[Cite as *Love v. Love*, 2021-Ohio-558.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
JACKSON COUNTY

WILLIAM LOVE, III, EXECUTOR OF THE ESTATE OF WILLIAM E. LOVE, JR.,	:	
Plaintiff-Appellee,	:	Case No. 20CA4
vs.	:	
ROBERT LOVE,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Jeffrey A. Eyerman, Columbus, Ohio, for Appellant.

Jessica L. Olsheski, Columbus, Ohio, for Appellee.

CIVIL CASE FROM COMMON PLEAS COURT, GENERAL DIVISION
DATE JOURNALIZED: 2-22-21
ABELE, J.

{¶ 1} This is an appeal from a Jackson County Common Pleas Court judgment that awarded money damages to William Love, III, Executor of the Estate of William E. Love, Jr., plaintiff below and appellee herein. Robert Love, defendant below and appellant herein, assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT MISCHARACTERIZED THE CRUX OF APPELLEE'S CLAIM FOR RECOVERY OF THE ESTATE'S REAL AND INTANGIBLE PERSONAL PROPERTY AS CIVIL

> CLAIMS FOR 'MONEY DAMAGES,' AND THE TRIAL COURT'S EXERCISE OF SUBJECT MATTER JURISDICTION OVER QUESTIONS TOUCHING ON THE NATURE AND EXTENT OF A DECEDENT'S ESTATE WAS PREJUDICIAL ERROR."
> SECOND ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT ERRED IN ROBERT LOVE'S PREJUDICE IN DENYING MOTIONS FOR SUMMARY JUDGMENT AND DIRECTED VERDICT WHERE THE PLAINTIFF HAD NO EVIDENCE OF HIS FATHER'S CONDITION ON THE DAY OF THE TRANSFERS, AND NO EVIDENCE OF ANY MEDICAL DIAGNOSIS."

{¶ 2} On May 3, 2018, appellee filed a complaint in the common pleas court general division that sought monetary and injunctive relief for appellant's alleged fraudulent transfer of real estate and bank account funds from the parties' father, William E. Love, Jr., to the appellant.

{¶ 3} The complaint alleged that William E. Love, Jr., the decedent, died in 2017 at age 88, after he began to exhibit signs of dementia in 2014. On November 6, 2015, doctors at the Veteran's Affairs Hospital (VA) in Chillicothe, Ohio examined the decedent and diagnosed cognitive impairment. Doctors noted that the decedent, approximately two years prior to his death, could not identify the year, month, day, date, town, county, hospital or clinic, and could not write a sentence or copy a clock. The complaint alleged that (1) four days after the VA visit, appellant influenced the decedent to include appellant as a joint owner of the decedent's savings account, and (2) two days later, influenced the decedent to transfer to appellant six tracts of real property. The complaint further alleged that appellant transferred and withdrew large sums of money, and, shortly after decedent's passing, told appellee, "I've got all the money and there's nothing you can do about it." The complaint included claims for fraud, conversion, unjust enrichment, theft, and sought to (1) preliminarily and permanently enjoin appellant from

disposing of the real estate, (2) enjoin appellant from transferring funds from any bank accounts, in which appellant transferred monies that rightfully belonged to the decedent and to the estate, and (3) award such legal or equitable relief that the court may deem appropriate.

{¶ 4} On May 3, 2018, appellee filed a motion for a temporary restraining order and a preliminary injunction. Appellant subsequently filed a motion to dismiss. The trial court denied appellant's motion to dismiss, found that all of appellee's claims seek money damages, but held that appellee must file in the probate division any declaratory judgment action that seeks to return the real estate to the estate. Appellant then filed a summary judgment motion that the court denied.

{¶ 5} At the jury trial, appellee called appellant to testify as on cross-examination. The evidence revealed, inter alia, that appellant lived in a home that he and the decedent purchased in 2004, while the decedent lived in a separate nearby home. However, in January 2015 a gas stove exploded and rendered the decedent's home uninhabitable. After the fire, the decedent moved into a house trailer approximately 1500 feet from appellant's driveway. Appellant visited the decedent every other day and, during this time, the decedent owned a cell phone and drove his vehicle.

