and the spouse were married;
- b) the creditor supplied necessities to the debtor; and
- c) the debtor was unable to pay for those necessities.

Only after these 3 elements are met is there any liability imposed upon the spouse, with the spouse having an affirmative defense of *her* inability to pay for the debtor's bill. In

other words, proof that the recipient of the services was unable to pay for the services is a prerequisite to any liability being imposed upon the spouse. This Court in *Kinkaid* also concluded the debtor's inability to pay for the medical services is a condition precedent to the spouse's liability. 48 Ohio St.3d at 80, 549 N.E.2d 517 (1990). Similarly, the 12<sup>th</sup> District previously recognized that inability to pay the debt by the recipient of the services is a prerequisite to liability being imposed upon the spouse. "... [T]he plain language of R.C. 3103.03(A) requires the married person be unable to support himself before the spouse of the married person must assist." *Home Helpers/Direct Link v. St. Pierre*, 196 Ohio App.3d 480, 2011-Ohio-4909, 964 N.E.2d 41 at ¶ 16. (Emphasis added). See also *Edwin Shaw Hosp. v. Mulloy*, 9th Dist. Summit No. 16723, 1995 WL 283784, \*2; *THC Piketon v. Edwards*, 10th Dist. Franklin No. 07AP-554, 2007-Ohio-6601, ¶ 1.

What is the effect of the individual's death? "Obligations incurred by a deceased during her lifetime become debts of her estate by operation of law ...' *Osborne v. Osborne* (1996), 114 Ohio App.3d 412, 414, 683 N.E.2d 365." *In re Estate of Cooke*, 5th Dist. Ashland No. 10-COA-024, 2011-Ohio-1637, ¶ 15. In fact, R.C. 2117.25 recognizes this when it states: "(A) Every executor or administrator shall proceed with diligence to pay *the debts of the decedent*." (Emphasis added). As Ohio courts have found, the estate "stands in the shoes" of the decedent:

Ohio law is clear that the legal representative of a decedent stands in the shoes of that decedent with respect to his financial and commercial rights *and obligations* and that a partner's legal interest in the partnership continues through his estate after his death. See, e.g., *Hosfelt v. Miller* (Nov. 22, 2000), 7th Dist. No. 97-JE-50, 2000 WL 1741909, citing *Santa v. Ohio Dept. of Human Serv.* (2000), 136 Ohio App.3d 190, 736 N.E.2d 86; *Hopper v. Nicholas* (1922), 106 Ohio St. 292, 302, 140 N.E. 186; *Hill v. Hill* (Feb. 21, 2002), 10th Dist. No. 01AP-716, 2002 WL 243294.

*Kelley v. Ferraro*, 188 Ohio App.3d 734, 2010-Ohio-2771, 936 N.E.2d 986, ¶ 55 (8<sup>th</sup> Dist.). (Emphasis added). The decedent's estate's position is to stand in the shoes of the decedent for both the decedent's rights "and obligations." Thus, under R.C. 3103.03, the first party obligated to pay the necessities claim is the estate. Only after the estate is "unable" to do so does the creditor have a claim against the surviving spouse. In this case, the Appellee never presented its claim to the estate as required by R.C. 2117.06(B). Therefore, the estate was never given the opportunity to pay the claim.

A similar case is where the creditor sued both the individual debtor and the spouse simultaneously, but the creditor failed to obtain service upon the debtor. In *Edwin Shaw Hosp. v. Mulloy* at \*2, the court found the wife was not liable as "[t]he hospital's failure to obtain service of process on Mulloy does not mean that Mulloy was unable to pay. It means only that he is either elusive or the hospital did not pursue him with diligence." Thus, the attempt to collect against the individual is a prerequisite to spousal liability under R.C. 3103.03. Where the individual is deceased, as a prerequisite to seeking payment from the surviving spouse, that attempt means presenting a claim to decedent's estate representative pursuant to R.C. 2117.06(B). Since that claim was never presented, the Appellee can never establish the estate was unable to pay the claim. If the Appellee presented its claim to Mr. Bell's estate representative today, it would be rejected as being barred by R.C. 2117.06(C). Indeed, if the executor paid the claim presented after 6 months of death, the executor would be subject to personal liability to reimburse the estate. *In re Estate of Greer*, 197 Ohio App.3d 542, 2011-Ohio-6721, 968 N.E.2d 55 at ¶ 1. Thus, as a matter of law, Mr. Bell's

estate is statutorily prohibited from making any payment on said claim. As Mr. Bell's estate owes no debt to the Appellee, the Appellee cannot prove the essential element of its claim that Mr. Bell's estate is unable to pay a debt. Said debt no longer exists.

The correct analysis, therefore, in applying the language of R.C. 3103.03 to a deceased individual is that, until a necessary creditor has presented its claim to the decedent's estate as required by R.C. 2117.06(B), it cannot establish a claim against the spouse. If that claim is barred by R.C. 2117.06(C), as a matter of law, the creditor can never show the decedent was unable to pay the debt. Therefore, it also cannot establish liability against the spouse.

### **III. CONCLUSION**

In summary, the 12<sup>th</sup> District's decision finding a claim under R.C. 3103.03 is an independent claim personal to the spouse disregards the clear language of R.C. 3103.03 that said claim is dependent upon first finding the recipient of the services was unable to support himself through his assets or his labor before liability can be imposed on the spouse. Where the individual recipient has died, the necessary claim must be subject to the probate statutory framework requiring the claim be presented to the estate as required under R.C. 2117.06. When the creditor fails to do so timely, the clear language of R.C. 2117.06(C) bars the creditor's necessary claim against "all parties." In fact, payment on the claim is specifically prohibited. The lower Court's opinion also sets a precedent which would effectively exempt the claim of the nursing home in an estate from the priority of creditors set out in R.C. 2117.25, thereby defeating the legislative intent to provide minimal resources to a surviving spouse. The Legislature has determined that, after death, the need to provide for the surviving spouse takes

precedence over the obligation for the spouse to support the decedent. The Court of Appeals decision, if left in place, would allow a nursing home to eliminate these protections by merely suing the surviving spouse directly, as occurred herein, a year after the decedent's death and take whatever spousal allowance she was provided from her husband's estate.

Therefore, in order to protect the spousal protections intended by the Legislature, and to enforce the clear language of R.C. 2117.06(C), the Appellant requests this Court reverse the Court of Appeals and reinstate the Trial Court's dismissal of this case.

Respectfully submitted,

/s/Miriam H. Sheline  
Miriam H. Sheline, (0018333)  
Counsel for Appellant  
Pro Seniors, Inc.  
7162 Reading Road, Suite 1150  
Cincinnati, Ohio 45237-3838  
Telephone: (513) 458-5509  
Facsimile: (513) 345-4169  
Email: [msheline@proseniors.org](mailto:msheline@proseniors.org)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail and regular US mail this 28<sup>th</sup> day of March 2018 on Daniel A. Friedlander and Jeffrey Sobeck, Counsel for Appellee, Weltman, Weinberg & Reis Co., L.P.A., 323 West Lakeside Avenue, Suite 200, Cleveland, Oh 44113.

/s/Miriam H. Sheline  
Miriam H. Sheline,  
Counsel for Appellant

Appellant's  
Appendix

IN THE SUPREME COURT OF OHIO

EMBASSY HEALTHCARE,

Appellee,

v.

