

**FILED**

02/10/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
October 19, 2022 Session

**IN RE ESTATE OF RICHADEAN GREER WILSON**

**Appeal from the Probate Court for Shelby County**  
**No. PR-5920-1 Kathleen N. Gomes, Judge**

---

**No. W2021-00862-COA-R3-CV**

---

This appeal involves a dispute over a testamentary trust, which was established by the will of the decedent's husband. Upon her husband's death, the decedent became a life income beneficiary of the trust. Upon the decedent's death, the corporate trustee distributed the remaining corpus in equal shares to the remainder beneficiaries, which were two nieces of the decedent's husband and a nephew of the decedent. The plaintiffs in this case—a niece and the surviving spouse of the other niece—filed a complaint to set aside the probate of the decedent's will and for an accounting of distribution of trust assets. They alleged that the decedent's will should be declared null and void for various reasons. They also alleged that the testamentary trust was improperly invaded by the decedent's nephew. However, the plaintiffs later sought to voluntarily dismiss their complaint insofar as it pertained to setting aside the probate of the decedent's will, which the probate court granted. They then amended their complaint and no longer contested the will. Instead, they alleged, among other things, that the corporate trustee failed to prevent the improper invasion of the testamentary trust, thereby breaching its fiduciary duties. The corporate trustee filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Tennessee Rule of Civil Procedure 12.02(6). Ultimately, the probate court granted the motion finding that the plaintiffs lacked standing to bring their claims against the corporate trustee of the testamentary trust. The court explained that the plaintiffs were neither beneficiaries under a will of the decedent nor heirs at law entitled to take in the decedent's estate through intestate succession. The court further explained that the testamentary trust was never a part of the decedent's estate and that the plaintiffs could have brought their claims in the estate that created the testamentary trust, which was the estate of the decedent's husband. Additionally, because the court found that Plaintiffs lacked standing, it found that it lacked subject matter jurisdiction. The court denied the plaintiffs' motion to transfer the case to the estate of the decedent's husband finding that it had no authority to transfer the case to a closed estate in its court. The plaintiffs appeal. We affirm the decision of the probate court and remand for further proceedings consistent with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed  
and Remanded**

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KENNY W. ARMSTRONG, JJ., joined.

Ralph T. Gibson, J. O’Neal Perryman, and Alexandria R. Holloway, Memphis, Tennessee, for the appellants, Ronnie Wayne Carraway and Mary Dell Robertson.

Lindsay A. Jones, Austin T. Rainey, and Christopher L. Patterson, Memphis, Tennessee, for the appellee, Cumberland Trust and Investment Company.

Oliver Cobb, III, Memphis, Tennessee, pro se.

Frank L. Watson, III, William F. Burns, and William E. Routt, III, Memphis, Tennessee, for the appellee, Johnny Alton Greer, Jr.

**OPINION**

**I. FACTS & PROCEDURAL HISTORY**

***A. Background***

Mr. Aubrey L. Wilson and Mrs. Richadean Greer Wilson married in 1966. Mr. Wilson executed his Last Will and Testament in 1982,<sup>1</sup> which provided that, if Mrs. Wilson survived him, she would receive a tract of land (“the Farm”) in fee simple and become a life income beneficiary of a Testamentary Trust established by the will.<sup>2</sup> Under the heading for “Item IV,” the will stated that “[t]his trust shall be administered for the exclusive use and benefit of my wife, Richadean G. Wilson, during her lifetime, and she shall be entitled to all income generated by the property in the trust during her lifetime.” Upon her death, the remaining corpus of the Testamentary Trust was to be paid to Mr. Wilson’s surviving siblings, Mr. Wilson’s surviving nieces and nephews, and Mrs. Wilson’s surviving nieces and nephews. Mr. Wilson died in 1987. At that time, Mrs. Wilson received the Farm in fee simple and became a life income beneficiary of the Testamentary Trust.

In December 1997, Mrs. Wilson created a Revocable Trust and transferred the Farm to it via warranty deed. In 2000, she then executed a Last Will and Testament (“the 2000 Will”). However, in March 2014, she transferred the Farm out of the Revocable Trust via

---

<sup>1</sup> Mr. Wilson executed a First Codicil in December 1982 and a Second Codicil in April 1986.

<sup>2</sup> The Uniform Principal and Income Act defines “income beneficiary” as “a person to whom net income of a trust is or may be payable[.]” Tenn. Code Ann. § 35-6-102(5).

quitclaim deed and executed a new Last Will and Testament (“the 2014 Will”). Mr. Johnny Alton Greer, Jr., who was Mrs. Wilson’s nephew, was the sole residuary beneficiary of the 2014 Will. Additionally, Mr. Oliver Cobb, III was appointed as the executor of the 2014 Will with Mr. Keith M. Alexander, her longtime attorney, appointed as the substitute executor. In any case, Mr. Alexander was designated to serve as the attorney for the personal representative of the Estate of Mrs. Wilson (“the Estate” or “Mrs. Wilson’s Estate”). In December 2014, Mrs. Wilson executed a First Codicil removing Mr. Cobb as executor of the 2014 Will and replacing him with Mr. Greer and Mr. Alexander to serve as co-executors.

