IN THE SUPREME COURT OF OHIO

ESTATE OF FRANCIS WELCH, et al.	:	Case No. 0653
	:	
Plaintiffs-Appellees	:	On Appeal from the Clinton County Court of Appeals, Twelfth Appellate District
	:	
vs.	:	
	:	Court of Appeals
THELMA R. TAYLOR	:	Case No. CA2020-03-004
	:	
Defendant-Appellant	:	

MEMORANDUM OF APPELLEES THE ESTATE OF FRANCIS M. WELCH, BY SHERRY McCAULEY, ESTATE BENEFICIARY AND NEXT OF KIN, SHERRY McCAULEY, JANET HOSKINS, ROBERT WELCH, AMES WELCH, JOHN REYNOLDS, AND DAVID GARRISON IN OPPOSITION TO JURISDICTION

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I. EXPLANATION OF WHY THE ISSUES RAISED IN THIS CASE ARE NOT OF PUBLIC OR GREAT GENERAL INTEREST.

Article IV of the Ohio Constitution, Section 2(B)(2)(e), provides that this Court's discretionary jurisdiction is limited to "cases of public or great general interest." Such cases are to be distinguished from those where the outcome is primarily of interest to the parties in a particular lawsuit. *Williamson v. Rubich*, 171 Ohio St. 253, 254, 168 N.E.2d 876 (1960). Because this appeal falls into the category of cases where the outcome is of interest only to the parties herein, jurisdiction should be denied.

This discretionary appeal was filed in order for Taylor to advocate that the Twelfth District came to the wrong conclusion, despite Taylor having three opportunities to convince the court otherwise.[1] Before encountering the Twelfth District, Taylor had succeeded in convincing multiple courts for multiple reasons that Beneficiaries should somehow not be permitted to conduct discovery to support their claims. By seeking this Court's review, Taylor desperately hopes for the same outcome she received in the trial court—so she can continue to avoid answering for her misdeeds. This Court's discretionary jurisdiction, however, does not encompass serving as an additional court of appeals to review alleged error. *Wells Fargo Bank, N.A. v. Burd*, 154 Ohio St. 3d 230, 2018-Ohio-3891, 113 N.E. 3d 501, P 14; *State Auto. Ins. Co. v. Pasquale*, 113 Ohio St.3d 11, 2007-Ohio-970, ¶46, 862 N.E.2d 483 (Pfeifer, J., dissent).

There is nothing unique or distinctive about this case to satisfy the "great general interest" prerequisite to this Court's jurisdiction. This Court's binding precedent, in fact, *required* the Twelfth District to overturn the trial court decision, in light of Beneficiaries'

[1] Taylor's Brief of Appellee, Motion for Reconsideration, and Motion to Certify Conflict made the same arguments and cited the same case law.

Civ. R. 56(F) request, and permit Beneficiaries to conduct discovery in support of their claims against Taylor. Additionally, Beneficiaries have cited on-point authority demonstrating that *res judicata* and Ohio statutes do not bar Beneficiaries' claims. Thus, the Twelfth District holdings do not create inconsistent precedent, as Taylor warns, because the cases cited by Taylor are factually distinguishable. Taylor's self-interest in overturning the result simply fails to give rise to the jurisdictional prerequisite of presenting a matter of "great general interest."

Taylor fails to see the irony in arguing that the "great general interest" allegedly created by the underlying appellate decision involves the need to avoid "endless litigation" when it is Taylor who has needlessly prolonged this litigation at every turn. Beneficiaries were never allowed out of the starting gate due to Taylor's actions, and Taylor has now lost two appeals, a Motion for Reconsideration, and a Motion to Certify Conflicts, and now seeks discretionary review in this Court. Enough is enough. Taylor's discretionary appeal should be denied, and Beneficiaries should finally be allowed to conduct discovery in order to support their claims.

II. HISTORY OF THE CASE

A. The Estate Proceedings

Frank Welch ("Frank") passed away on April 18, 2015, and his will was admitted into probate in Clinton County on May 6, 2015 (the "Estate Case"). Defendant-Appellee Thelma R. Taylor ("Taylor") was appointed executrix. Initially, Plaintiffs-Appellants, beneficiaries of Frank's estate and his next-of-kin (the "Beneficiaries"), filed Inventory exceptions after noticing a large portion of Frank's estate was missing. Beneficiaries served written discovery, but Taylor refused to respond, contending discovery could be

had only in a civil suit. Taylor also argued, through counsel, that her Amended Inventory was correct because she had no duty to account for assets taken prior to death.