{¶ 6} Appellant also testified that, although he drove the decedent to the VA hospital on November 5, 2015, he had no concerns about the decedent's well-being. Appellant acknowledged that the VA progress reports state that "Veteran has the odor of urine greatly,[1]"

[1] The exam notes, Exhibit B, state:

> Veteran presents today for his annual exam. Veteran denies any current complaints but his daughter is very worried about him because he lives alone at 86yo and she heard about some recent changes in his health yesterday. His daughter lives in Ashland, KY and visits him once a week on the weekends and was frightened yesterday because she heard over the phone that her father was

but believed that decedent's incontinence resulted from his diabetes. Appellant further acknowledged that the VA exam notes state that the decedent could not identify the year, month, day, date, town, county, hospital, or clinic, and could not write a sentence or copy a clock. Also, in spite of the VA medical records that indicate that the decedent's daughter told the VA that appellant had told her about the decedent's health decline, appellant denied that he conveyed that information to his sister. Appellant did acknowledge, however, that despite the discussion at the

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> having urinary incontinence without him knowing or paying any attention to it. Veteran states he is able to urinate and have a bowel movement by himself and has noticed some dribbling of urine without his control throughout the day. The veteran's son states that he has been having urinary incontinence for a while now and needs some Depends in order to stay clean. Veteran states he is able to dress himself, take a bath by himself, feed himself, and uses the bathroom by himself. Veteran states he lives alone and his son lives right down the drive-way from him and checks on him throughout the day in order to make sure he is okay. The veteran's son takes decedent his food everyday and makes sure he has water and everything else he needs for each day. The daughter and son has noticed that the patient's memory has declined over the year and he gets confused sometimes. Veteran's daughter states her father is diagnosis [sic] with diabetes and HTN but her father refuses to take any medications and the veteran agrees. The veteran son's further states by the end of the year, he plans to move decedent into his house with him so he can keep an even closer eye on him and would not need to get home health aid to help with his father's care.

The progress notes under Neuro further state:

> pt was unable to identify the year, month, day, date; unable to identify the town, county, hospital, or clinic; and unable to write a sentence or copy the clock; no focal neuro signs, no nystagmus, no dysmetry.

The medical decision making (assessment and plan) portion of progress notes states:

> Plan:
> 1) Prescribe depends for urinary incontinence
> 2) [partially redacted] Veteran and family declined home health aid care in the household and prefer to have their father move into the home with his son, Bob. Veteran denies any medication use therefore Donepezil use for memory maintenance was denied.
> 3) Prescribe a walker for unstable gait
> 4) Hearing consult for age-related hearing loss; Podiatry consult for food exam
> 5) Order CBC, CMP, TSH, HBA1c to monitor the veterans thyroid, liver, kidney function, and diabetes
> 5) [sic] Follow-up in 6 months.

VA about the decedent living with appellee in lieu of receiving home health services, appellant did not move the decedent into appellant's home because "he didn't need it." Although appellant also acknowledged that his sister was in the room at the VA with him and the decedent, he, instead, stated that "[s]he was there by herself. She wasn't there with me."

{¶ 7} Turning to the decedent's financial affairs, appellant acknowledged that four days after the decedent's VA appointment, appellant drove the decedent to the Ohio Valley Bank to sign documents to include appellant as a joint account holder with survivorship on decedent's savings account. The following day, appellant drove the decedent to an attorney's office to transfer to appellant six tracts of land, totaling 42 acres valued at $209,570.

