IN THE SUPREME COURT OF OHIO

IN RE:	:	**Supreme Court Case No. 2023-0266**
	:	
THE G. CARLTON WEBB TRUST.	:	**On Appeal from the Allen County**
	:	**Court of Appeals, Third Appellate**
	:	**District**
	:	
	:	**Court of Appeals Case No. 01-22-38**
	:	

MEMORANDUM IN RESPONSE TO JURISDICTION OF APPELLEE G. CARLTON WEBB

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

RULES:

STATUTES:

SECONDARY SOURCES:

I. EXPLANATION OF WHY THIS CASE IS *NOT* OF PUBLIC OR GREAT GENERAL INTEREST

This matter is not of public or great general interest as it involves the appeal of a summary judgment entry of the Third District Court of Appeals that is controlling only as to the parties to this action. Additionally, Appellant has failed to appeal any issue ruled upon by the Third District Court of Appeal. As such, this jurisdictional appeal is premature, not ripe for review, and this Court should decline to issue an advisory opinion.

In a well-reasoned and unanimous summary judgment entry by the appellate court, the Appellants were found to lack standing to become a party in the matter. As Appellants lacked standing and the issue of standing was dispositive to the appeal, the appellate court declined to address Appellants' remaining assignments of error pursuant to App. R. 12(A)(1)(c). When Appellants moved for reconsideration, the appellate court once again stated that Appellants "were not able to carry their burden as to 'standing' to intervene into their father's trust estate." (January 30, 2023 Judgment Entry, pg. 1). While the appellate court once again declined to address Appellants' other remaining assignments of error, including the due process argument they have refashioned as their first proposition of law, the appellate court noted that "Appellants have not been denied the 'opportunity to be heard at a meaningful time and meaningful manner.'" (*Id.*, at pg. 2). Further, a summary judgment entry is "controlling only as between the parties to this action and not subject to publication or citation as legal authority under Rule 3 of the Ohio Supreme Court Rules for the Reporting of Decisions." (January 9, 2023 Summary Judgment Entry, pg. 1).

Despite all of these procedural hurdles, Appellants' propositions of law are nonetheless without merit. First, Appellants are not a party. As such, their first proposition of law would not even encompass them. Second, while Appellants have neglected the basic procedural safeguards in place to protect their rights, they now claim their due process rights have been violated. In order

for Appellants to prevail on their first proposition, this Court would have to hold that a probate court violates the procedural due process rights of a non-party individual who seeks intervention, but does not follow the mandates of the civil rules regarding intervention pursuant to Civ. R. 24(C) and 7(A), when the probate court exercises its discretionary right to seal the record, the individual seeking intervention fails to pursue their procedural remedy of a writ of mandamus pursuant to Sup.R. 47(B), and the probate court denies the intervention because the Appellants have no legally recognizable property interest in the matter to begin with. The logical leaps that would be required for such a holding would consume and effectively eliminate the procedures set forth in Sup.R. 44-Sup.R. 47, as filing a motion to intervene would be all that would be required for a record to become unsealed.

Finally, Appellants' second proposition of law is without merit as Appellants are non-parties that lack standing and are seeking to challenge the standing of a party to the case, and the jurisdiction of the probate court, despite failing to cite any legal authority that would grant them the right to do so. Further, Appellee has standing pursuant to his trust agreement to bring the Petition before the probate court, and the probate court has proper jurisdiction.

In summary, Appellants' propositions of law do not constitute issues of public or great general interest, none of the propositions of law were ruled upon by the court of appeals, the first proposition of law would not encompass Appellants as non-parties seeking intervention, Appellee G. Carlton Webb has standing to bring his Petition pursuant to rights he reserved in the trust agreement, and the probate court has Jurisdiction over the matter. Therefore, the Court should decline jurisdiction over this appeal.

