

CAMPBELL V. CAMPBELL TRUST: A BRIEF LESSON IN STANDING AND PROBATE COURT JURISDICTION

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The author was counsel for several of the defendants in this case.

INTRODUCTION

The probate court is a court of limited jurisdiction and may exercise its powers as conferred by statute. Despite any such limitations, the probate court may dispose fully of any matter that is properly before it. A trust beneficiary's failure to satisfy that he has suffered an injury precludes the beneficiary from establishing common law standing. Without common law standing, a trust beneficiary must strictly adhere to R.C. 2107.46 to establish statutory standing. Possessing neither form of standing, a trust beneficiary is precluded from asserting a cause of action against third parties on behalf of the trust. This article demonstrates the delay and costs to a trust caused by a beneficiary asserting claims for which the beneficiary has no right under Ohio law to maintain as recently decided by the 8th District Court of Appeals in *Campbell v. Donald A. Campbell 2001 Trust*.¹

FACTS OF *CAMPBELL V. DONALD A. CAMPBELL 2001 TRUST*.²

Donald and Margaret Campbell had two children: Allen and Frederick. In 1993, Donald and Margaret each created a revocable

trust (referred to herein as the "Donald Trust" and the "Margaret Trust"). In 1997, Donald and Margaret formed the Campbell Family Limited Partnership (the "CFLP"). The general and limited partners of the CFLP were the Donald Trust and the Margaret Trust, each holding an equal general and limited partnership interest. Also in 1997, Donald and Margaret transferred two life insurance policies, under which Donald was the insured, into the CFLP. Prior to this transfer, the Donald Trust was the sole beneficiary on each life insurance policy and Donald and Margaret never changed this beneficiary designation. After Donald's death in 2010, Margaret, in her capacity as Trustee of the Donald Trust, filed the death benefit claims with the insurance company and the death benefit proceeds were properly paid to the Donald Trust. Also after Donald's death and until her death in 2015, Margaret was the sole Trustee and sole beneficiary of both the Margaret Trust and the Donald Trust. As sole Trustee, Margaret controlled the general and limited partnership interests in the CFLP held by each trust. It was undisputed that Margaret was mentally competent until her death in 2015.

Allen was never a trustee or beneficiary of the Donald Trust nor was he, individually, ever a general or limited partner of the CFLP. In 2011, Margaret amended and restated her trust and drafted a new Last Will and Testament naming Allen the successor trustee, executor, and a partial (50%) beneficiary of the Margaret Trust. Frederick Campbell died in 2013. His two daughters, Ava and Manuela, then became the other 50% beneficiaries of the Margaret Trust. Ava, Manuela, and Allen's daughter, Heather, became the Co-Trustees and equal beneficiaries of the Donald Trust after Margaret's death in 2015.

Allen filed a declaratory judgment action in 2016 against Frederick's widow, Jessie, and Ava, Manuela, and Heather as Co-Trustees of the Donald Trust. Allen voluntarily dismissed that case. Then in 2017, Ava and Manuela as beneficiaries filed suit against Allen for breach of fiduciary duties as Trustee of the Margaret Trust, conversion of Margaret Trust assets, and sought his removal as Trustee of the Margaret Trust. Thereafter, Allen voluntarily resigned as Trustee of the Margaret Trust and as Executor of her Estate. The Court appointed a new Trustee and Executor.

Then in January 2018, Allen filed his complaint in the General Division of the Cuyahoga County Court of Common Pleas against Ava and Manuela, individually and as Co-Trustees of the Donald Trust, Jessie, the CFLP, and named the Trustee of the Margaret Trust an "interested party." Even though Allen did not name Heather as a Defendant, Heather joined in the defense of the Donald Trust in her capacity as a Co-Trustee. Allen's complaint alleged nine causes of action for which all of the alleged injuries purportedly suffered by him as a beneficiary of the Margaret Trust stemmed from Margaret's lifetime decisions as Trustee of both trusts including decisions made by the CFLP general partners, *i.e.*, Margaret as trustee of both trusts.

All Defendants (including the court-appointed Trustee of the Margaret Trust) joined in a motion to transfer the case to the Probate Division of the Cuyahoga County Court of Common Pleas, which was granted. Thereafter, all Defendants jointly filed a Rule 12(B)(6) Motion to Dismiss Allen's complaint for, among other reasons, lack of standing and no basis in fact. Allen then filed a motion to dismiss his own com-

plaint arguing that the probate court lacked subject matter jurisdiction. In February 2020, the probate court denied Allen's motion to dismiss and granted Defendant's motion to dismiss finding that Allen lacked standing to pursue any of his claims and that he failed to state a claim against Ava and Manuela, in their individual capacity or in their capacity as Co-Trustees of the Donald Trust. Allen appealed the probate court's decision claiming, among other things, the probate court erred and abused its discretion in finding that it had jurisdiction to hear the case and that he had no standing. The Eighth Appellate District Court found the probate court had jurisdiction to hear the case and that Allen lacked common and statutory standing. Allen did not appeal this ruling to the Ohio Supreme Court.