CORA SUE BELL

Appellant

Case No.:

17-1031

On Appeal from the  
Warren County Court of Appeals,  
Twelfth Appellate District

Court of Appeals Case No. CA2016-08-072

---

NOTICE OF APPEAL OF APPELLANT, CORA SUE BELL

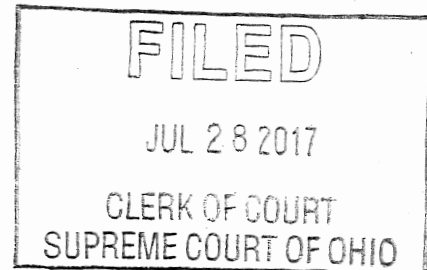
---

Miriam H. Sheline (0018333)  
Pro Seniors, Inc.  
7162 Reading Road, Suite 1150  
Cincinnati, Ohio 45237  
(513) 345-4160  
(513) 345-4169 (Fax)  
[msheline@proseniors.org](mailto:msheline@proseniors.org)

COUNSEL FOR APPELLANT,  
CORA SUE BELL

Daniel A. Friedlander (0011909)  
Jeffrey Sobeck (0080076)  
Weltman, Weinberg & Reis Co., L.P.A.  
323 West Lakeside Avenue, Suite 200  
(216)685-1169  
Fax: (216)363-6913  
[dfriedlander@weltman.com](mailto:dfriedlander@weltman.com)  
[jsobeck@weltman.com](mailto:jsobeck@weltman.com)

COUNSEL FOR APPELLEE,  
EMBASSY HEALTHCARE



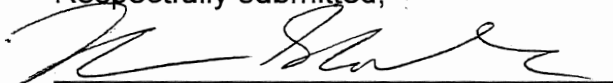


## Notice of Appeal of Appellant Cora Sue Bell

Appellant, Cora Sue Bell, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Warren County Court of Appeals, Twelfth Appellate District, entered in Court of Appeals Case No. CA2016-08-072 on April 19, 2017. The Appellant timely filed an Application for Reconsideration on May 2, 2017. The Court of Appeals denied the Appellant's Application for Reconsideration entered on June 16, 2017.

This case raises questions of public or great general interest.

Respectfully submitted,

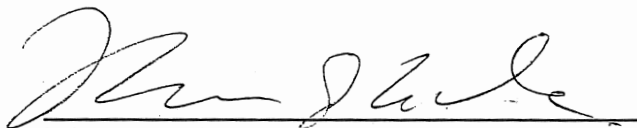


Miriam H. Sheline, (0018333)  
Pro Seniors, Inc.  
7162 Reading Road, Suite 1150  
Cincinnati, Ohio 45237-3838  
Telephone: (513) 458-5509  
Facsimile: (513) 345-4169  
msheline@proseniors.org

COUNSEL FOR APPELLANT,  
CORA SUE BELL

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by regular US mail this 28 day of July 2017 on Daniel A. Friedlander and Jeffrey Sobeck, counsel for Appellee, Weltman, Weinberg & Reis Co., L.P.A., 323 West Lakeside Avenue, Suite 200, Cleveland, Oh 44113.



Miriam H. Sheline,  
Counsel for Appellant, Cora Sue Bell

IN THE COURT OF APPEALS OF WARREN COUNTY, OHIO

COURT OF APPEALS  
WARREN COUNTY  
FILED

CASE NO. CA2016-08-072  
REGULAR CALENDAR

Appellant, JUN 16 2017

vs. James L. Spaeth, Clerk  
LEBANON OHIO

ENTRY DENYING APPLICATION  
FOR RECONSIDERATION

CORA SUE BELL,

Appellee.

The above cause is before the court pursuant to an application for reconsideration filed by counsel for appellee, Cora Sue Bell, on May 2, 2017, and a memorandum in opposition filed by counsel for appellant, Embassy Healthcare, on May 11, 2017. An application for reconsideration should be granted if it calls the attention of the court to an obvious error in its decision, or raises an issue for consideration which was either not considered at all or not fully considered by the court when it should have been. *Matthews v. Matthews*, 5 Ohio App. 3d 140 (10th Dist.1982).

In the present appeal, Embassy sued Bell asserting a claim under Ohio's "necessaries" statute, R.C. 3103.03. Embassy alleged that it provided Bell's deceased husband with \$1,678 in unpaid nursing services, and that Bell was personally liable for the debt pursuant to the necessaries statute. This court found that Embassy's failure to pursue a timely claim against the husband's estate did not preclude Embassy from pursuing a separate necessaries claim against Bell. In so holding, this court observed that the necessaries statute provides Embassy with an independent cause of action against Bell, which was not a claim against her husband's estate. The court also found that the time limitation set forth in R.C.

Warren CA2016-08-072  
Page -2-

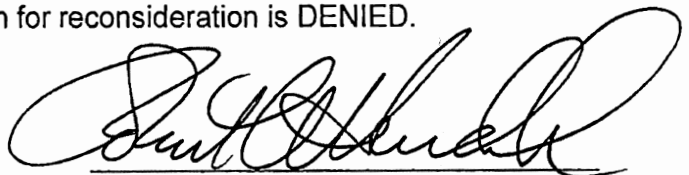
2117.06 applies only to claims against an estate.

In her application for reconsideration, Bell argues that his court should reconsider its decision in light of a recent Ohio Supreme Court case, *Wilson v. Lawrence*, \_\_\_ Ohio St.3d \_\_\_, 2017-Ohio-1410. Bell argues that the Ohio Supreme Court held that the provisions of R.C. 2117.06 are "mandatory," and that this court's interpretation of R.C. 2117.06 conflicts with *Wilson*. Bell argues that this court's decision "softens" the mandatory requirements of R.C. 2117.06 because it concluded that the statute only applies to claims against an estate and not claims brought under the necessities statute.

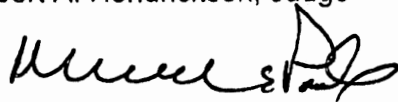
Bell's argument does not warrant reconsideration of this court's decision. The argument does not raise an obvious error, nor does it raise an issue for consideration that was either not considered or not fully considered when it should have been. The court in *Wilson* concluded that a claim is not presented to an estate upon delivery to a third party who later gives it to the executor. This legal conclusion has no bearing upon the issue addressed by the court in the present case, i.e., whether R.C. 2117.06 precludes a creditor from pursuing a necessities claim against a deceased debtor's spouse.

Accordingly, the application for reconsideration is DENIED.

IT IS SO ORDERED.



Robert A. Hendrickson, Judge



Mike Powell, Judge

✓  
COURT OF APPEALS  
WARREN COUNTY  
FILED

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

APR 24 2017

James L. Spaeth, Clerk  
LEBANON OHIO

EMBASSY HEALTHCARE, :

Plaintiff-Appellant, :

CASE NO. CA2016-08-072

- vs -

JUDGMENT ENTRY

15-07-CV-0275

CORA SUE BELL, :


Defendant-Appellee. :

Franklin Municipal Court

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, reversed and this cause is remanded for further proceedings according to law and consistent with the Opinion filed the same date as this Judgment Entry.

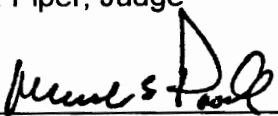
It is further ordered that a mandate be sent to the Franklin Municipal Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

  
Robert A. Hendrickson, Presiding Judge

(Dissents)

Robin N. Piper, Judge

  
Mike Powell, Judge



IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

COURT OF APPEALS  
WARREN COUNTY  
FILED

APR 24 2017

James L. Spaeth, Clerk  
LEBANON OHIO

EMBASSY HEALTHCARE,

Plaintiff-Appellant,

- vs -

CORA SUE BELL,

Defendant-Appellee.

:  
:  
:  
:  
:  
:

CASE NO. CA2016-08-072

OPINION  
4/24/2017

15-07-CVF-0275

Franklin Municipal  
Court

CIVIL APPEAL FROM FRANKLIN MUNICIPAL COURT  
Case No. 15-07-CVF-0275

Weltman, Weinberg & Reis Co., L.P.A., Daniel A. Friedlander, 323 West Lakeside Avenue, Suite 200, Cleveland, Ohio 44113, for plaintiff-appellant

Miriam H. Sheline, Pro Seniors, Inc., 7162 Reading Road, Suite 1150, Cincinnati, Ohio 45237, for defendant-appellee

**HENDRICKSON, P.J.**

{¶ 1} Plaintiff-appellant, Embassy Healthcare, appeals from a summary judgment decision rendered by the Franklin Municipal Court in favor of defendant-appellee, Cora Sue Bell. For the reasons detailed below, we reverse.

