

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

ALLEN F. CAMPBELL,	:	
Plaintiff-Appellant,	:	No. 109585
v.	:	
DONALD A. CAMPBELL 2001	:	
TRUST ET AL.,	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: May 20, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
General Division
Case No. CV-18-891240
Probate Division
18ADV233517

Appearances:

Allen F. Campbell, *pro se*.

Tucker Ellis L.L.P., H. William Beseth III, William J. Stavole, and Melissa Z. Kelly, *for appellees* Ava Havel and Manuela Hernandez.

Baker Hostetler, Kyle B. Gee, and Michael K. Farrell, *for appellee* Heather Campbell Bradford Wallace.

Joseph M. Patton, *for appellee* Egidijus Marcinkevicius.

Meyers, Roman, Friedberg & Lewis and Peter Turner, *for appellee* Jessie Garcia.

MARY EILEEN KILBANE, J.:

{¶ 1} Pro se plaintiff-appellant Allen F. Campbell (“Campbell”) appeals the probate court’s exercise of jurisdiction and the dismissal of his claims against defendants. For the reasons that follow, we affirm the judgment of the probate court.

Factual and Procedural History

{¶ 2} At the core of this litigation is a dispute between the beneficiaries of multiple trusts. Allen and Frederick Campbell are the two sons of Donald and Margaret Campbell, who each created various trusts that are the defendants-appellees in this case: Donald A. Campbell 2001 Trust (“Donald Trust”), Campbell Family 2001 Descendants Trust, F. Margaret Campbell 2011 Trust (“Margaret Trust”), and F. Margaret Campbell Family Trust. The Donald Trust and the Margaret Trust are the sole general and limited partners in the Campbell Family Limited Partnership (“CFLP”), a partnership formed in April 1997, that is also a defendant in this case.

{¶ 3} Frederick Campbell passed away on November 2, 2013. At that time, he had two daughters, defendants Ava Havel (“Havel”) and Manuela Hernandez (“Hernandez”), and was survived by his spouse, defendant Jessica Garcia (“Garcia”). Defendants Havel and Hernandez, along with Heather Campbell

Bradford Wallace (“Wallace”), Campbell’s own daughter, are involved in a series of lawsuits brought by Campbell against them as trustees of the Donald Trust and as limited partners of the CFLP, through their title as successor-trustees of the Donald Trust.

{¶ 4} In 1993, prior to the formation of the CFLP, Donald purchased life insurance policies for himself with the Donald Trust as the beneficiary. Sometime in 1997, these policies were transferred to the CFLP. Upon Donald’s death in 2010, Margaret became the successor-trustee and sole beneficiary of the Donald Trust until her death in 2015. As trustee, Margaret filed the death benefit claims with the insurance company who paid the death benefits to the Donald Trust.

{¶ 5} The Donald Trust documents provided for discretionary distribution of principal by the trustee to Margaret for her support, health, education, and best interests. This means that as successor-trustee, Margaret had exclusive discretion whether to make principal distributions consistent with the terms of the trust. Margaret was also the sole trustee and primary beneficiary of the Margaret Trust, which also permitted discretionary distribution of principal by the trustee to Margaret for her support, health, education, and best interests. As sole trustee of both trusts, Margaret was in exclusive control of the CFLP and its assets as well, until her death in 2015. It is undisputed that Margaret was mentally competent and managed the two trusts, the partnership, and her estate from 2010 until her death in 2015. When Margaret passed, she was 98 years old.

{¶ 6} After her husband's death in 2010, Margaret signed a new Last Will and Testament, and in 2011, she amended and restated her trust. As part of these changes, Margaret named Campbell executor of her estate, successor-trustee, and a beneficiary of the Margaret Trust upon her death. Campbell was never a trustee or beneficiary of the Donald Trust and was not, individually, a general or limited partner of the CFLP. Defendants Havel and Hernandez were also beneficiaries with Campbell of the Margaret Trust upon Margaret's death on April 7, 2015.