THE PROBATE COURT HAD CONCURRENT JURISDICTION

Allen made two separate arguments to the appellate Court claiming the probate court lacked jurisdiction. The first is that the probate court "did not have concurrent jurisdiction under R.C. 2104.24(B) because the causes of action in his complaint are not 'trust related,' but instead for breach of a partnership agreement and for other personal tort claims."³ R.C. 2104.24(B)(1)(b) gives a probate court concurrent jurisdiction to hear and determine any action "that involves an inter vivos trust."⁴ The appellate Court rejected Allen's attempt to reframe his complaint and held that "[a]ll of Campbell's causes of action center around the assets, life insurance payments, and personal payments made between two trusts in a partnership, with a singular trustee and beneficiary, his deceased mother Margaret."⁵ Accordingly, the appel-

late Court found that the probate court had concurrent jurisdiction pursuant to R.C. 2101.24 over Allen's complaint.

Allen's second jurisdictional argument concerned the application of the jurisdictional-priority rule. "The jurisdiction-priority rule provides that as between state courts of concurrent jurisdiction, the tribunal whose power is first invoked acquires exclusive jurisdiction to adjudicate the whole issue and settle the rights of the parties."⁶ Allen argued that the jurisdictional priority rule barred the transfer of his complaint from the general division to the probate division.⁷ However, "the jurisdiction-priority rule only applies when there are two cases pending in two different courts of concurrent jurisdiction."⁸ The appellate Court found Allen's argument to be a fundamental misunderstanding of the rule and held that the jurisdictional priority rule "does not apply to bar the transfer or consolidation of a case with the same court, which is what happened here."⁹

ALLEN DID NOT HAVE COMMON LAW OR STATUTORY STANDING TO BRING THE CLAIMS IN HIS COMPLAINT

COMMON LAW STANDING

All of Allen's claims were based on "his status as a beneficiary of the Margaret Trust."¹⁰ All of the alleged injuries he believed the Margaret Trust suffered were the result of decisions made by his mother, Margaret, while she served as sole Trustee of both trusts, which also gave Margaret "exclusive authority over all of [the] assets [in the CFLP]."¹¹ The appellate Court found as follows:

It is hard to comprehend the injury [Allen] imagines the Margaret Trust could have suffered at the hands of the Donald Trust or as a partner in the CFLP, when Margaret was the sole person making all the financial decisions for all three entities.

Even more importantly to this analysis, [Allen]'s claimed injuries, as a beneficiary of the Margaret Trust, cannot truly have existed before Margaret's death in April 2015. . . . [Allen] had no beneficial interest in any assets from the Margaret Trust until Margaret's death in 2015. . . . As such, [Allen] could not suffer any injury as a beneficiary of the Margaret Trust for any payments she made with its funds prior to her death. [] Therefore, [Allen] cannot maintain causes of action based on any events that occurred prior to Margaret's death because he is unable to satisfy the injury requirement for common law standing.¹²

STATUTORY STANDING

Without common law standing, Allen could only proceed with his complaint if a statute expressly provided him with standing. The appellate Court stated that "Chapter 5808 of the Revised Code does not give the beneficiary of a trust any authority to enforce claims for the trust against third parties."¹³ The appellate Court agreed with Allen that R.C. 2107.46 would permit a beneficiary to bring claims on behalf of a trust.¹⁴ However, Allen's complaint was silent concerning this statute and further, R.C. 2107.46 "must be strictly adhered to."¹⁵ The appellate Court held that based on Allen's complaint, the Ohio Revised Code did not provide him standing to assert claims against third parties as a beneficiary of a trust.¹⁶ The Ohio Revised Code provides an available path of relief for an aggrieved trust beneficiary through R.C. 2107.46 or 2721.05 (declaratory judgment) but Allen did not follow that path.

