

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In re: the Supervised Estate of  
Daniel Robinson,

Tracy Robinson,  
*Appellant-Defendant,*

v.

Ralph Robinson, et al.,  
*Appellees-Plaintiffs.*

December 14, 2022

Court of Appeals Case No.  
22A-ES-854

Appeal from the Elkhart Superior  
Court

The Honorable Kristine A.  
Osterday, Judge

Trial Court Cause No.  
20D01-1908-ES-47

**Bradford, Chief Judge.**

## Case Summary

- [1] Daniel Robinson died on September 17, 2017. A dispute subsequently arose regarding the execution of Daniel’s estate between Daniel’s surviving children. Given the dispute, the trial court determined that it was necessary to appoint a neutral third party to serve as the personal representative of Daniel’s estate. Tracy Robinson, Daniel’s daughter, appeals the trial court’s order disqualifying her from serving as personal representative of the estate and appointing a neutral third party. We affirm.

## Facts and Procedural History

- [2] Daniel died on September 17, 2017. A dispute subsequently arose between his children regarding the execution of his estate with some of his children accusing Daniel’s daughter Tracy of mishandling estate assets. In June of 2018, Michaelen Stark, Ralph Robinson, Shellie Hankes, Sherrie Lovely, and Terry Peebles (collectively, “the Appellees”) filed an action in the Elkhart Superior Court I (“the trial court”) under cause number 20D01-1806-MI-266 (“Cause No. MI-266”), alleging misconduct relating to certain estate assets by Tracy and requesting that Hankes be appointed to serve as the “Successor Executrix of the Last Will and Testament of Daniel Robinson.” Appellant’s App. Vol. III p. 37. The trial court held a hearing on the Appellees’ complaint and Tracy’s subsequently-filed claims on March 15, 2019. At the conclusion of the hearing, the trial court issued an order, which provided that

all Parties to handle disputed assets according to Last Will and Testament of Daniel W. Robinson, Plaintiff's Exhibit No. 1. In the event Parties are unable to resolve pending issues pursuant to said Will, Parties are directed to open an estate.... The Court directs that Myrna Taylor ensure all assets in dispute are accounted for and distributed according to [the] Will.

Appellant's App. Vol. III p. 40.

[3] Later that evening, Taylor sent an email in which she expressly stated that

I do not want anything to do with the estate of my mother and father. I do not want to be the executor of the estate. I have not been involved in this case whatsoever. I do not want my name on this case. Please assign someone else as the executor.

I do not want anything from the estate and if there is money that needs to be divided, please give my share to my sister Robin Robinson.

Appellant's App. Vol. III p. 41. In response to Taylor's email, on March 20, 2019, the Appellees filed a motion, which provided as follows:

1. An evidentiary hearing was held on March 15, 2019 in this cause;
2. As a result, this Court issued the Order attached hereto as Exhibit A directing Myrna Taylor to ensure all assets in dispute are accounted for and distributed according to the Last Will and Testament of Daniel Robinson;
3. On Friday, March 15, 2019 at 7:13 p.m., [the parties' counsels] received the attached email from Myrna Taylor (Exhibit B) indicating Ms. Taylor's renunciation to serve as the Executrix of her father's Last Will and Testament;

4. Pursuant to the terms and provisions of Daniel Robinson's Last Will and Testament (Exhibit C), Shellie Hankes was nominated as Successor Executrix in Article III, Section 1;

5. Shellie Hankes stands ready and willing to act as Successor Executrix of Mr. Robinson's Last Will and Testament;

6. Plaintiffs request that this Court issue an order allowing Shellie Hankes to take control of all assets in dispute, to properly account for such assets, and to distribute the same according to the terms and provisions of Mr. Robinson's Last Will and Testament;

7. Time is of the essence as Tracy Robinson and/or Myrna Taylor have already improperly dissipated estate assets; and

8. Additionally, time is of the essence as Shellie Hankes flew to Indiana from Colorado to assist in this estate proceeding on Sunday, March 17, 2019 and will only be in town for a limited amount of time.

WHEREFORE, Plaintiffs/Counter-Defendants, Michaelleen Stark, Ralph Robinson, Shellie Hankes, Sherrie Lovely and Terry Peebles, each respectfully request that the Court enter an order authorizing Shellie Hankes to serve as Successor Executrix of the Last Will and Testament of Daniel Robinson, directing Ms. Hankes to take control of all assets in dispute, to properly account for such assets, and to distribute the same according to the terms and provisions of Mr. Robinson's Last Will and Testament and for all other relief just and proper in the premises.

