

**COURT OF COMMON PLEAS  
PROBATE DIVISION  
HAMILTON COUNTY, OHIO**

MARILYN POYNTER	:	CASE NO. C-97538
	:	
Plaintiff	:	
	:	
-vs-	:	<u>OPINION &amp; ENTRY DENYING</u>
	:	<u>MOTION TO PROCEED ON</u>
	:	<u>ALL COUNTS OF COMPLAINT</u>
JEANNE BERTOIA, et al.,	:	<u>AND DISMISSING THOSE</u>
	:	<u>COUNTS FOR LACK OF</u>
Defendants	:	<u>SUBJECT MATTER</u>
	:	<u>JURISDICTION</u>
	:	
	:	
	:	

This matter came before Judge Wayne F. Wilke on February 25, 1999, regarding the Plaintiff's motions to amend her Complaint and to proceed on all counts of the Complaint in this court. Present were John J. Cruze on behalf of the Plaintiff and Ralph J. Conrad, on behalf of the Defendants. After oral arguments, the Court granted the motion to file an amended complaint by entry dated March 9, 1999. This opinion and entry pertains to the remaining issue before the Court.

The decedent, John D. Schwertman, died testate on May 13, 1997. He was survived by two adult children, to wit: Plaintiff Marilyn Poynter, and Defendant Jeanne A. Bertoia. The decedent's last will and testament was admitted to probate in this court on May 27, 1997.

On September 3, 1997, the Plaintiff filed a complaint styled "Complaint to Contest Will For Tortious Interference with Inheritance and/or Expectancy and Jury Trial

Demand". The first count of that complaint alleges that the document admitted to probate had not been properly witnessed and was invalid as a last will and testament. The second cause of action alleges Defendants Jeanne A. Bertoia and Douglas C. Bertoia tortiously interfered with Plaintiff's right to an expectancy. The plaintiff seeks damages of \$350,000.00 plus punitive damages. The third cause of action alleges the Defendants deprived the Plaintiff from receiving one-half of the decedent's estate by causing the decedent to transfer assets that would have been included in his estate to Defendant Jeanne A. Bertoia. Plaintiff seeks actual plus punitive damages for this count as well.

After holding a pretrial conference, a magistrate from this court indicated that this court lacked jurisdiction to adjudicate the tortious interference claim in Count Two and by inference, Count Three of Plaintiff's Complaint. Plaintiff, with the agreement of Defendants, asks this court to reconsider its position and to allow the parties to proceed with Counts Two and Three of the Complaint in this court. While the arguments in favor of adjudicating all of the Plaintiff's counts in this court are persuasive, current law simply denies this court subject matter jurisdiction to award monetary damages.

The Ohio General Assembly alone has the power to define the jurisdictional limits of the courts of common pleas. It is well settled that courts may exercise only such jurisdiction as is expressly granted to them by the legislature. *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.* (1981), 67 Ohio St.2d 19, 22. A probate court is a court of limited jurisdiction; it can exercise just such powers as are conferred on it by statute and the constitution of the state. *Dumas v. Dumas* (1994), 68 Ohio St. 3d 405, 408, quoting *Saxton v. Seiberling* (1891), 48 Ohio St. 554, 558-559.

Revised Code §2101.24 delineates the jurisdiction of Ohio's probate courts. Nothing in that section grants a probate court jurisdiction over claims of monetary damages. While R.C. §2101.24(A)(1)(p) grants authority to hear and determine actions to contest the validity of wills, there is no jurisdictional authority to assess damages as a consequence of such contest. The Supreme Court of Ohio has held on several occasions that a probate court has no jurisdiction over claims for money damages arising from allegations of fraud. See, e.g. *Shucker v. Metcalf* (1986), 22 Ohio St.3d 33, 35. In *Dumas*, supra, the court determined that the recovery of monetary damages for alleged fraud is a subject matter that lies solely within the jurisdiction of the general division of the court of common pleas. 68 Ohio St.3d at 408. It is especially noteworthy that *Dumas* was decided after the tort of intentional interference with an expectancy was recognized by the Ohio Supreme Court in *Firestone v. Galbreath* (1993), 67 Ohio St.3d. 87.

Since it rendered its decision of *Dumas v. Dumas*, the Ohio Supreme Court has declined the opportunity to provide further guidance for lower courts on this jurisdictional issue. In *State ex rel. Lewis v. Moser* (1995), 72 Ohio St.3d 25, the Court declined to unequivocally announce its decision and left the issue of monetary damages and probate court jurisdiction "for resolution by the appellate process". At most, the Supreme Court suggested in *Lewis* that it may need to reevaluate its past holdings that probate courts cannot award monetary damages. *Id.* at 29. While the Supreme Court suggests it may rule otherwise in the future, there is nothing in the Revised Code to suggest the Ohio General Assembly currently desires probate courts to begin adjudicating tort claims.

Accordingly, until the General Assembly or Ohio Supreme Court determines otherwise, this court does not have subject matter jurisdiction to adjudicate those counts of Plaintiff's Complaint that seek monetary damages. The two counts at issue are hereby dismissed pursuant to Civ.R. 41(B)(4).

SO ORDERED.

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WAYNE F. WILKE, JUDGE

cc: John J. Cruze  
Patrick J. Hanley  
Ralph J. Conrad