

FILED  
AUG 25 2021

PROBATE COURT OF STARK COUNTY, OHIO

JUDGE DIXIE PARK

STARK COUNTY PROBATE COURT

IN RE: ESTATE OF DONNA J.  
GEITGEY, DECEASED

CASE NO.: 227818

JUDGE THOMAS A. SWIFT  
*Sitting by Assignment*

**MEMORANDUM IN SUPPORT OF  
SUBJECT MATTER  
JURISDICTION AND BRIEF IN  
OPPOSITION TO MOTION TO  
VACATE**

Now comes Donald W. Geitgey, Jr., by and through counsel, and hereby submits this Memorandum in Support of Subject Matter Jurisdiction, as well as his Brief in Opposition to the Motion to Vacate filed by Jenifer Canoles. Because this Court undoubtably has subject matter jurisdiction to enforce the global resolution reached in this case, the Court should proceed to enforce the settlement, and deny the Motion to Vacate.

**Background Facts**

On December 28, 2016, the Last Will and Testament of Donna Jean Geitgey was submitted to this Court by Randal Geitgey as the applicant for executor of Donna's estate. Donald Geitgey also filed an application to be executor of Donna's estate. The beneficiaries of Donna's trust and estate included Randal Geitgey (Donna's son, executor of her estate, and 1/5 beneficiary), Donald Geitgey (Donna's son, trustee of her trust, and 1/5 beneficiary), Jenifer Canoles (Donna's daughter and 1/5 beneficiary), Rebeca Geitgey (daughter and 1/5 beneficiary), and Jeffrey Troyer and Lauri Paniccia (Donna's grandchildren from a deceased child and collectively 1/5 beneficiaries).

The Court ordered a hearing on the applications for Fiduciary on March 22, 2017. The issue was resolved by Donald withdrawing his application. The parties agreed to mediate the complex outstanding

issues regarding Donna Geitgey's estate, trust, real estate, and business holdings. The Court made the referral and retired Judge R. R. Denny Clunk served as the mediator. The mediation was to occur on March 30, 2017. Retired Judge Clunk prepared a written summary of the first mediation, which he signed on March 31, 2017. A second mediation occurred on May 3, 2017. The parties reached a detailed agreement.

On July 25, 2017, Randal Geitgey, Executor of the Estate of Donna J. Geitgey, filed a Motion for Enforcement of Mediated Settlement Agreement. The motion indicated that the "mediated agreement provides for the agreed disposition for the administration of all Estate and Trust assets," and further stated that "[t]he beneficiaries of both the Estate and the Trust of the decedent have consented to the jurisdiction of this Court to govern the preservation and disposition of all assets of both entities." The same date the Court held a status conference, at which time Judge Park worked with the parties towards resolution until late in the evening, around 9:30 p.m. The agreement was memorialized on the record, and further memorialized by Judge Park's Judgment Entry filed March 11, 2018. The agreement was detailed, comprehensive, and extensively negotiated. Substantial steps have since been taken to comply with various portions of the settlement. However, Jenifer Canoles now wishes to ignore the portion of the agreement permitting Donald W. Geitgey, Jr. to purchase property owned by the trust in accordance with the parties' mediated agreement and Judge Park's order since she has become successor trustee. In doing so, her first strategy was to seek to invoke other provisions of the agreement<sup>1</sup>, but she has now retained new counsel and challenges this Court's subject matter jurisdiction nearly three years after the journalization of the entry. This Court has requested briefing on the subject matter jurisdiction issue.

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<sup>1</sup> See Jenifer Canoles' June 21, 2021 filing submitted by prior counsel explicitly seeking to enforce various provisions of the settlement.

## **Subject Matter Jurisdiction**

### **I. The Probate Court Has Subject Matter Jurisdiction Regarding Trust and Estate Disputes**

Jenifer Canoles concedes, as she must, that this Court has jurisdiction over the Estate of Donna Geitgey. She also concedes that the Stark County Probate Court would have concurrent jurisdiction to hear disputes concerning trusts, including the trust at issue in this case. *See R.C. 2101.24(B)(1).* In addition to these express grants of power, 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.” R.C. 2101.24(C).

Canoles’ argument, therefore, is not that this Court lacks the power to hear trust disputes, but rather that the parties after already reaching a global resolution should have had to jump through the additional hoop of filing an entirely new action (despite the fact that no justiciable dispute would exist given that the case had settled), merely to enforce the mutual agreement. Canoles’ position is inefficient, untenable, and contrary to Ohio law.

### **II. Canoles’ Argument Challenges Jurisdiction Over the Case—Not Subject Matter Jurisdiction—and that Challenge Has Been Waived**

Canoles argues that no party can consent to subject matter jurisdiction where none exists. While technically true, the contention is a mischaracterization of the issue before this Court. Donald Geitgey is not requesting that this Court take some action that it is powerless to take, such as asking the probate court to impose a felony criminal sentence. Rather, he is asking this Court to enforce a settlement regarding a trust—a subject over which this Court was statutorily given concurrent jurisdiction.