Prior Probate Cases

{¶ 7} Based on the record, this is the fourth case filed regarding these various individuals and trusts. The first case filed, *In re Estate of Freda Margaret Campbell*, Cuyahoga P.C. No. 2016EST216495, dealt with the probate of Margaret's estate. Per the trust documents and will, Campbell was appointed executor of Margaret's estate and made successor-trustee of the Margaret Trust.

{¶ 8} The second case, *Campbell v. Garcia*, Cuyahoga P.C. No. 2016ADV219342, was a declaratory relief action filed by Campbell against defendant Garcia individually and defendants Havel, Hernandez, and his daughter Wallace, as co-successor-trustees of the Donald Trust and beneficiaries of the Margaret Trust. Campbell voluntarily dismissed this case.

{¶ 9} Then, in April 2017, defendants Havel and Hernandez filed their own action in Cuyahoga P.C. No. 2017ADV24571. They alleged in their complaint that Campbell had breached his fiduciary duty as successor-trustee of the Margaret Trust and that he had converted trust assets and funds. They then filed three

separate motions seeking to remove him as successor-trustee of the Margaret Trust, requesting an order from the court for Campbell to restore trust property and requesting an ex parte temporary restraining order and preliminary injunction against him. The court granted an ex parte temporary restraining order, and after a hearing on the matter, ordered it to remain in effect until the case is resolved.

{¶ 10} Campbell, Havel, and Hernandez filed a joint motion in September 2017 wherein the parties agreed that Havel and Hernandez would withdraw their motion to remove Campbell as successor-trustee and Campbell would voluntarily resign as successor-trustee of the Margaret Trust and executor of her estate. The probate court granted this motion in a journal entry on September 27, 2017. On November 1, 2017, the probate court appointed defendant Egidijus Marcinkevicius (“Gid”) as successor-trustee of the Margaret Trust and as administrator of her estate. This case is still pending.

The Current Litigation

{¶ 11} Finally, on January 8, 2018, Campbell filed the underlying lawsuit that is the focus of this appeal in the Cuyahoga County Court of Common Pleas, General Division. His complaint alleged nine claims against defendants Donald Trust, Havel and Hernandez as successor-trustees of the Donald Trust, the CFLP, Garcia, the Margaret Trust, and Gid (hereinafter “Defendants”) as successor-trustee for: (1) unjust enrichment and/or restitution, (2) breach of fiduciary duty, (3) breach of contract, (4) civil conspiracy, breach of fiduciary duty and/or other tortious conduct, (5) intentional interference with an expectancy of inheritance or

nonprobate transfer, (6) conversion, (7) aiding and abetting, (8) dissolution of the CFLP, and (9) injunction and constructive trust.

{¶ 12} Defendants then filed a joint motion to transfer the case to the probate division. It should be noted that, although she was not named as a defendant in this case, Wallace claims to join the motion by way of a footnote in Defendants' motion to transfer in her capacities as co-trustee of the Donald Trust and as a partner in the CFLP. The trial court granted this motion, and the case was transferred in March 2018 from the general division to the probate division. Once transferred, defendants Garcia, Havel, Hernandez, the Margaret and Donald Trusts, the CFLP, and Wallace, jointly filed a Civ.R. 12(B)(6) motion to dismiss Campbell's complaint alleging his claims: (1) do not exist under Ohio law; (2) cannot be asserted by Campbell for lack of standing; (3) are barred by the statute of limitations; or (4) have no basis in fact as asserted.

{¶ 13} In June 2018, Campbell filed two motions while Defendants' motion to dismiss was pending. The first was a "motion to dismiss (reject transfer) for lack of subject matter jurisdiction" arguing the probate court should reject the case being transferred because it lacked subject matter jurisdiction to hear the case. The second motion was to exclude matters outside the complaint or in the alternative to convert Defendants' joint motion to dismiss to a summary judgment motion and allow discovery. Campbell filed a third motion, two and a half years later on February 11, 2020, seeking leave to file a first amended complaint.