Taylor requested Beneficiaries withdraw their objections to Inventory and consent to a final account, with the understanding the missing money would be addressed in the General Division. The probate judge agreed the dispute should be heard by the General Division and encouraged Beneficiaries to withdraw their objections. Therefore, after "convening the hearing" in which these matters were discussed, Beneficiaries withdrew their objections. The Probate Court approved the final account on July 14, 2016.

B. The General Division Lawsuit

Beneficiaries filed their Complaint with the Clinton County Court of Common Pleas on October 13, 2016, for declaratory judgment, undue influence, conversion, unjust enrichment, and intentional interference with expectancy of inheritance (the "General Division Lawsuit"). Taylor filed a Motion for Judgment on the Pleadings ("MJP"), premised on the notion that Beneficiaries' claims could have been resolved during the Estate Proceedings. Taylor also filed a Motion to Stay Discovery, which was granted. The General Division granted Taylor's MJP, stating its belief that the Probate Court had exclusive jurisdiction over the declaratory judgment, undue influence, conversion, and unjust enrichment claims. Regarding those claims, the court stated, "if successful the assets would revert to the decedent's estate." The court further stated: "Until the probate court resolves these claims, [Beneficiaries'] IIEI claim is not ripe for consideration in the general division and this Court has no jurisdiction to consider it."

C. The Underlying Probate Lawsuit

In accordance with the General Division's Order, Beneficiaries filed their Complaint with the Clinton County Probate Court on April 6, 2017 (the "Underlying

Probate Lawsuit"). The Complaint reasserted the claims alleged in the General Division. On the same day she answered the Complaint, Taylor filed a Motion for Summary Judgment ("MSJ"), and, once again, a Motion to Stay Discovery.

Beneficiaries responded to the MSJ, in part, by informing the court the motion was premature because no discovery had been conducted. Beneficiaries also filed a separate Civ. R. 56(F) request to conduct discovery supported by an affidavit confirming that no discovery had been conducted. The Probate Court never ruled on Beneficiaries' request for a continuance. Although Taylor had filed for summary judgment, for unknown reasons, the probate court issued a Judgment Entry on October 19, 2017, ruling "* * * that Defendants are entitled to *judgment on the pleadings*[.]"

D. The 2017 Appeal

Beneficiaries timely appealed the Judgment Entry in the Underlying Probate Lawsuit (the "2017 Appeal"). The Twelfth District reversed and remanded on November 15, 2018, Case No. CA2017-11-021, finding the Probate Court's grant of judgment on the pleadings was erroneous because no such motion was before the court. The Probate Court was instructed to rule on Taylor's MSJ and the other "proper motions" on remand, with the Twelfth District cautioning: "[I]t is wise to permit discovery given that a motion for summary judgment must be supported by facts."

E. The Underlying Probate Lawsuit on Remand

On remand, the Probate Court granted the MSJ without allowing Beneficiaries to conduct discovery, accepting Taylor's argument that Beneficiaries' claims amounted to a "will contest." The Probate Court entered a Final Judgment Entry on All Claims on March 23, 2020, and Beneficiaries timely appealed on March 25, 2020.

F. The Twelfth District Decisions

On December 28, 2020, the Twelfth District reversed and remanded the decision granting Taylor's MSJ. Taylor moved the Twelfth District to reconsider its decision and certify an alleged conflict, but both motions were denied on April 5, 2021.

G. Probate Lawsuit Allegations

Frank and Janet Welch were married for over 50 years and had one child, Thomas, who died in 2008. Frank and Janet always maintained relationships with extended family and, after Thomas's death, Frank's nieces and nephews were their closest relatives.

Frank and Janet purchased property in Wilmington, Ohio, in 2009. Frank was 72 years old, infirm, and legally blind at the time. Frank and Janet met Taylor and her husband, Ed, who lived nearby. Janet's health significantly declined in 2013, and Taylor began spending time alone with Frank. Following Janet's death in 2013, Taylor, 30 years younger than Frank and still married, led Frank to believe she wanted to marry him.

On September 24, 2012, Frank signed the deed to his former residence in Midland, Ohio over to Taylor for $26,800.00. Frank told family that Taylor agreed to make installment payments, but it does not appear she ever did. Only three weeks after Janet's death, Taylor filled out two "Requests to Change Beneficiary" forms, making herself the sole beneficiary of Frank's sizable life insurance policies. A week later, Taylor had Frank sign papers to add her as an authorized signer for his National Cooperative Bank ("NCB") account, giving her a right of survivorship interest in the account.