{¶ 2} Embassy operates a nursing home where Bell's late husband, Robert, stayed beginning in early 2014. Robert passed away in May 2014 and no estate was opened. Over

six months after his death, Embassy issued Bell a letter asking for payment from Robert's estate for unpaid nursing services. The letter was addressed to "The Estate of: ROBERT BELL, c/o CORA BELL, Fiduciary" and began "Dear Personal Representative of the Estate."<sup>1</sup>

{¶ 3} In June 2015, Embassy sued Bell, asserting a claim pursuant to R.C. 3103.03, i.e., Ohio's necessities statute. Embassy alleged in the complaint that it provided Robert with \$1,678 in unpaid nursing services. The complaint further alleged that Bell was obligated to reimburse it for Robert's debt under the necessities statute.

{¶ 4} After filing her answer, Bell moved for summary judgment and attached her affidavit in support. In the motion, Bell argued that Embassy could not prove certain elements of its claim under the necessities statute and further, that the claim was time barred by the six-month statute of limitations for filing claims against a decedent's estate.

{¶ 5} To show that Robert could support himself and had the ability to pay Embassy for its nursing services – a fact which could potentially defeat Embassy's necessities claim – Bell included averments in her summary judgment affidavit related to Robert's Medicare insurance policies in effect prior to his death. Bell averred that her late husband had Medicare coverage, including a supplemental policy that paid for 100 days of skilled nursing care. Bell further averred that as of April 2014, Robert had 54 days of coverage for skilled nursing remaining.

{¶ 6} Embassy filed a responsive memorandum and included an affidavit of its custodian of records. Through the affidavit, the custodian authenticated billing records and Robert's admission packet. A portion of the packet reflecting Robert's financial resources appeared to show that his sources of income were social security and a pension.

---

1. The dissent notes that language in this letter informed Bell that she was not personally responsible for payment. However, Embassy directed the letter to Bell in her assumed role as fiduciary of her late husband's estate and not individually.

{¶ 7} A magistrate issued a decision recommending that the court find in favor of Bell and dismiss Embassy's complaint. The magistrate reasoned that Embassy failed to offer any evidence demonstrating that Robert was unable to support himself and could not pay for the services Embassy provided.

{¶ 8} Embassy filed objections, which the trial court overruled. In its decision, the trial court's basis for finding in favor of Bell differed from that of the magistrate. The court found that Robert's alleged debt to Embassy became a debt of Robert's estate upon his death. The court then concluded that Embassy was time barred from recovering the alleged debt because it failed to present a claim to Robert's estate, or open an estate for the purposes of doing so, within the six-month limitations period imposed by R.C. 2117.06. Effectively, the court found that Embassy was required to pursue its claim against Robert's estate before it could attempt to recover against Bell under R.C. 3103.03.

{¶ 9} Embassy presents one assignment of error on appeal:

{¶ 10} THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT.

{¶ 11} Embassy argues that the court erred when it concluded that Embassy's failure to present a claim against Robert's estate within the time requirements set forth in R.C. 2117.06 preclude it from asserting a R.C. 3103.03 necessities claim against Bell for the same debt. Embassy further argues that Bell did not support her summary judgment motion with facts sufficient to demonstrate the absence of a genuine issue of fact with respect to Robert's ability to support himself, and thus, it had no reciprocal burden under Civ.R. 56(E) to produce genuine issues of fact for trial. We address each argument in turn.

{¶ 12} This court reviews summary judgment decisions de novo, which means that we review the trial court's judgment independently and without deference to its determinations and use the same standard in our review that the trial court should have

employed. *Ludwigsen v. Lakeside Plaza, L.L.C.*, 12th Dist. Madison No. CA2014-03-008, 2014-Ohio-5493, ¶ 8. Summary judgment is appropriate under Civ.R. 56(C) when (1) there are no genuine issues of material fact to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) when all evidence is construed most strongly in favor of the nonmoving party, reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party. *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 369-370 (1998). "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Civ.R. 56(C).

{¶ 13} The movant bears the initial burden of informing the court of the basis of the motion and demonstrating the absence of a genuine issue of material fact. *Ludwigsen* at ¶ 9. Once the moving party meets this burden, the nonmoving party may not rest on the allegations of his pleadings but must set forth specific facts showing a genuine issue for trial. *Id.* Civ.R. 56(E).

Presentment of claims against estates and R.C. 3103.03

{¶ 14} R.C. 3103.03, the necessities statute, provides in pertinent part:

- (A) Each married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able.

\* \* \*

- (C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessities for the support of the spouse and recover the reasonable value of the necessities supplied from the married person who neglected to support the spouse unless the spouse abandons that person without



cause.

{¶ 14} R.C. 2117.06 governs the method of asserting claims against a decedent's estate. In relevant part, it provides:

- (A) All creditors having claims *against an estate*, including claims arising out of contract \* \* \* shall present their claims in one of the following manners: \* \* \*
- (B) \* \* \* a claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim \* \* \*.

(Emphasis added.)

{¶ 15} It is undisputed that Embassy's attorney presented Bell, as the fiduciary or personal representative of her husband's estate, with a letter requesting the balance of Robert's Embassy account in the amount of \$1,678. It was Bell's argument below that this letter was used to present a claim against her late husband's estate and Embassy had an obligation to timely seek the balance due from her husband's estate before pursuing a claim against her individually. Thus, since the letter was not presented within six months of her husband's death, Embassy's claim is now barred pursuant to R.C. 2117.06. On appeal, Embassy argues that the trial court erred by denying it's claim based upon its alleged failure to comply with R.C. 2117.06 prior to pursuing collection from Bell under the necessities statute, R.C. 3103.03.

{¶ 16} We agree with Embassy that the trial court erred in its conclusion that the failure to present a claim against an estate within the time requirements set forth in R.C. 2117.06 precludes a creditor from pursuing a claim for necessities against a decedent debtor's spouse under R.C. 3103.03. The plain language of R.C. 2117.06 makes clear that it is applicable only to claims against an estate. Embassy's claim under R.C. 3103.03 is not a claim against Robert's estate but is a personal claim against Bell.

{¶ 17} R.C. 3101.03 creates a personal and independent cause of action against a spouse who neglects to pay for the other spouse's "necessaries." R.C. 3103.03 makes no reference to R.C. 2117.06. Nor can we reasonably interpret the claim to be dependent upon the timely presentation of a separate claim against the debtor spouse's estate. If a creditor can prove every necessary element under R.C. 3103.03, it can maintain a cause of action for the recovery of "necessaries" against a debtor's spouse regardless of whether it timely presented a claim against the deceased debtor's estate. However, the creditor pursuing a necessities claim must prove that a deceased debtor was unable to support himself. If the creditor cannot prove that element of the claim and fails to timely present a claim against the debtor's estate, it runs the risk of losing the ability to pursue the debt entirely.

{¶ 18} The trial court found that R.C. 2117.06 and R.C. 3103.03 were irreconcilable because the former provides that a claim against an estate is barred after the six-month limitations period "as to all parties, including, but not limited to, devisees, legatees, and distributees." We do not agree that the two statutes are irreconcilable. R.C. 2117.06 precludes all creditors – whether they are seeking recovery of necessities or otherwise – from presenting a claim against an estate to satisfy a decedent's inter vivos debt after the six-month period under R.C. 2117.06 has expired.<sup>2</sup> We interpret the "all parties" language to mean that the beneficiaries of the estate also receive estate assets free of any claim by a creditor. However, and as stated previously, a claim brought under R.C. 3103.03 is not a claim against an estate but is a separate statutory cause of action against a debtor's spouse. A creditor's right to pursue such a claim does not depend on whether the debtor is living or whether an estate exists. In the context of this case, a claim brought under the necessities statute is simply not within the purview of R.C. 2117.06. *See also Cleveland Metropolitan*

---

2. There is a statutory exception to the six-month limitation which is irrelevant for purposes of this appeal.

*Gen. Hosp. v. Firestone*, 8th Dist. Cuyahoga No. 40967, 1980 Ohio App. LEXIS 12813, \*5-11 (Aug. 14, 1980) (concluding that the failure to present a claim within the time requirements of R.C. 2117.06 did not bar an action for medical expenses under R.C. 3103.03).