STATEMENT OF THE CASE

The G. Carlton Webb Trust is a revocable trust originally created with the execution of a Trust Agreement on January 18, 1996. The trust has subsequently been amended and restated several times, with the last amendment and restatement being executed on July 17, 2019. Petitioner-Appellee, Glen Carlton "Cart" Webb (hereinafter "Appellee" or "Cart"), is the **Grantor** of the G. Carlton Webb Trust and the **sole vested beneficiary** of the G. Carlton Webb Trust during his lifetime. (Docket Entry 2, Ex. A). Appellee is married to Lena M. Webb, his third wife. Appellee has two biological sons from his first marriage, Benjamin Webb and Brandon Webb (hereinafter "Appellants"), who are unvested contingent beneficiaries of the G. Carlton Webb Trust, and who both remain subject to defeasance. (See, e.g., Docket Entry 2, Ex. A, Article 3, Section 2, indicating that any interests anyone other than Cart may have in this trust are defeasible by his will.) The G. Carlton Webb Trust also lists numerous other individuals and organizations, who ***may*** at some future point in time have an interest in this trust, but need not be a party to the Petition as they are also unvested contingent beneficiaries of a revocable trust, who remain subject to defeasance. (Docket Entry 2, Ex. A).

Appellee Fifth Third Bank is the current Trustee of the G. Carlton Webb Trust, and is an interested party pursuant to the extent that the proposed modifications impact their duties as Trustee. Fifth Third Bank filed a response to the Petition stating that they do not oppose the modifications being sought by Appellee. (Docket Entry 8, initial paragraph).

The main issue in this case is whether an unvested contingent beneficiary of a revocable trust, who is subject to defeasance, has the right to intervene in an action to modify the trust that is brought pursuant to a procedure enumerated within the trust that allows for modifications to be made with approval of the probate court? Per the well-reasoned entries of the probate court and

court of appeals, the answer is an unequivocal no. Further, the review of the probate court's ruling is governed by an abuse of discretion standard. While Appellants claim that the exclusive authority for a Court to modify a trust is found within R.C. 5804.10-R.C. 5804.17, those sections do not apply to the G. Carlton Webb Trust. This is because the trust is clearly revocable, and the Petitioner is not seeking to modify the trust pursuant to a statutory right. Instead, Petitioner relies upon his right to modify the trust through the Allen County Probate Court that he reserved within in the language of the trust agreement.

As has been recognized by the probate court and court of appeals, the G. Carlton Webb Trust is a "revocable" trust under the terms of its own language and well-settled Ohio law. In Ohio, trusts are presumed to be revocable and require specific language to make them irrevocable. R.C. 5806.02(A). The Ohio Trust Code defines a "Revocable" trust as one that is "revocable at the time of determination by the settlor alone or **by the settlor with the consent of any person other than a person holding an adverse interest.**" R.C. 5801.01(R) (emphasis added). This means that if a settlor, such as Appellee, has the authority to revoke the trust, then the trust is revocable. It also means that if a settlor, such as Appellee, seeks to revoke the trust in whole or in part, and the trust names an authority to consent to the request for revocation, such as the trust committee for the corporate board of Trustee Fifth Third Bank or the Trust Advisor, then the trust is revocable. This is true whether the revocation is in whole or in part. Pursuant to R.C. 5801.01(R), a trust remains revocable even if a settlor is required to get preclearance to revoke or amend their trust.

In the case of the G. Carlton Webb Trust, the trust agreement gives Appellee the unfettered right to withdraw two percent (2%) of the principal of the trust per year without approval, consent, or other preclearance measures. (Docket Entry 2, Ex. A, Article 3, Section 1). Appellee simply must request this portion of the principal to be provided, and the Trustee is legally obligated to

hand it over. Such an unfettered right of the settlor to withdraw principal, even at a small amount, means under Ohio law that the trust is revocable.