{¶ 14} On February 14, 2020, the probate court issued four judgment entries ruling on the various pending motions. The first judgment entry denied Campbell's motion for leave to amend his complaint. The second entry dismissed Campbell's motion to exclude matters outside the complaint as moot. The third entry denied Campbell's motion to dismiss. The fourth entry granted the Defendants' joint motion to dismiss because the probate court found, after careful analysis of each claim, that Campbell lacked standing to pursue any of the claims set forth in his complaint. The court also found that Campbell failed to state a claim against defendants Havel and Hernandez in either their individual capacity or in their capacity as co-trustees. The court then dismissed Campbell's complaint pursuant to Civ.R. 12(B)(6).

{¶ 15} This appeal follows.

Assignments of Error

{¶ 16} Campbell presents four assignments of error for our review:

- (1) The Probate Court erred and abused its discretion in determining that it had jurisdiction to consider this case and to take all of the actions requested in the complaint.
- (2) The Probate Court erred and abused its discretion in determining that the Plaintiff had no standing.
- (3) The Probate Court erred and abused its discretion in denying and dismissing Plaintiff's Motion for Leave to File First Amended and/or Supplemental Complaint.
- (4) The Probate Court erred and abused its discretion in granting the Defendant's Motion to Dismiss filed pursuant to Civ. R. 12(B)(6).

Legal Analysis

{¶ 17} Campbell's first assignment of error deals with the probate court's jurisdiction to hear this case. Campbell's argument is twofold: 1) the probate court did not have concurrent jurisdiction under R.C. 2104.24(B) because the causes of action in his complaint are not "trust related," but instead for breach of a partnership agreement and for other personal tort claims; and 2) even if the probate court has concurrent jurisdiction with the general division, the probate court is barred by the jurisdictional-priority rule from hearing the case.

{¶ 18} Whether a court has jurisdiction over a matter is a legal question that this court reviews de novo. *Quantum Servicing Corp. v. Haugabrook*, 9th Dist. Summit No. 26542, 2013-Ohio-3516, ¶ 7, citing *Thomas v. Bldg. Dept. of Barberton*, 9th Dist. Summit No. 25628, 2011-Ohio-4493, ¶ 6. The probate court is a court of limited jurisdiction; it can exercise such powers as are conferred on it by statute and the constitution of the state. *Sosnoswsky v. Koscianski*, 2018-Ohio-3045, 118 N.E.3d 403, ¶ 9 (8th Dist.), citing *Goff v. Ameritrust Co., N.A.*, 8th Dist. Cuyahoga Nos. 65196 and 66016, 1994 Ohio App. LEXIS 1916, 10-11 (May 5, 1994) (internal citation omitted). Despite its limited jurisdiction, the probate courts also have plenary power "at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code." R.C. 2101.24(C). *Ivancic v. Enos*, 2012-Ohio-3639, 978 N.E.2d 927, ¶ 35 (11th Dist.).

{¶ 19} Pursuant to R.C. 2101.24(A) and relevant to this case, the probate court has exclusive jurisdiction to direct and control the conduct and settle accounts of executors and administrators and order the distribution of estates, to render declaratory judgments with respect to probate estates, and to direct and control the conduct of fiduciaries and settle their accounts. R.C. 2101.24(A)(1)(c), (l), (m). Furthermore, pursuant to R.C. 2101.24(B)(1)(b), the probate court is also granted concurrent jurisdiction with the general division of the court to hear and determine any action that involves an inter vivos trust.

{¶ 20} The claims in Campbell's complaint center on two life insurance policies owned by the CFLP and the actions of its two partners, which are two irrevocable inter vivos trusts. Campbell believes the policies were partnership property and should have been either liquidated prior to Donald's death and split among the partners, or the proceeds of death benefits should have been evenly split among the partners, rather than being paid to the named beneficiary, the Donald Trust. Campbell also takes issue with Margaret's choice to pay for personal expenses and for her living arrangement at the Judson Center using either her own funds or funds from the Margaret Trust, rather than using funds from the Donald Trust or the CFLP assets.

