

[Cite as *Estate of Dombroski v. Dombroski*, 2014-Ohio-5827.]

STATE OF OHIO, HARRISON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

THE ESTATE OF RONALD)	
DOMBROSKI, et al.,)	CASE NO. 14 HA 3
)	
PLAINTIFFS-APPELLANTS,)	
)	
VS.)	O P I N I O N
)	
MARNA DOMBROSKI, et al.,)	
)	
DEFENDANTS-APPELLEES.)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court,
Case No. CVH-2012-0100.

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiffs-Appellants:

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For Defendants-Appellees:

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Walter Dombroski)

JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: December 29, 2014

[Cite as *Estate of Dombroski v. Dombroski*, 2014-Ohio-5827.]
VUKOVICH, J.

{¶1} Plaintiffs-appellants, who are the adult children of a decedent, appeal the decision of the Harrison County Common Pleas Court, General Division, dismissing the case for lack of subject jurisdiction upon the finding that the probate division has exclusive jurisdiction. Appellants state that the general division erred because the probate court lacks jurisdiction over tort suits for monetary damages. Alternatively, appellants assert that a suit for fraud, conspiracy to commit fraud, and negligence does not fall within the probate court's exclusive jurisdiction, urging that such claims are regularly heard in the general division.

{¶2} However, the entire basis for this suit deals with the contents of the summary release from administration filed in the probate court, and the damages sought essentially depend on whether the estate would have been distributed differently, which in turn involves the application of various probate laws. We adopt the evolving case law position that a probate court can award monetary damages, and we conclude that this case falls within the exclusive jurisdiction of the probate court over summary releases and over estate administration, including its plenary power to exercise jurisdiction over the subject matter to the fullest extent required in a given case. In accordance, the judgment of the trial court is affirmed.

STATEMENT OF THE CASE

{¶3} The plaintiffs are the six surviving children of decedent Lawrence Dombroski: Rita Dagan, Lawrence Dombroski Jr., Laura Case, Daniel Dombroski, Randall Dombroski, Nellie Lishick, plus, the Estate of Ronald Dombroski (Lawrence's seventh child). On October 10, 2012, the plaintiffs filed suit in the general division against Marna Dombroski and the decedent's five brothers: Gerald, Louis, Richard, Robert, and Walter Dombroski. The decedent and his brothers each owned a 1/6 mineral interest in 139.60 acres.

{¶4} The decedent died on October 23, 2009. Marna, his surviving spouse, filed an application for a summary release from administration in the probate court on August 12, 2011 pursuant to R.C. 2113.031. It was alleged that she stated the estate assets were less than \$40,000 on the application in order to obtain a summary release and thus avoid any notice requirements.

{¶5} The complaint asserted a fraud claim against Marna on the grounds that she fraudulently misrepresented the value of the decedent's 1/6 interest and misrepresented the total value of the decedent's estate, causing all of the estate assets to transfer to Marna and depriving the children of their rightful share of the decedent's estate. In the alternative, the complaint asserted that Marna negligently represented the value of the 1/6 interest and the total value of the decedent's estate, which deprived them of their share of the decedent's estate.

{¶6} The complaint also asserted a claim for conspiracy to commit fraud against Marna and the decedent's five brothers. It was stated that the brothers were in negotiations with an energy company to lease the mineral rights to the acreage prior to Marna's probate action but needed a representative of the decedent's estate to sign the lease. The complaint alleged that the brothers and Marna conspired to defraud the children of their rightful share of the decedent's estate and interest in the mineral rights lease, contending that the brothers advised Marna to fraudulently pursue a summary release from administration to avoid delays and defraud the children. The plaintiffs sought compensatory and punitive damages.

{¶7} Discovery was conducted. During Marna's deposition, it was explained that she first sought and received a summary release in June of 2011 but was soon told about the 1/6 mineral interest at which point her attorney filed the August 12, 2011 application for summary release adding the 1/6 interest. The application for summary release listed as assets: a trailer valued at \$1,000, personalty valued at \$1,000, and the 1/6 mineral interest valued at \$625. The plaintiffs complained that her deposition suggested that she did not include other items owned by the decedent at death such as a few pieces of furniture, some guns, riding mowers, a tractor, and multiple vehicles including a Ford Model A classic car (which she described as junk).