Going even further than this, however, the trust agreement states that Appellee "shall have the right, upon approval of the trust committee for the corporate Trustee, to withdraw amounts in excess of two percent (2%) of the trust principal in any calendar year." (Docket Entry 2, Ex. A, Article 3, Section 1). This includes, but is not limited to, withdrawing one-hundred percent (100%) of the trust's principal. *Id.* This means that Appellee could revoke the trust in its entirety through mechanisms specifically laid out in the trust agreement itself. To do so, Appellee must simply present the Trustee with a request to withdraw one-hundred percent (100%) of the trust principal and be granted approval for such a withdrawal by the trust committee for the corporate board of the Trustee, Fifth Third Bank. Ohio courts have long decided that if a settlor has the right to withdraw the corpus of the trust, then a trust is not irrevocable. *Grieves v. Natl. City Bank*, 9th Dist. Summit No. 11672, 1984 WL 3969, *2. Appellee Cart Webb has a right to withdraw all of the assets in his trust with the approval of the trust committee for the corporate board of Trustee Fifth Third Bank, which is the power to revoke his trust. As Appellee can revoke his trust through this mechanism, his trust is by no means irrevocable. R.C. 5801.01(R).

Further, a "settlor, by a term of the trust instrument, may reserve to himself, or grant to another the power to modify or alter the trust." *Rex v. Rex*, 5th Dist. Stark No. 2016 CA 00088, 2016-Ohio-5788, ¶ 38, citing *Huntington Trust Co. v. Kear*, 4th Dist. Ross No. 1643, 1991 Ohio App. LEXIS 1791, 1991 WL 62185, citing Bogert, Trusts & Trustees (2d.Ed. Rev. 1983) 230, Sec. 993. The G. Carlton Webb Trust also contains a procedure which allows the trust to be amended or revoked by a court of competent jurisdiction. Article 9, Section 3 of the G. Carlton Webb Trust named a Trust Advisor to the G. Carlton Webb Trust. (Docket Entry 2, Ex. A, Article 9, Section

3). On May 10, 2021, the Trust Advisor resigned his position as Trust Advisor to the G. Carlton Webb Trust in a letter. (Docket Entry 2, Ex. B). The Trust Advisor did not exercise his power to appoint a successor Trust Advisor, and therefore, the powers granted to the Trust Advisor immediately vested in the Trustee, Fifth Third Bank. (Docket Entry 2, Ex. A, Article 9, Section 3). Pursuant to Article 2, Section 2 of the G. Carlton Webb Trust, Appellee may no longer amend or revoke the G. Carlton Webb Trust without the consent of the Trust Advisor at any time he is married (Docket Entry 2, Ex. A). As noted above, Appellee is married to Lena M. Webb, who resides with Appellee in their marital home. Pursuant to Article 2, Section 2 of the G. Carlton Webb Trust, if, at any time the G. Carlton Webb Trust can no longer be amended or revoked by Glen Carlton Webb (Grantor) without the consent of the Trust Advisor, there is no Trust Advisor then-serving, and/or if the rights, powers, and discretions of the Trust Advisor have vested in the Trustee, the Trust may be modified by a court of competent jurisdiction. (Docket Entry 2, Ex. A, Article 2, Section 2). Appellee filed the Petition to use this process, the right to which he specifically reserved in the trust agreement, to make changes to the G. Carlton Webb Trust, the powers of the Trust Advisor have vested in the Trustee Fifth Third Bank, and the Allen County Common Pleas Court, Probate Division is a court of competent jurisdiction.

Prior to the probate court hearing the merits of the petition for modification in this matter, Appellants sought to intervene in the matter and then, a day later, requested that the probate court unseal the record. (Docket Entries 12,13). At a December 13, 2021 hearing, the probate court, on the record, refused to unseal the record and Ordered the parties to instead brief the issue of intervention. (December 13, 2021, Hearing Transcript pg. 27-28). The probate court's ruling was further memorialized in an entry dated December 14, 2021. (Docket Entry 17).

Following the probate court's ruling denying Appellants motion to unseal the record, and with a full understanding of the looming briefing schedule, Appellants failed to seek a writ of mandamus pursuant to Sup. R. 47(B) to unseal the record. The issue of intervention was briefed, including a brief of Appellants, which stated that they were prejudiced by not having the sealed documents, and objected to not having the documents, without renewing their motion. (Docket Entry 19, Pg. 8).