{¶ 21} As a beneficiary of the Margaret Trust, Campbell believes the trust is owed money from the Donald Trust for the monies Margaret and the Margaret Trust spent from 2010 until her death in 2015. Again, after Donald's death, Margaret was the sole trustee and beneficiary of both the Donald and Margaret

Trusts and sole interest holder in the CFLP. All of Campbell's causes of action center around the assets, life insurance payments, and personal payments made between two trusts in a partnership, with a singular trustee and beneficiary, his deceased mother Margaret. He takes issue with the fiduciary decisions of the trustees of both the Donald and Margaret trusts. Therefore, we find that Campbell's claims are not only within the probate court's exclusive jurisdiction, but also its concurrent jurisdiction pursuant to R.C. 2101.24.

{¶ 22} Furthermore, we find Campbell's reliance on *Sosnowsky* to be misplaced. Campbell argues that the probate court does not have jurisdiction over claims for money damages arising from allegations of fraud. *Sosnowsky v. Koscianski*, 2018-Ohio-3045, 118 N.E.3d 403, ¶ 8-12 (8th Dist.). We acknowledge that the Ohio Supreme Court has stated "the probate division has no jurisdiction over claims for money damages arising from allegations of fraud." *Schucker v. Metcalf*, 22 Ohio St.3d 33, 488 N.E.2d 210 (1986). Here, however, there are no specific allegations of fraud in Campbell's complaint against the individual Defendants. For these reasons, *Sosnowsky* is inapplicable in this case. Therefore, we find that the probate court had both exclusive and concurrent jurisdiction over Campbell's complaint.

{¶ 23} The second part of Campbell's argument in his first assignment of error concerns the application of the jurisdictional-priority rule. The Ohio Supreme Court has stated that "[t]he jurisdictional-priority rule provides that as between state courts of concurrent jurisdiction, the tribunal whose power is first

invoked acquires exclusive jurisdiction to adjudicate the whole issue and settle the rights of the parties.” *State ex rel. Consortium for Economic & Community Dev. for Hough Ward 7 v. Russo*, 151 Ohio St.3d 129, 2017-Ohio-8133, 86 N.E.3d 327, ¶ 8, citing *State ex rel. Dunlap v. Sarko*, 135 Ohio St.3d 171, 2013-Ohio-67, 985 N.E.2d 450, ¶ 9. When the rule applies, the judge in the second case definitively and unambiguously lacks jurisdiction by operation of this rule. *Id.* If two cases are pending in the same court before different judges, a motion for consolidation is the appropriate solution available to the parties. *Id.* at ¶ 10.

{¶ 24} In his brief, Campbell argues this rule applies to bar the transfer of this case, from the general division to the probate division; however, that is a fundamental misunderstanding of when this rule applies. As defendants correctly state, this rule is only applicable when there are two cases pending in two different courts of concurrent jurisdiction. *Id.* at ¶ 10. *See also B-Dry System, Inc. v. Kronenthal*, 2d Dist. Montgomery No. 17130, 1999 Ohio App. LEXIS 3080 (June 30, 1999) (applying the jurisdictional priority rule and holding that exclusive jurisdiction vested in the Greene County Court of Common Pleas, not the Montgomery County Court of Common Pleas); *Bright v. Family Medicine Found., Inc.*, 10th Dist. Franklin No. 02AP-1443, 2003-Ohio-6652 (jurisdictional priority rule not applicable when both cases were filed in the Franklin County Court of Common Pleas).

{¶ 25} In this case, Campbell attempts to use the jurisdictional-priority rule to bar the transfer or consolidation of this case by defendants’ motion from one

division of the Cuyahoga County Court of Common Pleas to another. *Russo* at ¶14. However, as previously stated, the jurisdictional-priority rule only applies when there are two cases pending in two different courts of concurrent jurisdiction. *Id.* See e.g., *Bright*. If Campbell had subsequently filed a complaint against these Defendants, alleging the same claims, in the Lorain County Court of Common Pleas, then this rule could be applied to bar the Lorain County court from hearing that subsequent case. The rule does not apply to bar the transfer or consolidation of a case within the same court, which is what happened here. *Id.* at ¶ 10. The existence of the prior probate cases is irrelevant to this analysis. Therefore, this rule is inapplicable to bar the consolidation that occurred in this case. Based on the foregoing, Campbell's first assignment of error is overruled.