At the very most, Canoles seems to contend that the Court’s jurisdiction was not properly exercised. This type of challenge is not a challenge to subject matter jurisdiction. The Ohio Supreme Court explained the frequent confusion about different categories of jurisdictional challenges in *Pratts*

*v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992: “Jurisdiction has been described as ‘a word of many, too many, meanings.’ The term is used in various contexts and often is not properly clarified. This has resulted in misinterpretation and confusion.” *Id.* at ¶33. “Subject-matter jurisdiction is a court’s power over a type of case.” *Id.* at ¶34. Lack of subject matter jurisdiction renders a decision void. *Id.* at ¶12. Jurisdiction over a particular case, however, is different; “jurisdiction over the particular case encompasses the trial court’s authority to determine a specific case within that class of cases that is within its subject matter jurisdiction.” *Id.* How the court conducts a particular case is merely a matter of the exercise of its jurisdiction. *Id.* Challenges to the Court’s exercise of jurisdiction within a case are voidable—not void—and may be waived by the parties; “lack of jurisdiction over the particular case merely renders the judgment voidable.” *Id.*

Here, the probate court undoubtable has subject matter jurisdiction in that it has the power to decide the type of case or class of cases involving estate and trust disputes. Canoles’ argument here is a challenge to how the Court chose to exercise its discretion *in this particular case* by enforcing a settlement that reached an agreement regarding both estate and trust matters. That is solely a challenge to the Court’s exercise in jurisdiction over the case. Canoles waived the right to assert that challenge when she verbally assented to the agreement and when she again—as recently as June 21, 2021, moved to enforce provisions of that agreement herself.

### **III. Alternatively, the Court has Plenary Power to Enforce the Settlement**

Ohio Courts have explicitly noted a trend that “[m]ore recently, the Ohio Supreme Court has embraced a “broader view of the probate court’s jurisdiction.” *Sosnowsky v. Koscianski*, 2018-Ohio-3045, ¶14, 118 N.E.3d 403, quoting *Keith v. Bringardner*, 10th Dist. Franklin No. 07AP-666, 2008-Ohio-950, ¶9-11. The plenary power of probate courts is broad:

A probate court’s plenary power or jurisdiction authorizes probate courts to exercise full and complete jurisdiction over the subject matter as well as the parties to a controversy.

Plenary power is defined as “authority and power as broad as is required in a given case.” Thus, the probate courts have broad authority and power as is required to exercise full and complete jurisdiction over the subject matter.

*Galloway v. Galloway*, 2017-Ohio-87, ¶8, 80 N.E.3d 1225, 1228, quoting *Goff v. Ameritrust Co., NA*, 8th Dist. Cuyahoga No. 65196, 1994 WL 173544, \*6 (May 5, 1994) (internal citations omitted). In *Galloway*, the probate court considered whether it had subject matter jurisdiction to enforce a charging lien on the sale of real property following a settlement. The court of appeals considered it important that “the parties involved were not a stranger to the underlying suit,” and that requiring a separate action to enforce the charging lien “would only cause unnecessary delay and duplicative litigation.” *Id.* at ¶12. The same rationale applies here. The Court had jurisdiction over each beneficiary—none were strangers to the suit. The subject matter of the trust is within this Court’s concurrent jurisdiction. The parties voluntarily agreed to expand the scope of the issues being mediated, seeking a global resolution of the entire subject matter of the dispute. Requiring a separate action altogether to enforce that agreement would be inefficient, would unnecessarily delay a years-old administration, and would result in duplicative cases.

The purpose of mediation is to encourage full and complete resolution of the entirety of the dispute between the parties. One distinct advantage of mediation is the parties’ ability to craft creative resolutions beyond the bare relief sought in the pleadings filed with the Court, and even occasionally to agree on solutions that the Court itself would not be permitted to order. Allowing one party to challenge a negotiated agreement years later by arguing that the particular relief *that party consented to* is beyond the power of the court merely because different paperwork should have been filed is wasteful and demonstrates a lack of good faith approach to mediation. Canoles’ argument must be seen for what it is—a many years belated attempt to go back on her word—and it should be rejected by this Court.

Conclusion

Donald W. Geitgey, Jr. respectfully requests that this Honorable Court find that subject matter jurisdiction existed for the probate court to enter its March 11, 2018, Judgment Entry, deny the Motion to Vacate<sup>2</sup> filed by Jenifer Canoles, grant the Motion for Enforcement of Mediated Settlement Agreement, and schedule this matter for a show cause hearing.

Respectfully submitted,

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<sup>2</sup> While the Court's local rules typically provide for a 14-day response time to a motion, in this case, the Court independently set a deadline to brief the exact issue set forth in the motion to vacate, and that deadline controls.

CERTIFICATE OF SERVICE

A copy of the foregoing was sent via regular U.S. Mail to the below persons this 25<sup>th</sup> day of August, 2021.

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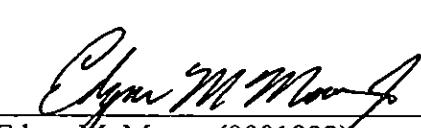
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