

OHIO ELDER FINANCIAL EXPLOITATION: AN OVERVIEW OF AN OHIO PROBATE LITIGATOR'S TOOLKIT

By *H. William Beseth III, Esq.*

*Tucker Ellis LLP
Cleveland, Ohio*

Ohio's senior adults may find themselves relying on and trusting others for care and assistance—but when that reliance and trust is exploited, Ohio law provides an Ohio estate, trust, and fiduciary litigator (“Ohio Probate Litigator”) with powerful tools to recover what was wrongfully taken and restore it to the rightful beneficiaries. This article examines the growing intersection of elder financial exploitation and estate, trust, and fiduciary litigation in Ohio. The article (i) surveys common fact patterns through which vulnerable adults are financially victimized, (ii) reviews the Ohio Probate Litigator's toolkit to prosecute bad actors, and (iii) offers an overview of possibilities for prosecuting these claims in Ohio's probate courts.

THE GENERAL LANDSCAPE OF ELDER FINANCIAL EXPLOITATION AND AN OHIO PROBATE COURT'S JURISDICTION TO LITIGATE THESE CLAIMS

In 2024, 5,389 Ohioans over the age of 60 reported losses exceeding \$95 million to elder financial fraud, with investment scams accounting for over \$31 million.¹ In 2025, 6,948 Ohioans over the age of 60 reported losses exceeding \$163 million to elder financial fraud purely through internet scams.² These numbers represent just the reported figures. For

the Ohio Probate Litigator, these numbers are not surprising, unfortunately. Needless to say, the number of adversarial cases filed in the probate division continue to increase in Ohio as our Probate Judges confirm.³

Elder financial exploitation in the context of estate, trust, and fiduciary litigation can sadly be perpetrated in many forms by many bad actors with access to a vulnerable adult. While most people who help Ohio's seniors act with integrity, those who do not tend to fall into a few recognizable categories: family members and relatives, caregivers and helpers, “new friends,” and fiduciaries (*e.g.*, attorney-in-fact or trustee).

These bad actors employ many different exploitation tactics to improperly take assets from, or insert themselves into the estate plans of, Ohio's vulnerable adults. These tactics include:

- Changes to Testamentary Documents—Make changes to wills and trusts shortly before death; create codicils or amendments to disinherit longstanding beneficiaries; forge wills and trusts; or influence the victim to change their estate planning attorney;
- Changes to Real Property—Use quit claim deeds to add themselves as a joint tenant with right of survivorship; change or create transfer-on-death affidavits; have the victim sign these documents through fraud, duress, undue influence, or when the victim lacks capacity;
- Manipulating Financial Accounts—Add themselves as a joint owner or authorized signatory on accounts; add themselves as a payable-on-death beneficiary on accounts; unduly influence the victim to make large gifts from financial accounts; gain access to ATM and debit cards or online banking portals;
- Changes to Beneficiary Designations on

Non-Probate Assets—Through undue influence, duress, forgery, or when the victim lacks capacity, change beneficiary designations on life insurance, IRAs, retirement accounts, and annuities; and

- Fiduciary Abuse—Obtain a fiduciary position (attorney-in-fact or trustee) through undue influence, fraud, duress, or when the victim lacks capacity; then, change trust documents, receive money and assets through self-dealing, conceal assets, make direct transfers, and make improper gifts or distributions.

Unfortunately, discovering elder financial exploitation often does not happen until after the victim's death, and typically during the estate or trust administration of the decedent's assets. This is where resolving these claims intersects with estate, trust, and fiduciary litigation in probate court. Ohio's probate courts obviously have jurisdiction over decedents' estates and trusts.⁴ Because changing a victim's will or trust usually requires an attorney, perpetrators of elder financial exploitation often employ simpler, more discreet tactics to obtain assets outside of a will or trust, hoping to avoid detection and probate court. Fortunately, Ohio's probate courts have jurisdiction over most of those types of bad actions as well. The Ohio Revised Code specifically provides probate courts with concurrent jurisdiction over the following common elder financial exploitation methods:

- Abusing a power of attorney;
- Changing beneficiary designations on life insurance policies, annuity contracts, retirement plans, brokerage accounts, bank accounts, real property, or tangible personal property;
- Changing payable-on-death or transfer-on-death beneficiary designations;
- Changing title of assets involving joint and survivorship;

- Making improper gifts; and
- Passing the victim's assets upon death otherwise than by will, intestate succession, or trust.⁵

In general, and discussed in more detail below, an Ohio Probate Litigator has the following toolkit of claims to address elder financial exploitation in the probate division: conversion, fraud, undue influence, duress, lack of capacity, breach of fiduciary duty, concealment, and civil theft. Ohio's probate courts are well-suited to adjudicate these types of claims because of the court's experience in this area of the law, its statutorily conferred concurrent jurisdiction, and its "plenary power at law and equity to dispose fully of any matter that is properly before" the probate court.⁶

AN OHIO PROBATE LITIGATOR'S TOOLKIT OF CLAIMS FOR ELDER FINANCIAL EXPLOITATION

The claims and remedies discussed below are not exhaustive—they represent the most frequently asserted claims that Ohio Probate Litigators use to recover money and property from perpetrators of elder financial exploitation. The following discussion represents a brief overview of available claims and remedies—each requiring careful research and fact-specific legal analysis to prevail on (or defend) such claims.

1. CONVERSION

To prove conversion one must show: (a) perpetrator's exercise of dominion or control; (b) over victim's property; and (c) in a manner inconsistent with victim's or beneficiary's rights of ownership.⁷ The statute of limitations for conversion is four years.⁸ A claim of conversion accrues when it is discovered or when in the exercise of reasonable diligence, the conversion should have been discovered, *i.e.*, the discovery rule.⁹ The discovery rule and the resulting tolling of the statute of limitations¹⁰

can be critically important in elder financial exploitation cases. A perpetrator may have concealed their wrongdoing for years with the family, heirs, or beneficiaries discovering the conversion only during the estate or trust administration.

2. FRAUD

To prove fraud one must show: (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material, (c) made knowingly falsely, or with such disregard as to its truth or falsity, (d) to intentionally mislead another to rely on it, (e) justifiable reliance, and (f) an injury was caused by the reliance.¹¹ Similar to conversion, the statute of limitations for fraud is four years and the discovery rule may also toll the statute of limitations.¹² Examples of a fraud claim in the context of elder financial exploitation include fraudulently changing or having the victim change deeds, titles on financial accounts, and/or beneficiary designations.

3. DURESS AND UNDUE INFLUENCE

Duress and undue influence are similar but have some distinguishing characteristics. Generally, duress is the result of threats or coercion that render the victim incapable of exercising their free will. Duress is of such nature to cause in the mind of the victim a reasonable fear of considerable injury to the victim or her property. Duress has been described as an extreme form of undue influence.¹³

To show undue influence, one must prove: (a) the victim was susceptible, (b) the perpetrator had opportunity to exert it, (c) improper influence was exerted, and (d) harm from such influence.¹⁴ Importantly, a presumption of undue influence may apply when the perpetrator was in a “confidential relationship” with the victim.¹⁵ A confidential relationship existed if the perpetrator served in a fiduciary capacity for the victim or if the victim relied on and

trusted the perpetrator with her important affairs.¹⁶ A parent-child relationship alone does not equate to the existence of a confidential relationship triggering the presumption of undue influence.¹⁷ When a confidential relationship between the perpetrator and victim is established, any actions, *e.g.*, transfer of assets, between them is “looked upon with suspicion that undue influence” existed.¹⁸ Undue influence claims can be difficult to prove, generally rely on circumstantial evidence, and may require expert testimony to prove the susceptibility of the victim.