Mrs. Wilson died in March 2016. After her death, the remaining corpus of the Testamentary Trust was ultimately distributed in equal shares to the remainder beneficiaries. The remainder beneficiaries were Charlotte Wilson Carraway and Mary Dell Robertson, who were the surviving nieces of Mr. Wilson, and Mr. Greer, who was the surviving nephew of Mrs. Wilson.<sup>3</sup> The distribution of the remaining corpus of the Testamentary Trust occurred in June 2016 when Mrs. Carraway, Mrs. Robertson, and Mr. Greer executed a Trust Termination Exoneration and Indemnification Agreement (“the Trust Agreement”) with the corporate trustee, Cumberland Trust and Investment Company (“Cumberland”).<sup>4</sup> The Trust Agreement specifically stated that “Cumberland . . . is the **Trustee of the Trust Under the Will of Aubrey L. Wilson . . .** [.]”

In April 2016, Mr. Greer and Mr. Alexander filed a petition to admit to probate the 2014 Will and First Codicil of Mrs. Wilson. The probate court subsequently entered an order admitting the 2014 Will to probate and appointing the executors without bond. In May 2016, Mrs. Carraway and Mrs. Robertson filed a petition to rescind the quitclaim deed which transferred the Farm from the Revocable Trust. In response, the Estate and Mr. Greer, individually and in his representative capacity as an executor, filed a motion to dismiss the petition for lack of standing. Mr. Alexander then filed an affidavit regarding both the 2000 Will and the 2014 Will, which stated in part:

[Mrs. Wilson] left [the 2014 Will] and a First Codicil . . . which together have been admitted herein to this Court to probate as [her] Last Will and Testament.

[The 2000 Will] was presented to Judge Gomes on . . . August 17th, 2016 for inspection in camera in her chambers in the presence of Matthew Thornton, attorney for [Mrs.] Carraway and [Mrs.] Robertson, and Affiant, attorney and co-executor for the Estate . . . , after inspection, Judge Gomes confirmed that neither [Mrs.] Carraway nor [Mrs.] Robertson were beneficiaries under the

---

<sup>3</sup> Mr. Wilson had no surviving siblings at the time of his death.

<sup>4</sup> Cumberland had served as a corporate trustee of the Testamentary Trust for approximately ten years preceding Mrs. Wilson’s death.

[2000 Will].

Affiant hereby confirms that, to the best of his knowledge, information and belief, that there was no other Will executed by [Mrs. Wilson] in the interim between January 19th, 2000 and March 27th, 2014. Further, Affiant was [Mrs. Wilson's] attorney throughout this period.

Mr. Alexander also filed a second affidavit regarding the Revocable Trust and the quitclaim deed, which explained that Mrs. Carraway and Mrs. Robertson had no standing to petition the probate court to set aside the quitclaim deed because they were never beneficiaries under the Revocable Trust. Given this information, Mrs. Carraway and Mrs. Robertson filed a notice of voluntary dismissal of the petition without prejudice pursuant to Tennessee Rule of Civil Procedure 41.01. The probate court entered an order of voluntary dismissal without prejudice and a final judgment as to the petition. After a petition to close the Estate was filed by Mr. Greer, the court entered its order closing the Estate and discharging Mr. Greer and Mr. Alexander as its co-executors in November 2016.

### ***B. Current Litigation***

In April 2018, Mr. Ronnie Wayne Carraway, who was the surviving spouse of the now-deceased Mrs. Carraway (Mr. Wilson's niece), and Mrs. Robertson (Mr. Wilson's niece) (collectively, "Plaintiffs") filed a complaint in Mrs. Wilson's Estate seeking to set aside the probate of the 2014 Will and for an accounting of the distribution of the Testamentary Trust's assets. Mr. Greer was the sole defendant named in this complaint. Plaintiffs alleged five counts in their complaint, which are summarized as follows:

1. The 2014 Will was invalid and should be declared null and void because Mrs. Wilson lacked testamentary capacity when she signed it;
2. The 2014 Will was invalid and should be declared null and void because Mrs. Wilson was unduly influenced and/or defrauded when she signed it;
3. The First Codicil to the 2014 Will was invalid and should be declared null and void because Mrs. Wilson was unduly influenced and/or defrauded when she signed it;
4. The 2014 Will and First Codicil should be declared invalid for lack of testamentary intent based on the totality of the events; and
5. The corpus of Mr. Wilson's Testamentary Trust was improperly invaded during Mrs. Wilson's lifetime in order to pay for her maintenance and expenses despite her having an abundance of income and financial resources to provide for her own maintenance without invading the corpus of the Testamentary Trust.