Summary judgment evidence of Robert's ability to support himself

{¶ 19} To prevail on its claim against Bell at trial, Embassy would be required to prove, *inter alia*, that Robert was unable to support himself and pay Embassy for its services or that Robert's estate was unable pay for the services. See *Home Helpers/Direct Link v. St. Pierre*, 196 Ohio App.3d 480, 2011-Ohio-4909, ¶ 16 (12th Dist.2011). Bell argues that she supported her summary judgment motion with evidence demonstrating that Robert had Medicare insurance that should have covered the cost of Embassy's nursing services. Bell contends that when she submitted this evidence in moving for summary judgment, the burden shifted to Embassy to produce a genuine issue of fact indicating that Robert could not support himself. According to Bell, Embassy did not meet its reciprocal evidentiary burden. Therefore, she was entitled to summary judgment.

{¶ 20} Bell's summary judgment evidence on the issue of Robert's ability to support himself consisted of these two averments in her affidavit:

- 6. My husband had Medicare coverage and a Medicare supplemental policy which covered in full 100 days of skilled nursing care.
- 7. As of April 5, 2014, my husband had 54 days of skilled nursing care coverage remaining \* \* \*."

Bell's affidavit also authenticated an exhibit consisting of Medicare documents detailing how Robert's policy paid for his earlier care at Embassy's nursing facility and how many days of skilled nursing coverage he had remaining.

{¶ 21} After reviewing the summary judgment record, this court concludes Bell's affidavit and the supporting documentation failed to demonstrate the absence of a genuine

issue of fact with respect to Robert's ability to support himself or pay Embassy. Bell's summary judgment evidence indicates that Robert *may* have had a means of paying Embassy and thus *may* have been able to support himself. However, her averments and the documentary evidence did not establish: (1) what specific medical services Embassy provided to Robert for which it now sought payment, (2) whether Robert's Medicare policy would have covered those specific services, and (3) whether a portion of the costs for Embassy's services may have been Robert's responsibility through coinsurance or copays. In this last regard, some of the Medicare documents appear to indicate that Robert had a coinsurance obligation.

{¶ 22} Furthermore, affidavits in support of summary judgment must be made on personal knowledge, "shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit." Civ.R. 56(E). The averments in Bell's affidavit lead us to believe that she simply reviewed Robert's Medicare documents in her possession to reach the conclusion that his skilled nursing coverage would pay for Embassy's services. The averments do not indicate that Bell has personal knowledge of how Medicare would have responded to Embassy's claim for services. Accordingly, the implication of Bell's affidavit, i.e., that Robert had insurance coverage for the alleged debt to Embassy, is conclusory and insufficient for summary judgment purposes. See *HSBC Mortg. Servs. v. Williams*, 12th Dist. Butler No. CA2013-09-174, 2014-Ohio-3778, ¶ 12-17.

{¶ 23} The only conclusion we can reach from Bell's summary judgment evidence is that Robert had insurance policies through Medicare that may have covered Embassy's nursing costs. Based upon this evidence, Bell – as the moving party – did not "affirmatively demonstrate" that Embassy could not establish the inability to support element of its necessities claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996).

{¶ 24} Bell is correct that Embassy also did not establish through its rebuttal evidence that Robert lacked the ability to pay. However, because Bell failed to meet her initial burden under Civ.R. 56 to show the absence of a genuine issue of fact, Embassy was not required to file rebuttal evidence to survive summary judgment. *Id.* See also *Polivka v. Cox*, 10th Dist. Franklin No. 01AP-1023, 2002-Ohio-2420 (reversing summary judgment where the defendant's affidavit in support failed to sufficiently demonstrate the absence of a genuine issue of material fact).

{¶ 25} Accordingly, we find merit in Embassy's assignment of error. We reverse the decision of the trial court granting summary judgment in favor of Bell. The case is remanded for further proceedings consistent with this Opinion.

M. POWELL, J., concurs.

PIPER, J., dissents.

**PIPER, J., dissenting.**

{¶ 26} I respectfully dissent since the trial court properly granted summary judgment in favor of Cora Bell. No genuine issue of material fact remains for litigation because Embassy Healthcare did not produce any supporting evidence suggesting that Robert Bell was unable to support himself regarding the services he received at the health care facility.

#### **Civil Rule 56's Shifting Burdens**

{¶ 27} The moving party bears the initial burden of informing the court of the basis for the motion and demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Once this burden is met, the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but must supply evidentiary materials setting forth *specific facts* showing there is some genuine issue of material fact yet

remaining for the trial court to resolve. *Whitson v. One Stop Rental Tool & Party*, 12th Dist. Preble No. CA2016-03-004, 2017-Ohio-418, ¶ 13.

{¶ 28} Summary judgment is proper if the nonmoving party fails to supply evidentiary materials setting forth such facts. *Puhl v. U.S. Bank, N.A.*, 12th Dist. Butler No. CA2014-08-171, 2015-Ohio-2083, ¶ 13. In determining whether a genuine issue of material fact exists, the court must answer the following inquiry: "Does the evidence present a sufficient disagreement to require submission to a jury or is it so one-sided that one party must prevail as a matter of law?" *Wilson v. Maple*, 12th Dist. Clermont No. CA2005-08-075, 2006-Ohio-536, ¶ 18.

#### **Requirement of Inability to Pay**

{¶ 29} R.C. 3103.03(A) and (C) require several elements before a spouse is responsible to pay for the necessities of his or her spouse. That means that Embassy Healthcare would have to prove several elements before it could show it was entitled to payment from Cora. Those elements applied to this case would mean that: (1) Robert and Cora were married; (2) Robert was unable to provide payment for his necessary expenses; (3) Cora did not provide payment for Robert's expenses; (4) the expenses claimed by Embassy Healthcare for Robert were necessary; (5) the value of the necessities was reasonable; and (6) Robert had not abandoned Cora without cause.

{¶ 30} Through affidavits and evidentiary material, Cora demonstrated that Embassy Healthcare cannot prove the second element. Embassy Healthcare, in turn, did not produce *any* evidentiary materials showing that Robert had an inability to provide for his expenses. In fact, the majority, itself, recognizes that "Bell is correct that Embassy also did not establish through its rebuttal evidence that Robert lacked the ability to pay." Simply stated, there is *no evidence* in the record that Robert was unable to have his necessary expenses paid by his insurance as had been done routinely in the past. Thus, Embassy Healthcare's claim must

fail, and Cora is entitled to judgment as a matter of law.

{¶ 31} In support of her motion for summary judgment, Cora provided uncontroverted evidence that Robert had Medicare coverage, as well as a Medicare supplemental policy that covered 100 days of skilled nursing care. Cora also provided evidence that Robert used over 40 days of that covered care, and that insurance paid the cost of those services.

{¶ 32} Specifically, an invoice attached to Cora's motion for summary judgment clearly indicates that Robert's insurance provider paid claims of \$3,192 and \$11,221.69 for Robert's nursing home stay. Some of these expenses were reimbursed to Embassy Healthcare for services it provided. Cora also provided evidence that Robert had over 50 days remaining of the 100 allotted days still available to him. Thus, the care provided to Robert, which admittedly was necessary, was coverable under Robert's insurance policy and was payable if a claim had been timely asserted.

{¶ 33} The majority agrees that Cora's evidence supports her argument that Robert had insurance, which had paid similar claims in the past. The majority concludes that because of the evidence submitted by Cora, her "summary judgment evidence indicates that Robert *may* have had a means of paying Embassy and thus *may* have been able to support himself." (Emphasis sic.) The majority does not assert that Cora's evidence lacked credibility or authenticity, but rather discounts Cora's evidence because it speculates that maybe all of the expenses might not be paid.