{¶ 8} Appellant, as a joint savings account holder, denied that he received copies of bank records and maintained that he did not view the records until appellee filed this action. Appellant did acknowledge, however, that: (1) Exhibit G1, a joint savings account, had a January 5, 2016 balance of $127,727.16, and indicates that appellant withdrew $6,851.50 from the account on February 8, 2016: (2) Exhibit H shows that appellant withdrew $3,700 on August 10, 2016, (3) Exhibit J shows that appellant withdrew $6,070.88 on January 18, 2017, (4) Exhibit K shows that appellant withdrew $4,662.42 on February 28, 2017, (5) Exhibit L shows that someone named "William" made a $300 phone transfer on the day of the decedent's death, March 23, 2017, and shows a March 23 withdrawal of $2,260, a March 24 withdrawal of $8,586, and a March 28 withdrawal of $500, and (6) Exhibit P shows the transfer of six parcels of land with a total value of $209,570 in 2015. When asked if he told appellee after their father's passing that appellant had all of decedent's money and that appellee "could do nothing about it," appellant denied that he made that statement. However, appellant did, in fact, admit that he

made that statement in a Request for Admission.

{¶ 9} Sandra Love, the oldest of the decedent's three children, lives in Ashland, Kentucky, a one hour drive from her father's residence. After her father's home burned, he stayed with Sandra for a few days. During that time Sandra noticed that her father had great difficulty using a phone and that he appeared to be confused. Also, the decedent suffered a head injury during the fire, and Sandra believed that his injury may have caused his impairment. After the decedent returned to his property, he lived in a house trailer. Sandra and her daughter visited every couple of weeks to clean, to do laundry, and to grocery shop. Sandra described the decedent's living conditions at the house trailer as "terrible" with "dog mess everywhere." After the fire, Sandra testified, the decedent's "confusion got worse, * * * he wasn't remembering things. He would repeat * * * stories from his past like being in the Navy and being young and him and my uncle Jack and * * * and things like that * * * he was just real confused. It was hard to keep his mind on the present." Sandra stated that "it got to where he didn't know who I was * * * in 2016." "[H]e would ask me who I was and I'd tell him I'm Sandy and he wanted to know well who's Sandy? I'd tell him I'm your daughter and then two (2) or three (3) minutes later he'd ask me again." Sandra also stated that "[h]e was urinating on himself and didn't realize it," and that she had observed him in public this way.

{¶ 10} At first, Sandra thought that a urinary tract infection may have caused the decedent's confusion, so she scheduled a VA hospital appointment. When Sandra and her daughter arrived to take the decedent to his appointment, appellant "came and raised a little bit of cane [sic] and he wanted to drive daddy so daddy drove with him."

{¶ 11} Sandra also served as the decedent's healthcare power of attorney, and testified

that she observed her father perform poorly on a neurological exam. In fact, he did not even recognize the doctor. Sandra hoped that her father could receive VA home health care services, but, instead, appellant promised to move their father into his home. Appellant, however, did not do so. Sandra's next visit, a week or so after the VA visit, revealed her father's house trailer still a mess and getting worse.

{¶ 12} Appellee William Love, III, the decedent's second child, lived in Greenup County, Kentucky, an hour from the decedent's home. Starting in 2006 or 2007, appellee visited the decedent every two weeks to mow grass. Appellee specifically recalled a 2015 visit when he drove his new truck, and the "[decedent] asked three (3) times in fifteen (15) minutes who's truck that was." In 2016, appellee had less frequent contact with decedent because appellee had prostate cancer and he helped to care for his wife's elderly parents.

{¶ 13} Appellee stated that, prior to the decedent's death, he had no involvement in the decedent's financial affairs. Appellee first learned that he had been named as the Executor of his father's estate on March 29, 2017, when he viewed the will. Appellee also asserted that the money appellant withdrew from the decedent's savings account, and the value of the property transferred to the appellant, should have been included in the decedent's estate because the will provided for a division of assets among the decedent's three children.