In regard to Count Five, Plaintiffs alleged that the improper invasion of the corpus reduced their distributive share as the remainder beneficiaries of the Testamentary Trust, thereby inflating the Estate for Mr. Greer's sole benefit. In addition to the complaint, Plaintiffs filed a notice of contest and motion for an order permitting Plaintiffs to contest the 2014

Will. Mr. Alexander filed a motion to quash the subpoena duces tecum issued to him, but the probate court entered an order denying the motion to quash and compelling the production of the 2000 Will. The court explained that Plaintiffs must satisfy the issue of standing and that they would only have standing if they would have been beneficiaries under the 2000 Will.

After Mr. Alexander provided a copy of the 2000 Will to both the judge and counsel for Plaintiffs, it was evident that neither Plaintiffs nor the late Mrs. Carraway were beneficiaries of Mrs. Wilson. Mr. Alexander filed an affidavit regarding both the 2000 Will and the 2014 Will, which reiterated what was said in his affidavit referenced above in the previous litigation. Thereafter, the Estate filed a motion to dismiss for lack of standing. However, Plaintiffs sought to voluntarily dismiss their complaint insofar as it pertained to setting aside the probate of the 2014 Will, which included Counts One through Four. They intended to still advance their remaining claim for the accounting of the distribution of the Testamentary Trust's assets, i.e., Count Five. As such, the probate court entered an order dismissing Plaintiffs' complaint to set aside the probate of the 2014 Will, specifically Counts One through Four.

In February 2019, the Estate filed a motion to dismiss the remaining claim asserted in Count Five. The Estate argued that Plaintiffs were time-barred from asserting such a claim pursuant to Tennessee Code Annotated section 30-2-307 and other applicable law. Plaintiffs filed a response to the motion and an amended complaint in March 2019. In addition to Mr. Greer, the amended complaint named Mr. Cobb, Regions Bank, and Cumberland as defendants.<sup>5</sup> Plaintiffs alleged seven counts in their amended complaint regarding the Testamentary Trust. They alleged the following: (1) breach of fiduciary duties; (2) tortious interference with inheritance; (3) undue influence; (4) fraudulent and deceitful conduct; (5) negligence; (6) unjust enrichment; and (7) breach of trust. In sum, they now contended that both Mr. Greer and Mr. Cobb, acting in concert with one another, caused to be distributed from the Testamentary Trust at least \$562,000 more than was necessary to fund Mrs. Wilson's monthly expenses during much of the last ten years of her life. Additionally, Plaintiffs alleged that Mr. Greer held \$2,333,290 in joint accounts with Mrs. Wilson, "the source of which upon information and belief was from the . . . [Testamentary] Trust." According to the amended complaint, upon Mrs. Wilson's death, the foregoing accounts passed to Mr. Greer automatically as a joint holder of the accounts outside of probate. Plaintiffs also alleged that Cumberland failed to prevent the improper invasion of the Testamentary Trust as a corporate trustee and thereby breached its fiduciary duties owed to them.

The Estate filed a motion to dismiss the amended complaint for lack of standing, lack of subject matter jurisdiction, and for being time-barred by the applicable statutes of

---

<sup>5</sup> Regions served as the initial corporate trustee of the Testamentary Trust. In August 2019, Regions was dismissed as a defendant pursuant to a consent order entered by the probate court.

limitation. Mr. Cobb filed his answer to the amended complaint denying Plaintiffs' allegations. Cumberland filed both an answer and a counter-complaint against Plaintiffs for contractual indemnification. Cumberland also filed a motion to dismiss arguing that Plaintiffs' claims were not timely filed within the statute of limitations pursuant to Tennessee Code Annotated section 35-15-1005(a) and that Plaintiffs' claims were barred by Tennessee Code Annotated section 35-15-1009. Mr. Greer filed a motion to dismiss the amended complaint or, in the alternative, a motion for judgment on the pleadings. In December 2019, the probate court entered an order dismissing the claims against Mr. Greer but denying the dismissal of the claims against Cumberland. The court found that Mr. Greer owed no fiduciary duty to the beneficiaries of the Testamentary Trust because he never served as a trustee. The court explained that "[a]ny claims of fraud, undue influence, theft, or intentional interference likewise fall under the duty of the Trustee, and not Mr. Greer as Executor of Decedent's estate or under any Power of Attorney he held in relation to the Decedent." However, the court found that there was no question that Cumberland, as a corporate trustee, owed a fiduciary duty to the beneficiaries of the Testamentary Trust. Furthermore, it found that the Trust Agreement was insufficient evidence of the existence of a "report" in order to apply the one-year statute of limitations under Tennessee Code Annotated section 35-15-1005(a). The court explained that "the actual knowledge threshold is only achieved by a showing of an actual report, and the [Trust] Agreement makes no showing of potential claims."