Appellant's App. Vol. III pp. 37–39. On March 26, 2019, the trial court issued an order allowing Hankes to act as successor personal representative and directing Hankes "to take control of all assets in dispute, to properly account for

such assets, and to distribute the same according to the terms and provisions of [Daniel's] Last Will and Testament.” Appellant’s App. Vol. III p. 47.

[4] The dispute relating to the execution of Daniel’s estate continued and, on or about August 23, 2019, Tracy filed an action in the Elkhart Superior Court III under cause number 20D03-2019-ES-47 (“Cause No. ES-47”), seeking the appointment of a personal representative for Daniel’s estate. The trial judge assigned to Cause No. ES-47 granted Tracy’s petition, ordering that the parties “shall agree on a neutral qualified third-party personal representative” within twenty days of the court’s order. Appellant’s App. Vol. III pp. 94–95. On September 11, 2019, the trial judge assigned to Cause No. ES-47 transferred the case to the trial court “to accompany the proceedings of” Cause No. MI-266. Appellant’s App. Vol. III p. 98. Cause No. MI-266 and Cause No. ES-47 were subsequently consolidated in the trial court under cause number 20D01-1908-ES-47.

[5] On April 15, 2020, the trial court issued a corrected order, which provides as follows:

Pursuant to the Plaintiffs’ Motion for Clarification, the Court now clarifies that the purpose of voiding the Court’s Order of March 26, 2019 was that the Order was issued based upon Plaintiffs’ representation that the disputes arising between the parties could not be probated. The Court subsequently learned through the Defendants that there was a valid Last Will and Testament of Daniel Robinson which could be timely probated. All Orders issued subsequently are also to be void only with respect to the distribution of property.

The Court stands by its prior findings that Tracy Robinson engaged in self-dealing; however, the property disputes must be resolved in the estate case. Due to the obvious animosity between the parties and the prior actions of Tracy Robinson, the Court disqualifies Tracy Robinson as the Personal Representative of the Estate of Daniel Robinson and finds that a neutral third party is necessary to administrator the estate assets.

As indicated in the Order of March 26, 2020, the parties are given thirty (30) days in which to object to the appointment of Sue Wolf of Kaleidoscope Services LLC to serve as the Personal Representative of the Estate of Daniel Robinson. The Court does not know the fees that Ms. Wolf will assess the Estate and suggests that the parties confer with Ms. Wolf to gather additional information. The parties are also welcome to suggest an alternative neutral appointment. If this matter remains unresolved, the Court will address the same at the Review Hearing on May 28, 2020.

The Court also admonishes Tracy Robinson and Myrna Taylor to preserve any potential estate assets. Failure to abide by the Court's admonishment will subject Parties to sanctions.

Appellant's App. Vol. III pp. 132–33. On June 30, 2020, the trial court appointed Hankes as successor personal representative of Daniel's estate. On March 16, 2022, the trial court ordered Tracy to pay \$25,537.50 in attorney's fees.

## Discussion and Decision

[6] At the outset, we note that our review is hampered by the fact that the Appellees did not file an appellate brief.

When an appellee has not filed an answer brief, we need not undertake the burden of developing an argument on the appellee's behalf. *Fifth Third Bank v. PNC Bank*, 885 N.E.2d 52, 54 (Ind. Ct. App. 2008). Rather, we may reverse the trial court if the appellant presents a case of prima facie error. *Id.* Prima facie error means at first sight, on first appearance, or on the face of it. *Id.* If an appellant does not meet this burden, we will affirm. *Id.*

*Henderson v. Henderson*, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010).

## I. Whether the Trial Court's Order is Void for Lack of Subject Matter Jurisdiction

[7] Tracy contends that the trial court's order appointing Hankes as successor personal representative of Daniel's estate is void because the court lacked subject matter jurisdiction. "Subject matter jurisdiction is the power of a court to hear and decide the general class of actions to which a particular case belongs." *In re Adoption of L.T.*, 9 N.E.3d 172, 175 (Ind. Ct. App. 2014). "Subject-matter jurisdiction is the constitutional or statutory power of a court 'to hear and determine cases of the general class to which any particular proceeding belongs.'" *State v. Reinhart*, 112 N.E.3d 705, 712 (Ind. 2018) (quoting *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006)). "So, in determining whether a court has subject-matter jurisdiction, the only relevant inquiry is whether the petitioner's claim 'falls within the general scope of the authority conferred upon such court by the constitution or by statute.'" *Id.* at 711–12 (quoting *State ex rel. Young v. Noble Cir. Ct.*, 263 Ind. 353, 356, 332 N.E.2d 99, 101 (1975)). "If a court does not have subject matter jurisdiction, any judgment it renders is void." *Vic's Antiques & Uniques, Inc. v. J. Elra Holdingz*,