Further, and with respect to Allen's claims against the CFLP, the appellate Court found it was undisputed that Allen, as an individual, was not a party to the CFLP agreement. Additionally, upon his resignation as the trustee of the Margaret Trust, Allen lost any potential standing to bring a claim on behalf of the Margaret Trust under the CFLP agreement.¹⁷ Because Allen, in his individual capacity, was not a party to the CFLP agreement, he lacked standing to assert claims for a breach of that agreement.¹⁸

CONCLUSION

The Eighth District Court of Appeals concluded that Allen suffered no injury because Margaret, as trustee of both trusts, had the exclusive right to do with the Margaret Trust and the Donald Trust assets, which included interests in the CFLP, as she determined during her lifetime. Therefore, Allen, as a trust beneficiary, had no common law or statutory standing to maintain a cause of action against third parties for alleged injuries that occurred prior to Margaret's death. The only statutory support a beneficiary of a trust has to pursue a cause of action against a third party on a claim belonging to the trust is the strict adherence to R.C. 2107.46 or through a declaratory judgment action against the trustee. Additionally, a probate court has jurisdiction over claims regarding a family limited partnership when a partner is the trustee of an inter vivos trust.

ENDNOTES:

¹*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, 2021 WL 2012581 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

²These facts are derived from the appellate opinion and the probate court Judgment Entry dismissing the case.

³*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 17, 2021 WL 2012581, *3 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

⁴R.C. 2104.24(B)(1)(b).

⁵*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 21, 2021 WL 2012581, *4 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

⁶*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 23, 2021 WL 2012581, *4 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021), citing *State ex rel. Consortium For Economic and Community Development for Hough Ward 7 v. Russo*, 151 Ohio St. 3d 129, 2017-Ohio-8133, ¶ 8, 86 N.E.3d 327, 329 (2017), citing *State ex rel. Dunlap v. Sarko*, 135 Ohio St. 3d 171, 173, 2013-Ohio-67, ¶ 9, 985 N.E.2d 450 (2013).

⁷*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 23, 2021 WL 2012581 *4 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

⁸*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 25, 2021 WL 2012581, *5 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

⁹*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 25, 2021 WL 2012581, *5 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

¹⁰*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 38, 2021 WL 2012581, *6 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

¹¹*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶¶ 38-39, 2021 WL 2012581, *6 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

¹²*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶¶ 40-41, 2021 WL 2012581, *6-7 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

¹³*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 43, 2021 WL

2012581, *7 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

¹⁴*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 44, 2021 WL 2012581, *7 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

¹⁵*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 44, 2021 WL 2012581, *7 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021), citing *Firestone v. Galbreath*, 1992 WL 281167 (Ohio Ct. App. 10th Dist. Franklin County 1992), and *Firestone v. Galbreath*, 1992 WL 281167 (Ohio Ct. App. 10th Dist. Franklin County 1992), dismissed, *Firestone v. Galbreath*, 66 Ohio St. 3d 1420, 607 N.E.2d 843 (1993) (plaintiffs do not have standing to institute an action to recoup assets that they allege were wrongfully transferred from their grandmother's inter vivos trust where they failed to follow the statute and instead brought claims for monetary damages).

¹⁶*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 44, 2021 WL 2012581, *7 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

¹⁷*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 47, 2021 WL 2012581, *8 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

¹⁸*Campbell v. Donald A. Campbell 2001 Trust*, 2021-Ohio-1731, ¶ 48, 2021 WL 2012581, *8 (Ohio Ct. App. 8th Dist. Cuyahoga County 2021).

USES AND ABUSES OF POWERS OF ATTORNEY

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I. GENERAL OVERVIEW AND HISTORY

Over the years of reading the Estate Planning, Trust and Probate Law Section

community forum of the Ohio State Bar Association, I have noticed the recurring comments and questions about powers of attorney. These are always good questions, and many times differing opinions arise, which is well and good. I have my thoughts, which I would like to share to the practitioners in Ohio. The reason for my interest is that powers of attorney are likely the most powerful instruments we as lawyers prepare. Their use, and sometimes misuse, is and should be on our minds frequently.

Prior to 2012, Ohio operated under the power of attorney act, Chapter 1337. S.B. 117 became effective on March 22, 2012. That Act created Ohio's version (the "OPOAA") of the Uniform Power of Attorney Act ("UPOAA"). The Act is codified in R.C. 1337.21 to 1337.64.

In the view of the author, there are several problems with the OPOAA. The first is the introduction of a "check-the-box" form prescribed by R.C. 1337.60. Second is the rejection of the requirement that third parties accept the power of attorney, even the statutory form. Ironically, while use of the "form" was designed to increase acceptance, it nevertheless has the opposite effect. The form also increases the potential for fraud and the unauthorized practice of law.

The most recurring theme on the OSBA website is the issue of non-acceptance of powers of attorney. I will address that, but first, I would like to review the creation of powers of attorney under Ohio law.

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