Below, the probate court properly found that it had jurisdiction, pursuant to R.C. 2101.24(B)(1)(b) and R.C. 5802.01(A). (Docket Entry 21, pg. 2). The probate court also found that Appellee was seeking to make changes to the G. Carlton Webb Trust pursuant to the provisions allowing him to do so in the trust and must only substantially comply with the terms or methods pursuant to R.C. 5806.02(C). (Docket Entry 21, pg. 4). The probate court further found that the G. Carlton Webb Trust is revocable (Docket Entry 21, pg. 4-5); that Appellants are unvested contingent beneficiaries of a revocable trust (Docket Entry 21, pg. 5); and that Appellants are subject to defeasance prior to their interest vesting (Docket Entry 21, pg. 5). As such, the probate court found that Appellants would be unable to maintain a cause of action based upon events that would happen prior to their interest vesting, as they would have no injury or damage. (Docket Entry 21, pg. 5). Thus, the probate court properly found that Appellants lack standing to intervene. (Docket Entry 21, pg. 5).

Further, the probate court found that Appellants claimed their standing through R.C. 5804.10, but the probate court noted that R.C. 5804.10(B) only afforded a beneficiary the ability to approve or disprove of a modification or termination action pursuant to R.C. 5804.11-5804.17, and the probate court found that none of the modification sections, R.C. 5804.11-5804.17, applied to this matter. (Docket Entry 21, pg. 6-7). This is because, this action is not premised upon R.C.

5804.11-5804.17. Nor does this action encompass the types of trust modifications found within those sections.

The probate court further found that Appellants failed to comply with Civ. R. 24(C), which requires that motions to intervene be accompanied with a pleading as defined in Civ. R. 7(A). (Docket Entry 21, pg. 7). As Appellants failed to follow the procedural requirements of intervention, their motion was further denied. (Docket Entry 21, pg. 7). Appellee maintains that the probate court properly decided the issue and that Appellants lack standing to intervene.

Appellants then filed an appeal with the Third District Court of Appeals, in which they raised three assignments of error:

I. The Trial Court erred when it refused to permit Appellants to see Appellee's Petition, sealed the record, and denied Appellants a meaningful opportunity to be heard violating their rights under the Fourteenth Amendment of the U.S. Constitution and Section 16, Article 1 of the Ohio Constitution.

II. The Trial Court abused its discretion in denying Appellants' motion to intervene when it determined Appellants' (sic) lacked standing and acted unreasonably, arbitrarily, and unconscionably when it determined Appellants' motion to intervene was defective for failing to file a responsive pleading when the trial court had ordered the pleadings sealed and refused to provide Appellants a copy.

III. The Trial Court erred when it granted Appellee's motion to seal the record pursuant to Ohio Rule of Superintendence 45(E).

Following a briefing of both parties and oral argument, the Third District Court of Appeals issued a well-reasoned and unanimous summary judgment entry in which the Court held that "Appellants have no vested property interest in the action as unvested, contingent beneficiaries to a revocable Trust that remain subject to defeasement and therefore lack standing to intervene in this action." (January 9, 2023 Summary Judgment Entry, pg. 8). As Appellants lacked standing and the issue of standing was dispositive to the appeal, the appellate court declined to address Appellants' first and third assignments of error pursuant to App. R. 12(A)(1)(c). (*Id.*, at 9-10). When Appellants moved

for reconsideration, the Court once again stated that appellants "were not able to carry their burden as to 'standing' to intervene into their father's trust estate" and "that "Appellants have not been denied the 'opportunity to be heard at a meaningful time and meaningful manner.'" (January 30, 2023 Judgment Entry, pg. 1, 2).