{¶8} On September 10, 2013, Marna filed a motion to dismiss under Civ.R. 12(B)(1) for lack of subject matter jurisdiction and 12(B)(6) for failure to state a claim (and in the alternative a motion for summary judgment). Pertinent to the dismissal motion, she stated that the matter of the summary release and the resulting issuance of a certificate of transfer of the 1/6 interest involved a probate court decision. She urged that the probate court had exclusive jurisdiction of the matter, citing to R.C.

2101.24 (A)(1)(b), (c), and (cc), which give the probate court exclusive jurisdiction to: (b) grant and revoke letters testamentary and of administration; (c) direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates; and (cc) hear and determine applications for an order granting a summary release from administration under R.C. 2113.031.

{¶9} The plaintiffs responded that fraud, negligence, and conspiracy to commit fraud (in filing a summary release from administration) are all within the jurisdiction of the general division and do not constitute probate issues merely because they happen to involve acts in the probating of an estate. The plaintiffs state that the crux of their case is that Marna manipulated the values of the assets in order to meet the requirements of a summary release and avoid notice to the plaintiffs and she thus perpetrated a fraud against the probate court. Marna replied by characterizing the plaintiffs' arguments as an attempt to set aside the probate proceedings and urged that since the suit revolves around probate matters, only the probate court has jurisdiction.

{¶10} On January 16, 2014, the general division granted the motion to dismiss on jurisdictional grounds. The court stated that the probate division has exclusive jurisdiction in all probate matters including the administration of the decedent's estate and concluded that the general division lacked jurisdiction over the claims. The court noted that the plaintiffs filed in the probate court a motion to set aside the summary release on December 2, 2013.¹

PROBATE LAW

{¶11} A decedent's surviving spouse may apply to the probate court for an order granting a summary release from administration if the value of the assets of the decedent's estate does not exceed the total of the allowance for support to the surviving spouse under division R.C. 2106.13 (\$40,000) and an amount, not exceeding \$5,000 for the decedent's funeral and burial expenses. R.C. 2113.031(B). The applicant/surviving spouse must describe the known assets of the decedent and sign and acknowledge the application in the presence of a notary public. R.C.

¹Subsequently, on February 11, 2014, the probate court denied the motion, and that decision was also appealed. See *In re Estate of Dombroski*, 7th Dist. No. 14HA5.

2113.031(C). See *also* R.C. 2113.031(C)(2)(d)(i) (if the decedent's estate includes a motor vehicle, the application must include the year, make, model, body type, vehicle identification number, certificate of title number, and date of death value).

{¶12} The probate court is a court of limited jurisdiction and thus cannot exercise authority other than that specifically granted by statute or the constitution. *Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988). Pursuant to R.C. 2101.24(A)(1) and except as otherwise provided by law, the probate court has *exclusive jurisdiction* to engage in certain statutorily listed functions, including, for example: (b) to grant and revoke letters testamentary and of administration; (c) to direct and control the conduct and settle the accounts of executors and administrators and *order the distribution of estates*; (e) to appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts; (m) to direct and control the conduct of fiduciaries and settle their accounts; (p) to hear and determine actions to contest the validity of wills; (bb) to hear and determine applications for an order relieving an estate from administration under section 2113.03 of the Revised Code; and (cc) *to hear and determine applications for an order granting a summary release from administration under section 2113.031 of the Revised Code*. See R.C. 2101.23(A)(1)(a)-(ff). See *also* R.C. 2101.24(A)(2) (and exclusive jurisdiction if another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court and no section expressly confers jurisdiction over that subject matter upon any other court or agency).