On April 14, 2014, Frank signed a new Last Will and Testament ("Will"), naming Taylor as the beneficiary of all his tangible personal property and devising the rest of his estate equally among his next of kin (Beneficiaries) and a family friend. That same day, Frank signed a TOD deed to Taylor for his Wilmington residence. Approximately six

weeks later, Taylor had Frank sign papers giving Taylor interests in four other bank accounts at NCB.

On December 13, 2014, Taylor wrote a $42,000.00 check from Frank's First Financial account to her sister and brother-in-law's realty company. On January 26, 2015, Taylor purchased a house in Sabina, Ohio. Shortly thereafter, Frank told Beneficiary Sherry McCauley that he believed he was a co-owner of the Sabina property, but records reveal he never was.

Frank passed away on April 18, 2015. Two days later, Taylor wrote a $9,792.00 check from Frank's bank account to her husband and a check for $1,500.00 to a neighbor who likely witnessed Taylor's comings and goings. Less than ten days after Frank's death, Taylor filed paperwork to collect from Frank's life insurance policies. On May 7, 2015, Taylor signed an affidavit of survivorship and transferred the Wilmington residence to herself. On July 15, 2015, Taylor withdrew $201,205.00 from one of Frank's bank accounts, and $33,245.06 from another. On November 5, 2015, Taylor withdrew an additional $77,412.03 from Frank's bank accounts. Then, on November 29, 2015, Taylor wrote another check to her sister and brother-in-law's realty company for $15,000.00. In total, Taylor took more than $500,000.00 from Frank through *inter vivos* transfers. None of this was known to Frank's kin.

III. ARGUMENT IN OPPOSITION TO TAYLOR'S PROPOSITIONS OF LAW

Proposition of Law No. 1: If a party fails to request a continuance pursuant to Civ. R. 56(F), that party is precluded from arguing on appeal that the trial court's summary judgment decision was premature.

This Court's 1983 decision in *Tucker v. Webb Corp.*, 4 Ohio St. 3d 121, 447 N.E.2d 100 (1983), is the only authority needed to demonstrate the Twelfth District was correct in overturning the Probate Court's grant of summary judgment to Taylor without allowing

Beneficiaries to conduct any discovery. *Tucker* is on all fours with the facts in the instant matter, and Taylor's last gasp attempt to distinguish the decision falls short.

In *Tucker*, plaintiff Tucker substantively responded to the defendant's MSJ, but also stated "'the Court should be aware that **defendant has filed this motion for summary judgment prior to the institution of any substantial discovery against it** * * *.'" *Tucker* at 121, FN 2 (emphasis added). The trial court granted the MSJ without ruling on Tucker's request or allowing discovery, and the appellate court affirmed. This Court reversed both courts, holding that although plaintiff "did not cite Civ. R. 56(F) specifically, **he did <u>in effect</u> ask the trial court for more discovery** * * *." *Tucker* at 122 (emphasis added). This Court concluded:

> [W]e believe that the courts below should have been more cautious in determining whether any genuine issues of material fact existed that could potentially impose liability on the appellee for the injuries sustained by appellant. **One cannot weigh evidence most strongly in favor of one opposing a motion for summary judgment when there is a dearth of evidence available in the first place.**

Tucker, 4 Ohio St. 3d 121, 123, 447 N.E.2d 100 (emphasis added).

Exactly as in *Tucker*, Beneficiaries in this matter informed the trial court that no discovery had been undertaken, stating: "Plaintiffs initially note that it is premature to bring a motion for summary judgment. No discovery has been conducted and no pretrial order has been set scheduling a dispositive motion deadline." Beneficiaries attached their counsel's affidavit detailing how Taylor thwarted all discovery efforts. Such efforts were sufficient to invoke Rule 56(F) under *Tucker*, but, as noted in the Twelfth District's Opinion, Beneficiaries went further here. They also filed Plaintiffs' Notice of Filing Supplemental Responsive Arguments and Affidavit in Opposition to Defendant's Motion for Summary Judgment and for Sanctions, putting on affidavit testimony confirming

Taylor blocked all discovery efforts, so, "[c]onsequently, Plaintiffs cannot present by depositions, answers to interrogatories, written admissions, and affidavits all of the facts which may be essential to justify their opposition." Beneficiaries' pleadings easily cleared the relaxed *Tucker* bar for cases where no discovery has occurred.