Afterward, Cumberland filed a renewed motion to dismiss. First, it argued that the probate court was without jurisdiction to grant the relief requested because the corpus of the Testamentary Trust was never a part of Mrs. Wilson's Estate. Second, it argued that Plaintiffs' claims were not timely filed within the statute of limitations pursuant to Tennessee Code Annotated section 35-15-1005(c). Third, it argued that Plaintiffs lacked standing to pursue the requested relief. Plaintiffs filed a "Combined Motion and Supporting Memorandum to Substitute Parties and Consolidate Estates and Response to Cumberland Trust and Investment Company's Renewed Motion to Dismiss." Plaintiffs requested that the probate court substitute Mrs. Jennifer Carraway Walls, who was the executrix for Mrs. Carraway's estate, for Mr. Carraway ex rel. Mrs. Carraway. Plaintiffs also moved the court to consolidate the estates of Mr. Wilson, Mrs. Wilson, and Mrs. Carraway. Cumberland filed a reply in support of its renewed motion to dismiss and in opposition to Plaintiffs' motion to substitute parties and consolidate estates. After a hearing on the matter, Plaintiffs filed a brief requesting the probate court transfer the case to Mrs. Carraway's estate or to a new docket number.

In July 2021, the probate court entered an order on Cumberland's renewed motion to dismiss. The court found that Plaintiffs lacked standing to bring their claims against Cumberland. The court explained that Plaintiffs were neither beneficiaries under a will of Mrs. Wilson nor heirs at law with a right to take in Mrs. Wilson's Estate through intestate succession. Furthermore, the court explained that the Testamentary Trust was never a part of Mrs. Wilson's Estate and that Plaintiffs could have brought their claims in the estate that

created the Testamentary Trust, which was Mr. Wilson's estate. Additionally, because the court found that Plaintiffs lacked standing, it found that it lacked subject matter jurisdiction. Given that the court lacked subject matter jurisdiction, it determined that it need not address the issue concerning the statute of limitations. In regard to the motion to transfer, the court stated that Plaintiffs' reliance on Tennessee Code Annotated section 16-1-116 was "misplaced" and that the statute did not apply. The court denied Plaintiffs' motion to transfer to Mr. Wilson's estate finding that it had no authority to transfer the case to a closed estate in its court. The court explained that "Plaintiffs are in the right Court, but the wrong case." As such, the court dismissed Plaintiffs' claims against Cumberland, including language in its order noting that its decision was a final judgment pursuant to Tennessee Rule of Civil Procedure 54.02 and that there was no just reason for delay. Thereafter, Plaintiffs timely filed an appeal.<sup>6</sup>

## II. ISSUES PRESENTED

Plaintiffs present the following issues for review on appeal, which we have slightly restated:

1. Whether the probate court erred as a matter of law in finding that Plaintiffs, as beneficiaries of the Testamentary Trust, lacked standing to bring their claims related to the Testamentary Trust;
2. Whether the probate court erred as a matter of law in finding that it lacked subject matter jurisdiction to adjudicate disputes related to the Testamentary Trust in spite of a statute specifically conferring jurisdiction upon the court;
3. Whether the probate court abused its discretion and erred as a matter of law in failing to transfer the case to an appropriate estate within the same court; and
4. Whether the probate court abused its discretion and erred as a matter of law in failing to consolidate the estates of Mr. Wilson, Mrs. Wilson, and Mrs. Carraway.

Cumberland presents the following additional issues for review on appeal, which we have slightly restated:

1. Whether the probate court erred in failing to dismiss the amended complaint in accordance with the statute of limitations codified at Tennessee Code Annotated section 35-15-1005;
2. Whether the probate court erred in not dismissing the amended complaint pursuant to the terms of the release in accordance with Tennessee Code Annotated section 35-15-1009; and
3. Whether Cumberland should be awarded its attorney's fees and costs on appeal.

---

<sup>6</sup> Cumberland notes in its appellate brief that Plaintiffs' claims against Mr. Cobb are still pending and are not subject to this appeal.

For the following reasons, we affirm the decision of the probate court and remand for further proceedings consistent with this opinion.

### III. STANDARD OF REVIEW

This is an appeal from the probate court's grant of a motion to dismiss pursuant to Tennessee Rule of Civil Procedure 12.02(6), which is also known as a motion to dismiss for failure to state a claim upon which relief can be granted. A motion filed under Rule 12.02(6) tests "only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence." *Elvis Presley Enters., Inc. v. City of Memphis*, 620 S.W.3d 318, 323 (Tenn. 2021) (quoting *Webb v. Nashville Area Habitat for Human., Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011)). Our review of such motion "requires us to take the allegations in the complaint as true." *Id.* (citing *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002)). One filing a motion to dismiss admits the truth of all of the relevant and material allegations contained in the complaint, but asserts that the allegations fail to establish a cause of action. *Id.* (quoting *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004)). Therefore, "courts should grant a motion to dismiss only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Id.* (quoting *Crews*, 78 S.W.3d at 857). We review the "trial court's decision to dismiss . . . de novo with no presumption of correctness." *Id.* (quoting *Metro. Gov't of Nashville v. Bd. of Zoning Appeals of Nashville*, 477 S.W.3d 750, 754 (Tenn. 2015)).

