

[Cite as *Bur. of Workers' Comp. v. Mal-Sarkar*, 2015-Ohio-1025.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101642

**STATE OF OHIO BUREAU OF
WORKERS' COMPENSATION**

PLAINTIFF-APPELLANT

vs.

SANCHITA MAL-SARKAR, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-817175

BEFORE: E.A. Gallagher, J., Jones, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: March 19, 2015

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EILEEN A. GALLAGHER, J.:

{¶1} Plaintiff-appellant the State of Ohio Bureau of Workers' Compensation ("BWC") appeals from a decision of the Cuyahoga County Court of Common Pleas, General Division ("trial court" or "common pleas court") dismissing its complaint on the grounds that the Cuyahoga County Court of Common Pleas, Probate Division ("probate court") had exclusive jurisdiction over the BWC's claim to recover its alleged subrogation interest under R.C. 4123.931(G) against defendants-appellees Sanchita Mal-Sarkar ("Mal-Sarkar") and Intermatic Inc., Levitron Manufacturing Co., Inc., Advance Transformer Distribution Corporation Philips Electronics North America d.b.a. Advance, the third parties with whom Mal-Sarkar had settled wrongful death claims following her husband's death (collectively, the "third parties"). For the reasons that follow, we affirm the trial court's judgment.

Procedural and Factual Background

{¶2} On August 16, 2005, Tarun Mal ("Mal") died after he was electrocuted by a faulty fluorescent light fixture during the course and scope of his employment as a professor at Cleveland State University. On January 23, 2006, Mal's wife, Mal-Sarkar, filed a claim with the BWC to recover death benefits to which she and the couple's minor daughter were entitled under the Workers' Compensation Act. As of May 28, 2013, Mal-Sarkar had allegedly received \$274,299.43 in workers' compensation benefits with estimated future payments of \$626,182.37.

{¶3} In 2007, Mal-Sarkar filed a product liability action against the third parties in the United States District Court for the Northern District of Ohio, Case No. 07-CV-02868, seeking to recover damages arising out of Mal's electrocution and death. On March 14, 2007, the BWC sent a letter to Mal-Sarkar's counsel notifying him of the BWC's subrogation rights. In or around 2010, the product liability claims were settled. The probate court approved the

settlements, allegedly resulting in a net recovery of \$1,545,535.13 to Mal-Sarkar and their daughter.¹ The BWC alleges that, in violation of R.C. 4123.931(G), neither Mal-Sarkar nor any of the third parties notified the BWC or the attorney general prior to the probate court's approval of these settlements.

{¶4} On November 14, 2013, the BWC filed this lawsuit in the Cuyahoga County Court of Common Pleas against Mal-Sarkar (both in her individual capacity and as the fiduciary of the estate of Mal), the third parties with whom Mal-Sarkar had settled wrongful death claims relating to Mal's death and various John Doe defendants against whom Mal and his estate allegedly had "a right of recovery for his injuries and death" or who insured the third parties, seeking to recover the total amount of workers' compensation benefits paid and estimated to be paid in the future as a result of Mal's death.

{¶5} In its complaint, the BWC asserted that Mal-Sarkar and the third parties had settled at least three claims "arising from the same injuries and death for which [Mal-Sarkar] received compensation from the BWC" without providing the statutory notice required under R.C. 4123.931(G) (the "wrongful death settlement"). The BWC alleged that because (1) Mal-Sarkar and the third parties failed to notify the BWC and the attorney general of their settlements as required under R.C. 4123.931(G) and (2) their settlement agreements "excluded the entire amount of the BWC's lien," Mal-Sarkar and the third parties were jointly and severally liable for the "entire amount of the BWC's subrogation interest." The BWC requested that judgment be entered jointly and severally against all defendants in the amount of \$903,481.80 — the total

¹Based on the documentation attached to the BWC's complaint, the total amount of the settlement was \$2,850,000. \$1,140,000 of the settlement went toward attorney's fees and another \$167,742.87 for litigation expenses. Of the remainder, \$250,000 was allocated to the child, and \$1,295,535.13 was allocated to Mal-Sarkar.

amount of workers' compensation benefits paid to Mal-Sarkar (and estimated to be paid in the future) as a result of Mal's death.