{¶ 14} Appellee's wife, Jane Love, testified that she and her husband often visited the decedent, and that she visited every two weeks to take food and to wash laundry. Jane stated that the house fire caused a traumatic disruption in the decedent's life. "[H]e was incontinent * * * before the fire, but * * * I noticed that he seemed more unkept * * * more scraggly * * * unshaved." Jane recalled that when her husband purchased a new truck in April 2015, the

decedent asked appellee five or six times, "Is that your truck?" Shortly after that, the decedent would say, "Now, who's truck is that?" She also testified that she did not think the decedent "was really sure who Bill was * * * at first." At Thanksgiving in 2015, Jane also observed the decedent when Christy, Sandra's daughter, stopped at Jane's home. Jane explained to the decedent "several times" that appellee was at work, and that she recalled telling appellee when he came home, "you know, I'm not really sure if your dad knew who I was" because he asked "how many children she had."

{¶ 15} At the close of appellee's case, appellant requested a directed verdict. Appellant argued that, although appellee's case is based upon the decedent's condition on the day of the transfers (November 10 and November 12), appellee produced no witnesses who observed the decedent on those particular days. The trial court overruled appellant's motion.

{¶ 16} Appellant testified that since 2005, he lived on the same property as the decedent and that he observed him every day. When appellant returned to Ohio from Georgia, the decedent purchased another farm (the Monroe Hickory farm) behind appellant's farm (the decedent purchased the Arch Campbell Road farm in 1970). Appellant stated that "in the years * * * before the fire * * * my brother [appellee] had been * * * pressuring my dad to give him the farm" at Arch Campbell Road, what appellant referred to as the family farm, but the decedent refused to do so. Appellant stated that afterwards, the decedent treated appellee "different" and he did not want appellee to mow his grass. Appellant also testified that he never had a close relationship with his brother or sister.

{¶ 17} Appellant further testified that, on the day of the house fire, the decedent first called him for assistance. After the fire the decedent lived with Sandra Love for ten days to two

weeks, but returned to Ohio because "he wanted to be around me." Appellant acknowledged the decedent's incontinence, but "attributed it to the diabetes." Appellant further stated that "considering he [his dad] was * * * eighty-six (86) years old, I thought he had a pretty good memory," and he characterized his brother's and sister's testimony as "a lie," and noted that the decedent "never failed to recognize me."

{¶ 18} Appellant also testified that the day Sandra arrived to take their father to the VA, the decedent told appellant that Sandra was "trying to make him go to the doctor and he didn't want to go." The decedent also told the VA that he "was not going to take any medication" they prescribe him. The decedent did, however, receive a walker, and the VA recommended a six month follow-up appointment.

{¶ 19} On November 10, 2015, appellant drove the decedent to the bank and waited in his car while the decedent included appellant's name as a joint owner on the decedent's savings account. On November 12, 2015, appellant drove the decedent to an attorney's office and the decedent signed a deed to transfer tracts of real property to appellant. Appellant explained that those two days in question were "good days," and if decedent had not been having a "good day," the bank would not have allowed the transaction.

{¶ 20} Appellant further stated that the decedent periodically transferred money from his checking account to the joint savings account because it was a non-interest bearing account, while the savings account was interest bearing. Appellant further testified that Exhibit J1, a January 18, 2017 $6,070.88 check, paid property taxes, and Exhibit H1, a $3,700 check, purchased the decedent's mobile home. Appellant explained that he also loaned $12,000 to the decedent to help him purchase a house when appellant returned to Ohio from Georgia, and that

they agreed that when appellant sold his Georgia house, the Ohio property "would become mine." Appellant also opined that, because the decedent loved him more than his brother and sister, the decedent wanted to "make sure I was protected."

{¶ 21} Appellant related that between 2016 and 2017, appellee visited his house eight times and "did not stop once to see his father." Appellant explained that once, "I remember specifically my dad stepped out in the driveway to flag my brother down and he drove right on by him." Appellant stated that his sister visited "twice a year."

{¶ 22} On rebuttal, appellee testified that he did not pressure his father to give him his farm, that his father did not tell him not to mow his grass, and that he did not observe his father attempt to flag him down. Sandra Love also testified in rebuttal that no falling out occurred with her father, and that he returned to Ohio because he wanted to return to his farm.