{¶ 34} However, there is no evidence submitted by Embassy Healthcare contesting or even challenging Cora's evidence, which she filed to support her assertion that Robert's charges for skilled nursing care would have been paid in the same manner as such charges from Embassy Healthcare had been paid routinely in the past. The majority fails to examine, discuss, or otherwise rely upon any evidence submitted by Embassy Healthcare and only

uses conjecture that Robert's expenses might be uncovered expenses.<sup>3</sup>

{¶ 35} Instead, the facts and evidence presented by Cora are undisputed: (1) Robert had health insurance; (2) Robert had a supplemental policy that covered 100 days of skilled nursing care; (3) Robert used 40 days of such care in the past; (4) Robert's insurance paid Embassy Healthcare for such services; (5) Robert had over 50 days remaining of the allotted 100 days; (6) Embassy Healthcare charged Robert for the services he obtained while utilizing Embassy's skilled nursing care. Again, these facts are completely uncontroverted, and clearly establish that Robert consistently had his medical expenses paid and Embassy Healthcare simply quit processing claims for medical expenses due to Robert's death.

{¶ 36} Rather than dispute the undisputable, or attempt to demonstrate why there were unresolved issues of material fact, Embassy Healthcare chose not to put forth a single piece of evidence to even suggest that Robert's insurance would not cover the charges, or that he had an inability to pay Embassy Healthcare's claim for expenses. In addition to excusing Embassy Healthcare from its burden, the majority advances an unsupported argument as to the possibility of a co-pay for the reason why Cora should be denied judgment as a matter of law – while at the same time recognizing that Embassy Healthcare did not have a single piece of evidence to establish that Robert had an inability to have his necessary expenses paid.

{¶ 37} Moreover, the majority asserts that Cora's evidence should be discounted because it was not based on personal knowledge. I disagree. Cora's affidavit clearly demonstrates that she was familiar with her husband's medical issues, what had occurred in the past regarding payment of nursing care, and what benefit payments still remained. To

---

3. The majority struggles with attempting to weigh Cora's evidence, yet it is undeniable there is *no* evidence from Embassy Healthcare to challenge the evidence submitted by Cora. Embassy Healthcare's bare assertions are insufficient to survive Cora's motion for summary judgment.



insinuate that Cora lacked personal knowledge of the medical issues and finances of her husband is dubious where Cora's affidavit was clearly supported by documentation that proved Robert's entitlement to insurance coverage, which specifically had paid Embassy Healthcare in the past.<sup>4</sup>

{¶ 38} Pursuant to the evidentiary materials presented by Cora, Robert did not have an inability to provide payment for the services received. If a claim had been processed, all evidence is that Robert, through an opened fiduciary estate, would have processed Embassy Health's claims for expenses and Robert would have been responsible for payment via his insurance. Thus, Cora carried her initial burden of informing the court of the basis for her motion.

{¶ 39} Once this burden was met, Embassy Healthcare could not rest upon the mere allegations or denials of its pleadings, but must have set forth evidentiary materials supplying *specific facts* demonstrating that there was some genuine issue of material fact yet remaining for the trial court to resolve. It did not do so – a fact expressly recognized within the majority's opinion.

#### **Burden Shifted, But Unmet**

{¶ 40} In responding to Cora's evidentiary materials, the majority recognizes that Cora is "correct that Embassy also did not establish through its rebuttal evidence that Robert lacked the ability to pay." The majority's recognition of this fact is because Embassy Healthcare submitted no evidence in response to Cora's evidentiary materials. Therefore, the record does not contain any evidence submitted by Embassy Healthcare that Robert was unable to be financially responsible for the services he received. Embassy Healthcare did

---

4. At oral argument, Embassy Healthcare conceded it did not move the trial court to strike Cora's affidavit for the lack of personal knowledge. It is improper to rely on arguments not asserted below since they are deemed waived. *Webster v. G & J Kartway*, 12th Dist. Preble No. CA2005-06-011, 2006-Ohio-881. Presumably, Embassy Healthcare did not move to strike Cora's affidavit because her personal knowledge was evident.

not seek payment from Robert's insurance provider, and never submitted a creditor's claim against Robert – something it was entitled to do after Robert's death.<sup>5</sup> Instead, Embassy Healthcare only *argued* that it was reasonable to stop submitting their claims to Robert's insurance carrier because of his death. Rather than submit evidence to support its reciprocal burden that genuine issues remained in regard to Robert's inability to have his bills paid, Embassy Healthcare essentially argued that Robert is unable to provide payment because he is deceased and, although discovered beyond the timeframe for the payment of claims, Robert did not have an estate with assets from which to seek payment.<sup>6</sup>

{¶ 41} Embassy Healthcare simply did not submit any evidence that Robert was unable to have his expenses paid. Similarly, Embassy Healthcare did not present any evidence suggesting that if it had processed a claim for expenses, it would not have been paid. Nor did Embassy Healthcare present any evidence that even remotely suggested that the expenses might not have been paid. Like the plaintiff in our precedent, *Puhl v. U.S. Bank, N.A.*, 2015-Ohio-2083, Embassy Healthcare failed to meet its burden on summary judgment.

{¶ 42} The majority seems to operate under the impression that the necessities statute, R.C. 3103.03(A) and (C) requires the spouse, Cora in this case, to prove that the deceased spouse, Robert in this case, had the actual ability to pay his necessary expenses.

---

5. Without some action toward establishing an inability to provide payment, there is no genuine issue of material fact existing, and Cora is entitled to judgment as a matter of law. As the trial court correctly pointed out, Embassy Healthcare submitted a claim to Cora, believing an estate had been opened for the payment of claims. Embassy Healthcare's conduct demonstrates it knew Robert had an ability to pay through his health insurance coverage as had been done in the past. Yet, there was no estate opened, and the attempted claim was submitted beyond the deadline in which claims would be accepted and paid.

6. While Robert may not have had "assets" that required an estate, it is undisputed that Robert had insurance. A request for the appointment of a fiduciary could have been made solely for the purposes of handling any potential insurance claims, and Embassy Healthcare knew Robert had insurance, which had paid its claims in the past. However, and other than a letter to Cora attempting to make an untimely estate claim, there are no evidentiary materials asserting that Embassy Healthcare requested a fiduciary be appointed for purposes of processing payment for Embassy Healthcare's potential claim. Despite the letter being addressed to Cora Bell in her fiduciary capacity, Embassy informed her that she would not be personally responsible for payment.

In fact, after Cora established Robert's insurance had paid Embassy Healthcare's expenses in the past, the claimant, here Embassy Healthcare, had the responsibility to support with some evidentiary material its suggestion that the deceased spouse, Robert, had *an inability* to have his necessary expenses paid. Embassy Healthcare simply cannot rely on the bare assertions in its complaint. I would, therefore, find that Cora is entitled to judgment as a matter of law and affirm the decision of the trial court. Thus, I must respectfully dissent from the majority's analysis and judgment because the trial court's result, as a matter of law, was proper, reasonable, and appropriate in granting summary judgment to Cora Bell.

FRANKLIN MUNICIPAL COURT FILED

WARREN COUNTY, OHIO 2016 JUN -7 PM 7: 31

CIVIL DIVISION FRANKLIN MUNICIPAL COURT FRANKLIN, OHIO

EMBASSY HEALTHCARE

CASE NO 15-07-CVF-0275

Plaintiff,

Judge Ruppert  
Magistrate Demos

v.

ENTRY

CORA SUE BELL

Defendant,

This matter was before the court on plaintiff's objections to the magistrate's decision filed 2/25/16, granting summary judgment in favor of defendant. The court has independently reviewed, pursuant to Civ. R. 53(D)(4)(d), the complaint; answer; defendant's motion for summary judgment; plaintiffs memo contra; defendant's reply; the magistrates decision; plaintiff's objections and defendant's response to plaintiff's objections. When ruling on objections to a magistrate's decision, the trial court has the ultimate authority and its independent analysis may result in a different conclusion than that of the magistrate. *Ohio Civil Rights Commission v. Mellon Ridge, Inc. 2009-Ohio-5807(12<sup>th</sup> Dist.)*. Based upon the foregoing, plaintiff's objections to the magistrate's decision are OVERRULED.