II. ARGUMENT

a. **APPELLEE'S POSITION IN RESPONSE TO APPELLANTS' FIRST PROPOSITION OF LAW:** A COURT DOES NOT VIOLATE A NON-PARTY'S DUE PROCESS RIGHTS WHEN THE NON-PARTY SEEKS INTERVENTION, FAILS TO FOLLOW CIV. R 24(C) AND 7(A), FAILS TO SEEK A WRIT OF MANDAMUS PURSUANT TO SUPP.R.47(B) FOLLOWING THE COURT'S EXERCISE OF ITS DISCRETIONARY POWER TO SEAL THE RECORD, AND THE COURT DENIES INTERVENTION BECAUSE THE NON-PARTIES HAVE NO STANDING OR LEGALLY RECOGNIZABLE PROPERTY INTEREST IN THE MATTER**.**

In their first proposition of law, Appellants claim that their constitutional due process rights have been violated and that they were not heard in a meaningful way by the probate court because they did not have access to a few of the documents on the record that were sealed. To sustain Appellants' assignment of error, this Court would have to hold that a probate court violates the procedural due process rights of a non-party seeking intervention when the non-party fails to follow the mandates of the civil rules regarding intervention pursuant to Civ. R. 24(C) and 7(A), fails to pursue their procedural remedy of a writ of mandamus pursuant to Sup.R. 47(B) following the court's exercise their discretionary right to seal the record, and are denied intervention because they have no legally recognizable property interest in the matter to begin with. The logical leaps required of this Court to make such a holding is likely why Appellants told the court of appeals that "[t]his is a case of first impression in the State of Ohio." (Third District Brief of Appellants, at 1.).

While Appellants' first proposition of law expressly states that the rights of "A Party" were violated, Appellants are not a party, as they sought and were denied intervention. Appellants

sought intervention in this matter on December 8, 2021 (Docket Entry 12). Notably, they did so prior to even seeking a copy of the pleadings on December 9, 2021 (Docket Entry 13). The Court was scheduled to hold a hearing on the Petition on December 13, 2021 (Docket Entry 6). Instead, the probate court allowed the parties and the Appellants the opportunity for oral argument related to the pending motions to intervene and motion for a copy of the pleadings. (December 13, 2021, Hearing Transcript pg. 2-28). The Court advised the parties and the Appellants of their intention to order additional briefing. (*Id.* at 26-28). Appellants made an oral motion for the pleadings prior to the briefing which the probate court denied on the record. (*Id.* at 27-28). The Court then allowed the parties to file additional briefing on the issue of the proposed intervention of Appellants.

Following an adverse ruling, Appellants sought review by the Third District Court of Appeals, who unanimously upheld the decision of the trial court. Appellants have cited to the entire record in their memorandum in support, including the documents that were sealed, and noted at oral argument that they now have a copy of the entire record. This is likely due to error in the transmission of the record to the court of appeals. Armed with the full record that they believe hindered their initial briefing with the probate court, Appellants have failed to point to anything within the sealed documents that would change the analysis of the probate court or aid their argument for intervention. Instead, they ask this Court to find that their due process rights were violated, despite the fact that they failed to follow the rules that protect those rights, so that they may return to the probate court and still fail to meet their burden to show that have standing in the matter. As Appellants already have the documents, and there is no new analysis related to their standing as a result, a ruling in their favor would effectively be moot as Appellants still lack standing.

From a practical standpoint, if this Court were to hold that a non-party was entitled to the record before showing they have standing, any individual could easily gain access to any sealed record and there would be no need for Sup. R. 44 through Sup. R. 47. This is because rather than getting the record unsealed pursuant to the rules, all an individual would have to do to get the sealed record would be to file a motion to intervene. This would circumvent the protections of Sup. R. 44 through Sup. R. 47 and would be a dangerous interpretation of the law.