{¶ 23} At the conclusion of the trial, the jury (1) found, by a preponderance of the evidence, that appellant committed fraud, conversion, unjust enrichment, and civil theft; and (2) returned a $419,310 verdict in the appellee's favor. Compensatory damages included $184,299 in cash assets, $209,580 in real estate, $5,000 for liquidated damages, $20,000 for attorneys' fees, and $440 court costs. This appeal followed.

I.

{¶ 24} In his first assignment of error, appellant asserts that the trial court mischaracterized appellee's claims for the recovery of the estate's real and intangible personal property as civil claims for "money damages." Consequently, the general division of the common pleas court improperly exercised subject matter jurisdiction over questions that touch on the nature and extent of a decedent's estate and should instead be heard in the probate division.

A. Standard of Review

{¶ 25} " ' "The existence of the trial court's subject-matter jurisdiction is a question of law that we review de novo." ' " *Martindale v. Martindale,* 4th Dist. Athens No. 14CA30, 2016-Ohio-524, ¶ 27, quoting *Barber v. Williamson,* 4th Dist. Ross No. 11CA3265, 2012-Ohio-4925, ¶ 12, quoting *Yazdani-Isfehani v. Yazdani-Isfehani*, 170 Ohio App.3d 1, 2006-Ohio-7105, 865 N.E.2d 924, ¶ 20 (4th Dist.); *W.E. v. C.E.*, 4th Dist. Scioto No. 19CA3884, 2019-Ohio-4818.

B. Analysis

{¶ 26} It is well-settled that because a probate court is a court of limited jurisdiction, probate court proceedings are restricted to actions permitted by statute and by the Constitution. *Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988), citing *Schucker v. Metcalf,* 22 Ohio St.3d 33, 488 N.E.2d 210 (1986). Here R.C. 2101.24(C), the pertinent statute, provides: "The 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." The Supreme Court of Ohio has held that, pursuant to R.C. 2101.24, "generally speaking, the probate division has no jurisdiction over claims for money damages arising from allegations of fraud." *Schucker* at 35, citing *Alexander v. Compton*, 57 Ohio App.2d 89, 385 N.E.2d 638 (3d Dist.1978). In *Schucker*, the plaintiff filed suit in the general division and alleged that certain fraudulent inter vivos transfers violated various trustee duties. The Supreme Court of Ohio held that, under R.C. 2101.24, a probate division's jurisdiction over trustees is limited to testamentary trustees, and the probate division had no control over inter vivos trust trustees. *Schucker* at 35.

{¶ 27} In *Dumas v. Estate of Dumas,* 68 Ohio St.3d 405, 627 N.E.2d 978 (1994), a question of jurisdiction arose when a widow sued her husband's estate and alleged that her husband's transfer of assets to an inter vivos trust constituted a fraudulent transfer, intended to deprive her of her elective share of his probate estate. The Supreme Court of Ohio concluded that the general division had subject matter jurisdiction and cited *Schucker* for the proposition that the probate division has no jurisdiction over claims for money damages that arise from allegations of fraud. The court further noted that the widow-plaintiff did not contest the will's validity or the estate inventory, but instead alleged that the defendant fraudulently transferred assets to an inter vivos trust with the intent to deprive her of her legal rights. "Even though in her amended complaint she seeks an order to rescind the transfer of assets to the trust and return to her certain unspecified property, which order, if granted, may affect the administration of Mr. Dumas's probate estate, her primary aim is still the recovery of monetary damages for the alleged fraud. We therefore hold that the issues raised in the complaint were solely within the jurisdiction of the general division of the court of common pleas." *Dumas* at 408.