{¶ 26} Campbell's second assignment of error asserts the probate court erred in determining Campbell did not have standing to bring the claims in his complaint. For the reasons stated below, we affirm the probate court's finding that Campbell does not have standing to bring the claims in his complaint.

{¶ 27} "Before an Ohio court can consider the merits of a legal claim, the person or entity seeking relief must establish standing to sue." *Ohio Pyro, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27. Standing is evaluated as of the commencement of suit. *Groveport Madison Local Schools Bd. of Edn.*, 137 Ohio St.3d 266, 2013-Ohio-4627, 998 N.E.2d 1132.

{¶ 28} “Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends on whether the party has alleged * * * a personal stake in the outcome of the controversy.” *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 21, quoting *Cleveland v. Shaker Hts.*, 30 Ohio St.3d 49, 51, 507 N.E.2d 323 (1987). Ohio courts generally adhere to the traditional principles of standing that “require litigants to show, at a minimum, that they have suffered ‘(1) an injury that is (2) fairly traceable to the defendant’s allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.’” *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶ 7.

{¶ 29} Beginning with the first element of the analysis, the court must examine the injury Campbell has alleged in his nine causes of action. The probate court analyzed each cause of action in its judgment entry finding Campbell does not have standing. The probate court found that Campbell’s alleged injuries or damages stem from two places. We agree. First and foremost, Campbell believes the proceeds of the life insurance policies should have been allocated to either the Margaret Trust or Margaret’s share of the CFLP. Second, Campbell believes payments made by the CFLP to Judson Center were improperly recorded as distributions on the CFLP tax returns and allocated to Margaret’s partnership capital when the partnership agreement has the Donald Trust making said payments. As such, Campbell, as a Margaret Trust beneficiary, is seeking reimbursement from the Donald Trust for all of Margaret’s payments to Judson

Center from her personal and/or trust fund account that occurred from 2010 until her death in 2015.

{¶ 30} For the purposes of this analysis, we will first focus on Counts 1, 2, 4, 5, 6, 7, 9, while Counts 3 and 8 will be discussed subsequently.

{¶ 31} Count 1 alleges the Defendants via their status as beneficiaries of the Donald Trust were unjustly enriched by the life insurance policies that were paid out to the trust. This is because the policies were then owned by the CFLP, and Campbell argues half of their value belonged to the Margaret Trust, injuring Campbell as a beneficiary of the Margaret Trust.

{¶ 32} Count 2 alleges breach of a fiduciary duty by the Donald Trust, as a partner of the CFLP, to the Margaret Trust.

{¶ 33} Count 4 alleges civil conspiracy by the CFLP or his mother Margaret, as successor-trustee of the Donald Trust to transfer property and benefits out of the CFLP to the detriment of the Margaret Trust beneficiaries.

{¶ 34} Count 5 alleges Defendants' intentional interference with an expectancy of inheritance or nonprobate transfer in regard to unspecified property and benefits of the CFLP and Defendants' continued refusal to return this unspecified property or benefits to the proper owner. Campbell alleges that because of the Defendants' interference, he was unable to realize half of the assets of Margaret and the Margaret Trust at the time of her death.

{¶ 35} Count 6 alleges conversion of the life insurance policies monies by the Donald Trust, of which Campbell argues he was the owner or beneficial owner, and is entitled to their possession.

{¶ 36} Count 7 is titled aiding and abetting, but alleges no specific facts taken by any Defendants that could form the basis for any such claim.

{¶ 37} Count 9 is more properly understood as a Civ.R. 65 request for an injunction against Defendants and not an independent cause of action.