{¶6} On January 30, 2014, appellees filed a motion to dismiss the case for lack of subject matter jurisdiction arguing that because the BWC was "seeking to rework a wrongful death settlement distribution," the probate court had exclusive jurisdiction under R.C. 4123.931(J), 2101.24(A)(1)(m), 2125.02(C) and 2125.03(A)(1) over the subject matter of the complaint. The BWC opposed the motion. The BWC denied that it was seeking to "rework" or void the settlement agreement. The BWC argued that because it was trying to "recoup money damages" for its subrogation lien in a "separate, independent cause of action" under R.C. 4123.931, its action could be brought in the common pleas court.²

{¶7} On May 20, 2014, the trial court granted appellees' motion to dismiss, stating that "[u]nder the authority of *Rheinhold v. Reichel*, [8th Dist. Cuyahoga No. 99973, 2014-Ohio-31], Defendants' Motion * * * to Dismiss is granted."

{¶8} The BWC timely appealed the trial court's judgment, raising the following assignment of error for review:

The trial court erred, as a matter of law, and abused its discretion, by dismissing the Complaint of the Plaintiff-Appellant, on the grounds that only the Probate Court had jurisdiction over the claims raised by the Plaintiff-Appellant and relying solely on the decision reached in *Rheinhold v. Reichel*, 8th Dist. Cuyahoga No. 99973, 2014-Ohio-31.

Law and Analysis

² While the BWC maintains its claim is intended to prevent Mal-Sarkar from receiving a "double recovery" or "double windfall," Mal-Sarkar disputes that the recovery received in settlement of the claims in the product liability action are for the "same losses" the BWC has paid. She contends that the civil damages authorized under the Wrongful Death Act are for "specific categories of losses suffered by the survivors, which are distinct from the death benefits that the [BWC] is required to pay under the Workers' Compensation Act for a qualifying work-related fatality."

Standard of Review

{¶9} We review a trial court’s decision on a Civ.R. 12(B)(1) motion to dismiss under a de novo standard of review. *Bank of Am. v. Macho*, 8th Dist. Cuyahoga No. 96124, 2011-Ohio-5495, ¶ 7, citing *Crestmont Cleveland Partnership v. Ohio Dept. of Health*, 139 Ohio App.3d 928, 936, 746 N.E.2d 222 (10th Dist.2000). In order to dismiss a complaint under Civ.R. 12(B)(1) for lack of subject matter jurisdiction, the court must determine whether the plaintiff “has alleged any cause of action that the court has authority to decide.” *Rheinhold* at ¶ 7, citing *Crestmont* at 936. In making a determination under Civ.R. 12(B)(1), the court is not limited to the allegations of the complaint but may consider any material pertinent to that inquiry. *Keybank Natl. Assn. v. Collins*, 8th Dist. Cuyahoga No. 77264, 2000 Ohio App. LEXIS 5226, *7-8 (Nov. 9, 2000) citing *Howard v. Covenant Apostolic Church, Inc.*, 124 Ohio App.3d 24, 705 N.E.2d 385 (1st Dist.1997); *see also Rheinhold* at ¶ 7, citing *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus.

{¶10} The BWC contends that its action to recover its subrogation interest under R.C. 4123.931(G) “could not be maintained in probate court” and that, therefore, the trial court erred in dismissing its complaint for lack of subject matter jurisdiction. We disagree.

The BWC’s Statutory Subrogation Interest

{¶11} R.C. 4123.931(A) gives the BWC a statutory right of subrogation against any third party who is or may be liable to a claimant — a person who has received workers’ compensation benefits due to the injury or death of an employee — for damages sustained during the course and scope of the employee’s employment. R.C. 4123.931(G) requires that a claimant provide

notice to the BWC and the attorney general of all third parties against whom the claimant has or may have a right of recovery. The statute further provides that “[n]o settlement, compromise, judgment, award, or other recovery in any action or claim by a claimant shall be final unless the claimant provides the statutory subrogee and, when required, the attorney general, with prior notice and a reasonable opportunity to assert its subrogation rights.” R.C. 4123.931(G).