{¶ 28} Appellant cites *Grimes v. Grimes*, 173 Ohio App.3d 537, 2007-Ohio-5653, 879 N.E.2d 247 (4th Dist.) in support of his argument that subject matter jurisdiction in the case at bar belongs in the probate division, not the general division. In *Grimes,* the executor of a father's estate brought an action in the general division to challenge the validity of the father's inter vivos deed transfers to his son. After the trial court granted the son's motion for summary judgment, the executor filed a complaint in the probate court that raised the same claims. The probate court granted the son's motion for summary judgment on grounds of res judicata. This court, however, vacated that judgment and remanded the case because the plaintiff could not

pursue his claim for tortious interference with an expectancy of inheritance in the general division if relief was available through the probate court and, because the probate court did not reach a conclusion on the interference claim, the issue was not ripe for the general division. Thus, the trial court lacked jurisdiction to grant a motion for summary judgment until the probate court resolved the claim. In other words, this court determined that a probate court has exclusive jurisdiction over declaratory actions brought to determine questions that arise out of the administration of a decedent's estate. *Grimes* at ¶ 17. "'[T]he action related to the administration of the estate and is within the *exclusive* jurisdiction of the probate court.'" (Emphasis sic.) *Grimes* at ¶ 19, quoting *Mock v. Bowen*, 6th Dist. No. L-91-210, 1992 WL 163959, *3 (July 17, 1992).

{¶ 29} Appellant also relies on *Barber v. Williamson*, 4th Dist. Ross No. 11CA3265, 2012-Ohio-4925. In *Barber*, the plaintiffs filed suit on their mother's behalf against their brothers, to whom mother had given money. The plaintiffs alleged breach of fiduciary duty, conversion, undue influence, fraud and coercion and requested a declaratory judgment, an accounting, and money damages. After the court rendered a judgment on the breach of fiduciary duty claim, the sons appealed. This court, however, vacated the judgment and concluded that the probate court had exclusive jurisdiction over that claim. Appellant thus contends that *Grimes* and *Barber* hold that when the issue is whether a decedent's estate should include property that had been transferred inter vivos, that question falls within a probate court's exclusive jurisdiction.

{¶ 30} Appellant also cites *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 29, 647 N.E.2d 155 (1995). In *Lewis*, a legatee sued an executor for monetary damages after the executor sold

paintings that belonged to the legatee, then misallocated the tax benefit. The Court cited an Eighth District case and held, "[i]n essence, the *Goff* court held that (1) the probate court's plenary jurisdiction at law and in equity under R.C. 2101.24(C) authorizes any relief required to fully adjudicate the subject matter within the probate court's exclusive jurisdiction, and (2) claims for breach of fiduciary duty, which inexorably implicate control over the conduct of fiduciaries, are within that subject-matter jurisdiction by virtue of R.C. 2101.24(A)(1)(c) and (l)." *Lewis*, citing *Goff v. Ameritrust Co., N.A.*, 8th Dist. Cuyahoga No. 65196 & 66016, 1994 WL 173544 (May 5, 1994).

{¶ 31} In the case sub judice, the trial court fully and carefully considered the applicable authority and concluded that the *Grimes* line of cases should not control in this case. The court instead reasoned that, because appellee sought money damages and not declaratory relief, claims for money damages based upon fraud fall within a common pleas court's general division's jurisdiction. *Dumas.* Indeed, both *Grimes* and *Barber* involved declaratory judgments and the administration of an estate. Thus, the court held that, although a declaratory judgment action that seeks to return real estate to an estate must be filed in the probate division, the case at bar does not involve declaratory relief, but, instead, involves claims for money damages and such claims are within the jurisdiction of the common pleas court's general division. Consequently, because all claims sought money damages, the trial court overruled appellant's motion to dismiss.