This case involves the application of O.R.C. 2117.06 and O.R.C. 3103.03 as they relate to plaintiffs' claims against defendant pursuant to Ohio's necessities statute found at O.R.C. 3103.03. O.R.C. 3103.03 has condition precedents which must be met before the defendant spouse can be liable for the necessary health care expenses of the other spouse. In particular, plaintiff must show that the spouse who incurred the financial obligation was unable to pay the obligation before the other spouses must assist. *Home Helpers/Direct Link v. St. Pierre, 2011-Ohio-4909(12<sup>th</sup> Dist.)*. Even when the spouse who incurred the necessary expenses during his lifetime is deceased,

RUPERT E. RUPPERT  
JUDGE  
FRANKLIN MUNICIPAL COURT  
FRANKLIN, OHIO

the issue of his estate's ability to pay remains. *Ohio State University v. Kincaid*, (1990), 48 Ohio St. 3d 78.

O.R.C. 2117.06(B)&(C) states in part that all claims shall be presented within six months after the death of decedent, whether or not the estate is released from administration or an executor or an administrator is appointed during that six month period. A claim not presented within six months after the death of the decedent shall be forever barred as to all parties, including but not limited to, devisees, legatees and distributees. No payment shall be made on the claim and no action shall be maintained on the claim. Obligations incurred by a deceased during his lifetime become the debts of his estate by operation of law. *Osborne v. Osborne* (1996), 114 Ohio App. 3d 412.

Courts apply a statute as it is written when its meaning is unambiguous and definite. *Summerville v. City of Forest Park* (2010), 128 Ohio St. 3d 221. When a statute is subject to various interpretations a court may invoke the rules of statutory construction in order to arrive at legislative intent. *Summerville, supra*. A well settled rule of statutory construction is that provisions be construed together and the Revised Code is to be read as an interrelated body of law. *Summerville, supra*. The rule of statutory construction is set forth in O.R.C. 1.51 which states: "If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special provision prevails as an exception to the general provision, unless the general is the later adoption and the manifest intent is that the general provision prevail."

This court finds that O.R.C. 2117.06 is a specific provision regarding procedures to bring a claim against a decedent through his estate. The time limits are specific and failure to comply results in a mandatory bar of the claim against the estate and all parties and no payment shall be made on the claim and no action shall be maintained on the claim. On the other hand O.R.C. 3103.03 is a general provision of support obligations. Under either prong of statutory construction, O.R.C. 2117.06 applies to and controls the case at hand.

Construing the statutes together, and giving effect to both, plaintiff could still pursue its support claim against defendant pursuant to O.R.C. 3103.03 after exhausting the specific mandates of O.R.C. 2117.06. The defendant herein is not jointly and severally liable for her deceased husband's obligation. The debt to plaintiff was that of Mr. Bell which became part of his estate by operation of law at the time of his death. O.R.C. 2117.06 provides specific procedures for plaintiff to follow in order to preserve its claim. Plaintiff did not follow these procedures.

RUPERT E. RUPPERT  
JUDGE  
FRANKLIN MUNICIPAL COURT  
FRANKLIN, OHIO

If the statutes are irreconcilable the specific provision prevails unless the general provision is the later adopted and the manifest intent is that the general prevail. While O.R.C. 3103.03 is the later adopted, there is no indication of a manifest intent that the general provision is to prevail. In fact, a reading of O.R.C. 3103.03 tends to indicate that it is a remedy of last resort as a defendant's liability is conditional upon multiple factors. Furthermore, if the legislature intended to eliminate the requirements of O.R.C. 2117.06 or to establish joint and several liability it could have placed such language in the statute. Under this analysis O.R.C. 2117.06 applies and controls as well.

In the case at bar, defendant argued in her motion for summary judgment that plaintiff had an obligation to timely seek payment from decedent's estate before pursuing defendant. Defendant attached to her motion by way of affidavit and exhibits that plaintiff did not submit a claim against decedent's estate nor open a creditors estate within six months. (Plaintiff's response to Int. #5, #6) Defendant's Ex. "C" is a letter from plaintiff to the estate of Mr. Bell giving notice of plaintiff's claim. However, the letter/notice was sent beyond the six month limitation after his death. This indicates to the court that plaintiff was aware that Mr. Bell and or his estate was liable for the debt but failed to comply with the time requirements for filing its claim. Plaintiff, in its response to defendant's motion did not respond with specific facts by affidavit or other evidence to sustain its Civ. R. 56(E) reciprocal burden. The court finds that plaintiff's failure to comply with O.R.C. 2117.06 prior to pursuing defendant pursuant to O.R.C. 3103.03 is a bar to maintaining the instant action.

WHEREFORE, it is ORDERED, ADJUDGED AND DECREED that plaintiff's objections are not well taken and are hereby OVERRULED.

Defendant's motion for summary judgment is GRANTED.

RUPERT E. RUPPERT  
JUDGE  
FRANKLIN MUNICIPAL COURT  
FRANKLIN, OHIO

  
Judge Rupert E. Ruppert Date:

FRANKLIN MUNICIPAL COURT  
WARREN COUNTY, OHIO  
CIVIL DIVISION

2016 FEB 25 AM 8:33

FRANKLIN MUNICIPAL COURT  
WARREN COUNTY, OHIO

EMBASSY HEALTHCARE

CASE NO: 15-07-CVF-0275

Plaintiff,

Judge Ruppert  
Magistrate Demos

v.

CORA SUE BELL

MAGISTRATE'S DECISION

Defendant(s),

---

This matter was before the court on defendant's motion for summary judgment filed 10/27/15. Plaintiff filed memo in opposition on 1/8/16 and defendant filed its reply on 1/29/16.

Upon consideration of the testimony, evidence and/or pleadings, the following is hereby ORDERED, ADJUDGED AND DECREED:

Plaintiff's complaint alleges that defendant owes it \$1,678 for necessary medical expenses provided to defendant's late husband Robert Bell who passed away May 22, 2014. Plaintiff's complaint is brought pursuant to the "necessaries statute" found at O.R.C. 3103.03.

In her motion for summary judgment, defendant argues, among other things, that plaintiff must establish Robert Bell was unable to pay for such services and that defendant neglected to pay for such services. Defendant concedes that the services provided were necessary. Defendant argues that plaintiff's claim should be barred by the statute of limitations found at O.R.C. 2117.06(C), because plaintiff failed to timely file a claim against the estate of Robert Bell regarding the balance due and did not open a creditor's estate. Defendant states she was not the executor or administrator of her husband's estate. (*See: Def. Aff. @ #10, #11; Def. Ex. "C"; Plaintiff's response to admissions, #5, and #6*). Defendant also argues that she did not neglect her

duty of support as Medicare coverage was available to cover these services and it was plaintiff who failed to properly bill Medicare and/or provide proper notice to defendant that Medicare benefits had terminated. Defendant states that as of April 5, 2014 her late husband had 54 days of Medicare coverage remaining. (Def. Aff. @#7; Def. Ex. "A"). Defendant states she never received notice from plaintiff regarding termination of benefits. (Def. Aff. @#9) Plaintiff admits that it received payment for services from Medicare and Middletown workers retiree fund after February 12, 2014 and that Mr. Bell had Medicare coverage but denies that it did not provide notice to defendant regarding termination of Medicare benefits. (*Plaintiff's response to admissions #4 & #8*).

Plaintiff states that its complaint is based upon O.R.C. 3103.03(C). Plaintiff argues that the requisite evidence to support its complaint has been established due to the following: Defendant concedes that plaintiff provided care and ancillary services to Robert Bell; that during the relevant dates of service defendant was the spouse of Robert Bell; that the reasonable value of services provided was \$1,678; and despite demand, defendant has failed to pay. (*Plaintiff's Ex. "A" Def. response to admissions #2, #3; Ex. "B" Aff. of Edith Perry @ #4, #5, #11.*) Plaintiff argues that since Robert Bell is deceased, he is unable to pay. Plaintiff also argues that spousal abandonment without cause is the only exception which would relieve defendant's obligation to pay. (*Plaintiff's memo contra, p.2, p.4*). Finally, plaintiff argues that defendant has neglected to support her spouse, as that term is used in the statute, by failing to pay the amount for services provided. (*Plaintiff's memo contra, p. 3*).