{¶12} Although the BWC’s subrogation right is generally limited to the “net amount” of the claimant’s recovery from a third party under R.C. 4123.931, R.C. 4123.931(G) provides that if a claimant settles a claim against a third party without providing the required notice or if a settlement “excludes any amount paid by the [BWC],” the third party and the claimant “shall be jointly and severally liable to pay the [BWC] the full amount of the subrogation interest.”³ R.C. 4123.931(G); *see also Rivers v. Otis Elevator*, 8th Dist. Cuyahoga No. 99365 2013-Ohio-3917, ¶ 31-36 (where worker failed to give prior notice of settlement with third party required under R.C. 4123.931(G), self-insured employer was entitled to recover full amount paid in workers’ compensation benefits to injured worker for her work-related injuries, \$61,527.42, and was not limited to the \$15,000 worker received in settlement of third party claim involving those injuries); *Bur. of Workers’ Comp. v. Williams*, 180 Ohio App.3d 239, 2008-Ohio-6685, 905 N.E.2d 201, ¶ 13-16 (10th Dist.) (where BWC paid workers’ compensation benefits to an injured worker, worker thereafter entered into a settlement agreement with insurance company pursuant

³ The BWC’s “subrogation interest” “includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and any other costs or expenses paid to or on behalf of the claimant by the statutory subrogee pursuant to [Chapter 4123.] or Chapter 4121., 4127., or 4131. of the Revised Code.” R.C. 4123.92(D). “Net amount recovered” is “the amount of any award, settlement, compromise, or recovery by a claimant against a third party, minus the attorney’s fees, costs, or other expenses incurred by the claimant in securing the award, settlement, compromise, or recovery. It does not include any punitive damages that may be awarded

to which insurance company paid worker \$6,200 to settle her claim against insurance company's insured, and neither party notified the BWC prior to the settlement or reimbursed BWC for its payments to the worker after the settlement, the worker and insurance company were jointly and severally liable to the BWC under R.C. 4123.931(G) for the full amount of its past, present and future estimated payments, totaling \$12,751.44).⁴

Exclusive Jurisdiction of the Probate Court

{¶13} The sole issue for us to decide in this case is whether the trial court erred in holding that the probate court had exclusive jurisdiction over the BWC's claim for recovery of its subrogation interest under R.C. 4123.931(G) arising out of the wrongful death settlement.

{¶14} The probate court is a court of limited and special jurisdiction. As such, its jurisdiction is limited to only those matters conferred by statute and by the Ohio Constitution. *Dumas v. Estate of Dumas*, 68 Ohio St.3d 405, 408, 627 N.E.2d 978 (1994). The Ohio Supreme

by a judge or jury.”

⁴Although the merits of the BWC's claim is not before us, we note that contrary to appellees' argument, it was not the BWC's obligation under R.C. 4123.931 to promptly assert and “seek probate court approval of its subrogation claim.” Likewise, the BWC was not, as appellees contend, required to search the docket, identify the probate estate that had been opened, enter the proceedings and submit a claim “as soon as notice of the death was received” in order to preserve its subrogation right. The BWC's right to subrogation under R.C. 4123.931 is “automatic.” R.C. 4123.931(H). The claimant has the obligation under R.C. 4123.931(G) to provide notice of potential claims to the BWC and attorney general. We likewise disagree with the BWC's contention that it “did not have a right of recovery” until after Mal-Sarkar “recovered money from the [t]hird [p]arties.” Although the BWC may not have had a right to recover its full “subrogation interest” until after Mal-Sarkar and the third parties failed to account for the BWC's subrogation right in the wrongful death settlement, under R.C. 4123.931(A), the “payment of * * * [workers' compensation] benefits * * * creates a right of recovery in favor of a statutory subrogee against a third party” and subrogates the BWC “to the rights of a claimant against that third party.”