Finally, Taylor advocates the disingenuous position that *Tucker* requires a party to specifically request discovery to invoke 56(F). Taylor relies on a passage from the *Tucker* decision, where this Court concluded Tucker "stated initially that he needed more discovery." This Court *quotes* Tucker's actual request, however, in footnote 2, as reprinted above, and it is clear Tucker only told the trial court he had not been allowed to conduct any discovery*, the same as the Beneficiaries in the instant matter*. Thus, this Court's conclusion in *Tucker* that informing a court that no discovery has been conducted is, "in effect," a request for more discovery, demonstrates the Twelfth District correctly overturned the Probate Court's summary judgment decision in this matter. Indeed, the Twelfth District really had no choice because a holding that Beneficiaries were required to do more, herein, would have contravened this Court's binding *Tucker* precedent.

The Twelfth District also correctly determined its decision does not conflict with any other appellate district. Taylor's erroneous assertion of conflict only underscores the application of the operative law to the unique facts of each case, to wit:

- *Tutolo v. Young*, 11th Dist. Lake No. 2020-L-118, 2012-Ohio-121—parties engaged in significant discovery, MSJ was filed after discovery deadline expired, and party opposing MSJ never filed a Civ.R. 56(F) motion or affidavit claiming more discovery needed.

- *MacConnell v. Safeco Prop.*, 2nd Dist. Montgomery No. 21147, 2006-Ohio 2910—party opposing MSJ never filed a 56(F) motion or contended he needed discovery in order to oppose MSJ, instead resting on allegations in a Second Amended Complaint.

- *BFI Waste Sys. v. City of Garfield Heights*, 94 Ohio App. 3d 62, 74, 640 N.E.2d 227 (8th Dist. 1994)—party opposing MSJ never filed Rule 56(F) motion after depositions and other discovery taken, instead contending court erred by granting MSJ with motions to compel pending.

- *Travelers Ins. Co. v. Wainer*, 6th Dist. Lucas No. L-91-023, 1991 Ohio App. LEXIS 5601 (Nov. 22, 1991), *3, 7—party opposing MSJ did not request 56(F) relief or inform the trial court the MSJ was not ripe, instead requesting a Civ. R. 6(B) enlargement of time to respond.

Because Taylor has failed to demonstrate that the Twelfth District decision creates a matter of "great general interest," this Court should decline jurisdiction.

Proposition of Law No. 2: A party is required to state with specificity the reason why it is unable to present by affidavit facts sufficient to justify its opposition to summary judgment in order to obtain relief pursuant to Civ. R. 56(F).

The *Tucker* decision is the starting point for determining the level of specificity required by a party who has not been permitted any discovery to invoke Civ. R. 56(F). *Tucker* establishes that strict compliance is simply not required where, as here, a party informs a court "substantial discovery has not yet occurred." *Sleeper v. Casto Mgmt. Servs.*, 10th Dist. Franklin No. 12AP-566, 2013-Ohio-3336, ¶ 48. Further, when the party moving for summary judgment is in control of the facts giving rise to the claim, as here, specifying the discovery needed to respond to an MSJ is not required.

In *Scaccia v. Dayton Newspapers, Inc.*, 2nd Dist. Montgomery No. 21474, 2007-Ohio-869, for example, the trial court granted the defendant's MSJ without allowing plaintiffs-Scaccias to conduct any discovery. The appellate court recognized the Scaccias "did not identify what additional discovery they needed in order to respond * * * merely aver[ring] that the Scaccias had received no discovery at all." The court further acknowledged the general rule that a party needs to "do more than merely assert generally the need for additional discovery" in invoking 56(F), by providing "a factual basis stated

and reason given why the party cannot present facts essential to its opposition to the motion." However, relying on the relaxed *Tucker* standard, the Montgomery County Court of Appeals reversed the trial court, holding it abused its discretion by granting summary judgment without allowing any discovery.

Another important and undisputed fact supporting the Twelfth District's decision to reverse and remand is that Taylor has control of the facts relating to the claims against her. "[W]hen the facts are in the control of the party moving for summary judgment," a Rule 56(F) motion need not specify the facts a party hopes to discover. *Drake Constr. Co. v. Kemper House Mentor, Inc.*, 11th Dist. Lake No. 2005-L-157, 2007-Ohio-120, ¶ 29. See, also, *Porter v. Ettinger*, 2nd Dist. Greene No. 2006CA31, 2006-Ohio-6842, ¶ 19 ("A party who seeks a continuance for further discovery is not required to specify what facts he hopes to discover, especially where the facts are in the control of the party moving for summary judgment.").

