



Angela G. Carlin is the Co-Chair of Weston Hurd's Estate, Trust and Probate Practice Group. She focuses her practice on estate, trust and probate administration and litigation, and tax matters. Angela is the author of the Merrick-Rippner Probate Law publication which is the recognized authority in Ohio on probate law. She received the Nettie Cronise Lutes Award from the Ohio State Bar Association in 1996 as the Outstanding Woman Lawyer and for many years, she has been named as an *Ohio Super Lawyer* by [Thomson Reuters](#) and a *Leading Lawyer* by [Inside Business Magazine](#).



Karen A. Davey focuses her practice on estates, trust and probate administration. She also handles litigation in probate related matters, such as will contests, trust contests, and power-of-attorney disputes.



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Gary W. Johnson advises clients on matters involving commercial litigation, business entities creation and maintenance, land use, construction law, zoning, estate planning and probate. Gary has been recognized as an *Ohio Super Lawyer* in the area of Business Litigation by [Thomson Reuters](#).



Eugene (Gene) A. Kratus advises individuals in the areas of tax, business and estate planning and counsels privately-owned businesses and their owners on corporate, tax, mergers, acquisitions and business succession issues. His estate planning practice includes implementing various estate planning techniques, ranging from modest By-Pass Trusts to the implementation of sophisticated planning with family limited partnerships, family limited liability companies, charitable trusts and private foundations.



Samuel J. Lauricia III focuses his practice on tax planning, at both the Federal and state level, involving corporate, partnership, individual and gift tax issues, succession planning and general corporate transactions, contracts, mergers and acquisitions. Sam has been recognized as an *Ohio Rising Star* in the area of Taxation by [Thomson Reuters](#).



Shawn W. Maestle is the Chair of Weston Hurd's Appellate section and a member of the firm's Litigation section. He focuses his practice in the areas of appellate, estate planning and probate litigation.

As many readers of this publication have noted, this author reviews recent statutes and cases affecting the inheritance rights of adopted and illegitimate children of decedents. A State of Georgia case was reviewed in this publication where through a "virtual adoption" in *Sanders v. Riley*, No. S14A1314, decided March 16, 2015, a daughter of the decedent inherited a portion of the latter's estate along with the decedent's other two natural children. Also emphasized in that article was that Ohio has not accepted the theory of "virtual adoption" and requires a formal statutory and court approved proceeding by a prospective parent of a child. The Supreme Court in Georgia defined in the *Sanders* case, that "virtual adoption" had been a valid equitable remedy in Georgia for more than a century where a person may adopt a child as his own without a statutory adoption, where a relationship of parent and child has been acted upon by all concerned parties for many years, and which may be enforced in equity after the obligor's death by decreeing that the child is entitled to the obligor's property undisposed of by a will. The Supreme Court warned not only that certain conditions must be met before a recovery by the child is ordered, but also cautioned the "virtual adoption" does not result in a legal adoption, or the creation of a legal parent-child relationship, and the equitable remedy may be invoked by the child only after the death of the "virtually adopting parent." While Ohio does recognize the doctrine of "equitable adoption," where a contract or agreement for adoption has been performed for the child's benefit citing *Sprekel v. Flemming*, 181 F. Supp. 185 (1960), Ohio has not recognized the doctrine of "virtual adoption."

In *In re Estate of Burdette*, 2016-Ohio-5866, the Second District Appellate Court in Montgomery County, Ohio, in September 2016, upheld the probate court overruling a purported daughter's efforts to inherit from her father's estate. Appellant Jackie Marie Burdette Wright ("Wright") contended that the probate court erred in ruling that she could not inherit from her father's estate by failing to accept her birth certificate listing her father as prima facie evidence of the parent-child relationship, and violating her constitutional rights in failing to treat her with equal standing to decedent's two natural children. Her father's estate, as Appellee, responded that Wright did not prove a legally established parent-child relationship through: 1) a paternity action, or 2) any other statutory relationship.