Court explained the jurisdictional relationship between the court of common pleas and the probate court in *Schucker v. Metcalf*, 22 Ohio St.3d 33, 34, 488 N.E.2d 210 (1986), as follows:

“the power to define the jurisdiction of the courts of common pleas rests in the General Assembly and * * * such courts may exercise only such jurisdiction as is expressly granted to them by the legislature.” *Seventh Urban, Inc. v. University Circle*, 67 Ohio St. 2d 19, 22 423 N.E.2d 1070 (1981). “The court of common pleas is a court of general jurisdiction. It embraces all matters at law and in equity that are not denied to it. * * * The probate court is a court of limited jurisdiction; it can exercise just such powers as are conferred on it by statute and the constitution of the state * * *.” *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559, [29 N.E. 179] (1891).

{¶15} R.C. 2101.24(A)(1) sets forth the exclusive jurisdiction of the probate court. This general grant of jurisdiction includes exclusive jurisdiction, except as otherwise required by law, “[t]o direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates,” R.C. 2101.24(A)(1)(c), “[t]o appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts,” R.C. 2101.24(A)(1)(e), and “[t]o direct and control the conduct of fiduciaries and settle their accounts.” R.C. 2101.24(A)(1)(m).

{¶16} In addition, R.C. 2101.24(A)(2) provides that the probate court shall have exclusive jurisdiction over a particular subject matter if “[a]nother section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court” and “[n]o section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.” This includes the approval of settlements in wrongful death actions and the

distribution of settlement proceeds in such actions. R.C. 2125.02(C); R.C. 2125.03(A)(1); *see also Comer v. Bench*, 2d Dist. Montgomery No. CA 19229, 2003-Ohio-2821, ¶ 15 (“By enacting R.C. 2125.03(A), the General Assembly conferred exclusive jurisdiction on the probate division of the court of common pleas to approve settlements in actions for wrongful death and to order distribution of the settlement proceeds.”).

{¶17} With respect to those matters within its exclusive jurisdiction, the probate court’s authority to act is broad. Under R.C. 2101.24(C), “[t]he 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 otherwise expressly limited). *See, e.g., In re Guardianship of Jadwisiak*, 64 Ohio St.3d 176, 593 N.E.2d 1379 (1992) (“a probate court, in order to maintain control over any personal injury settlement entered into on behalf of a ward under its protection, has subject matter jurisdiction over the entire amount of settlement funds,” including attorney fees). We cannot, however, “interpret the statutory grant of plenary powers to enlarge the statutory grant of jurisdiction to the probate division.” *Roll v. Edwards*, 156 Ohio App.3d 227, 2004-Ohio-767, 805 N.E.2d 162, ¶ 15 (4th Dist.); *Oncu v. Bell*, 49 Ohio App.2d 109, 110, 359 N.E.2d 712 (9th Dist.1976).

{¶18} Appellees argue, and the trial court agreed, that only the probate court possesses authority to adjudicate a subrogation claim by the BWC directed against a wrongful death settlement involving a minor beneficiary. The trial court dismissed the BWC’s complaint, concluding that the probate court had exclusive jurisdiction over the matter, based on this court’s decision in *Rheinhold*, 8th Dist. Cuyahoga No. 99973, 2014-Ohio-31. *Rheinhold* involved claims arising from a monetary settlement the plaintiff received when she was injured in a car

accident at age 7. *Id.* at ¶ 2. The settlement proceeds had been deposited into a guardianship account at a bank that was administered by the probate court. *Id.* The plaintiff’s mother was appointed guardian and the guardianship was set to terminate when the plaintiff was 18. *Id.* In 2010, the mother, as guardian, and the attorney for the guardian filed an application with the probate court to terminate the guardianship and distribute the funds, stating that the plaintiff was then 18. *Id.* at ¶ 13. The application included a waiver, indicating that the plaintiff had waived service and notice and consented to the application to terminate the guardianship. *Id.* The application was granted, and the bank released the funds to the plaintiff’s mother.