{¶13} The probate court has concurrent jurisdiction with the general division if jurisdiction relative to a particular subject matter is stated to be concurrent in a section of the Revised Code or has been construed by judicial decision to be concurrent. R.C. 2101.24(B)(1)(a). And, there is concurrent jurisdiction over certain listed items such as an *intervivos* trust or an action with respect to a probate estate, guardianship, trust, or post-death dispute that involves a designation or removal of a beneficiary of a life insurance policy, retirement plan, brokerage account, bank account, real property, tangible personal property, and payable-on-death or joint and survivorship interests. See R.C. 2101.24(B)(1)(b)-(c). If there is concurrent jurisdiction, the probate court can *sua sponte* transfer the case to the general division. R.C. 2101.24(B)(2).

{¶14} Furthermore, pursuant to R.C. 2101.24(C), “The probate court has 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.” Thus, where a matter is properly before the probate court, it has full power to dispose of the case (unless the power is expressly otherwise limited). See R.C. 2101.24(C). See also *Wolfrum v. Wolfrum*, 2 Ohio St.2d 237, 239-240, 208 N.E.2d 537 (1965) (cancellation of renunciation of interest in intestate succession would fall within probate court jurisdiction to settle accounts of executors or administrators and to order the distribution of estates combined with its plenary power at law and in equity to dispose of any matter properly before it).

{¶15} In addition, “The probate court has the same power as the court of common pleas to vacate or modify its orders or judgments.” R.C. 2101.33. Where for instance, allegations of fraud upon the court are made regarding the procurement of a judgment, a party can seek Civ.R. 60(B) relief or can file an independent action. See *Coulson v. Coulson*, 5 Ohio St.3d 12, 15, 448 N.E.2d 809 (1983). The question here is where that independent action can be filed when the allegations deal with a summary release from administration filed in and granted by the probate court.

{¶16} It has been observed that Ohio’s complex jurisdictional rules for probate courts create continuing problems in construing the relationship between Ohio’s general and probate divisions and that courts have been unable to develop any useful test to determine when a dispute regarding the administration of an estate would confer exclusive jurisdiction over an action on the probate court. See John F. Winkler, *The Probate Courts of Ohio*, 28 U.Tol. L.Rev. 563 (Spr.1997).

ASSIGNMENT OF ERROR NUMBER ONE

{¶17} Appellants set forth three assignments of error, the first of which alleges:

{¶18} “THE TRIAL COURT ERRED IN GRANTING DEFENDANT’S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE ALLEGATIONS OF FRAUD, AND RELATED CLAIMS SEEKING MONETARY COMPENSATION ARE WITHIN THE JURISDICTION OF THE COMMON PLEAS COURT.”

{¶19} Appellants state that an independent action in the general division can impeach a probate judgment that was obtained by fraud, citing *Jacobsen*. Appellants note that the general division hears claims of fraud, conspiracy to commit fraud, and negligence regularly. Appellants urge that the probate division cannot hear this action because it has no jurisdiction over claims for monetary damages arising from allegations of fraud (or negligence in the alternative), citing the First District's *Alexander* case and the Supreme Court's *Shucker* case.

{¶20} Appellees counter that *Alexander* is outdated and that appellate courts have been following the Eighth District's decision in *Goff*, stating a probate court does not lack jurisdiction merely because monetary damages are sought. Appellees point out that the Supreme Court in *Moser* indicated that *Goff* provides a persuasive reason to move away from the *Alexander* line of thought.

{¶21} The *Jacobsen* case cited by appellants involved a suit filed after administration was closed against a person who committed fraudulent acts against a testator, fraudulently procured waivers from the plaintiffs in order to probate the will, used false testimony to probate the will, and failed to account for assets. The question addressed was whether the general division had concurrent jurisdiction with the probate court over the claims. *Jacobsen v. Jacobsen*, 164 Ohio St. 413, 415, 133 N.E.2d 833 (1956). The Supreme Court held that merely because the defendant later became the executor did not mean that the case fell within the probate court's exclusive jurisdiction over the administration of an estate. *Id.* at 417. The Court concluded that the defrauded party could maintain an independent suit in the general division to obtain relief from the fraud. *Id.* at 418. Notably, the initial tort occurred during the life of the decedent.