4. LACK OF CAPACITY

The statutory requirement under Ohio law to make a will is that a person must be eighteen years of age, of sound mind and memory, and not under restraint.¹⁹ The common law elements to make a will, trust, gift, or to name beneficiaries is to: (a) understand the nature of the business in which he is engaged, (b) comprehend generally the nature and extent of his property, (c) hold in his mind the names and identity of those who have natural claims upon his bounty, and (d) appreciate his relation to the members of his family.²⁰ The plaintiff generally has the burden to prove the victim lacked capacity. To do so, medical records, forensic psychiatrists, and other medical expert testimony will likely be required. For example, it is not enough that the victim had been diagnosed with dementia or Alzheimer’s disease at the time of signing documents or transfer of assets. Rather, there must be evidence that the victim was incapable of knowing his family or his estate and understanding the effect of his actions at that moment.²¹

5. BREACH OF FIDUCIARY DUTY

If the perpetrator served as a fiduciary for the victim, either as a Trustee or agent under a power of attorney, then the perpetrator owed fiduciary duties to the victim and could only act in the best interests of the victim. If the fi-

duciary perpetrator did not act in such a manner, then the Ohio Revised Code identifies numerous breach of fiduciary duty claims that could be asserted against the fiduciary perpetrator.²² For a breach of fiduciary duty under a power of attorney, the statute of limitations is generally four years under R.C. 2305.09. For a trust, the statute of limitations under R.C. 5810.05(A) is two years if a trustee's report is given to a beneficiary with the required information and disclosures. If a trustee's report is not provided, then R.C. 5810.05(C) provides a four-year limitations period running from the first of four triggering events: (1) removal, resignation, death or of the trustee; (2) termination of the beneficiary's interest; (3) termination of the trust; or (4) the time the beneficiary knew or should have known of the breach. The statute is explicit, the clock begins to run with the earliest applicable triggering event.²³ Examples of breach of fiduciary duty claims in the context of elder financial exploitation include self-dealing, improper distributions or transfer of assets, changing title to accounts, and amending estate plan documents in favor of the perpetrator.

6. CONCEALMENT

Ohio provides for a special statutory proceeding in probate court under R.C. 2109.50 to discover and recover assets that are concealed, embezzled, or conveyed away or improperly held from an estate. The procedure under R.C. 2109.50 is considered quasi-criminal in nature but is governed by the Ohio Rules of Civil Procedure. Proof of fraudulent conduct or criminal intent is not required; only wrongful possession or culpable conduct is required.²⁴ If the probate court or a jury determines the accused is guilty of concealing estate assets, then R.C. 2109.52 requires a 10% penalty on the value of the assets concealed.

7. CIVIL THEFT

While Ohio's civil theft statutes (R.C. 2307.60 and R.C. 2307.61) could provide Probate Litigators with a powerful enforcement mechanism that can award treble damages, they are not commonly asserted in probate court and may be, for now, underutilized. Some reasons Ohio's civil theft statutes may be underutilized in probate court include jurisdiction based on a companion claim, standing, and perhaps most critically, the statute of limitations.

Depending on the facts of the case, a practitioner may want to assert an Intentional Interference with Expectancy of Inheritance ("IIEI") claim in addition to a civil theft claim, which courts have found that IIEI claims are not cognizable in probate court.²⁵ Further, there is little authority regarding who has the right or standing to bring a civil theft claim after the victim of elder financial exploitation is deceased. The estate certainly has jurisdiction²⁶ and at least one court has determined that a vested trust beneficiary also has standing under R.C. 2307.60 and R.C. 2307.61.²⁷ Regarding the statute of limitations, the majority of available case law, both state and federal, directs that a one-year statute of limitations applies to a civil theft claim.²⁸ Whereas other courts, state and federal, do not find the one-year limitations arguments persuasive and instead apply a six-year statute of limitations.²⁹

Until the statute of limitations issue is resolved by the Ohio Supreme Court, the district in which a civil theft claim is filed may determine the application of the one-year or six-year statute of limitations. Without such a resolution, Probate Litigators potentially lack the power and threat of civil theft claims that could fundamentally alter the economics of elder financial exploitation litigation. Aside from waiting for such a ruling, the Ohio legislature could amend the statutes to expressly state the length of the limitations period.

ENHANCED DAMAGES AND ATTORNEY'S FEES AVAILABLE FOR ELDER FINANCIAL EXPLOITATION CLAIMS

One of the most powerful aspects of Ohio elder financial exploitation litigation is the availability of enhanced damages beyond simple compensatory recovery. Experienced Probate Litigators understand and aggressively pursue these remedies when the facts support them. Punitive damages, treble damages, and attorney's fees are strong possibilities in elder financial exploitation cases.