### IV. DISCUSSION

#### A. Subject Matter Jurisdiction

We begin by addressing the issue of subject matter jurisdiction, which is a threshold question. "[S]ubject matter jurisdiction is a threshold inquiry, which may be raised at any time in any court." *Johnson v. Hopkins*, 432 S.W.3d 840, 844 (Tenn. 2013) (citing *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012)). It "involves the court's lawful authority to adjudicate a controversy brought before it." *Id.* at 843 (citing *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712 (Tenn. 2012); *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996)). It "is conferred by statute or the Tennessee Constitution," and thus "the parties cannot confer it by appearance, plea, consent, silence, or waiver." *Id.* at 843-44 (citing *In re Estate of Trigg*, 368 S.W.3d at 489). "A determination of subject matter jurisdiction involves questions of law; therefore, rulings on such questions are reviewed de novo on appeal, without any presumption of correctness." *Id.* at 844 (citing *In re Estate of Trigg*, 368 S.W.3d at 489).

The probate court determined that because Plaintiffs lacked standing, it also lacked subject matter jurisdiction. Although the court found that it lacked subject matter jurisdiction, it stated that "Plaintiffs are in the right Court, but the wrong case." A plaintiff's "lack of standing does not usually defeat a court's subject matter jurisdiction[.]"



*Jarnigan v. Moyers*, 568 S.W.3d 585, 589 (Tenn. Ct. App. 2018). “Subject matter jurisdiction and standing are ‘two distinct concepts.’” *Grant v. Anderson*, No. M2016-01867-COA-R3-CV, 2018 WL 2324359, at \*4 (Tenn. Ct. App. May 22, 2018) (quoting *SunTrust Bank, Nashville v. Johnson*, 46 S.W.3d 216, 221 (Tenn. Ct. App. 2000)). However, the Tennessee Supreme Court has stated that “[w]hen a statute creates a cause of action and designates who may bring an action, the issue of standing is interwoven with that of subject matter jurisdiction and becomes a jurisdictional prerequisite.” *Osborn v. Marr*, 127 S.W.3d 737, 740 (Tenn. 2004). This Court subsequently explained that the “concepts of standing and subject matter jurisdiction” are sometimes “conflate[d].” *Bowers v. Estate of Mounger*, 542 S.W.3d 470, 480 (Tenn. Ct. App. 2017). We clarified our Supreme Court’s explanation in *Osborn*, stating that “subject matter jurisdiction is only implicated when ‘a statute creates a cause of action and designates who may bring an action’ such that ‘the issue of standing is interwoven with that of subject matter jurisdiction and becomes a jurisdictional prerequisite.’” *Id.*; see *In re Estate of Smallman*, 398 S.W.3d 134, 149 (Tenn. 2013) (finding that there was neither a statute that created a cause of action nor one that limited the parties who might bring such an action in its case).

In the case at bar, Plaintiffs initially sought to set aside the probate of the 2014 Will of Mrs. Wilson when they filed their complaint in April 2018. However, they abandoned this course of action when it became evident that they were “strangers” to Mrs. Wilson’s Estate, i.e., they lacked standing because they were neither beneficiaries under a will of Mrs. Wilson nor heirs at law entitled to take in the Estate through intestate succession.<sup>7</sup> Here, there is no dispute that Plaintiffs were never beneficiaries of Mrs. Wilson’s Estate. Plaintiffs were neither beneficiaries of the 2014 Will or the 2000 Will nor heirs at law entitled to any part of Mrs. Wilson’s Estate should the 2014 Will be set aside. See *In re Estate of Green*, No. W2022-00449-COA-R3-CV, 2022 WL 17494629, at \*3 (Tenn. Ct. App. Dec. 8, 2022). Based on Plaintiffs’ amended complaint, however, this case is no longer a will contest.

Plaintiffs filed their amended complaint in March 2019, in which they set forth allegations concerning only Mr. Wilson’s Testamentary Trust. “[W]hen the original complaint is subsequently amended, . . . such amended complaint becomes the operative pleading, which the court must review for jurisdictional purposes.” *Estate of Mounger*, 542 S.W.3d at 480-81. The probate court, which has probate jurisdiction, possesses subject matter jurisdiction over trusts and “the power to intervene in the administration of a trust

---

<sup>7</sup> The Tennessee Supreme Court has noted that “[a]lthough our statute does not include either the word ‘interested’ or the word ‘aggrieved,’ . . . a contestant must show that he or she would be entitled to share in the decedent’s estate if the will were set aside or if no will existed.” *In re Estate of Brock*, 536 S.W.3d 409, 414 (Tenn. 2017) (citations omitted); see Tenn. Code Ann. § 32-4-101(a) (“If the validity of any last will or testament . . . is contested, then the court having probate jurisdiction over that last will or testament must enter an order sustaining or denying the contestant’s right to contest the will.”). “On the other hand, ‘[a] stranger to an estate, one who would take nothing if the will was set aside,’ lacks standing to bring a will contest.” *Id.* at 415 (quoting *Warmath v. Smith*, 279 S.W.2d 257, 260 (Tenn. 1955)).

if its jurisdiction is invoked by any interested person.” *Conservatorship of Acree v. Acree*, No. M2011-02699-COA-R3-CV, 2012 WL 5873578, at \*5 (Tenn. Ct. App. Nov. 20, 2012) (citing Tenn. Code Ann. §§ 35-15-201 and 35-15-203). In regard to subject matter jurisdiction, the Tennessee Uniform Trust Code (“the UTC”) provides as follows:

Chancery courts and other courts of record having probate jurisdiction:

- (1) To the exclusion of all other courts, have concurrent jurisdiction over proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust; and
- (2) Have concurrent jurisdiction with other courts of record in this state over other proceedings involving a trust.

