

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

PHILLIP J. MORELLO

Plaintiff - Appellant

-VS-

SAMUEL J. FERRUCIO, JR.

Defendant - Appellee

JUDGES:

Hon. Craig R. Baldwin, P.J.

Hon. Lisa Sadler, V.J.

Hon. Gary Tyack, V.J.

## Sitting by Supreme Court Assignment

Case No. 2014CA00139

## OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court  
of Common Pleas, Case No.  
2014CV01226

**JUDGMENT:**

Affirmed

DATE OF JUDGMENT:

April 6, 2015

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

CRAIG T. CONLEY  
604 Huntington Plaza  
220 Market Avenue South  
Canton, OH 44702

STANLEY R. RUBIN  
437 Market Avenue North  
Canton, OH 44702

*Baldwin, J.*

{¶1} Appellant Phillip J. Morello appeals a judgment of the Stark County Common Pleas Court dismissing his complaint against appellee Samuel J. Ferruccio, Jr.

STATEMENT OF FACTS AND CASE

{¶2} Appellant and appellee are co-trustees of a trust. Appellant and his wife, Catherine Morello, were the donors of the trust. Catherine Morello died on February 3, 2014.

{¶3} Appellant filed the instant action on May 20, 2014, in the General Division of the Stark County Common Pleas Court. Service was perfected on June 18, 2014. Appellant's complaint avers that he made a withdrawal and distribution from the trust which appellee sought to "undo," and appellant sought a declaratory judgment that he had lawful authority to withdraw funds and an injunction prohibiting anyone from preventing him from withdrawing funds from the trust.

{¶4} Appellee moved to dismiss the complaint, arguing that the Stark County Probate Court had exclusive jurisdiction over the action due to a complaint he filed regarding the same issues on May 27, 2014. Although the complaint in probate court was filed later than appellant's complaint was filed in the general division, service was perfected on the probate complaint on May 27, 2014.

{¶5} The trial court took judicial notice of the proceedings pending in the probate court and dismissed the complaint. Appellant assigns a single error:

{¶6} "THE TRIAL COURT ERRED IN THE ISSUANCE OF ITS JULY 23, 2014 JUDGMENT ENTRY THROUGH WHICH IT DISMISSED PLAINTIFF'S/APPELLANT'S

VERIFIED COMPLAINT AND THROUGH WHICH IT DENIED HIS MOTION TO STRIKE.”

{¶7} Appellant first argues that the court could not take judicial notice of court proceedings in another case, and the court therefore erred in finding that the two complaints involved the same subject matter and parties.

{¶8} A trial court can take judicial notice of the court's docket. *Helfrich v. Madison*, 5th Dist. Licking No. 08–CA–150, 2009–Ohio–5140, ¶ 49, citing *State v. Washington*, 8th Dist Cuyahoga Nos. 52676, 52677, 52678, 1997 WL 16180 (Aug. 27, 1987). However, a court does not have the authority to take judicial notice of the proceedings in another case, including its own judgment entries. *Id.*, citing *State v. LaFever*, 7th Dist. Belmont No. 02 BE 71, 2003–Ohio–6545, ¶ 27; *State v. Blaine*, 4th Dist. Highland No. 03CA9, 2004–Ohio–1241, ¶ 17; *Diversified Mortgage Investors, Inc. v. Athens Cty. Bd. of Revision*, 7 Ohio App.3d 157, 454 N.E.2d 1330(4th Dist. 1982); *NorthPoint Properties, Inc. v. Petticord*, 179 Ohio App.3d 342, 2008–Ohio–5996, 901 N.E.2d 869 (8th Dist.), ¶ 16. The rationale for this holding is that if a trial court takes notice of a prior proceeding, the appellate court cannot review whether the trial court correctly interpreted the prior case because the record of the prior case is not before the appellate court. *Id.*, citing *Blaine, supra*, ¶ 17; *LaFever, supra*, ¶ 27.

{¶9} However, both the trial court and this Court can take judicial notice of court filings which are readily accessible from the internet. *In re Helfrich*, 5th Dist. Licking No. 13CA20, 2014-Ohio-1933, ¶35, citing *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007–Ohio–4798, 974 N.E.2d 516, ¶ 8, 10 (court can take judicial notice of judicial opinions and public records accessible from the internet).

{¶10} In the instant case, the complaint filed by appellee in the Stark County Probate Court is a public record readily accessible on the internet. The complaint avers that appellant gave notice to appellee that he was revoking the trust in violation of the trust agreement, and attempted to withdraw trust funds. Appellee asked the probate court for a declaration interpreting the trust and sought a temporary restraining order and permanent injunction prohibiting Huntington Bank from releasing trust funds to appellant. It is clear from a reading of both complaints that the issues raised by appellee's complaint in the probate court are the same as those raised by appellant in the general division, and the trial court did not err in finding that jurisdiction had vested in the probate court over the instant matter.

{¶11} Appellant also argues that the jurisdictional priority rule does not apply between two complaints filed in the same court, and the general division and probate court are the same court.

{¶12} The jurisdictional priority rule contemplates cases filed in two different courts of concurrent jurisdiction, rather than two cases filed in the same court. *Hill v. Freeh*, 10th Dist. Franklin No. 11AP-1023, 2012-Ohio-4505, ¶11. However, the jurisdictional priority rule does apply as to cases filed in the general division and in the probate court, where the courts have concurrent jurisdiction. *In re Scanlon*, 8th Dist. Cuyahoga No. 95264, 2011-Ohio-1097, ¶21; *Demery v. Baluk*, 6th Dist. Erie No. E-11-027, 2012-Ohio-4486, ¶16 (jurisdictional priority rule prohibited court from sua sponte invoking probate court jurisdiction where case was filed in the general division, even though the same trial judge presided over both courts). Therefore, the trial judge in the

instant case did not err in applying the jurisdictional priority rule as to different divisions of the Stark County Common Pleas Court.

{¶13} Finally, appellant argues that he was entitled to a change in venue rather than a dismissal of his complaint. Appellant cites *Keith v. Bringardner*, 10th Dist. Franklin No. 07AP-666, 2008-Ohio-950, in support of his proposition. However, in that case, the complaint filed in the general division was not an action over which the general division had concurrent jurisdiction; sole jurisdiction over the complaint resided in the probate court. The Court of Appeals found that the trial court should have transferred the case to the probate court instead of dismissing the complaint. *Id.*, ¶14-17. In the instant case, appellant's complaint was not filed in an improper venue; therefore, transfer to another venue was not authorized. *Langaa v. Pauer*, 11th Dist. Geauga No. 2001-G-2405, 2002-Ohio-5603, ¶16.

{¶14} The assignment of error is overruled. The judgment of the Stark County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, P.J.

Sadler, V.J. and

Tyak, V.J. concur.