*LLC*, 143 N.E.3d 300, 308–09 (Ind. Ct. App. 2020) (quoting *Hoang v. Jamestown Homes, Inc.*, 768 N.E.2d 1029, 1032 (Ind. Ct. App. 2002), *trans. denied*), *trans. denied*. We review the question of subject matter jurisdiction *de novo*. *Id.*

[8] The Elkhart Superior Court is a standard superior court. Ind. Code § 33-33-20-3. “All standard superior courts have: (1) original and concurrent jurisdiction in all civil cases[.]” Ind. Code § 33-29-1-1.5. Given that the Elkhart Superior Court is a standard superior court with original jurisdiction in all civil cases, we cannot say that it lacked subject matter jurisdiction over the underlying case. *See Matter of Estate of Brown*, 587 N.E.2d 686, 689 (Ind. Ct. App. 1992) (providing generally that both the Elkhart superior and circuit courts have subject-matter jurisdiction over probate cases). Therefore, its order is not void for lack of subject matter jurisdiction.<sup>1</sup>

## II. Whether the Trial Court Could Appoint a Successor Personal Representative

[9] Tracy next contends that the trial court could not appoint a successor personal representative because a different room of the trial court, *i.e.*, Elkhart Superior Court III, had jurisdiction over the case. The Elkhart Superior Court is a standard superior court and has six judges. Ind. Code §§ 33-33-20-3, -4. “In a county that has a superior court consisting of two (2) or more judges, the court

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<sup>1</sup> Tracy argues that “even if the Elkhart Superior Court 1 subsequently obtained subject matter jurisdiction over the Will, it could not ratify Shellie Hanks as the ‘Successor Executrix’ simply because the March 26, 2019 Order appointing her as Successor Executrix is void.” Appellant’s Br. p. 21. However, for the reasons detailed above, the trial court’s order was not void for lack of subject matter jurisdiction.



shall be divided into rooms.” Ind. Code § 33-29-4-1. Thus, the actions were not pending in two separate courts, but rather were pending in two different rooms of the same court. For causes pending in the same court, Trial Rule 42(A) provides

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

[10] The matter was initially filed in the trial court and Tracy subsequently initiated proceedings in Elkhart Superior Court III. On September 11, 2019, the trial judge presiding over the case that was filed in Elkhart Superior Court III transferred the case to the trial court, consolidating the original actions. The consolidated cases were assigned a new cause number, and the trial court accepted jurisdiction over all matters relating to the consolidated cases. At the time of transfer, Elkhart Superior III relinquished its jurisdiction over the case and, from that point on, the trial court had jurisdiction over all pending matters. As such, the trial court had jurisdiction over the question of whether to appoint a successor personal representative. Tracy’s challenge to the trial court’s jurisdiction is without merit. Further, given our conclusions that the trial court did not lack subject matter jurisdiction and had jurisdiction over the question of who to appoint as successor personal representative, we further conclude that Tracy’s contention that the subsequent orders of the trial court are void for lack of subject matter jurisdiction is also without merit.

### III. Whether a Personal Representative may be Removed Without a Hearing

[11] Tracy last contends that the trial court erred in removing her as the personal representative of Daniel's estate without first holding a hearing. Although none of the court orders pointed to by Tracy specifically appointed her as the personal representative of Daniel's estate, we nonetheless conclude that despite Tracy's contention that the trial court did not hold a hearing on whether she should serve as personal representative of Daniel's estate, the record provides that the trial court conducted hearings on this case on March 15, 2019, May 9, 2019, July 11, 2019, September 4, 2019, and February 2, 2020. It is clear from the record that the parties were aware that the question of who would serve as personal representative and whether Tracy had misappropriated estate assets was before the trial court during the various hearings. On April 15, 2020, the trial court indicated that it

stands by its prior findings that Tracy Robinson engaged in self-dealing; however, the property disputes must be resolved in the estate case. Due to the obvious animosity between the parties and the prior actions of Tracy Robinson, the Court disqualifies Tracy Robinson as the Personal Representative of the Estate of Daniel Robinson and finds that a neutral third party is necessary to administrator the estate assets.

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The Court also admonishes Tracy Robinson and Myrna Taylor to preserve any potential estate assets. Failure to abide by the Court's admonishment will subject Parties to sanctions.

Appellant's App. Vol. III pp. 132–33. Tracy was given notice that the question of her fitness to serve as personal representative was before the court during various hearings. Her contention that the trial court erred by disqualifying her from serving as personal representative without first conducting a hearing is therefore without merit.

[12] The judgment of the trial court is affirmed.

Brown, J., and Pyle, J., concur.