Tenn. Code Ann. § 35-15-203. Plaintiffs’ cause of action concerned the Testamentary Trust, and they were beneficiaries of the Testamentary Trust. Therefore, given that Plaintiffs were beneficiaries of the Testamentary Trust, it would appear at first glance that the probate court had subject matter jurisdiction in this case.

Nevertheless, we must address the elephant in the room, which is that Plaintiffs filed their cause of action against Cumberland in Mrs. Wilson’s Estate. As we will explain, the issue here is that the Testamentary Trust was never a part of Mrs. Wilson’s Estate. In a prior decision, this Court has discussed a court’s jurisdiction over assets that pass outside of an estate, which are not assets to be probated. *In re Estate of Rhoades*, No. E2003-03094-COA-R3-CV, 2005 WL 990568, at \*6 (Tenn. Ct. App. Apr. 28, 2005). Such assets cannot be “recouped” in probate proceedings. *Id.* at \*1. We held that “it was not within the jurisdiction of the probate court to do anything with respect to the proceeds from the certificate of deposit *or* the checking account since title to these assets devolved to others at the time of the Testator’s death.” *Id.* at \*6. We found “no cases in which the probate court has ordered that assets passing outside of probate be returned to an estate of which they were never a part.” *Id.*

The Trust Agreement executed after Mrs. Wilson’s death plainly stated that “Cumberland . . . is the **Trustee of the Trust Under the Will of Aubrey L. Wilson** . . . [.]” Indeed, the Testamentary Trust was established by *Mr. Wilson’s* will. As such, Mr. Wilson’s will was the “trust instrument,” which is defined by the UTC as the “instrument executed by the settlor that contains terms of the trust, including any amendments thereto[.]” Tenn. Code Ann. § 35-15-103(36). Furthermore, because Mr. Wilson both created and contributed property to the Testamentary Trust, Mr. Wilson was the “settlor” of the Testamentary Trust. *Id.* § 35-15-103(29); *see Settlor*, Black’s Law Dictionary (11th ed. 2019) (the settlor of a trust is also referred to as the creator, donor, trustor, grantor, or founder). Mrs. Wilson became a life income beneficiary of the Testamentary Trust upon Mr. Wilson’s death. Mrs. Wilson did not possess any power of appointment over the

Testamentary Trust, and the Testamentary Trust did not name her or her Estate as a remainder beneficiary upon her death. It is clear then that the Testamentary Trust was never a part of Mrs. Wilson's Estate and was never part of the probate of her Estate.

Additionally, Plaintiffs alleged in their amended complaint that the accounts containing the proceeds improperly obtained from the Testamentary Trust passed outside of the probate of Mrs. Wilson's Estate. The accounts were joint accounts held by Mrs. Wilson and Mr. Greer, which passed to Mr. Greer upon Mrs. Wilson's death, and the accounts were not assets of Mrs. Wilson's Estate to be probated. *See Lowry v. Lowry*, 541 S.W.2d 128, 131 (Tenn. 1976) (“[A] joint account agreement with rights of survivorship establishes a contract which transfers the account proceeds at death by operation of law.”). Thus, the accounts passed outside of probate, and there are no allegations that the Estate received any benefit from any alleged improper invasion of the Testamentary Trust.<sup>8</sup> Neither the Testamentary Trust nor the accounts containing the proceeds that Plaintiffs alleged were improperly obtained were ever a part of Mrs. Wilson's Estate. Consequently, this demonstrates that Plaintiffs' claims against Cumberland have no connection whatsoever to Mrs. Wilson's Estate.

Similar to the assets at issue in *In re Estate of Rhoades*, the assets at issue in this case were never a part of Mrs. Wilson's Estate. Plaintiffs brought their cause of action against Cumberland within Mrs. Wilson's Estate, but it was not within the jurisdiction of the probate court to do anything with respect to the Testamentary Trust or the accounts containing the proceeds from the Testamentary Trust because they were never a part of Mrs. Wilson's Estate. We note again that the probate court found that Plaintiffs were in the right court but the wrong case. The court stated that Plaintiffs could have filed to reopen Mr. Wilson's estate and file their complaint there, but they did not. Alternatively, they could have potentially filed a separate trust action altogether, but they did not. Here, Plaintiffs can prove no set of facts that would entitle them to relief within Mrs. Wilson's Estate because both the Testamentary Trust and the accounts were not assets to be probated and passed outside of Mrs. Wilson's Estate. Plaintiffs are simply in the wrong estate. As such, we affirm the probate court's dismissal of Plaintiffs' claims against Cumberland for lack of subject matter jurisdiction. Based on our conclusion as to the issue of subject matter jurisdiction, the issue of standing is pretermitted.