Taylor's cases only further accentuate the stark factual differences between this case and those where substantial discovery occurred or the party's diligence was at issue:

- *Reddy v. Plain Dealer Publ. Co.*, 8th Dist. Cuyahoga No. 98834, 2013-Ohio-2329—party filing Rule 56(F) motion conducted discovery in an earlier filing of the same lawsuit, and his counsel conducted discovery against same defendant in his own lawsuit.

- *Perpetual Fed. Sav. Bank v. TDS2 Prop. Mgt., LLC*, 10th Dist. Franklin No. 09AP285, 2009-Ohio-6774—party filing Rule 56(F) motion had access to own records to contest summary judgment motion.

- *Porter v. Ettinger*, 2nd Dist. Greene No. 2006CA31, 2006-Ohio-6842—appellate court affirmed denial of second Rule 56(F) continuance due to lack of diligence after first continuance granted, and second request not made until 60 days after summary judgment response due.

- *Spratt v. Rickey*, 4th Dist. Adams No. 97CA639, 1998 Ohio App. LEXIS 1207 (Mar. 26, 1998)—appellate court affirmed denial of second Rule 56(F) motion due to lack of diligence after claiming in first continuance request that no discovery

conducted, while making same claim over 90 days later in second continuance request.

- *Image Sciences, Inc. v. Design Linc Corp.*, 12th Dist. Warren No. CA95-07-074, 1996 Ohio App. LEXIS 430 (Feb. 12, 1996)—party requesting continuance had information it needed in its possession and failed to file affidavit in support of Civ. R. 56(F) request.

- *Gates Mills Investment Company v. Pepper Pike*, 59 Ohio App. 2d 155, 392 N.E.2d 1316 (8th Dist. 1978)—substantial discovery completed and party opposing MSJ argued it should be allowed to complete discovery, but failed to put on affidavit demonstrating facts it could obtain with more discovery.

- *American Economy Insurance Company v. Pryor*, 12th Dist. Clermont No. CA95-03-019, 1995 Ohio App. LEXIS 3009 (July 17, 1995)—Pro se plaintiff failed to file affidavit in support of Civ. R. 56(F) request.

Because Taylor has failed to demonstrate that the Twelfth District decision creates a matter of "great general interest," this Court should decline jurisdiction.

Proposition of Law No. 3: A court's order approving a final account is binding against parties to the estate proceedings in which that order was entered such that subsequent claims made by those parties pertaining to the same decedent's estate are barred by *res judicata*.

Beneficiaries' claims are not barred by *res judicata*. To the contrary, the merits of Beneficiaries' claims have never been litigated. The General Division Lawsuit was dismissed on jurisdictional grounds, thus not invoking the doctrine of *res judicata*. Furthermore, the Estate Case does not bar the Beneficiaries' claims. Although Taylor attempts to conflate Beneficiaries' claims with a will contest, it is important to note that Beneficiaries challenge *inter vivos* transfers from the decedent, Frank Welch, to Taylor. Given the *inter vivos* nature of the disputed transfers, they were not in Frank's possession at the time of his death and therefore were not part of his Estate. Consequently, should Beneficiaries be successful in their claims against Taylor, they would simply apply to reopen Frank's estate to distribute the newly discovered assets. The Beneficiaries would

not seek to vacate the prior final accounting under R.C. 2109.35 because the accounting was correct insofar as it included what Frank possessed at the time of his death. Thus, Taylor's arguments regarding R.C. 2109.35 are misplaced.

It is commonplace for new assets to be discovered after a final account has been entered (see *In re Chapman*, 8th Dist. Cuyahoga No. 78296, 2001 Ohio App. LEXIS 2769, *7, 2001 WL 703871 (noting that newly discovered assets belonging to a closed estate need to be collected and distributed)). If newly discovered assets were barred from being distributed because of R.C. 2109.35, then the effectiveness and intent of our probate courts would be greatly diminished because a decedent's newly discovered assets would then sit idly, belonging to no one. Although Taylor makes much ado about the Beneficiaries disputing *inter vivos* transfers that were the subject of their Exceptions to the Inventory, she leaves out that the Beneficiaries' exceptions expressly included: "Other presently unknown property wrongfully taken by Thelma Taylor while decedent, who was legally blind, disabled and a grieving widower, was under duress and/or lacked capacity to gift." Moreover, as pointed out by the Twelfth District, Beneficiaries were never permitted to conduct discovery. Consequently, the Beneficiaries have never been able to discover the full extent of Taylor's conduct and the evidence surrounding the circumstances of the disputed transfers.