{¶22} The *Alexander* case appellants cite involved heirs bringing an action in the general division alleging that a probate court order was procured by the fraud of the administrator and seeking punitive damages. The general division dismissed for lack of jurisdiction. The First District reversed, holding that the probate division would not have jurisdiction over monetary damages for fraud. *Alexander v. Compton*, 57 Ohio App.2d 89, 90, 385 N.E.2d 638 (1st Dist.1978) (Clinton County, pre-Twelfth

Dist.), citing *Kindt v. Cleveland Trust Co.*, 26 Ohio Misc. 1, 5, 266 N.E.2d 84 (1971) (where probate division dismissed counterclaims seeking money damages).

{¶23} The Supreme Court thereafter ruled on a case where trustees of an intervivos trust were accused of self-dealing and breach of duties and monetary damages were sought. The Court concluded that the issues were solely within the jurisdiction of the general division. *Shucker v. Metcalf*, 22 Ohio St.3d 33, 36, 488 N.E.3d 638 (1986). After stating that the former R.C. 2101.24 mentioned only testamentary trustees, the Supreme Court added: “Under the same statute, we also hold that, generally speaking the probate division has no jurisdiction over claims for monetary damages arising from allegations of fraud.” *Id.* at 35, citing *Alexander*, 57 Ohio App.2d 89. *Id.* at 36. As can be seen, though, the case involved acts against a person during their lifetime.

{¶24} In another case, a complaint alleged fraud and fraudulent conveyance of assets to an intervivos trust and sought to rescind a transfer and recover monetary damages. *Dumas v. Estate of Dumas*, 68 Ohio St.3d 405, 627 N.E.2d 978 (1994) (noting that the plaintiff did not contest the validity of the will or challenge the inventory of the probate estate). The Court concluded that the issues were solely within the jurisdiction of the general division. *Id.* In doing so, the Court reiterated its statement in *Shucker* that the probate court has no jurisdiction over claims for monetary damages arising from allegations of fraud. *Id.* Still, this case also dealt with fraud prior to death.

{¶25} Thereafter, in *Goff*, the Eighth District decided a case seeking money damages for breach of fiduciary duties by guardians during the life and after the death of the ward and breach of fiduciary duty by executors for failing to collect all assets and pursue all estate claims. The general division dismissed for lack of subject matter jurisdiction. The appellant urged that an action for fraud, breach of fiduciary duty, and misconduct seeking monetary damages cannot be construed to fall within a probate court's jurisdiction in directing and controlling the conduct of executors, guardians, or fiduciaries or settling their accounts.

{¶26} The Eighth District disagreed and found that the case fell within the probate court's exclusive jurisdiction. *Goff v. Ameritrust Co., N.A.*, 8th Dist. Nos. 65196, 66016 (May 5, 1994). The court noted that the probate court has jurisdiction

over all matters “touching the guardianship,” those related directly to the administration of the estate, and those involving direction of an executor or fiduciary. *Id.* The court concluded that the subject matter involved the conduct of the fiduciaries and that an award for money damages will clearly have the effect of directing and controlling the conduct of the fiduciaries so that the suit fell within the plenary power of the probate court in exercising its exclusive jurisdiction to direct and control the conduct of fiduciaries and settle their accounts. *Id.*

{¶27} Plenary power was defined as “the authority and power as broad as is required in a given case.” *Id.* “It must be remembered that the probate court’s plenary power at law authorizes the probate court to exercise complete jurisdiction over the subject matter to the fullest extent required in a given case.” *Id.*

{¶28} The *Goff* court specifically rejected the holdings in *Alexander* and *Kindt*. *Id.* (stating that the *Alexander* court failed to recognize that a probate court can exercise its jurisdiction to vacate or modify and then proceed to an appropriate judgment). The court added that a probate court is a court in law and in equity, and that a court of law clearly has authority to award money damages. *Id.*, citing R.C. 2101.35 (a probate court order for payment of money can be enforced in common pleas court).²

{¶29} Shortly after the Eighth District decided *Goff*, a petition for a writ was sought in the Supreme Court against a general division trial court after that court found that it lacked jurisdiction over claims against an executor for conversion, breach of fiduciary duty, and mishandling of an estate. *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 647 N.E.2d 155 (1995). (After the general division transferred that part of the case to the probate court, the probate court granted a motion to dismiss on grounds that a probate court has no jurisdiction over money damages.)