### ***B. Transfer or Consolidation***

Plaintiffs also contend that the probate court abused its discretion and erred as a matter of law in failing to either transfer the case to an appropriate estate within the same

---

<sup>8</sup> Plaintiffs alleged in their original complaint that the improper invasion of the corpus reduced their distributive share as the remainder beneficiaries of the Testamentary Trust, thereby “inflating” the Estate for Mr. Greer's sole benefit. However, they later amended their complaint stating that the accounts containing the proceeds improperly obtained from the Testamentary Trust passed outside of the probate of Mrs. Wilson's Estate.

court or consolidate the estates of Mr. Wilson, Mrs. Wilson, and Mrs. Carraway. We review a trial court’s decision concerning both transfer and consolidation for an abuse of discretion. *See Van Zandt v. Dance*, 827 S.W.2d 785, 787-88 (Tenn. Ct. App. 1991) (concluding that the trial court did not abuse its discretion in denying the motion to consolidate); *Washington v. Parker*, No. M2021-00583-COA-R3-CV, 2022 WL 1447941, at \*4 (Tenn. Ct. App. May 9, 2022) (“A trial court’s decision whether to transfer venue in a particular case is reviewed under an abuse of discretion standard.”). “An abuse of discretion occurs when a court strays beyond the applicable legal standards or when it fails to properly consider the factors customarily used to guide the particular discretionary decision.” *In re Estate of Rogers*, 562 S.W.3d 409, 425 (Tenn. Ct. App. 2018) (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010)). Additionally, “[a] court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence.” *Id.* (quoting *Lee Med., Inc.*, 312 S.W.3d at 524). When reviewing a court’s discretionary decision, we review its “legal determinations de novo without any presumption of correctness.” *Lee Med., Inc.*, 312 S.W.3d at 525 (citations omitted).

For the transfer issue, Plaintiffs rely on the transfer statute, which provides in pertinent part as follows:

[W]hen an original civil action . . . is filed in a state or county court of record . . . and such court determines that it lacks jurisdiction, the court shall, if it is in the interest of justice, transfer the action . . . to any other such court in which the action . . . could have been brought at the time it was originally filed. Upon such a transfer, the action . . . shall proceed as if it had been originally filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it was transferred.

Tenn. Code Ann. § 16-1-116. As required by the transfer statute, this case was an “original civil action” that was filed in the probate court. *In re Estate of Salmons*, No. E2017-00389-COA-R3-CV, 2018 WL 1324954, at \*6-7 (Tenn. Ct. App. Mar. 14, 2018). The probate court seemingly agreed that Plaintiffs were in the right court but stated that they were in the wrong case. In other words, the Shelby County Probate Court was the proper court to hear Plaintiffs’ claims regarding the Testamentary Trust, but their claims were filed in an estate unrelated to the Testamentary Trust. Therefore, the court found that the transfer statute did not apply and that there was no authority to transfer the action to a closed estate in its court. Likewise, we find that the transfer statute does not apply.

Plaintiffs argue that “if a court can transfer from one court to another, even when it lacks subject matter jurisdiction, that same court can surely transfer from one matter to another matter within itself.” Like the probate court, however, we find that their argument is misplaced. “The general rule governing transfer is that a court lacking subject matter

jurisdiction over a case has no authority to transfer it, unless that authority is specifically conferred by statute, rule, or constitutional provision.” *Norton v. Everhart*, 895 S.W.2d 317, 319 (Tenn. 1995). While the transfer statute provides for transferring an action to another *court* in which the action could have been brought, it does not authorize transfer of the action to another case within the same court. Tenn. Code Ann. § 16-1-116. Plaintiffs rely on the *In re Estate of Salmons* case for this particular argument, but that case involved transfer of an estate matter from the court of one county to the court of another county. *In re Estate of Salmons*, 2018 WL 1324954, at \*2. The transfer requested by Plaintiffs would require transferring the action to a different estate filed in the probate court and not transferring the case to a different court. Consequently, we conclude that the probate court did not err or abuse its discretion in failing to transfer the action to a different estate.

In regard to the consolidation issue, Plaintiffs rely on Tennessee Rule of Civil Procedure 42.01, which states that “[w]hen actions involving a common question of law or fact are pending before a court, the court may order all the actions consolidated or heard jointly, and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” Plaintiffs provide no case law to support their argument that the probate court could have consolidated the estates of Mr. Wilson, Mrs. Wilson, and Mrs. Carraway. Moreover, consolidating these three estates still would not overcome what has been the chief obstacle since the beginning of this dispute: The Testamentary Trust at issue is not a part of Mrs. Wilson’s Estate. Therefore, we conclude that this issue is without merit.

Given that we have reached a conclusion affirming the dismissal of Plaintiffs’ claims against Cumberland, the additional issues raised by Cumberland regarding Tennessee Code Annotated sections 35-15-1005 and 35-15-1009 are pretermitted.

