

**IN THE SUPREME COURT OF OHIO**

IN THE MATTER OF JAY F.	)	CASE NO: 2022-0089
ROUDEBUSH AND BEVERLY J.	)	
ROUDEBUSH TRUST,	)	On Appeal from the Carroll County Court of
	)	Appeals, Seventh Appellate District
BEVERLY J. ROUDEBUSH AND	)	
MARTIN ROUDEBUSH,	)	Court of Appeals Case No. 21CA0949
	)	
Appellant-Beneficiaries,	)	
	)	
MARTIN ROUDEBUSH,	)	
	)	
Appellant-Trustee,	)	
	)	
vs.	)	
	)	
JEFFREY BORY,	)	
	)	
GERMAINE LAWLESS,	)	
	)	
Appellee-Intervenors	)	

---

**APPELLEE-INTERVENORS JEFFREY BORY AND GERMAINE LAWLESS'  
MEMORANDUM IN RESPONSE TO APPELLANTS' MEMORANDUM IN SUPPORT  
OF JURISDICTION**

---

SANDRA K. CHESHIRE  
(0026310)  
319 Mississippi St. SE  
North Canton, Ohio 44720  
(330) 433-9310  
Fax: (330) 433-9314  
Cheshire.sandy@gmail.com  
*Counsel for Appellant-  
Beneficiaries  
Beverly and Martin  
Roudebush*

MICHELA HUTH  
(0091353)  
P.O. Box 17  
Bolivar, Ohio 44612  
(330) 440-4027  
Michelahuth.esq@gmail.com  
*Counsel for Appellant  
Trustee,  
Martin Roudebush*

R. SCOTT HEASLEY  
(0087235)  
(Counsel of Record)  
AMILY A. IMBROGNO  
(0092434)  
Meyers Roman Friedberg & Lewis  
28601 Chagrin Boulevard, Ste. 600  
Cleveland, Ohio 44122  
Phone: (216) 831-0042  
Fax: (216) 831-0542  
sheasley@meyersroman.com  
aimbrogno@meyersroman.com  
*Counsel for Appellees,  
Dr. Jeffrey Bory and Germaine  
Lawless*

## **TABLE OF CONTENTS**

STATEMENT OF APPELLEES' POSITION AS TO WHETHER THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST .....	1
STATEMENT OF FACTS AND PROCEDURAL HISTORY .....	2
ARGUMENTS REGARDING PROPOSITIONS OF LAW RAISED IN MEMORANDUM IN SUPPORT OF JURISDICTION .....	5
PROPOSITION OF LAW NO. 1: A Probate Court's authority and jurisdiction to intervene in the administration of an inter vivos trust is only triggered upon an interested party invoking the court's jurisdiction.....	5
PROPOSITION OF LAW NO. 2: Ohio Revised Code 2101.24(A)(1)(h) does not apply to inter vivos trusts.....	7
CONCLUSION.....	7
CERTIFICATE OF SERVICE .....	9

**I. STATEMENT OF APPELLEE’S POSITION AS TO WHETHER THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST**

The Court should deny Appellants’ Motion because this case does not involve a matter of public or great general interest. It is merely one of interest primarily to the parties. *Williamson v. Rubich*, 171 Ohio St. 253, 168 N.E.2d 876 (1960); Ohio Constitution Article IV, Section 2. As noted below, the Carroll County Probate Court properly exercised its jurisdiction over the Trust and the Trustee based on multiple statutory provisions.

In terms of the relevant statutes, the provisions of R.C. 5802.01 clearly permit a court to intervene in the administration of a trust when its jurisdiction is invoked by an interested person, as Appellants have numerous times here. Because they disagree with the Seventh District’s decision that the Probate Court had jurisdiction, Appellants are asking this Court to accept their appeal based on a technicality that would not change the outcome. Specifically, Appellants claim the Seventh District misinterpreted R.C. 2104.24(A)(1)(h), which Appellants claim does not give probate courts jurisdiction to regulate inter vivos trusts. What Appellants fail mention is at least three (3) other statutory provisions, which are cited in the Seventh District’s opinion, give probate courts jurisdiction to regulate inter vivos trusts. R.C. 2101.24(B)(1)(b), R.C. 2101.24 (C) **and** R.C. 5802.01(A) all permit probate courts to appoint and regulate trustees over inter vivos trusts.

