

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

ESTATE OF ROBERT M. LUOMA, : **OPINION**
DECEASED.

: **CASE NO. 2011-L-006**

Civil Appeal from the Lake County Court of Common Pleas, Probate Division, Case No. 09 ES 0063.

Judgment: Affirmed.

Alex J. Morton, 2000 Auburn Drive, Suite 200, Beachwood, OH 44122 (For Appellant, Jonathan C. Luoma).

Jay F. Crook, Jay F. Crook, Attorney At Law, L.L.C., 30601 Euclid Avenue, Wickliffe, OH 44092 (For Appellee, Robert D. Luoma).

Gina M. Bevack, Thrasher, Dinsmore & Dolan, 100 Seventh Avenue, Suite 150, Chardon, OH 44024-1079 (For Appellee, Matthew N. Luoma).

Anthony J. Aveni, Cannon, Aveni & Malchesky Co., L.P.A., 41 East Erie Street, Painesville, OH 44077. (Administrator for the Estate).

MARY JANE TRAPP, J.

{¶1} Jonathan C. Luoma appeals from a judgment of the Probate Division of the Lake County Court of Common Pleas, which denied the Exceptions to Inventory and Appraisal he filed regarding his father's estate. He claims a Toyota owned by his father should have been included in the inventory of the estate because it was brought from his father's home in Massachusetts to Ohio and sold in Ohio. We disagree, as we

decide that for purposes of determining an Ohio probate court's jurisdiction over the property of a non-resident decedent, an automobile is "within the state" where the decedent was domiciled when he died. We therefore affirm the trial court.

{¶2} Substantive Facts and Procedural History

{¶3} Robert M. Luoma ("Mr. Luoma"), a resident of Rockport, Massachusetts, died on December 7, 2005. He was survived by three sons: Jonathan C Luoma, of Maine, Matthew N. Luoma, of California, and Robert D. Luoma, of Ohio. Mr. Luoma's most valuable asset was a house in Fairport Harbor, Lake County. In his will, he bequeathed 50 percent of the interest in the house to Robert and 25 percent each to Jonathan and Matthew. The three brothers were to share the residue of his estate equally.

{¶4} After Mr. Luoma died, the brothers met at his apartment in Massachusetts to divide minor household items he owned. As for his 1998 Toyota Corolla, the brothers agreed Robert should drive it to Ohio, sell it, and divide the proceeds among the brothers. Robert sold the car in Ohio for \$4,000, but used the funds to repair the Fairport Harbor house that had been cited by the city for its deteriorating condition.

{¶5} Matthew was named the executor in Mr. Luoma's will and Jonathan the alternate executor. Matthew, however, did not file his father's will for probate in Massachusetts, apparently believing his father only owned nominal property in Massachusetts. The Fairport Harbor house, valued at \$67,000, was rented for a short period of time to tenants after his father moved to Massachusetts.

{¶6} On February 6, 2009, Jonathan filed an ancillary administration in Ohio and asked the court to appoint him as the executor. The court denied the request and Jonathan appealed to this court, in Appeal Case Number 2009-L-123. This court subsequently dismissed the appeal upon the parties' request, after the parties agreed to have the trial court appoint Anthony J. Aveni, Esq., a third-party fiduciary, as the Administrator, WWA, of the estate.

{¶7} On February 11, 2010, Mr. Aveni filed the Inventory and Appraisal (the "Inventory") of the estate. The only property listed on the inventory was the Fairport Harbor real property. On March 1, 2010, Jonathan filed "Exceptions to Inventory and Appraisal," alleging the inventory failed to include rental income from the Fairport Harbor house, its furnishings, and the Toyota Corolla.¹

{¶8} The court scheduled a hearing on the exceptions, which was rescheduled upon Jonathan's counsel's request. On the rescheduled date, neither Jonathan nor his counsel appeared. The court denied the exceptions, but later granted Jonathan's motion for relief from judgment and scheduled another hearing.