{¶19} Two years later, the plaintiff filed a complaint against her mother, the attorney and the bank in the common pleas court, alleging that she did not sign the waiver and had no knowledge that the application to terminate the guardianship had been filed. *Id.* at ¶ 2, 4. She asserted claims of conversion, fraud, negligence, legal malpractice, civil liability for criminal conduct, breach of fiduciary duties and statutory liability against the defendants, seeking money damages. *Id.* at ¶ 4. Because the claims arose from the alleged misappropriation of funds from the guardianship, the trial court determined that it lacked subject matter jurisdiction and dismissed the plaintiff’s complaint. On appeal, this court affirmed the trial court’s decision holding that because the plaintiff’s claims “touch[ed] the guardianship,” they were within the exclusive jurisdiction of the probate court. *Id.* at ¶ 13.

{¶20} This court explained:

Under R.C. 2101.24(A)(1)(e), a probate court has exclusive jurisdiction to “appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts.” It also “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.” R.C. 2101.24(C).

The Ohio Supreme Court has stated that the probate division has continuing and exclusive jurisdiction over all matters pertaining to a guardian and ward. *In re Clendenning*, 145 Ohio St. 82, 92, 60 N.E.2d 676 (1945). Indeed, the probate court’s jurisdiction extends “to all matters ‘touching the guardianship.’” *In re Guardianship of Jadwisiak*, 64 Ohio St.3d 176, 180, 593 N.E.2d 1379 (1992), quoting *In re Zahoransky*, 22 Ohio App.3d 75, 488 N.E.2d 944 (1985). Therefore, in the instant case, the issue of jurisdiction turns upon whether Rheinhold’s claims “touch upon the guardianship.” * * *

In the instant case, all of Rheinhold’s claims arise out of the alleged conduct by Pickering, as guardian, Reichek, as attorney for guardian, the probate court’s approval to terminate the guardianship and allow Pickering to access the estate funds, and Dollar Bank’s handling of the funds. In her complaint, Rheinhold challenges the actions of the guardian, attorney for the guardian, the probate court’s administration of her estate, and Dollar Bank’s distribution of estate funds. These claims “touch the guardianship” and are, therefore, within the exclusive jurisdiction of the probate court.

Id. at ¶ 9-13. This court also held that the fact that the guardianship had terminated did not foreclose the probate court’s exclusive jurisdiction. *Id.* at ¶ 13, citing *Ohio Farmers Ins. Co. v. Huntington Natl. Bank*, 8th Dist. Cuyahoga No. 76303, 2000 Ohio App. LEXIS 4533, *16 (Sept. 28, 2000).

{¶21} The BWC argues that because its claims (1) “did not arise solely out of” the conduct of a guardian or probate court fiduciary and (2) “did not deal specifically and solely with” the actions of a guardian or probate court fiduciary — i.e., because the BWC is asserting its claim against both the third parties (who were not fiduciaries) and Mal-Sarkar (the fiduciary of Mal’s estate), any one of whom is allegedly responsible for paying the full amount of its subrogation interest under R.C. 4123.931(G) — *Rheinhold* does not apply. The BWC further contends because it is seeking to recover money damages “separate and apart from the [s]ettlement” that excluded its subrogation interest and is not attempting to “rework” the probate court’s “allocation of wrongful death proceeds,” its claim falls outside the exclusive jurisdiction of the probate court and that “other Ohio [c]ourt decisions” have “limited the jurisdiction of the

[p]robate [c]ourt” under “similar circumstances.” Appellees urge us to read *Rheinhold* more broadly and find that the BWC’s claim falls within the exclusive jurisdiction of the probate court because it, at the very least, “touches upon” the similar authority of the probate court to “direct and control the conduct of fiduciaries and settle their accounts” under R.C. 2101.24(A)(1)(m) and also “seeks to completely override” the probate court’s orders approving and allocating the wrongful death settlement.