For most of the tort claims outlined above, punitive damages are available and require a finding of actual malice or egregious fraud.³⁰ Elder financial exploitation cases might satisfy the malice standard if there is proof that the perpetrator deliberately targeted a vulnerable adult. Civil theft claims may support both punitive damages and treble damages; however, the practitioner's pleading strategy is critical to avoid election of remedies issues. Additionally, punitive damages must be proven by clear and convincing evidence, the highest burden of proof in a civil case.³¹

"Treble damages" are available under R.C. 2307.61 in specific situations. The actual statutory language of R.C. 2307.61 does not use the words "treble damages" but instead states that recovery of "three times the value of property" at issue is available as "liquidated damages."³² Note that treble damages and punitive damages are distinct remedies—careful pleading is required to preserve both. Treble damages under R.C. 2307.61 are available as a matter of right at the election of the plaintiff.³³ However, the plaintiff must choose either compensatory or liquidated damages because treble damages are only available for liquidated damages.³⁴

Under Ohio law, when punitive damages are warranted in a case involving fraud or a tort, attorney fees may also be awarded.³⁵ In elder

financial exploitation cases where malice is established, the combination of punitive damages plus attorney's fees substantially increases total recovery and litigation leverage. In any action involving the administration of a trust, R.C. 5810.04 grants probate courts broad discretionary authority to award costs, expenses, and reasonable attorney fees to any party as justice and equity may require. The Supreme Court holds that when a court has statutory authority to award attorney fees, the amount of fees is within the court's discretion. Unless the amount of fees awarded is "so high or so low as to shock the conscience, an appellate court will not interfere."³⁶ Under R.C. 5810.04, attorney's fees may be awarded to be paid by another party or from the trust corpus itself. Critically, Ohio courts have affirmed fee awards that exceed compensatory damages where the litigation conferred a benefit on the trust or its beneficiaries, *i.e.*, proportionality is not required.³⁷ Practitioners should consider pleading for an award of attorney's fees under R.C. 5810.04 fees for all trust-related elder financial exploitation claims as a standalone basis for attorney's fee recovery.

It is important to be well versed in all these nuanced claims and remedies to maximize the available damages, *i.e.*, layering compensatory damages + liquidated treble damages + punitive damages + attorney's fees. This knowledge provides Probate Litigators with the ability to manage client expectations while pursuing maximum recovery.

CONCLUSION AND RECOMMENDATIONS

Elder financial exploitation strikes at the most vulnerable members of Ohio's communities and undermines the testamentary freedom and dignity of those who have built a lifetime of assets. Ohio's probate courts, armed with the jurisdiction and full complement of statutory and equitable remedies outlined in this article, are well positioned to provide meaningful redress. The key to successful prosecution

of these types of cases is experienced, proactive representation. The rightful beneficiaries of deceased victims of elder financial exploitation should promptly retain an Ohio Probate Litigator experienced in these claims and remedies—attorneys who understand not only the standard toolkit, but, if applicable, the enhanced damages available. Swift action, strategic claim selection, and aggressive pursuit of attorney’s fees, punitive damages, and treble damages are not merely litigation tactics; they are sometimes the most effective means of achieving justice for Ohio’s most vulnerable citizens and deterring elder financial exploitation in the future.

ENDNOTES:

¹FBI Cleveland Field Office Press Release (June 13, 2025): <https://www.fbi.gov/contact-us/field-offices/cleveland/news/fbi-recognizes-elder-abuse-awareness-day-and-warns-americans-about-elder-fraud>.

²FBI Internet Crime Complaint Center (IC3) data for 2025, https://www.ic3.gov/AnnualReport/Reports/2025_IC3Report.pdf.

³See e.g., Judge Laura J. Gallagher, Cuyahoga County Probate Court: View From the Bench presentations at the Cleveland Metropolitan Bar Association, April 16, 2024—192 Adversarial Cases filed in 2023; April 22, 2025—214 Adversarial Cases filed in 2024; April 21, 2026—226 Adversarial Cases filed in 2025.