{¶ 32} Moreover, in *Roll v. Edwards*, 156 Ohio App.3d 227, 2004-Ohio-767, 805 N.E.2d 162 (4th Dist.), a husband and son of the decedent contested her will and claimed intentional interference with expectancy of inheritance. This court held that the probate court had

jurisdiction to hear the will contest pursuant to R.C. 2101.24(A)(1)(p), but while the will contest and tort claim both required proof of undue influence, the tort claim required proof of elements not relevant or necessary to the probate court's resolution of the will contest. This court thus concluded that the probate court does not have plenary jurisdiction over the claim for intentional interference with expectancy of inheritance and the probate court acted properly to dismiss it. *See also, Prokos v. Hines*, 4th Dist. Athens Nos. 10CA51 and 10CA57, 2014-Ohio-1415, ¶ 44-45 (distinguishing *Grimes v. Grimes,* as concerning "three declaratory judgment actions, not tort actions, and did not contain a prayer for monetary relief" and concluding that *Dumas* and *Schucker* are still good law); *Widdig v. Watkins*, 4th Dist. Scioto No. 13CA3531, 2013-Ohio-3858, ¶ 36 (probate court had no jurisdiction over claims for money damages that arise from fraud that occurred during the decedent's lifetime). Once again, we believe that *Grimes* is inapplicable to the case at bar.

{¶ 33} In the case sub judice, we agree with the trial court's conclusion that, because the basis for the appellee's claims occurred during the decedent's lifetime and not after his death, the claims do not directly concern the administration of the decedent's estate. Although appellant asserts that the law has evolved to recognize a natural extension of the probate court's plenary powers, as appellee notes the Supreme Court of Ohio has not overruled *Schucker* and *Dumas*.

{¶ 34} Accordingly, based upon the foregoing reasons, we believe that the trial court properly exercised subject matter jurisdiction in the case sub judice and we overrule appellant's first assignment of error.[2]

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[2] We, however, readily acknowledge that this particular area of the law may certainly be characterized as less than crystal clear. For example, in *Estate of Dombroski v. Dombroski*, 7th Dist. Harrison No. 14HA3, 2014-Ohio-5827, ¶ 16, citing *The Probate Courts of Ohio*, 28 U.Tol. L.Rev. 563. (Spr. 1997), the court wrote:

II.

{¶ 35} In his second assignment of error, appellant asserts that the trial court's denial of his motions for summary judgment and directed verdict constitutes reversible error. In particular, appellant argues that appellee did not present evidence concerning the decedent's mental condition or capacity on the precise days of the monetary and real estate transfers, and did not present evidence of any medical diagnosis.

A. Standard of Review

{¶ 36} In reviewing a summary judgment, trial courts and appellate courts utilize the same standard; in other words, an appellate court reviews the judgment independently and without deference to the trial court's determination. *Marcum v. Zerkle,* 4th Dist. Gallia No. 05CA10, 2005-Ohio-6664, ¶ 6, citing *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996); *Doe v. Shaffer*, 90 Ohio St.3d 388, 390, 748 N.E.2d 1243 (2000). Thus, appellate courts apply the same criteria as the trial court, which is the standard contained in Civ.R. 56. *Marcum* at ¶ 6. Under Civ.R. 56(C), summary judgment is proper if: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to one conclusion when viewing the evidence in favor of the non-moving party, and that conclusion is adverse to the non-moving party. *Marcum, supra.*

> "It has been observed that Ohio's complex jurisdictional rules for probate courts create continuing problems in construing the relationship between Ohio's general and probate divisions and that courts have been unable to develop any useful test to determine when a dispute regarding the administration of an estate would confer exclusive jurisdiction over an action on the probate court."

{¶ 37} When a court considers a motion for a directed verdict, the court must construe the evidence most strongly in favor of the nonmoving party and determine whether "upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party." Civ.R. 50(A)(4). In deciding whether to grant a motion for directed verdict, a trial court must determine if sufficient credible evidence exists to permit reasonable minds to reach different conclusions on an issue. *O'Day v. Webb*, 29 Ohio St.2d 215, 280 N.E.2d 896 (1972), paragraph four of the syllabus. A motion for directed verdict tests the legal sufficiency of the evidence, rather than weight or witness credibility. *Ruta v. Breckenridge-Remy Co.*, 69 Ohio St.2d 66, 430 N.E.2d 935 (1982), paragraph one of the syllabus. Therefore, a motion for a directed verdict presents a question of law, and an appellate court must conduct a de novo review of a trial court's judgment. *Mender v. Chauncey*, 2015-Ohio-4105, 41 N.E.3d 1289, ¶ 10 (4th Dist.); *Howell v. Dayton Power & Light Co.*, 102 Ohio App.3d 6, 13, 656 N.E.2d 957 (4th Dist.1995).