{¶22} Although we believe *Rheinhold* supports the finding that the probate court has exclusive jurisdiction over the BWC’s claims in this case, we do not believe it is, in and of itself, determinative of the issue.

{¶23} As stated above, the General Assembly conferred exclusive jurisdiction on the probate court to approve settlements in wrongful death actions and to order distribution of the settlement proceeds. This is not a case in which the cause of action at issue simply “touches upon” a matter over which the probate court has exclusive jurisdiction or merely relates to a wrongful death settlement. R.C. 4123.931(G) expressly provides that “[n]o settlement * * * in any action or claim by a claimant shall be final unless the claimant provides the statutory subrogee and, when required, the attorney general, with prior notice and a reasonable opportunity to assert its subrogation rights.” (Emphasis added.) R.C. 4123.931(J) further provides that “[i]f a claimant’s claim against a third party is for wrongful death or the claim involves any minor beneficiaries, amounts allocated under [R.C. 4123.931] are subject to the approval of probate court.”

{¶24} “The primary goal in construing a statute is to ascertain and give effect to the intent of the legislature.” *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 17, citing *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 11. We

examine the plain language of the statute, “read words and phrases in context[,] and construe them according to the rules of grammar and common usage.” R.C. 1.42. In doing so, we attempt to give effect to “every word, phrase, sentence, and part of the statute” and to avoid an interpretation that would “restrict, constrict, qualify, narrow, enlarge, or abridge the General Assembly’s wording” or that would otherwise render a provision meaningless or superfluous. *State ex rel. Carna v. Texas Valley Local School Dist. Bd. of Edn.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 18-19.

{¶25} Appellees argue that we should ignore the second sentence of R.C. 4123.931(G), claiming that it is “immaterial” “[s]ince it has been acknowledged that the [BWC] is not attempting to vacate or set aside the wrongful death settlement * * *.” The BWC similarly ignores the impact of this provision in its briefs. However, where, as here, a statute is clear on its face, we must apply the statute as written, giving effect to every phrase and word in the statute.

{¶26} Although we acknowledge that R.C. 4123.931 creates an “independent right of subrogation” on behalf of the BWC, *see Ohio Bur. of Workers’ Comp. v. McKinley*, 7th Dist. Columbiana No. 09 CO 3, 2010-Ohio-1006, ¶ 41, we do not agree that the BWC’s claim to recover the full amount of its subrogation interest under R.C. 4123.931(G) in the context of this case, involving a minor beneficiary and a wrongful death settlement that was subject to the probate court’s approval, is, as the BWC claims, completely “separate and apart from the underlying settlement.” The BWC’s claim arises directly out of Mal-Sarkar’s (the fiduciary’s) conduct in administering the estate, i.e., her alleged failure to notify the BWC and attorney general prior to settling the wrongful death claims with the third parties. Further, under the plain language of R.C. 4123.931(G), the BWC’s allegations call into question the “finality” of the

settlement between Mal-Sarkar and the third parties. The BWC's claim thereby directly implicates the prior approval, allocation and distribution of the wrongful death settlement by the probate court under R.C. 2125.02(C) and 2125.03(A)(1). Cases such as *United Healthcare of Ohio v. Percival*, 4th Dist. Ross Nos. 01CA2630 and 01CA2635, 2002-Ohio-3163, ¶ 18-21 (while the probate court had exclusive jurisdiction over minor child's personal injury claim, it did not have exclusive, if any, jurisdiction over his parents' claims for loss of services and medical expenses or the subrogated claim of the insurer for medical bills paid on minor's behalf, "separate matters that do not come within the typical purview of a guardianship"), and *Hoopes v. Hoopes*, 5th Dist. Stark No. 2006 CA 00220, 2007 Ohio App. LEXIS 1582 (Apr. 9, 2007) (probate court lacked jurisdiction to consider claim for intentional interference with expectancy of inheritance), relied upon by the BWC, are, therefore, distinguishable. Compare *Comer v. Bench*, 2003-Ohio-2821 at ¶ 15 (probate court had exclusive jurisdiction over claim seeking to void wrongful death settlement approved by probate court based on alleged forgery of signature on settlement agreement under R.C. 2125.03(A)), with *Buckman-Pierson v. Brannon*, 159 Ohio App.3d 12, 2004-Ohio-6074, 822 N.E.2d 830, ¶ 16-17 (2d Dist.) (probate court did not have exclusive jurisdiction over malpractice and breach of contract claims arising out of wrongful death action where claims "did not directly implicate the approval and distribution of the wrongful-death settlement"). As such, we conclude that the probate court has exclusive jurisdiction over the BWC's claim.