Further, this issue is not ripe for review. The court of appeals found that "Appellants have no vested property interest in the action as unvested, contingent beneficiaries to a revocable Trust that remain subject to defeasement and therefore lack standing to intervene in this action." (January 9, 2023 Summary Judgment Entry, pg. 8). As Appellants lacked standing and the issue of standing was dispositive to the appeal, the appellate court declined to address Appellants' first and third assignments of error pursuant to App. R. 12(A)(1)(c). (*Id.*, at 9-10). When Appellants moved for reconsideration, the Court once again stated that Appellants "were not able to carry their burden as to 'standing' to intervene into their father's trust estate" and "that Appellants have not been denied the 'opportunity to be heard at a meaningful time and meaningful manner.'" (January 30, 2023 Judgment Entry, pg. 1, 2). Therefore, the Court should decline jurisdiction over Appellant's first proposition of law because Appellants due process argument that was considered moot by the Third District is not ripe for review, they are not a party to the matter, and their due process rights were not violated.

b. <u>APPELLEE'S POSITION IN RESPONSE TO APPELLANTS' SECOND PROPOSITION OF LAW:</u> A NON-PARTY CANNOT CONTEST THE JURISDICTION OF A COURT, AND EVEN IF THEY COULD, R.C. 5804.10-R.C. 5804.16 HAS NOT WHOLLY DISPLACED THE ABILITY OF SETTLORS TO RESERVE OR GRANT POWERS OF MODIFICATION THROUGH THEIR REVOCABLE TRUST AGREEMENT.

In their second proposition of law, Appellants effectively argue that trusts may only be modified pursuant to R.C. 5804.10-R.C. 5804.16 and that a trust may not be modified pursuant to a provision contained within the trust agreement.

i. A NON-PARTY CANNOT CONTEST THE STANDING OF A PARTY, NOR CAN THEY CONTEST THE JURISDICTION OF THE COURT.

Appellants are not a party to this matter at this time. Their argument, that Appellee has no right to bring this Petition pursuant to the contractual provision in the trust agreement is effectively seeking to challenge Appellee's standing to bring this matter and the Allen County Probate Court's jurisdiction to hear the matter. Yet, they cite no authority that would grant a non-party to a case a right to challenge the standing of another party to bring a claim. Nonetheless, Appellee does indeed have standing to bring this Petition pursuant to his trust agreement, and the Allen County Probate Court has authority to hear this matter.

Ohio probate courts have wide ranging and specific jurisdiction over trust actions. R.C. 2101.24(B)(1)(b) grants the probate court, "concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine… [a]ny action that involves an inter vivos trust; a trust created pursuant to section 5815.28 of the Revised Code; [and/or] a charitable trust or foundation." Further, the Allen County Probate Court has clear and unambiguous authority to, "intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person." R.C. 5802.01(A).

ii. A REVOCABLE TRUST AGREEMENT MAY RESERVE OR GRANT THE POWER OF MODIFICATION, AS R.C. 5804.10-R.C. 5804.16 EXPANDED THE POWERS OF A COURT TO MODIFY A TRUST, IT DID NOT DISPLACE THEM.

Appellants' belief that modifications to the G. Carlton Webb Trust can only be made in accordance with R.C. 5804.10- R.C. 5804.16 is not correct for multiple reasons. While this Petition

is not brought pursuant to R.C. 5804.10(B), and the G. Carlton Webb Trust is revocable, they claim that the probate court should construe the Petition as being brought pursuant to R.C. 5804.10(B) anyway, because they claim that the only modifications that can be made to trusts are those found within R.C. 5804.10-R.C. 5804.16.

However, Appellee has maintained a separate right to modification pursuant to the explicit terms of the trust agreement. As Appellants noted to the trial court, trust agreements are to be treated like contracts when interpreted by courts. (Docket Entry 19, pg. 11). Thus, there is a separate right pursuant to the trust agreement itself that is independent and does not conflict with R.C. 5804.10- R.C. 5804.16. Trust agreements have long granted courts rights outside of those granted pursuant to statute. By way of example, it is common for trusts to include a provision granting a court of competent jurisdiction the ability to appoint a trustee if there is not one then serving, the trust agreement has not selected an alternative beneficiary, or the prior trustee failed to appoint a successor trustee. Such rights to grant authority to a court of competent jurisdiction have certainly not been wholly displaced pursuant to R.C. 5801.04(B)(4), which states:

> (B) The terms of a trust prevail over any provision of Chapters 5801. to 5811. of the Revised Code except the following:
> …
> (4) The power of the court to modify or terminate a trust under sections 5804.10 to 5804.16 of the Revised Code.