{¶9} On July 16, 2010, a hearing on the exceptions was held before the magistrate. Jonathan's counsel conceded the only basis for the inclusion of the Toyota on the Inventory is the fact that "it ended up in Ohio" and that Robert sold it in Ohio. Mr. Aveni, the Administrator, WWA, stated he did not believe the automobile should be

¹ In addition to the Exceptions to Inventory and Appraisal, Jonathan also filed a Motion for Forfeiture on July 22, 2010, claiming Matthew's interest in the estate should be forfeited for failing to offer Mr. Luoma's will for probate and neglecting his duty as the executor. The magistrate denied the motion after a hearing; Jonathan filed objections to the magistrate's decision and the trial court overruled his objections. The forfeiture claim is not part of this appeal.

included as part of the Ohio estate because it was titled in Massachusetts. Robert testified he did not remember whether the automobile had an Ohio or Massachusetts title.

{¶10} On August 6, 2000, the magistrate issued a decision recommending that the trial court deny the exceptions. The magistrate concluded Jonathan did not meet his burden as the exceptor to prove that the Toyota Corolla, various household goods and furnishings, and \$1,000 in rental income should be included in the inventory of the estate. Regarding the Toyota, the magistrate pointed to the lack of evidence regarding where it was titled.

{¶11} Jonathan filed objections to the magistrate's decision. Interestingly, his only objection was that the Toyota should have been included in the estate, citing the sale of the automobile in Ohio. He attached to his objections a copy of certificate of title to the Toyota issued by the commonwealth of Massachusetts. The assignment of certificate of title shows the automobile was sold to a buyer in Ohio in February of 2006. That exhibit was admitted by the trial court at the hearing held on December 14, 2010 on Jonathan's objections.²

{¶12} The only issue before the court was whether the Toyota should be included in the Inventory in the instant ancillary administration. After hearing, the court overruled Jonathan's objections. The court noted that the Toyota was the subject of a

² At the beginning of this hearing, Jonathan's attorney requested the audiotape recording of the proceeding. The court denied his request, reminding him that Lake County Probate Division Loc.R.11 requires a request for the audiotape recording of the proceedings to be made in writing three days before the proceeding. On appeal, Jonathan did not file an App.R. 9(C) or (D) statement in lieu of transcript of the proceeding.

separate complaint filed by Jonathan alleging that Robert concealed and embezzled assets of the estate; thus, the issue should be disposed of in that case.

{¶13} The separate complaint to which the trial court referred was a complaint for concealment or conveying estate assets filed by Jonathan in a different trial court case number, 10 CV 0108. Jonathan alleged Robert embezzled or concealed the 1998 Toyota and the rental payments generated by the real property. It appears the case remains pending and awaits final adjudication.³

{¶14} On appeal, Jonathan raises the following assignment of error:

{¶15} “The Probate Court erred by overruling beneficiary’s Objections to Magistrate’s Decision recommending that beneficiary’s Exceptions to Inventory of decedent’s estate be denied and that Inventory which did not list decedent’s automobile be approved as submitted.”

{¶16} **Exceptions to an Inventory**

{¶17} “A hearing of exceptions to an inventory, pursuant to R.C. 2115.16, is a summary proceeding conducted by the probate court to determine whether those

³ On August 6, 2010, Robert filed a motion to dismiss that complaint. Regarding the Toyota, he asserted the court lacked subject matter jurisdiction because Jonathan did not allege the Toyota was located in Lake County. Regarding the real property, Robert asserted the real property was vested in the heirs and therefore the matter should be filed as an accounting action in the general division of the court of common pleas. On September 29, 2010, the court denied the motion to dismiss, stating vaguely: “There is evidence in the estate file that the 1998 [Toyota] was transferred in Ohio. The Probate Court may have jurisdiction over the [Toyota]; however; the Court notes that jurisdiction over this Massachusetts-titled vehicle is questionable.” The court also determined it has subject matter jurisdiction over the real property. This judgment entry is not part of the record at the proceedings below. On appeal, Jonathan filed a motion to supplement the record with this judgment entry. We denied the motion because it was not part of the trial court’s record in this case.

charged with the responsibility of filing an inventory have included in the decedent's estate more or less than the decedent owned at the time of his or her death.” *In re Estate of Platt*, 148 Ohio App.3d 132, 2002-Ohio-3382, ¶13 (citation omitted).