First, R.C. 2101.24(B)(1)(b) provides that a probate court has jurisdiction over “any action that involves an inter vivos trust.”

Second, “R.C. 2101.24(C) confers broad authority to the probate court to address collateral matters, including ‘plenary power at law and in equity to dispose fully of any matter that is properly before the court.’” *Heslet v. Artz*, 6th Dist. Sandusky Nos. S-10-046, S-10-047, 2011-Ohio-2961, ¶ 26, citing R.C. 2101.24(C); *Rinehart v. Bank One Columbus*, 125 Ohio App. 3d 719, 728, 709

N.E.2d 559 (10th Dist. 1998), citing *Wolfrum v. Wolfrum*, 2 Ohio St.2d 237, 208 N.E.2d 537 (1965), paragraph one of the syllabus. “This plenary power authorizes the probate court to exercise complete jurisdiction over the subject matter to the fullest extent necessary.” *Heslet, supra*. This would clearly include the appointment of a trustee over a trust and issuing an order regarding the trustee’s duties over the trust.

Finally, the language of R.C. 5802.01(A) states: “A court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.”

Appellants claim that this Court should grant their Motion because the Seventh District misinterpreted R.C. 2104.24(A)(1)(h), which states: “Except as otherwise provided by law, the probate court has exclusive jurisdiction \*\*\* (h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts.” To the extent that the Seventh District may have erred in referencing R.C. 2104.24(A)(1)(h), this harmless error has no effect on the public interest because R.C. 2101.24(B)(1)(b), R.C. 2101.24(C), and R.C. 5802.01(A) all gave the Probate Court jurisdiction. Appellants should not be permitted to use the Supreme Court of Ohio as a vehicle to merely further their own agenda when any determination of this Court will not have any practical effect on them. Therefore, the Court should deny Appellants’ Motion.

## **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Many of the allegations provided in Appellants’ “Statement of the Case and Facts” are irrelevant at best, and patently false at worst.<sup>1</sup> A brief synopsis of the relevant, accurate factual and procedural history of this case is as follows:

---

<sup>1</sup> Though not relevant to the issues addressed in this Memorandum, Appellees vehemently deny that they trespassed on Trust property or harassed and frightened Beverly Roudebush. Furthermore,

The stated purpose of The Jay F. and Beverly J. Roudebush Trust dated December 11, 1989 (the “Trust”) is to permit Beverly J. Roudebush (“Beverly”) to live on property located at 2172 Canton Road NW, Carrollton, Ohio 44615 (the “Neighboring Property”), which is adjacent to Appellees Jeffrey Bory and Germaine Lawless’ (“Appellees”) residence.

On September 9, 2016, the Trust and its beneficiaries voluntarily invoked the jurisdiction of the Carroll County Probate Court by filing forms to open a new matter and filing a Motion to Appoint a Successor Trustee. Thereafter, a hearing was set on the initial motion. Since that time, the Trust and Appellants have filed numerous pleadings and other documents thereby invoking the Probate Court’s jurisdiction.

Turning to the relevant disputes, the Roudebushes and Appellees have had ongoing disagreements regarding, among other things, a driveway that is located on Appellees’ property that the Roudebushes use to access the Neighboring Property. To resolve the disputes, Appellees filed suit in Carroll County Common Pleas Court’s General Division against the Roudebushes and the Trust asserting claims for: (i) a declaratory judgment regarding the boundary between the two properties; (ii) trespass; (iii) nuisance; and (iv) assault. Carroll County Common Pleas Court Case No. 2015CVH28333. In response, the Trust asserted counterclaims for adverse possession, declaratory judgment, and to quiet title. The Roudebushes filed an Answer, which generally denied the claims in the Complaint and asserted boilerplate affirmative defenses, but they did not assert any counterclaims.