R.C. 5801.04(B)(4) only applies to the new substantive rights for modification created by R.C. 5804.11-R.C. 5804.16. These are in addition to, not to the exclusion of, other rights of modification and termination. If the G. Carlton Webb Trust was irrevocable and stated that it may not be modified at all by a court, then certainly it could still be modified pursuant to statute, as R.C. 5801.04(B)(4) notes that the terms of a R.C. 5804.11 action for modification of an irrevocable trust would prevail over the terms in a trust limiting the probate court's authority to make such a change.

But R.C. 5804.11 does not in any way exclude other types of modifications pursuant to the terms of a revocable trust agreement.

Appellants argue the terms allowing for modification in a trust agreement are wholly superseded by newly created statutory privileges to modify certain trusts found in R.C. 5804.10-R.C. 5804.16, to the exclusion of any other types of modifications. If Appellants' rigid and absolutist interpretation were to prevail, then that would mean that R.C. 5804.10-R.C. 5804.16 would be the only mechanism for which a trust could be modified in Ohio. However, as R.C. 5801.05 notes, "[t]he common law of trusts and principles of equity continue to apply in this state, except to the extent modified by Chapters 5801. to 5811. or another section of the Revised Code." Thus, as the common-law principles still apply, the revised code provisions did not displace the common law, it created new privileges. R.C. 5801.05 also stands for the proposition that if the procedure for a trust modification pursuant to common law directly conflicts with a provision in the Ohio Trust Code, then the trust code would apply. But the provisions for modification found within R.C. 5804.10-R.C. 5804.16 do not conflict with Appellee's common law and contractual right to Petition the probate court that is found in his revocable trust. This is because none of the provisions for modification found within R.C. 5804.11-R.C. 5804.16 deal with the settlor of a revocable trust seeking to make the type of modifications that Appellee seeks. Indeed, pursuant to R.C. 5804.10, the only action for modification found within R.C. 5804.11-R.C. 5804.16 that a settlor, such as Appellee, may commence is one pursuant to R.C. 5804.11, which expressly states that it only applies to irrevocable trusts. Again, the G. Carlton Webb Trust is revocable. This means that Appellee's contractual right (pursuant to his trust agreement) to seek modification of his revocable trust does not conflict with the statutory right to seek modification that grantors of

irrevocable trusts possess pursuant to R.C. 5804.11. Thus, it is clear that Appellee has a separate right and is exercising that right.

Therefore, the Court should decline jurisdiction over Appellant's second proposition of law because R.C. 5804.10-R.C. 5804.16 is not the exclusive mechanism for which to modify a trust under Ohio law, and Appellants have no right to challenge the standing of Appellee to bring a modification action pursuant to the terms of his trust agreement. Further, the Allen County Probate Court clearly has jurisdiction to hear this matter. Therefore, Appellants have no standing to challenge the authority of the Allen County Probate Court, their challenge lack merit, and the Allen County Probate Court may nonetheless hear this matter without them as they lack standing.

III. CONCLUSION

For the reasons contained herein, the Court should decline jurisdiction over Appellants' appeal. Appellants' propositions of law do not constitute issues of public or great general interest, none of the propositions of law were ruled upon by the court of appeals, the first proposition of law would not encompass Appellants as non-parties seeking intervention, Appellee G. Carlton Webb has standing to bring his Petition pursuant to rights he reserved in the trust agreement, and the Probate Court has Jurisdiction over the matter. Therefore, this matter should be dismissed.

Respectfully Submitted,
FABER & ASSOCIATES, LLC

/s/ John R. Willamowski, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of forgoing has been served upon:

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By placing same in the United States Mail on the 24th day of March, 2023.

/s/ John R. Willamowski, Jr.
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