{¶30} The relator asked the Supreme Court to order the general division to proceed in the case because the probate court’s limited jurisdiction does not include claims for compensatory and punitive damages. *Id.* at 26-27. The Supreme Court

²We recognize that the estate in *Goff* was still being administered at the time of the action in the general division. We note here that at the time the general division ruled in the case at bar, a motion to vacate the summary release and reopen the estate was pending in the probate court.

refused to grant the writ on the grounds that there existed an adequate remedy at law by way of a later appeal of the jurisdictional issue. *Id.* at 27 (after trial on the remaining general division claims). In addressing the exception to the adequate remedy at law requirement, the Court was “not convinced that the probate court so patently and unambiguously lacked jurisdiction over claims for breaches of fiduciary duty seeking monetary damages * * *.” *Id.* at 28.

{¶31} The *Moser* Court expressed that competent authority was cited on both sides. On the one side, *Alexander* and *Kindt* were cited for the proposition that probate courts have no jurisdiction under R.C. 2101.24 to award money damages. *Id.* at 28-29 (pointing out that they relied on those cases in *Shucker* and *Dumas*). On the other side, the Court reviewed cases finding the probate court has exclusive jurisdiction to determine claims concerning an executor’s handling of estate assets, otherwise there would be an impermissible collateral attack on a probate court’s judgment. *Id.* at 29.

{¶32} The Supreme Court then reviewed the Eighth District’s case: “In essence, the *Goff* court held that (1) the probate court’s plenary jurisdiction at law and in equity under R.C. 2101.24(C) authorizes any relief required to fully adjudicate the subject matter within the probate court’s exclusive jurisdiction, and (2) claims for breach of fiduciary duty, which inexorably implicate control over the conduct of fiduciaries, are within that subject-matter jurisdiction by virtue of R.C. 2101.24(A)(1)(c) and (1).” *Id.* The *Moser* Court expressed: “The thoughtful discussion in *Goff* suggests a basis for reevaluating the holdings in *Kindt*, *supra*, and *Alexander*, *supra*, that probate courts cannot award monetary damages.” *Id.*

{¶33} From this, the Eleventh District applied the position in *Goff* when holding that a probate court can award money damages for fraud arising from administration of estate. See *Holik v. Lafferty*, 11th Dist. No. 2005-A-0005, 2006-Ohio-2652, ¶ 19-20, fn. 13, citing *Moser*, 72 Ohio St.3d at 29. See also *Keith v. Bringardner*, 10th Dist. No. 07AP-666, 2008-Ohio-950, ¶ 9-13 (since *Moser*, the law has evolved so that probate court has jurisdiction to award money damages in cases falling within its jurisdiction; a case where plaintiff sought compensatory and punitive damages in fraud action against his guardians and law firm); *Rheinhold v. Reick*, 8th Dist. No. 99973, 2014-

Ohio-31 (and fact that guardianship had been terminated did not eliminate probate court's exclusive jurisdiction).³

{¶34} We agree that the law has evolved to allow the probate court to hear claims for money damages if they arise from matters properly before the court. This leads to appellants' next assignment of error.

ASSIGNMENT OF ERROR NUMBER TWO

{¶35} Appellants' second assignment of error provides:

{¶36} "THE TRIAL COURT ERRED IN DETERMINING THAT THE PROBATE COURT HAD EXCLUSIVE JURISDICTION TO HEAR THE CLAIMS PRESENTED IN APPELLANT'S COMPLAINT BECAUSE THIS MATTER IS NEITHER EXPRESSED AS PART OF THE PROBATE COURT'S EXCLUSIVE JURISDICTION NOR DOES IT FALL UNDER THE PROBATE COURT'S PLENARY POWER."