{¶18} The exceptor has the burden of proving the existence of assets he claims should have been included on the inventory. *In re Estate of Haas*, 10th Dist No. 07AP 512, 2007-Ohio-7011, ¶43; *Talbott v. Fisk*, 10th Dist. Nos. 02AP-427 and 02AP-428, 2002-Ohio-6960, ¶31.

{¶19} Standard of Review

{¶20} Our standard of review of such a proceeding is one of abuse of discretion. *Id.* An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black’s Law Dictionary (8 Ed.Rev.2004) 11.

{¶21} Here, Jonathan claims the Toyota should have been included in the estate because it was sold in Ohio. The certificate of title he produced subsequent to the hearing conducted by the magistrate shows the automobile was titled in Massachusetts and sold in Ohio. On appeal, he conceded the automobile had a Massachusetts certificate of title. Citing no case law or statutory authority, he claims the probate court should have included the automobile in the estate because its sale took place in Ohio.

{¶22} What Property Is Subject to Ancillary Administration

{¶23} R.C. 2129.04 governs the jurisdiction of a probate court in Ohio over the property of a non-resident decedent. R.C. 2129.04 (“Ancillary Administration”) states:

{¶24} “When a nonresident decedent leaves property in Ohio, ancillary administration proceedings may be had upon application of any interested person in any county in Ohio in which is located property of the decedent[.] *** The ancillary administration first granted shall extend to all the estate of the deceased *within the state*, and shall exclude the jurisdiction of any other court.” (Emphasis added.)

{¶25} Administration of ancillary estate is concerned solely with decedent's real and personal property located within territorial limits of the state in which ancillary administration is granted. *In re Kelley* (1940), 68 Ohio App. 51, 57.

{¶26} The question is then whether Mr. Luoma's Toyota was “within the state” for purposes of R.C. 2129.04. The magistrate focused on where the automobile was titled. However, while it is completely appropriate to consider the title at the outset of any analysis, our own research does not disclose any authority for such a rule. Instead, to determine whether an automobile is “within the state” to be included in the ancillary estate for purposes of R.C. 2129.04, we will rely on established case law regarding the situs of personal property.

{¶27} **The Situs of Personal Property**

{¶28} “Personal property has no fixed situs and adheres, in contemplation of law, to the person of the owner and is disposed of according to the *jus domicilii*.” *In re Estate of Gould* (P.C.1956), 75 Ohio L.Abs. 289, 1 O.O.2d 366, paragraph nine of the syllabus. See, also, *In re Walker* (P.C.1939), 34 Ohio L. Abs. 246, 21 O. O. 220, paragraph three of the syllabus (“[t]he situs of a wrecked automobile, the personal effects, and clothing of the decedent, is the domicile of the owner.”) In *Howard v.*

Reynolds (1972), 30 Ohio St. 2d 214, a case where the decedent was domiciled in one state but his intangible personal property located in another, the Supreme Court of Ohio held that the law where the decedent was domiciled at the time of his death governs the succession of the decedent's personal property. In that case, the trial court found the services rendered by appellant were fair and reasonable, yet without explanation, the trial court reduced appellant's fees by \$ 45,373.50. The court explained that the domiciliary rule grew out of "the transitory nature of personal property." *Id.* at 217.

{¶29} The rationale is equally applicable to inherently movable personal property such as automobiles, which are often in transit to and from different places. Therefore, based on the long-established law and for purposes of R.C. 2129.04, the automobile in this case should be considered located in the domicile of its owner when he died, i.e., Massachusetts. The fact that the automobile was titled in Massachusetts provides additional support for this conclusion.

{¶30} Because the automobile was not "within the state," it could not be included in the ancillary administration. Therefore, the exceptor failed to meet his burden of proving the automobile should be part of the inventory of Mr. Luoma's estate in Ohio. The trial court did not abuse its discretion in denying the exceptions filed by Jonathan.

{¶31} In any event, the automobile had been sold three years before the opening of the ancillary estate in Ohio. Therefore, it would appear the essence of Jonathan's claim is that Robert misappropriated the sale proceeds of the automobile by using it to repair Mr. Luoma's real property, to which Jonathan is entitled to 25% instead of 33%. As the trial court noted, Jonathan had indeed filed a separate complaint

alleging concealment and embezzlement regarding the proceeds. Thus, Jonathan is not without redress for that claim.

{¶32} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, Probate Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.