{¶27} The BWC does not contend that the relief it is seeking could not be awarded by the probate court. See *Rheinhold* at ¶ 11 (The "broad statutory grant of authority [to the probate court] to fully resolve matters properly before it [pursuant to R.C. 2101.24(C)] includes the power to award monetary damages"), citing *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25,

28-29, 647 N.E.2d 155 (1995), citing *Goff v. Ameritrust Co., N.A.*, 8th Dist. Cuyahoga No. 65196, 1994 Ohio App. LEXIS 1916 (May 5, 1994). Nor does the fact that the estate is now closed “foreclose the probate court’s exclusive jurisdiction.” *Reinhold* at ¶ 13.

{¶28} Accordingly, the trial court did not err in dismissing the BWC’s complaint for lack of subject matter jurisdiction. The BWC’s assignment of error is overruled.

{¶29} Judgment affirmed.

It is ordered that appellees recover from appellant the 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.

EILEEN A. GALLAGHER, JUDGE

LARRY A. JONES SR., P.J., CONCURS;

MELODY J. STEWART, J., DISSENTS (WITH SEPARATE OPINION)

MELODY J. STEWART, J., DISSENTING:

{¶30} I respectfully dissent from the decision reached by the majority. I see no reason why the general division of the common pleas court would not have jurisdiction to decide this subrogation case. I agree that on its face, R.C. 4123.931(J) would appear to support the estate’s position that the probate court has exclusive jurisdiction over the subrogation question. But the bureau’s argument, that the provision of the statute relates only to the allocation of a wrongful death settlement and not the bureau’s right to automatic subrogation, is persuasive. R.C.

4123.931(J) simply appears to subject such a settlement to probate court approval, but says nothing about whether the general division can determine what those amounts are.

{¶31} Assuming an ongoing probate case, the probate court would have to approve any distribution of assets from the estate. It does not follow from that proposition that the probate court has exclusive jurisdiction to determine whether the bureau had any right of subrogation and what amount, if any, that might be. This conclusion is reinforced by reference to myriad cases in which insurance companies seek subrogation from estates that have collected sums from tortfeasors. At bottom, the bureau is nothing more than a form of insurance company, so it could seek to enforce its subrogation rights in the general division of the common pleas court.

{¶32} As previously noted, the trial court relied on this court's decision in *Rheinhold*, 8th Dist. Cuyahoga No. 99973, 2014-Ohio-31, *supra*, for the proposition that the probate court has exclusive jurisdiction over this matter, but that case is easily distinguishable. *Rheinhold* held that the probate court had exclusive jurisdiction over claims for monetary damages against a former guardian, attorney, and financial institution. Because the probate case involved the conduct of fiduciaries, the appointment and supervision of whom the court had exclusive jurisdiction, *see* R.C. 2101.24(A)(1)(e), this court held that the claims were within the exclusive jurisdiction of the probate court. *Id.* at ¶ 13.

{¶33} The bureau's claim does not involve the conduct of fiduciaries under the exclusive control of the probate division; it involves the bureau's claim for subrogation. To the extent that the general division finds a viable subrogation claim, it can determine the amount owing under the subrogation claim. It may then be up to the probate court to approve any distribution of assets from the estate.