{¶37} Appellants insist that because fraud and negligence are not listed in R.C. 2101.24(A)(1), its complaint would not fall under the probate court's exclusive jurisdiction. Appellants claim that because the complaint did not specifically seek to invalidate the summary release but framed the remedy as damages for the tort of fraud (or negligence) in the procurement of the summary release, the matter became one for the general division, noting that the general division tries the torts of fraud and negligence on a regular basis.

{¶38} Appellees respond by focusing on three statutory grants of exclusive probate division jurisdiction: (c) to direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates; (m) to direct and control the conduct of fiduciaries and settle their accounts; and (cc) to hear

³Appellants cite the Fourth District's *Widdig* and *Roll* cases. See *Widdig v. Watkins*, 4th Dist. No. 13CA3531, 2013-Ohio-3858, ¶ 36 (citing *Shucker* for the proposition that the probate court has no jurisdiction over claims for money damages arising from allegations of fraud, in a case involving intentional interference with expectancy of inheritance); *Roll v. Edwards*, 156 Ohio App.3d 227, 2004-Ohio-767, 805 N.E.2d 162, ¶ 21 (stating that *Goff* found the probate court has jurisdiction to award money damages in exercising its exclusive jurisdiction to direct and control the conduct of fiduciaries, not that the probate court has independent jurisdiction to entertain claims for monetary damages; another case involving intentional interference with expectancy of inheritance). See also *Prokos v. Hines*, 4th Dist. Nos. 10CA51, 10CA57, 2014-Ohio-1415, ¶ 44 (general division had jurisdiction as a money judgment was being sought on a tort claim). Notably, those cases dealt with fraud occurring during the decedent's life (besides during the guardianship). Here, we are dealing with allegations of fraud after the decedent's death in the procuring of a release from the probate court. The claim is said to involve fraud upon the plaintiffs and the probate court.

and determine applications for an order granting a summary release from administration under R.C. 2113.031. See R.C. 2101.24(A)(1)(c), (m), and (cc).

{¶39} There may be an issue with the use of division (m) due to the issue of whether an applicant for a summary release fits the particular statutory definition of a fiduciary. The Ninth District, in passing, characterized the person seeking a release from administration as a fiduciary. *In re Estate of Marsico*, 9th Dist. No. 05CA881, 2006-Ohio-4413, ¶ 7. However, whether an applicant for a release is considered a fiduciary under probate statutory law was not at issue in that case; the statement was merely made that no one contested the person's role as the "fiduciary."

{¶40} A fiduciary is statutorily-defined in pertinent part as follows: "any person * * * appointed by and accountable to the probate court and acting in a fiduciary capacity for any person, or charged with duties in relation to any property, interest, trust, or estate for the benefit of another[.]" R.C. 2109.01 (definition applies to Chapters 2101 to 2131). The next statute provides that: "No act or transaction by a fiduciary is valid prior to the issuance of letters of appointment to the fiduciary." R.C. 2109.02. "Letters of appointment shall not issue until a fiduciary has executed a written acceptance of the fiduciary's duties, acknowledging that the fiduciary is subject to removal for failure to perform the fiduciary's duties, and that the fiduciary is subject to possible penalties for conversion of property the fiduciary held as a fiduciary." *Id.*

{¶41} An applicant for a summary release must list all assets and must sign and acknowledge the application before a notary. R.C. 2113.031(C). An applicant is not appointed by the court, and no letters are issued. In any event, we conclude that divisions (c) and (cc) cover the situation before us.

{¶42} As for division (c), there was no executor or administrator because no letters testamentary or letters of administration were issued; as aforementioned, the person applying for a release from administration is called the applicant. R.C. 2113.031(C)(1). Still, the court also has the exclusive jurisdiction under (c) to "order the distribution of estates." The fact that the complaint avoids referring to an amended estate distribution, does not alter the fact that we are dealing with a claim for money to replace unlisted estate assets (to the extent they would have exceeded the spousal allowance).

{¶43} Labeling the issues with the summary release as tort claims for fraud, conspiracy to commit fraud, and negligence does not transform the crux of the case: that the estate should not have been released from administration due to other estate assets which should have been distributed in part to the descendants. The administration of estates has been the touchstone of probate court jurisdiction throughout the history of probate practice in Ohio. See *Wolfrum*, 2 Ohio St.2d 237. See also *Jacobsen*, 164 Ohio St. 413.