### LAW AND DECISION

Summary judgment is proper under Civ. R. 56 when: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the party against whom the summary judgment is made, that conclusion is adverse to that party. *Leibreich v. A.J. Refrigeration, Inc. (1993), 67 Ohio St. 3d 266*.

O.R.C. 3103.03(A) states, "Each married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able.... ." O.R.C. 3101.03(C) states, "If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessaries for the support of the spouse and recover the reasonable value of the necessaries supplied from the married person who neglected to support the spouse unless the spouse abandons that person without cause."

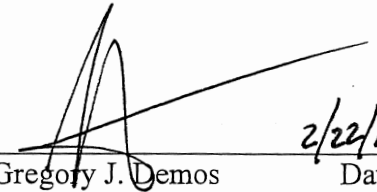


The plain language of O.R.C. 3103.03(A) requires that the married person be *unable* to support himself before the spouse of the married person must assist. *Home Helpers/Direct Link v. St. Pierre, 2011-Ohio-4909(12<sup>th</sup> Dist.)*. In order to find a spouse liable under O.R.C. 3103.03, it must be shown that the patient spouse is unable to pay, and if so, that the non-patient spouse is able to pay. *Central Ohio Neurological Surgeons, Inc. v. Rose, No. 96APE11-1611, (1997, 10<sup>th</sup> Dist.)*, citing, *Fulton Cty. Health Ctr. v. Underwood, (1995), 100 Ohio App. 3d. 451*.

Obligations incurred by a deceased during his lifetime become the debts of his estate by operation of law. *Osborne v. Osborne, (1996), 114 Ohio App. 3d. 412*.

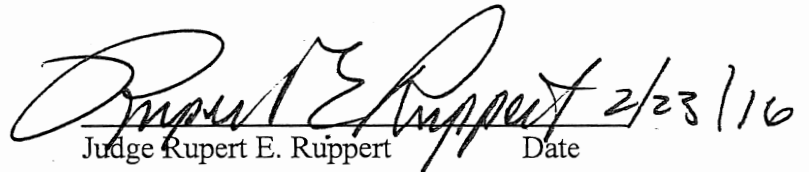
In the case at bar, Plaintiff has offered no evidence to demonstrate that the decedent spouse was unable to pay this obligation. Plaintiff has not provided the court with case law stating that the death of the spouse satisfies this requirement. Plaintiff's only argument that Mr. Bell is unable to pay is because he is deceased. The patient spouse's inability to pay is an essential element of the cause of action, and the absence of any evidence regarding this issue ends the inquiry of whether the non-patient spouse has an obligation to pay. O.R.C. 3103.03(A) & (C) are read in conjunction with each other and establish the elements of the plaintiff's cause of action. Both parties herein have cited the Ohio Supreme Court case of Ohio State University v. Kinkaid, (1990), 48 Ohio St. 3d. 78 to support their positions. This court finds instructive the manner in which the Supreme Court framed the issue when it said: "The issue before us is whether a wife is liable for the payment of hospital or medical expenses incurred by her husband before his death when, at the husband's death, his assets are insufficient to pay such expenses." Furthermore, the 12<sup>th</sup> district in *Home Helpers supra*, citing *Kinkaid*, stated the *Kinkaid* court found the wife was obligated to pay the hospital, provided she was able, because her husband's assets at the time of his death were insufficient to pay the medical expenses. The court in *Home Helpers* considered evidence regarding whether the decedent spouse had assets in her estate before determining whether she was unable to pay. It is clear to this court that death alone is not evidence of inability to pay. The record before the court is devoid of any evidence offered by plaintiff to establish Mr. Bell or any estate left by Mr. Bell was unable to pay. Such evidence is necessary before any obligation of the surviving spouse may be realized.

**WHEREFORE**, defendant's motion for summary judgment is hereby GRANTED. Cost to plaintiff. Having ruled on defendant's motion as stated herein, the court finds it unnecessary to address all other issues raised by defendant in her motion,

  
Magistrate Gregory J. Demos 2/22/16  
Date

OBJECTION TO MAGISTRATE'S DECISION

THIS MAGISTRATE'S DECISION SHALL BECOME THE FINAL ORDER OF THE COURT UNLESS AN OBJECTION IS FILED, IN WRITING, WITHIN FOURTEEN DAYS OF THE FILING HEREOF. A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURTS ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FACTUAL FINDING OR CONCLUSION OF LAW UNDER Civ. R. 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR CONCLUSION OF LAW AS REQUIRED BY Civ. R. 53(D)(3)(b). A DEPOSIT OF \$200 MUST BE PAID SO THAT A TRANSCRIPT OF THE HEARING CAN BE PREPARED AND REVIEWED.

  
Judge Rupert E. Ruppert      Date 2/23/16

Baldwin's Ohio Revised Code Annotated  
Title XXXI. Domestic Relations--Children  
Chapter 3103. Husband and Wife (Refs & Annos)

R.C. § 3103.03

3103.03 Duty of married person to support self, spouse, and children; duration of duty to support; third person's recovery of support; funeral expenses of spouse

Effective: July 6, 2009

Currentness

(A) Each married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able. The biological or adoptive parent of a minor child must support the parent's minor children out of the parent's property or by the parent's labor.

(B) Notwithstanding section 3109.01 of the Revised Code and to the extent provided in section 3119.86 of the Revised Code, the parental duty of support to children shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school. That duty of support shall continue during seasonal vacation periods.

(C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessaries for the support of the spouse and recover the reasonable value of the necessaries supplied from the married person who neglected to support the spouse unless the spouse abandons that person without cause.

(D) If a parent neglects to support the parent's minor child in accordance with this section and if the minor child in question is unemancipated, any other person, in good faith, may supply the minor child with necessaries for the support of the minor child and recover the reasonable value of the necessaries supplied from the parent who neglected to support the minor child.

(E) If a decedent during the decedent's lifetime has purchased an irrevocable preneed funeral contract pursuant to section 4717.34 of the Revised Code, then the duty of support owed to a spouse pursuant to this section does not include an obligation to pay for the funeral expenses of the deceased spouse. This division does not preclude a surviving spouse from assuming by contract the obligation to pay for the funeral expenses of the deceased spouse.

**CREDIT(S)**

(2008 S 196, eff. 7-6-09; 2000 S 180, eff. 3-22-01; 1997 H 352, eff. 1-1-98; 1996 H 538, eff. 1-1-97; 1992 S 10, eff. 7-15-92; 1990 S 3, H 346; 1973 S 1; 1953 H 1; GC 8002-3; Source--GC 7997)

R.C. § 3103.03, OH ST § 3103.03

Current through File 51 of the 132nd General Assembly (2017-2018) and 2017 State Issue 1.

Baldwin's Ohio Revised Code Annotated  
Title XXI. Courts--Probate--Juvenile (Refs & Annos)  
Chapter 2117. Presentment of Claims Against Estate (Refs & Annos)  
Claims of Creditors

R.C. § 2117.06

2117.06 Presentation and allowance of creditor's claims; procedure

Currentness

(A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall present their claims in one of the following manners:

(1) After the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:

(a) To the executor or administrator in a writing;

(b) To the executor or administrator in a writing, and to the probate court by filing a copy of the writing with it;

(c) In a writing that is sent by ordinary mail addressed to the decedent and that is actually received by the executor or administrator within the appropriate time specified in division (B) of this section. For purposes of this division, if an executor or administrator is not a natural person, the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of administering the estate of the decedent actually receives the writing within the appropriate time specified in division (B) of this section.

(2) If the final account or certificate of termination has been filed, in a writing to those distributees of the decedent's estate who may share liability for the payment of the claim.

(B) Except as provided in section 2117.061 of the Revised Code, all claims shall be presented within six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period. Every claim presented shall set forth the claimant's address.

(C) Except as provided in section 2117.061 of the Revised Code, a claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim, except as otherwise provided in sections 2117.37 to 2117.42 of the Revised Code with reference to contingent claims.