{¶ 38} Put simply, in regard to Counts 1, 2, 4, 5, 6, 7, and 9, all of Campbell's alleged injuries stem from his status as a beneficiary of the Margaret Trust. All the alleged injuries he believes the Margaret Trust has suffered deal with the financial decisions made by the CFLP partners, the Donald and Margaret Trusts, and thereby the trustees of said trusts. During the times alleged, the sole trustee of both trusts was his mother Margaret.

{¶ 39} After Donald's death, both trust documents named Margaret as the primary beneficiary. This means that while Margaret was alive, both trusts' documents stated that all assets in the trusts were for her exclusive benefit. She was to receive any and all net income from the trusts, and she had sole discretion to distribute any and all principal to herself for her support, her health, her education, and her best interests. As sole trustee and beneficiary for both trusts, this made Margaret the sole interest holder in the CFLP, giving her exclusive authority over all of its assets.

{¶ 40} All alleged injuries to Campbell were a result of the actions his mother took from 2010 to 2015 as she chose how to use funds from among the Donald Trust, the Margaret Trust, and the CFLP to pay for things. Because Margaret had exclusive control over trusts and CFLP assets, she had the sole authority to decide what funds to use for what purpose. Therefore, Margaret could and did choose to pay for things like her living accommodations at the Judson Center from the Margaret Trust instead of from the Donald Trust. That was exclusively her prerogative. It is hard to comprehend the injury Campbell imagines the Margaret Trust could have suffered at the hands of the Donald Trust or as a partner in the CFLP, when Margaret was the sole person making all the financial decisions for all three entities.

{¶ 41} Even more importantly to this analysis, Campbell's claimed injuries, as a beneficiary of the Margaret Trust, cannot truly have existed before Margaret's death in April 2015. This is because it was not until her death that any of her descendants would become entitled to any distributions from either of the trusts, and any distributions would be from whatever assets Margaret left in the trusts. "In situations where a trust beneficiary's interest does not vest until the settlor's death, because it is subject to defeasance prior to death (as here), courts have held that the beneficiary cannot maintain a cause of action based on events that occurred prior to the settlor's death." *Cartwright v. Batner*, 2014-Ohio-2995, 15 N.E.3d 401, ¶ 57 (2d Dist.). *See Papps v. Karras*, 6th Dist. Lucas No. L-14-1246, 2015-Ohio-1055, ¶ 13-14 (applying *Cartwright*). Campbell had no beneficial

interest in any assets from the Margaret Trust until Margaret's death in 2015. There was nothing stopping Margaret from completely depleting the Margaret Trust before her death, leaving Campbell and the other beneficiaries with a vested interest in nothing. This is because Campbell's interest was not vested and was subject to defeasance prior to her death. As such, Campbell could not suffer any injury as beneficiary of the Margaret Trust for any payments she made with its funds prior to her death. *Cartwright* at ¶ 5. Therefore, Campbell cannot maintain causes of action based on any events that occurred prior to Margaret's death because he is unable to satisfy the injury requirement for common law standing. *Id.*

{¶ 42} Campbell argues that the probate court incorrectly found that the Ohio Revised Code also failed to provide him standing to pursue his claims. We disagree. In Ohio, the only other way to have standing to sue is pursuant to an explicit statute or what is described as “statutory standing.” *Wooster v. Enviro-Tank Clean, Inc.*, 9th Dist. Wayne No. 13CA0012, 2015-Ohio-1876, ¶ 12 (“Statutory standing” in Ohio has been described as the statutory grant of authority to sue).

{¶ 43} The probate court correctly stated in its entry that “any claim on behalf of a trust or estate must be pursued by the fiduciary appointed to represent the trust or estate. A fiduciary's authority to maintain a cause of action is granted under the terms of the trust or will and, if not, such authority is expressly provided under R.C. 5808.16(X) and R.C. 2107.46.” Chapter 5808 of the Revised Code does

not give the beneficiary of a trust any authority to enforce claims for the trust against third parties.