⁴R.C. 2101.24(A)(1)(a)-(p), (B)(1)(b).

⁵R.C. 2101.24(B)(1)(c)(i)-(v).

⁶R.C. 2101.24(C).

⁷*McHenry v. McHenry*, 2017-Ohio-1534, ¶ 29, 88 N.E.3d 1222, 1229 (Ohio Ct. App. 5th Dist. Stark County 2017).

⁸R.C. 2305.09.

⁹*Cundall v. U.S. Bank*, 122 Ohio St. 3d 188, 194, 2009-Ohio-2523, ¶ 29, 909 N.E.2d 1244, 1250 (2009).

¹⁰*Mattlin Holdings, L.L.C. v. First City Bank*, 189 Ohio App. 3d 213, 2010-Ohio-3700, ¶ 8, 937 N.E.2d 1087 (10th Dist. Franklin County 2010).

¹¹*Estate of Kretzler v. Kretzler*, 2015-Ohio-

4776, ¶ 32, 2015 WL 7357180 (Ohio Ct. App. 5th Dist. Fairfield County 2015).

¹²R.C. 2305.09(C); *Cundall v. U.S. Bank*, 122 Ohio St. 3d 188, 2009-Ohio-2523, ¶ 29, 909 N.E.2d 1244 (2009).

¹³*In re Loftin’s Estate*, 285 N.C. 717, 722, 208 S.E.2d 670, 675 (1974).

¹⁴*Krischbaum v. Dillon*, 58 Ohio St. 3d 58, 65-66, 567 N.E.2d 1291 (1991), quoting *West v. Henry*, 173 Ohio St. 498, 501, 20 Ohio Op. 2d 119, 184 N.E.2d 200 (1962).

¹⁵See *Allen v. Davis*, 2026-Ohio-1064, ¶ 12, 2026 WL 838885 (Ohio Ct. App. 5th Dist. Richland County 2026).

¹⁶*Foelsch v. Farson*, 2020-Ohio-1259, ¶ 20, 153 N.E.3d 601 (Ohio Ct. App. 5th Dist. Knox County 2020), citing *Craggett v. Adell Ins. Agency*, 92 Ohio App. 3d 443, 451, 635 N.E.2d 1326 (8th Dist. Cuyahoga County 1993).

¹⁷*Foelsch v. Farson*, 2020-Ohio-1259, ¶ 21, 153 N.E.3d 601 (Ohio Ct. App. 5th Dist. Knox County 2020), citing *Jeffreys v. Dennis*, 1996 WL 753141, *3 (Ohio Ct. App. 5th Dist. Guernsey County 1996).

¹⁸*Allen v. Davis*, 2026-Ohio-1064, ¶ 12, 2026 WL 838885 (Ohio Ct. App. 5th Dist. Richland County 2026).

¹⁹R.C. 2107.02.

²⁰*Foelsch v. Farson*, 2020-Ohio-1259, ¶ 32, 153 N.E.3d 601 (Ohio Ct. App. 5th Dist. Knox County 2020) quoting *Niemes v. Niemes*, 97 Ohio St. 145, 119 N.E. 503 (1917) (paragraph four of the syllabus).

²¹*Foelsch v. Farson*, 2020-Ohio-1259, ¶ 33, 153 N.E.3d 601 (Ohio Ct. App. 5th Dist. Knox County 2020), citing *Martin v. Dew*, 2004-Ohio-2520, ¶ 19, 2004 WL 1109562 (Ohio Ct. App. 10th Dist. Franklin County 2004).

²²See R.C. 5808.02 to R.C. 5808.13; R.C. 1337.34.

²³See *Ross Sinclair and Associates, LLC v. Huntington National Bank*, 2018-Ohio-661, 106 N.E.3d 866 (Ohio Ct. App. 10th Dist. Franklin County 2018); *Thompson v. Butler*, 2013-Ohio-1075, 2013 WL 1189421 (Ohio Ct. App. 2d Dist. Montgomery County 2013).