(D) In the absence of any prior demand for allowance, the executor or administrator shall allow or reject all claims, except tax assessment claims, within thirty days after their presentation, provided that failure of the executor or administrator

to allow or reject within that time shall not prevent the executor or administrator from doing so after that time and shall not prejudice the rights of any claimant. Upon the allowance of a claim, the executor or the administrator, on demand of the creditor, shall furnish the creditor with a written statement or memorandum of the fact and date of the allowance.

(E) If the executor or administrator has actual knowledge of a pending action commenced against the decedent prior to the decedent's death in a court of record in this state, the executor or administrator shall file a notice of the appointment of the executor or administrator in the pending action within ten days after acquiring that knowledge. If the administrator or executor is not a natural person, actual knowledge of a pending suit against the decedent shall be limited to the actual knowledge of the person charged with the primary responsibility of administering the estate of the decedent. Failure to file the notice within the ten-day period does not extend the claim period established by this section.

(F) This section applies to any person who is required to give written notice to the executor or administrator of a motion or application to revive an action pending against the decedent at the date of the death of the decedent.

(G) Nothing in this section or in section 2117.07 of the Revised Code shall be construed to reduce the periods of limitation or periods prior to repose in section 2125.02 or Chapter 2305. of the Revised Code, provided that no portion of any recovery on a claim brought pursuant to that section or any section in that chapter shall come from the assets of an estate unless the claim has been presented against the estate in accordance with Chapter 2117. of the Revised Code.

(H) Any person whose claim has been presented and has not been rejected after presentment is a creditor as that term is used in Chapters 2113. to 2125. of the Revised Code. Claims that are contingent need not be presented except as provided in sections 2117.37 to 2117.42 of the Revised Code, but, whether presented pursuant to those sections or this section, contingent claims may be presented in any of the manners described in division (A) of this section.

(I) If a creditor presents a claim against an estate in accordance with division (A)(1)(b) of this section, the probate court shall not close the administration of the estate until that claim is allowed or rejected.

(J) The probate court shall not require an executor or administrator to make and return into the court a schedule of claims against the estate.

(K) If the executor or administrator makes a distribution of the assets of the estate pursuant to section 2113.53 of the Revised Code and prior to the expiration of the time for the presentation of claims as set forth in this section, the executor or administrator shall provide notice on the account delivered to each distributee that the distributee may be liable to the estate if a claim is presented prior to the filing of the final account and may be liable to the claimant if the claim is presented after the filing of the final account up to the value of the distribution and may be required to return all or any part of the value of the distribution if a valid claim is subsequently made against the estate within the time permitted under this section.

#### CREDIT(S)

(2004 S 80, eff. 4-7-05; 2003 H 51, eff. 4-8-04; 2003 H 95, eff. 9-26-03; 2002 S 281, eff. 4-11-03; 2001 S 108, § 2.01, eff. 7-6-01; 2001 S 108, § 2.02, eff. 7-6-01; 2001 H 85, eff. 10-31-01; 1996 H 350, eff. 1-27-97 (*State ex rel. Ohio Academy of Trial Lawyers, v. Sheward* (1999)); 1990 H 346, eff. 5-31-90; 1988 S 228; 1984 H 37; 1983 H 291, S 115; 1982 H 379; 1975 S 145; 1969 H 363; 131 v H 580; 127 v 701; 1953 H 1; GC 10509-112)

R.C. § 2117.06, OH ST § 2117.06

Current through File 51 of the 132nd General Assembly (2017-2018) and 2017 State Issue 1.

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works

Baldwin's Ohio Revised Code Annotated  
Title XXI. Courts--Probate--Juvenile (Refs & Annos)  
Chapter 2117. Presentment of Claims Against Estate (Refs & Annos)  
Payment of Debts

R.C. § 2117.25

2117.25 Order in which debts to be paid

Effective: September 29, 2013  
Currentness

(A) Every executor or administrator shall proceed with diligence to pay the debts of the decedent and shall apply the assets in the following order:

(1) Costs and expenses of administration;

(2) An amount, not exceeding four thousand dollars, for funeral expenses that are included in the bill of a funeral director, funeral expenses other than those in the bill of a funeral director that are approved by the probate court, and an amount, not exceeding three thousand dollars, for burial and cemetery expenses, including that portion of the funeral director's bill allocated to cemetery expenses that have been paid to the cemetery by the funeral director.

For purposes of division (A)(2) of this section, burial and cemetery expenses shall be limited to the following:

(a) The purchase of a right of interment;

(b) Monuments or other markers;

(c) The outer burial container;

(d) The cost of opening and closing the place of interment;

(e) The urn.

(3) The allowance for support made to the surviving spouse, minor children, or both under section 2106.13 of the Revised Code;

(4) Debts entitled to a preference under the laws of the United States;

(5) Expenses of the last sickness of the decedent;

(6) If the total bill of a funeral director for funeral expenses exceeds four thousand dollars, then, in addition to the amount described in division (A)(2) of this section, an amount, not exceeding two thousand dollars, for funeral expenses that are included in the bill and that exceed four thousand dollars;

(7) Expenses of the decedent's last continuous stay in a nursing home as defined in section 3721.01 of the Revised Code, residential facility as defined in section 5123.19 of the Revised Code, or hospital long-term care unit as defined in section 5168.40 of the Revised Code.

For purposes of division (A)(7) of this section, a decedent's last continuous stay includes up to thirty consecutive days during which the decedent was temporarily absent from the nursing home, residential facility, or hospital long-term care unit.

(8) Personal property taxes, claims made under the medicaid estate recovery program instituted pursuant to section 5162.21 of the Revised Code, and obligations for which the decedent was personally liable to the state or any of its subdivisions;

(9) Debts for manual labor performed for the decedent within twelve months preceding the decedent's death, not exceeding three hundred dollars to any one person;

(10) Other debts for which claims have been presented and finally allowed.

(B) The part of the bill of a funeral director that exceeds the total of six thousand dollars as described in divisions (A)(2) and (6) of this section, and the part of a claim included in division (A)(9) of this section that exceeds three hundred dollars shall be included as a debt under division (A)(10) of this section, depending upon the time when the claim for the additional amount is presented.

(C) Any natural person or fiduciary who pays a claim of any creditor described in division (A) of this section shall be subrogated to the rights of that creditor proportionate to the amount of the payment and shall be entitled to reimbursement for that amount in accordance with the priority of payments set forth in that division.

(D)(1) Chapters 2113. to 2125. of the Revised Code, relating to the manner in which and the time within which claims shall be presented, shall apply to claims set forth in divisions (A)(2), (6), and (9) of this section. Claims for an expense of administration or for the allowance for support need not be presented. The executor or administrator shall pay debts included in divisions (A)(4) and (8) of this section, of which the executor or administrator has knowledge, regardless of presentation.

(2) The giving of written notice to an executor or administrator of a motion or application to revive an action pending against the decedent at the date of death shall be equivalent to the presentation of a claim to the executor or administrator for the purpose of determining the order of payment of any judgment rendered or decree entered in such an action.

(E) No payments shall be made to creditors of one class until all those of the preceding class are fully paid or provided for. If the assets are insufficient to pay all the claims of one class, the creditors of that class shall be paid ratably.



(F) If it appears at any time that the assets have been exhausted in paying prior or preferred charges, allowances, or claims, those payments shall be a bar to an action on any claim not entitled to that priority or preference.

CREDIT(S)

(2013 H 59, eff. 9-29-13; 2011 H 153, eff. 9-29-11; 2007 H 119, eff. 9-29-07; 2006 H 426, eff. 10-12-06; 2003 H 95, eff. 9-26-03; 2002 H 345, eff. 7-23-02; 1999 H 18, eff. 10-20-99; 1990 H 346, eff. 5-31-90; 1988 S 252; 1977 H 1; 1975 S 145; 1974 H 162; 1973 S 318; 128 v 320; 1953 H 1; GC 10509-121, 10509-122)

R.C. § 2117.25, OH ST § 2117.25

Current through File 51 of the 132nd General Assembly (2017-2018) and 2017 State Issue 1.