I.V. Burdette, Jr. ("Burdette") died intestate (without a will) in July 2009. When the estate was opened his two natural children were notified as next of kin. Wright was neither listed as a next of kin or notified of the proceedings. The probate court approved a settlement of a wrongful death/medical negligence claim for \$135,000 which was divided by decedent's two natural children after payment of costs and attorney fees. The probate court approved the final account and the administration was completed. Wright moved for relief from judgment 14 months later averring that she was a natural child of Burdette, that she had no notification of estate proceedings, nor was she aware of the medical negligence claim or its settlement. Wright filed her birth certificate listing Burdette as her father. Prior to the hearing on Wright's motion, the parties agreed to genetic testing with the results submitted through an agreed entry reflecting that Wright was the biological child of Burdette.



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In lieu of a hearing, all parties including the estate and Appellant Wright stipulated to the facts including: that I.V. Burdette, Jr. died without a will, the estate was opened only to settle the personal injury claim, Wright was not listed as an heir nor did she receive any estate distribution, that Wright was the biological child of the decedent, that Wright's mother and Burdette were never married, that Wright was never adopted by Burdette nor did Burdette acknowledge Wright as his daughter in any statutory proceeding in probate or juvenile court, that Burdette never designated Wright as his heir-at-law, and that Burdette was never determined to be Wright's father in any parentage action and none such action was pending at Burdette's death.

Both parties moved for summary judgement with Wright filing a supporting affidavit where she averred that her father acknowledged her as his daughter, never denied the relationship, and that her father visited her when Wright lived with Burdette's mother – her paternal grandmother. Burdette's brother, Herbert, corroborated Wright's affidavit in his own affidavit. Interestingly, Veronica, one of Burdette's two natural children admitted that Wright was introduced to Veronica as a stepsister, but that Burdette never acknowledged Wright as his daughter. After the matter was submitted for decision without a hearing, the probate court magistrate overruled Wright's motion for summary judgment or relief from judgment concluding that she was not an heir of Burdette. Wright filed objections to such decision arguing that the birth certificate was prima facie evidence of paternity, and that she was denied her rights of equal protection. The probate court overruled Wright's objections and upheld the magistrate's decision, concluding that: 1) the birth certificate was insufficient to prove inheritance rights; 2) the undisputed facts established that a parent-child relationship was not established or acknowledged by a marriage between the biological parents of Wright; 3) there was no provision for Wright in Burdette's Will because he died intestate; 4) there was no formal adoption of Wright by Burdette; and 5) there was no acknowledgment of Wright by Burdette in any statutory proceeding.

Upon appeal of the probate court decision by Wright, the appellate court upheld the trial court decision notwithstanding that pursuant to Ohio Revised Code 3705.23(A)(3) and (B)(1), a certified copy of a birth certificate "shall be prima-facia evidence of the facts stated in it in all courts and places," however "prima facie evidence is not conclusive," since "(t)he term denotes evidence which will support, but not require, a verdict in favor of the party offering the evidence," citing *Krischbaum v. Dillon*, 58 Ohio St. 3d 58, 64, 567 N.E. 2d 1291 (1991). Unless a statute provides otherwise, prima facie evidence creates a rebuttable presumption. Further, it was not enough for Wright to prove that she is, in fact, Burdette's daughter through conclusive DNA testing. Before Wright could claim the status of intestate heir of Burdette, Wright had to prove Burdette acknowledged her as his daughter publicly through paternity proceedings. The law of intestate distribution, Ohio Revised Code 2105.06, establishes a presumption of how a decedent wishes his estate to be distributed in absence of a will. The appellate court determined that once Burdette had acknowledged Wright as his daughter, then Burdette would have known the consequences of his death without a valid will; Burdette could have decided to give Wright more, less, or none of an intestate share by executing a valid will, citing *Byrd v. Trenmor*, 157 Ohio App 3d 358, 811 NE 2d 549.