In re Estate of Faldon, 6th Dist. Erie No. E-15-071, 20l6-Ohio-7337, is factually distinguishable. In *Faldon*, the decedent's will directed that her estate was to be divided among two charitable entities. *Id.* ¶ 3. After the probate court approved the final accounting, the appellant sought to reopen the estate and vacate the order approving the final accounting. *Id.* ¶ 10. Thus, *Faldon* is clearly inapposite for two reasons. First, as discussed above, the Beneficiaries do not wish to disturb distributions made under

Frank's will. The Beneficiaries have never challenged Frank's will—only *inter vivos* transfers that were not included in the Estate under Frank's will. Second, the appellant in *Faldon* sought to vacate the final accounting under R.C. 2109.35. Here, the Beneficiaries would not need to vacate the prior final accounting, as discussed above. Thus, *Faldon's* discussion of R.C. 2109.35 is inapplicable to the case at bar.

Proposition of Law No. 4: R.C. 2109.35(A) requires a party to allege fraud, and support that allegation by clear and convincing evidence, in order to avoid the binding effect of an order approving a final account.

As discussed above, R.C. 2109.35 is inapplicable because the Beneficiaries would not seek to vacate the final accounting—merely apply to reopen the estate to distribute newly discovered assets. However, alternatively, if the Beneficiaries were required to establish fraud, they have sufficiently pled facts that demonstrate a showing of fraud.

In accordance with Civ. R. 9, fraud must be pled with particularity. An allegation of fraud should include all the elements of a fraud action. 3 Ohio Civil Practice with Forms 151.11 (2019). To successfully plead fraud, the factual allegations should set out "the time, place and content of the false representation, the fact misrepresented, and the nature of what was obtained or given as a consequence of the fraud." *Stout v. N. Am. Rail Group*, 12th Dist. Butler No. 10-286, 2007-Ohio-4971, ¶ l. Ohio courts have allowed a party to argue fraud under R.C. 2109.35 even if said party did not state fraud as a separate cause of action, so long as the party alleged facts that could amount to a fraud claim. *Draz v. Hurlbert*, 11th Dist. Trumbull No. 2836, 1981 Ohio App. LEXIS 14152, *2-3,1981 WL 4383 (June 8, 1981).

Here, the Complaint alleges that Taylor (1) lied to Frank about paying installments for the deed to his house and about marrying him; (2) those lies were material to Frank signing her the deed and making her the beneficiary, survivor, etc. on various accounts;

(3) the lies were made falsely, as Taylor never made payments and was already married during her relationship with Frank; (4) the lies were made to induce Frank into signing over his deed and accounts; (5) Frank relied on Taylor's promises when signing over the deed and making her the beneficiary, survivor, etc. on various accounts; and (6) Taylor pocketed more than $500,000.00 that would have belonged to the Estate but for Taylor's conduct. Thus, the four corners of Beneficiaries' Complaint lay out a cause for fraud.

The cases cited by Taylor correctly state that fraud must be established by clear and convincing evidence under R.C. 2109.35. However, here, it is difficult to reconcile Taylor's argument with her repeated, successful, attempts to stay discovery over the course of this litigation. As outlined above, Beneficiaries have pled facts that allege Taylor's fraudulent conduct. Much to the dismay of the Beneficiaries, no discovery has been permitted allowing them to establish their claims.

The instant case is distinguishable from the cases cited by Taylor because the merits of Beneficiaries' claims have not even been examined due to the complete lack of discovery. Consequently, *In re Estate of Willard v. West*, 7th Dist. Jefferson No. 16 JE 0017, 2017-Ohio-7128, ¶15-16, and *In re Estate of Sowande*, 11th Dist. Portage No. 2014-P-0018, 2014-Ohio-5384 ¶29, are not in conflict with the Twelfth District's Opinion because the merits of Beneficiaries' claims have not been litigated, unlike the claims in the aforementioned cases.

CONCLUSION

Because Taylor has failed to demonstrate this case presents a matter of "great general interest" and is rather Taylor's misguided attempt to use this Court as an additional appellate court to overturn perceived error, jurisdiction should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Civ. R. 5(B)(2)(f), I served a copy of the foregoing by electronic mail upon the following on this 11th day of June, 2021:

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