

STATE OF MICHIGAN
COURT OF APPEALS

MARLENE ARCHER, PATRICIA ANDERSON,
LEONARD BOYD, PRESSLEY MURRY,
LONNIE MURRAY, CHRISTOPHER HICKS,
FRANCINE HOWARD, and CLARENCE BOYD,

UNPUBLISHED
August 4, 2009

Plaintiffs-Appellants,

v

CHARLES ANDERSON and JAMES
ANDERSON,

No. 285251
Wayne Circuit Court
LC No. 06-610251-CZ

Defendants-Appellees.

Before: Saad, C.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's order that granted summary disposition to defendants. For the reasons set forth below, we affirm.

Robert New died on February 10, 2006. New had no wife or children and plaintiffs are eight of approximately 20 nieces and nephews that survived New at the time of his death. Plaintiffs filed this action in circuit court against defendants, who are two of New's other living nephews. Plaintiffs alleged that defendants are liable for conversion because, before New died, they conspired to add themselves to New's financial accounts as joint owners or beneficiaries and as beneficiaries on his life insurance policy. Plaintiffs maintain that, according to New's will, he intended that his estate would be divided equally among his nieces and nephews and that, therefore, they are entitled to an award of damages from defendants. Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(4) and argued that the circuit court lacked subject matter jurisdiction over the case and that the probate court has exclusive jurisdiction. The trial court agreed and granted summary disposition to defendants.

Plaintiffs claim that the trial court erroneously dismissed this action because it is a simple tort case involving a claim of conversion, and not a matter within the exclusive jurisdiction of the probate court. This Court reviews motions for summary disposition de novo. *Weishuhn v Catholic Diocese of Lansing*, 279 Mich App 150, 155; 756 NW2d 483 (2008). "Likewise, an issue of subject-matter jurisdiction that turns on an interpretation of statutory provisions is reviewed de novo." *Cairns v City of East Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007). "In considering a motion challenging jurisdiction under MCR 2.116(C)(4), a court must

determine whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate that the court lacks subject matter jurisdiction.” *CC Mid West, Inc v McDougall*, 470 Mich 878; 683 NW2d 142 (2004), citing MCR 2.116(G)(5).

The trial court ruled that plaintiffs’ claims fall within the exclusive jurisdiction of the probate court and that, as a circuit court, it lacked jurisdiction to decide plaintiffs’ claims. Article 6, § 15 of Michigan’s Constitution states the following with regard to probate courts:

In each county organized for judicial purposes there shall be a probate court. The legislature may create or alter probate court districts of more than one county if approved in each affected county by a majority of the electors voting on the question. The legislature may provide for the combination of the office of probate judge with any judicial office of limited jurisdiction within a county with supplemental salary as provided by law. The jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law.

Pursuant to this constitutional provision, the Legislature set forth matters within the exclusive jurisdiction of the probate court in MCL 700.1302, under the Estates and Protected Individuals Code (EPIC). Specifically, MCL 700.1302(a) provides:

The court has exclusive legal and equitable jurisdiction of all of the following:

(a) A matter that relates to the settlement of a deceased individual’s estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

(i) The internal affairs of the estate.

(ii) Estate administration, settlement, and distribution.

(iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.

(iv) Construction of a will.

(v) Determination of heirs.

(vi) Determination of death of an accident or disaster victim under section 1208.

Though plaintiffs label their claim as one for conversion (including conspiracy to convert and aiding and abetting conversion), the gravamen of their cause of action is their request for the court to rule that, pursuant to New’s will, they are entitled to a share of his estate. “When a party brings a motion for summary disposition, courts ‘look beyond the face of a plaintiff’s pleadings to determine the gravamen or gist of the cause of action contained in the complaint.’ ” *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 159; 677 NW2d 874, 883 (2003), quoting *Sankar v Detroit Bd of Ed*, 160 Mich App 470, 476; 409 NW2d 213 (1987).

Plaintiffs' complaint states that the case involves "the estate of a deceased individual and his assets" and that it is brought by New's "direct heirs, relatives and beneficiaries." In their motion for summary disposition, plaintiffs asserted that New had an estate worth more than \$500,000 and that, based on his will, he intended to divide the estate among plaintiffs and defendants. Plaintiffs further claimed that defendants learned about New's intent and conspired to take over New's accounts before he died.

We hold that plaintiffs' complaint plainly seeks a determination of their rights as devisees under New's will as well as how New's estate should have been administered and distributed. Pursuant to MCL 700.1302(a)(i), (ii), (iii) and (iv), plaintiffs' claims fall within the exclusive jurisdiction of the probate court. Plaintiffs do not merely accuse defendants of converting New's assets, but claim that, under New's will, they are entitled to a portion of those assets as New's devisees. Indeed, plaintiffs' interest in this case is based entirely on their status as devisees under New's will and, absent their asserted right under the will, they would have no standing to claim an interest in New's assets. The construction of a will, the determination of the rights of devisees, and the distribution of a deceased's assets are matters within the exclusive jurisdiction of the probate court.¹

Though plaintiffs argue that MCL 700.1303 suggests that the circuit court has concurrent jurisdiction with the probate court to decide "a property right or interest," plaintiffs misinterpret the statute. MCL 700.1303 simply provides that a probate court may determine matters related to a property right or interest with regard to an estate, it does not provide that the circuit court also has jurisdiction over matters involving estates that are exclusively reserved to the probate court under MCL 700.1302. Rather, instead of requiring the probate court to transfer the matter to another court to handle issues that may arise in a probate matter, the statute *permits* the probate court to address ancillary issues that may arise, in order to "simplify the disposition of an action or proceeding involving" an estate. MCL 700.1303. Accordingly, plaintiffs' argument on this issue is without merit.²

Plaintiffs further argue that, instead of dismissing the case, the trial court should have simply transferred it to probate court. While plaintiffs are correct that defendants asked for the circuit court to either transfer the case or dismiss it, it was within the trial court's discretion to

¹ Plaintiffs' reliance on *Leib v Genesee Merchants Bank & Trust Co*, 371 Mich 89; 123 NW2d 140 (1963) is unavailing. *Leib* is not precedentially binding on the issue of jurisdiction was not before the Court. It is well-settled that "a case is *stare decisis* on a particular point of law if the issue was 'raised in the action decided by the court, and its decision made part of the opinion of the case.' " *Terra Energy, Ltd v Michigan*, 241 Mich App 393, 399; 616 NW2d 691 (2000), quoting 20 Am Jur 2d, Courts, § 153, p 440.

² Plaintiffs complain that defendants filed their motion to dismiss or transfer the case too late. "[A] challenge to subject-matter jurisdiction may be raised at any time" *Adams v Adams*, 276 Mich App 704, 708-709; 742 NW2d 399 (2007). Indeed, a challenge to subject matter jurisdiction is not untimely even if the issue is raised for the first time on appeal. *Midwest Energy Co-op v Michigan Public Service Com'n*, 268 Mich App 521, 523; 708 NW2d 147 (2005). Accordingly, we reject plaintiffs' argument.

either transfer the case or to dismiss it pursuant to MCR 2.116(C)(4). Pursuant to MCR 2.227(A)(1), “[w]hen the court in which a civil action is pending determines that it lacks jurisdiction of the subject matter of the action, but that some other Michigan court would have jurisdiction of the action, the court may order the action transferred to the other court in a place where venue would be proper.” The court rule is permissive, and states only that a trial court *may* transfer the case. We hold that it was within the trial court’s discretion to dismiss the case, particularly where, as here, plaintiffs had sufficient time within the statute of limitations to refile their case in probate court.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Stephen L. Borrello