B. Analysis

{¶ 38} Appellant asserts that, because appellee did not produce any medical diagnosis or expert witness testimony at trial, the lay witnesses who did testify gave, in essence, hearsay diagnoses that must be excluded.

{¶ 39} In the case sub judice, medical professionals did not testify. The trial court determined, however, that although appellee could not introduce medical opinions or diagnoses from the decedent's VA medical records, it permitted appellee to introduce witness observations of the decedent as appears in the medical records, including statements that the decedent did not know, inter alia, the date or time.

{¶ 40} In *Bush v. Burchett*, 4th Dist. Athens No. 94CA2237, 1995 WL 356527 (June 13, 1995), this court held that a trial court erred by allowing a physician to read portions of another physician's letter that expressed a medical opinion. *Id.* at *4. Also, in *Meek v. Cowman*, 4th Dist. Washington No. 07CA31, 2008-Ohio-1123, this court did hold that a decedent's capacity is determined as of the date the document in question is executed. In *Meek,* the beneficiaries under a prior will challenged the validity of a subsequent will that bequeathed them nothing, and argued that the testator, who had previously been declared incompetent in a guardianship proceeding, lacked testamentary capacity. *Id.* at ¶ 2-5. The trial court awarded summary judgment to the defendant and the other beneficiaries under the decedent's will. This court affirmed the judgment and held that the fact that the decedent had been judicially declared incompetent and under a guardianship raised only the presumption of incompetence, a presumption that the defendant, in fact, rebutted.

{¶ 41} Appellant argues that appellee did not produce sufficient evidence to show that, on the particular days in question, the decedent lacked the capacity to transfer property or include appellant as a joint owner of his bank accounts. Our review of the record, however, reveals that appellee presented ample competent, credible evidence at trial, if believed, concerning the decedent's mental condition, albeit without the benefit of expert medical testimony. Here, the jury heard all of the testimony, including the appellee and his sister, regarding their interaction with the decedent and the decedent's mental condition. The jury heard both appellant and his sister testify that they attended the VA Hospital appointment when medical professionals observed the decedent in a state of cognitive impairment, such that he was not oriented to time or place. Although lay witnesses could not offer expert opinions about the decedent's mental

condition, the witnesses could nevertheless recount and describe their observations, interactions, and personal opinions concerning the decedent's ability to function independently and to conduct his own affairs. The jury also heard testimony that appellant had the opportunity, and obvious motive, to compel the decedent to make significant financial decisions, and that appellant exerted his influence just days after appellant and others witnessed the decedent's hospital appointment and demonstration of his cognitive impairment. Moreover, appellant presented no evidence other than his own testimony. In fact, both parties could have presented potential witnesses who interacted with the decedent on the days of the asset transfers, witnesses who may have been able to recall particular details and events of that day. The record, however, is devoid of such evidence.

{¶ 42} Thus, in the case sub judice we believe that, after the trial court considered the evidentiary material, the court properly denied appellant's request for summary judgment. The evidence sufficiently demonstrated genuine issues of material fact as to appellant's culpability for the torts alleged in appellee's complaint. Therefore, we affirm the trial court's denial of appellant's summary judgment motion.

{¶ 43} Further, with respect to appellant's motion for directed verdict, we also agree with the trial court's conclusion that sufficient, credible evidence was adduced at trial to permit reasonable minds to reach different conclusions on the issues concerning the multi-count complaint that set forth the various tort claims against appellant.

{¶ 44} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Jackson County Common Pleas Court to carry these judgments into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.