### ***C. Attorney’s Fees & Costs on Appeal***

As a final matter, Cumberland requests attorney’s fees and costs on appeal. “In Tennessee, ‘litigants are responsible for their own attorney’s fees absent a statute or agreement between the parties providing otherwise.’” *In re Graham*, No. M2021-00967-COA-R3-CV, 2022 WL 17008526, at \*10 (Tenn. Ct. App. Nov. 17, 2022) (quoting *Darvarmanesh v. Gharacholou*, No. M2004-00262-COA-R3-CV, 2005 WL 1684050, at \*16 (Tenn. Ct. App. July 19, 2005)).

#### *i. Tenn. Code Ann. § 20-12-119*

Cumberland first requests attorney’s fees and costs on appeal pursuant to Tennessee Code Annotated section 20-12-119. Section 20-12-119 states in part as follows:

[I]n a civil proceeding, where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a

claim upon which relief may be granted, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties. The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.

(2) Costs shall include all reasonable and necessary litigation costs actually incurred due to the proceedings that resulted from the filing of the dismissed claims, including, but not limited to:

- (A) Court costs;
- (B) Attorneys' fees;
- (C) Court reporter fees;
- (D) Interpreter fees; and
- (E) Guardian ad litem fees.

(3) An award of costs pursuant to this subsection (c) shall be made only after all appeals of the issue of the granting of the motion to dismiss have been exhausted and if the final outcome is the granting of the motion to dismiss. The award of costs and attorneys' fees pursuant to this section shall be stayed until a final decision which is not subject to appeal is rendered.

Tenn. Code Ann. § 20-12-119(c)(1) (emphasis added). However, this Court has recently held that “[a]ttorney fees incurred on appeal are not recoverable pursuant to Tennessee Code Annotated section 20-12-119.” *Pagliara v. Moses*, No. M2020-00990-COA-R3-CV, 2022 WL 4229930, at \*5 n.10 (Tenn. Ct. App. Sept. 14, 2022) (citing *First Cmty. Mortg., Inc. v. Appraisal Grp., Inc.*, 644 S.W.3d 354, 368 (Tenn. Ct. App. 2021) *perm. app. denied* (Tenn. Mar. 24, 2022) (holding that “Tennessee law does not provide that attorney’s fees for appellate work are authorized under section 20-12-119(c) in the absence of an explicit provision providing for that relief.”)). Therefore, we must decline to award attorney’s fees and costs on appeal pursuant to section 20-12-119.

*ii. Tenn. Code Ann. § 35-15-1004*

Alternatively, Cumberland requests attorney’s fees and costs on appeal pursuant to Tennessee Code Annotated section 35-15-1004, which states in part as follows:

(a) In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney’s fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Tenn. Code Ann. § 35-15-1004(a). “Section 35-15-1004(a) expressly applies to proceedings ‘involving the administration of a trust[.]’” *In re Estate of Edmonds*, No. W2018-01783-COA-R3-CV, 2019 WL 2304053, at \*8 (Tenn. Ct. App. May 30, 2019). As we have explained throughout this opinion, Plaintiffs amended their complaint which set forth allegations concerning only the Testamentary Trust.

The foundation of Plaintiffs’ amended complaint alleged that Cumberland breached its fiduciary duties as the corporate trustee of the Testamentary Trust. *In re Conservatorship of Cross*, No. W2018-01179-COA-R3-CV, 2020 WL 6018759, at \*13 (Tenn. Ct. App. Oct. 9, 2020). As such, this was a judicial proceeding involving the administration of a trust, and we may consider awarding attorney’s fees and costs on appeal pursuant to section 35-15-1004(a). “The determination of whether a party is entitled to such an award on appeal is within the sound discretion of this Court.” *Cartwright v. Garner*, No. W2016-01424-COA-R3-CV, 2018 WL 4492742, at \*9 (Tenn. Ct. App. Sept. 19, 2018); see *In re Estate of Goza*, No. W2013-00678-COA-R3-CV, 2014 WL 7235166, at \*6 (Tenn. Ct. App. Dec. 19, 2014) (determining that an award under section 35-15-1004(a) “is within the sound discretion of this Court”). Under the circumstances of this case, and in exercise of our discretion, we determine that Cumberland is entitled to an award of reasonable attorney’s fees and costs incurred in this appeal.<sup>9</sup> Therefore, we remand this case to the probate court for a determination of the appropriate amount of those attorney’s fees and costs.

## V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the probate court. We remand the case for further proceedings consistent with this opinion. Costs of this appeal are taxed to the appellants, Ronnie Wayne Carraway and Mary Dell Robertson, for which execution may issue if necessary.

---

CARMA DENNIS MCGEE, JUDGE

---

<sup>9</sup> Due to our award of attorney’s fees and costs on appeal pursuant to section 35-15-1004(a), we need not address Cumberland’s alternative ground of whether an award was warranted due to the execution of the Trust Agreement.