²⁴*Thevenin v. Day-Air Credit Union, Inc.*, 2025-Ohio-1488, ¶ 15, 270 N.E.3d 224, 230, 117 U.C.C. Rep. Serv. 2d 5 (Ohio Ct. App. 2d Dist. Montgomery County 2025).

²⁵*Vondrasek v. Heiss*, 2024-Ohio-3061, ¶ 17, 249 N.E.3d 412, 418 (Ohio Ct. App. 11th Dist.

Geauga County 2024), citing *Roll v. Edwards*, 156 Ohio App. 3d 227, 2004-Ohio-767, ¶ 24, 805 N.E.2d 162 (4th Dist. Ross County 2004).

²⁶See generally *Dancybey v. Dancy-Dunlap*, 2022-Ohio-2774, 2022 WL 3270002 (Ohio Ct. App. 8th Dist. Cuyahoga County 2022).

²⁷*Cartwright v. Batner*, 2014-Ohio-2995, ¶¶ 96-97, 15 N.E.3d 401, 422 (Ohio Ct. App. 2d Dist. Montgomery County 2014).

²⁸See *Gaston v. Cuyahoga Community College*, 2025 WL 835073, *9 (N.D. Ohio 2025), and the cases cited therein.

²⁹See *Harris v. Cunix*, 2022-Ohio-839, ¶ 14, 187 N.E.3d 582, 586 (Ohio Ct. App. 10th Dist. Franklin County 2022); *Garner v. Cleveland Clinic Foundation*, 735 F. Supp. 3d 867 (N.D. Ohio 2024).

³⁰R.C. 2315.21(C)(1).

³¹R.C. 2315.21(D)(4).

³²R.C. 2307.61(A)(1)(b); *Batsche v. Batsche*, 2025-Ohio-3017, ¶ 28, 2025 WL 2435102 (Ohio Ct. App. 12th Dist. Clermont County 2025), appeal not allowed, 180 Ohio St. 3d 1419, 2025-Ohio-5220, 270 N.E.3d 1133 (2025).

³³R.C. 2307.61(A)(1).

³⁴*Batsche v. Batsche*, 2025-Ohio-3017, ¶ 28, 2025 WL 2435102 (Ohio Ct. App. 12th Dist. Clermont County 2025), appeal not allowed, 180 Ohio St. 3d 1419, 2025-Ohio-5220, 270 N.E.3d 1133 (2025).

³⁵See *Farmers State Bank & Trust Co. v. Mikesell*, 51 Ohio App. 3d 69, 86, 554 N.E.2d 900, 914-915, 11 U.C.C. Rep. Serv. 2d 1306 (2d Dist. Darke County 1988), citing *Roberts v. Mason*, 10 Ohio St. 277, 1859 WL 78 (1859); see also *Columbus Finance, Inc. v. Howard*, 42 Ohio St. 2d 178, 71 Ohio Op. 2d 174, 327 N.E.2d 654, 83 A.L.R.3d 587 (1975).

³⁶*In re Estate of Klie*, 2017-Ohio-487, ¶ 22, 84 N.E.3d 313 (Ohio Ct. App. 10th Dist. Franklin County 2017), citing *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St. 3d 143, 569 N.E.2d 464 (1991) (holding modified by, *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, 160 Ohio St. 3d 32, 2020-Ohio-1056, 153 N.E.3d 30 (2020)) (*Phoenix Lighting* reaffirming holding in *Bittner* to the extent that it held that a lodestar can be modified, but consistent with *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 130 S. Ct. 1662, 176 L. Ed. 2d 494, 109 (2010) modifying by holding that lodestar is presumptively reasonable and that enhancements to the lodestar should be rarely

granted and allowed only when the prevailing party has presented evidence that enhancement is necessary to provide reasonable compensation, that is, if the lodestar does not take into consideration any factor that may be properly considered in determining a reasonable fee).

³⁷*McHenry v. McHenry*, 2017-Ohio-1534, ¶¶ 53-57, 88 N.E.3d 1222 (Ohio Ct. App. 5th Dist. Stark County 2017).

[REDACTED]