In February of 2018, Appellees and the Trust entered into a settlement agreement (the “First Settlement”) that was approved by the Carroll County Probate Court. The Roudebushes appealed

---

there is no evidence in the record to support these false accusations. Appellants’ recitation of these facts continues a long campaign of harassment, half-truths, lies, and misrepresentations.

the order approving the First Settlement, and the Seventh Appellate District reversed and remanded the case in September of 2019. *In Re Roudebush*, 7th Dist. Carroll No. 18CA0929, 2019-Ohio-3955.

On remand, Appellees dismissed their remaining trespass claim against the Roudebushes, and they also settled their claims and counterclaims with the Trust pursuant to a second settlement agreement (the “Second Settlement”). The Second Settlement did not include the Roudebushes as signatories because the Trust is the sole owner of the Neighboring Property. The terms of the Second Settlement were initially approved by the Carroll County Probate Court on March 26, 2020, and Appellees and the Trust filed a Joint Notice of Dismissal in the General Division on March 30, 2020. The Carroll County Common Pleas Court General Division issued an Order confirming the dismissal with prejudice the same day.

Thereafter, the Roudebushes filed a Motion to Vacate in Probate Court, which the Probate Court granted on April 9, 2020. The Probate Court ordered the Roudebushes to file a brief stating the good faith reasons they were disputing the terms of the Second Settlement. The Roudebushes filed their brief (again invoking the jurisdiction of the Probate Court), and Trustee Sean Smith filed a Memorandum in Support of the Motion to Approve Settlement.

On October 5, 2020, the Probate Court held a lengthy hearing on the Trustee’s Motion to Approve the Second Settlement. Appellants actively participated in the hearing, which lasted more than nine hours. They did not question the Court’s jurisdiction at any time during that proceeding. Following the hearing, the Probate Court granted the Motion to Approve on November 13, 2020.

On December 11, 2020, Trustee Smith resigned after he was elected as the Carroll County Probate Court judge.<sup>2</sup> Then, Appellants invoked the Probate Court’s jurisdiction yet again on

---

<sup>2</sup> Judge Smith did not take office until February 9, 2021.

December 21, 2020, when they filed a Motion to Strike Sean Smith’s Motion for Court to Appoint Successor Trustee or In the Alternative Motion to Dismiss Sean Smith’s Motion for Court to Appoint Successor Trustee. Thereafter, the members of the Trust selected Martin to serve as trustee. The Probate Court scheduled a hearing on February 4, 2021 so Carroll County Probate Court Judge John S. Campbell could explain Martin’s duties as trustee. On February 8, 2021, on Judge Campbell’s last day in office, the Probate Court entered an Order stating:

- (i) The cause came for hearing on the 4th day of February, 2021.
- (ii) Present for the hearing were Martin and Beverly Roudebush represented by Attorney Sandra K. Cheshire.
- (iii) The court found that the trustee [Martin] shall represent the interest of the trust and not his own interest.
- (iv) The settlement reached in the case is the position the trustee shall represent.
- (v) The trustee shall make arrangements to pay the bill of [Trustee Smith’s] Attorney Kathleen Allmon Stoneman.
- (vi) The trustee shall retain separate counsel for the trust as his personal attorney has a conflict of interest.

Appellants appealed Judge Campbell’s Order approving the Second Settlement in Seventh Appellate District in Case No. 21CA0948, and they appealed Judge Campbell’s February 8 Order in Seventh Appellate District in Case No. 21CA0949.

### **III. ARGUMENTS REGARDING PROPOSITIONS OF LAW RAISED IN MEMORANDUM IN SUPPORT OF JURISDICTION**

- a. PROPOSITION OF LAW NO. 1: A Probate Court’s authority and jurisdiction to intervene in the administration of an inter vivos trust is only triggered upon an interested party invoking the court’s jurisdiction.

Citing R.C. 5802.01, Appellants claim the Probate Court lacked jurisdiction to intervene in the underlying matter because that statute provides that “A court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as

provided by law.” In doing so, Appellants make the bold (and incorrect) assertion that no interested party invoked the Probate Court’s jurisdiction in the underlying case. As noted above, Appellants repeatedly invoked the Probate Court’s jurisdiction since their initial filing in 2016. Various trustees and beneficiaries (including Martin Roudebush) have filed motions and other pleadings related to Trust matters. In doing so, both the Trust and the beneficiaries consented to the Carroll County Probate Court’s jurisdiction.