{¶44} Regarding (cc), the probate court has exclusive jurisdiction to hear and determine an application for an order granting a summary release from administration. The application was heard and determined. Reopening the estate or the summary release and distributing the estate differently (if the assets were found to be so undervalued that a different intestacy distribution would occur) clearly falls within the probate court's exclusive jurisdiction to hear and determine the release again and to administer the estate if need be. Whether fraud or negligence were involved in the procuring of the release are questions akin to those involved in such a proceeding.

{¶45} Here, if there was fraud, it occurred in the filing of documents in the probate court and the procuring of that court's order. Whether there exists damages and if so how to calculate a starting point for damages would be based upon various aspects of probate law, including: summary release from administration, spousal allowance, valuation of probate assets (date of death), and intestacy laws on distribution. We cannot say that the mere asking for punitive damages in a complaint would change the analysis. See *Keith*, 10th Dist. No. 07AP-666 at ¶ 13 (ruling that probate court has jurisdiction to award money damages in a case where plaintiff sought compensatory and punitive damages).

{¶46} Properly distributing the estate and determining whether improperly valued assets would have pushed the estate out of the limits for a summary release would be a goal of fully adjudicating and determining the summary release. The main issue is within the probate court's exclusive jurisdiction, and the articulated claims for monetary damages fall under the court's plenary jurisdiction to fully adjudicate a subject that is within the court's exclusive jurisdiction. In other words, hearing and determining an application for summary release is within the probate division's

exclusive jurisdiction and thus decisions on whether there existed fraud, conspiracy, or negligence in filing that application and the damages caused thereby are part of the probate court's plenary jurisdiction available in ruling on a subject matter within its exclusive jurisdiction.

ASSIGNMENT OF ERROR NUMBER THREE

{¶47} Appellants' final assignment of error contends:

{¶48} "THE TRIAL COURT ERRED IN DETERMINING THAT THE ALLEGATIONS BROUGHT IN APPELLANTS' COMPLAINT WERE PROBATE MATTERS BECAUSE, IN FACT, THEY ARE ALLEGATIONS ABOUT THE CONDUCT OF INDIVIDUALS, THE SAME TYPES OF CONDUCT GOVERNED WITHIN THE COMMON PLEAS JURISDICTION."

{¶49} Appellants reiterate that the general division hears tort actions based on the conduct of individuals on a regular basis. Appellants then alternatively briefly posit that, at the least, the general and probate divisions would have concurrent jurisdiction.

{¶50} However, the matters asserted herein are not in the statutory list of items for which there is concurrent jurisdiction. See R.C. 2101.24(B)(1)(b)-(c) (intervivos trust or an action with respect to a probate estate, guardianship, trust, or post-death dispute that involves a designation or removal of a beneficiary of a life insurance policy, retirement plan, brokerage account, bank account, real property, tangible personal property, and payable-on-death or joint and survivorship interests). And, no statute is cited providing concurrent jurisdiction over this particular matter. See R.C. 2101.24(B)(1)(a). The only option for concurrent jurisdiction would thus be if jurisdiction relative to a particular subject matter has been construed by judicial decision to be concurrent. See *id.*

{¶51} The relevant judicial decisions were reviewed *infra*. Those decisions do not find concurrent jurisdiction. The argument for concurrent jurisdiction is unsubstantiated by the appellants' brief. We have found that the crux of the matter falls within the probate court's exclusive jurisdiction and that in exercising that exclusive jurisdiction, the court can use its plenary power to fully adjudicate that subject matter, including issuing any necessary relief. Where the probate court has exclusive jurisdiction over a topic because it involves the subject matter listed in R.C.

2101.24(A), the general division would not have concurrent jurisdiction. Appellant's three assignments of error are overruled.

{¶52} For the foregoing reasons, the judgment of the trial court is hereby affirmed.

Donofrio, J., concurs.

DeGenaro, P.J., concurs.