{¶ 44} Campbell is correct that Ohio statutory law permits beneficiaries to bring claims on behalf of a trust against third parties pursuant to R.C. 2107.46. That said, nowhere in his complaint does Campbell state that any of his nine claims are being brought pursuant to R.C. 2107.46 or 2721.05, nor does his prayer for relief request that the court take any action pursuant to those statutes. For a party to have standing pursuant to R.C. 2107.46, the statute must be strictly adhered to. *Firestone v. Galbreath*, 10th Dist. Franklin Nos. 92AP-150, 92AP-154, and 92AP-159, 1992 Ohio App. LEXIS 5219 (Oct. 6, 1992), *dismissed, Galbreath*, 66 Ohio St.3d 1420, 607 N.E.2d 843 (1993) (plaintiffs do not have standing to institute an action to recoup assets that they allege were wrongfully transferred from their grandmother's inter vivos trust where they failed to follow the statute and instead brought claims for monetary damages). Therefore, based on Campbell's complaint, these statutes are not applicable here and do not provide him standing.

{¶ 45} Last, Campbell attempts to establish standing by arguing that the probate court's September 27, 2019 order in Case No. 2017ADV224571, which journalized the parties' joint motion wherein Campbell voluntarily resigned as successor-trustee of the Margaret Trust, preserved his right as a beneficiary to assert or protect any interests in a claim against the CFLP. This argument is meritless, as the probate court noted, because the language does not provide any additional rights or interests as a beneficiary of the Margaret Trust.

{¶ 46} As such we find Campbell is unable to satisfy either common law or statutory standing for Counts 1, 2, 4, 5, 6, 7, and 9 of his complaint. For these reasons, we find that the probate court properly dismissed these counts of Campbell’s complaint for lack of standing because, as a beneficiary of the Margaret Trust, Campbell did not have standing to bring these claims against the current Defendants.

{¶ 47} We will now address the remaining Counts of Campbell’s complaint. Count 3 is a claim for breach of the CFLP partnership agreement and Count 8 is a claim for dissolution of the CFLP. “Only a party to a contract or an intended third-party beneficiary may bring an action on a contract.” *Bain Builders v. Huntington Natl. Bank*, 8th Dist. Cuyahoga No. 78442, 2001 Ohio App. LEXIS 3025, 11 (July 5, 2001), citing *Thornton v. Windsor House, Inc.*, 57 Ohio St.3d 158, 161, 566 N.E.2d 122 (1991). It is undisputed that Campbell is not a limited or general partner in the CFLP and is therefore not a party to this agreement. Similarly, once Campbell voluntarily resigned as successor-trustee to the Margaret Trust, he lost any potential standing to bring a claim pursuant to the CFLP partnership agreement on behalf of the Margaret Trust. *Id.*

{¶ 48} There is no allegation in his complaint that Campbell, as an individual, was an intended third-party beneficiary in the partnership agreement. Instead, the complaint alleges that Campbell is a partner of the CFLP. Because he is neither a party to the CFLP partnership agreement nor an intended third-party

beneficiary, Campbell lacks standing to assert any claim for breach of the CFLP partnership agreement.

{¶ 49} Further, limited partnerships, like the CFLP, can only be dissolved pursuant to R.C. 1782.44, which only allows dissolution under four specific circumstances; pursuant to the partnership agreement, by written consent of all partners, after withdrawal of a partner or upon entry of a judicial decree by application of a partner. R.C. 1782.44(A)-(D). There is no allegation in the complaint that Campbell's claim for dissolution is being brought pursuant to R.C. 1782.44(A)-(D). We reiterate that Campbell is not a partner to the CFLP and, as such, he has no standing pursuant to R.C. 1782.44(D) to bring a claim requesting a judicial decree to dissolve the CFLP. Therefore, Counts 3 and 8 were also properly dismissed by the probate court for lack of standing.

{¶ 50} Our disposition of Campbell's first and second assignments of error renders his third and fourth assignment of errors moot.

{¶ 51} Therefore, we affirm the probate court's dismissal of Campbell's complaint, without prejudice, for lack of standing.

{¶ 52} Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27
of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

MICHELLE J. SHEEHAN, P.J., and
LISA B. FORBES, J., CONCUR