Furthermore, Judge Campbell’s hearing notice was issued in Carroll County Probate Court Case No. T2016-3002 wherein both the Trust and its beneficiaries (including Martin Roudebush) invoked the jurisdiction of the Carroll County Probate Court to resolve disputes related to the Trust and various settlement agreements. Thereafter, Martin Roudebush did not have the authority to pick and choose when the Probate Court could issue orders or hearing notices relating to the Trust.

Appellants insist this Court should accept jurisdiction over this matter because the limitations of R.C. 5802.01(A) require further definition. However, neither the statute itself, the Seventh Appellate District, or Appellees have suggested that a probate court may sua sponte generate any order related to a property governed by a trust simply because the probate court previously appointed a trustee. All of the Probate Court’s actions relate directly to the Probate Case that had already been pending for over five (5) years, which the Trust and its beneficiaries (including Martin Roudebush) repeatedly utilized to try to further their agenda.

Judge Campbell did not order Martin Roudebush to appear on a whim while there was no matter pending in his court, as suggested by Appellants – quite the contrary. Martin Roudebush’s insistence that Judge Campbell could not order him to appear to discuss fulfilling his duties as trustee is meritless because the Trust and its beneficiaries consented to the Court’s jurisdiction long ago.



Moreover, the fact that neither this Court nor any Ohio appellate courts have interpreted the limitations of R.C. 5802.01(A) proves that such interpretation is unnecessary. The issue has not been heavily litigated because the language of the statute itself is clear. This case is not a matter of public or great general interest because only Appellants would gain an advantage from obtaining further interpretation of R.C. 5802.01(A) by this Court.

- b. PROPOSITION OF LAW NO. 2: Ohio Revised Code 2101.24(A)(1)(h) does not apply to inter vivos trusts.

The Seventh District held Judge Campbell had the authority to order Martin to appear because, by the plain language of R.C. 2101.24(A)(1)(h), Judge Campbell had jurisdiction “to qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts.” Even assuming *arguendo* that the appellate court erred, that determination is not a matter of public or great general interest because Judge Campbell still had authority pursuant to at least three (3) other statutory provisions. Any other Ohio probate court entertaining similar matters in the future will have jurisdiction to regulate trustees over inter vivos trusts under these three provisions as well.

#### **IV. CONCLUSION**

The Court should deny Appellants’ Motion because: (i) Appellants consented to the Probate Court’s jurisdiction when they filed the Probate Case in 2016; (ii) Appellants have repeatedly invoked the Probate Court’s jurisdiction since the initial filing; (iii) the Probate Court had the power to schedule the hearing pursuant to at least three (3) sections of the Ohio Revised Code; and (iv) this case does not present any issues of law that warrant granting Appellants’ Motion.

Respectfully submitted,

/s R. Scott Heasley

R. Scott Heasley (0087235) (Counsel of record)

Amily A. Imbrogno (0092434)

MEYERS ROMAN FRIEDBERG & LEWIS

28601 Chagrin Boulevard, Suite 600

Cleveland, OH 44122

Phone: (216) 831-0042

Fax: (216) 831-0542

Email: sheasley@meyersroman.com

aimbrogno@meyersroman.com

*Counsel for Intervenors/Appellees,*

*Dr. Jeffrey Bory and Germaine Lawless*

**CERTIFICATE OF SERVICE**

I hereby certify a copy of the foregoing was served this 24th day of February, 2022 via regular U.S. Mail upon the following:

Sandra K. Cheshire, Esq.  
1401 South Main Street, Suite 102  
North Canton, Ohio 44720  
*Attorney for Defendants,  
Beverly and Martin Roudebush*

Michela Huth, Esq.  
P.O. Box 17  
Bolivar, Ohio 44612  
*Counsel for Appellee Trustee,  
Martin Roudebush*

/s R. Scott Heasley  
R. Scott Heasley (0087235)  
*Attorney for Intervenors/Appellees*