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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.



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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.

The probate court in the *Estate of Eric Anthony Hand* found that the Love Letter Will could not be admitted to probate under R.C.2107.03 or 2107.181 because it was not signed by two witnesses. In addition, such document could not be admitted to probate under RC 2107.24 because while there was clear and convincing evidence that decedent prepared such document, and signed it in the presence of the two friends, there was no clear and convincing evidence that decedent "intended the three-page hand-printed document to constitute his will."

In Ohio, a will must meet certain statutory requirements under R.C. 2107.03 before such document can be admitted to probate: be in writing; signed at the end by the testator or by some other person at testator's express direction in the testator's conscious presence; and attested and subscribed in the testator's conscious presence by two or more competent witnesses who saw the testator subscribe the document with testator's signature or heard testator acknowledge his or her signature. Because the Love Letter Will was only signed by decedent, it did not meet the requirements of RC 2107.03.

Appellant argued that even if the Love Letter Will did not meet the requirements of RC 2107.03 under RC 2107.24, decedent's testamentary intent was that he intended the Love Letter Will to be his last will and that such document clearly and convincingly demonstrated his testamentary intent. But under RC 2107.24, the probate court held, and the appellate court confirmed, that the subject document would be treated as if it complied with RC 2107.03 only if the appellant proved by clear and convincing evidence (certainly a stricter proof than by a mere preponderance of the evidence) that the decedent: (1) prepared the document, (2) signed the document and intended it to be his will, and (3) signed the document in the presence of two or more witnesses. In response, the appellant cited certain cases which the appellate court found inapplicable because in each case the issue dealt with interpretation of wills already admitted to probate. There were also other issues in the instant case relative to which burden of proof was to be applied to appellant's argument relative to the admission to probate of the Love Letter Will which space here precludes such inclusion, but suffice it to say that appellant argued that decedent intended the Love Letter Will to be his last will because he described it "as my last will and testament," named appellant as beneficiary, both printed and signed his full name, and asked two persons to witness him sign the document. The probate court, in response, ruled that: (1) none of the three pages in the Love Letter Will had a title, (2) usual words of gifting such as "give," "devise" or "bequeath" do not appear in such document, (3) although not legally required, the document did not have an exordium (introductory clause containing testator's name and capacity to make a will) and/or a testimonium clause (reciting the date when signed and in what capacity), and (4) by contrast, the LegalZoom Will decedent prepared the day before included all such clauses. Therefore, the decedent "was somewhat familiar with how a formally drafted Will appeared," and the Love Letter Will was more consistent with the other "love notes" written to the appellant and, where in this case, the purported will is a single, run-on sentence in a love letter.

The appellate court determined that there was no clear and convincing evidence that decedent intended the Love Letter Will to be his last will, and such document was properly denied admission to probate.