Determining Jurisdiction for Breach of Fiduciary Duty Claims

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I. INTRODUCTION

Breach of fiduciary duty claims can arise in a number of situations and be pursued in a variety of courts. For instance, cases involving a trustee's breach of fiduciary duty can be brought in district court or in probate court. Fiduciary duty cases arise in the family court when marital fiduciary duties are at issue. Fiduciary duty disputes arise in guardianship cases initiated in the probate court or cases involving powers of attorney (that can be in probate court or district court). Of course, fiduciary duty disputes can arise in business contexts, such as malfeasance by a director or officer of the company. Even in those cases, the fiduciary duty claim could be heard by a probate court, district court, county court, or federal court.

Where should you bring or attempt to transfer your fiduciary duty claim? The first step is knowing where the possibilities lie. From there, the strategies take over. This paper discusses where the possibilities lie. The panel presentation focuses on the strategies.

II. EXCLUSIVE PROBATE COURT4 JURISDICTION

For general litigators, the extent of the jurisdiction of the probate courts may be less familiar than that of district, county, or federal court. Before discussing fiduciary duty claims specifically, then, it is appropriate to review generally the scope of jurisdiction of the Texas probate courts that can impact these claims.

A. Original Probate Jurisdiction

Original probate jurisdiction may, depending on the county, be vested in a statutory probate court, a county court at law, or a constitutional county court. See TEX. PROB. CODE ANN. § 4C.

1. Counties With No Statutory Probate Court or County Court at Law

If the county has no statutory probate court or county court at law exercising original probate jurisdiction, original probate jurisdiction is vested in the constitutional county court. TEX. PROB. CODE ANN. § 4C(a).

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1 In keeping with the Probate Code, “probate court” as used in this paper means a court exercising original probate jurisdiction, regardless of the type of court, unless otherwise specified. See TEX. PROB. CODE ANN. § 3(e)-(g).
2. Counties With a County Court at Law but No Statutory Probate Court

If the county has no statutory probate court but does have a county court at law exercising original probate jurisdiction, then that county court at law exercising original probate jurisdiction and the constitutional county court have concurrent original jurisdiction of probate proceedings. TEX. PROB. CODE ANN. § 4C(b); TEX. GOV. CODE ANN. § 25.0003(d). The jurisdiction of county courts at law exercising probate jurisdiction is not, however, coterminous with the jurisdiction that the Probate Code confers on statutory probate courts. TEX. GOV. CODE ANN. § 25.0003(f); see TEX. PROB. CODE ANN. § 3 (“A county court at law exercising probate jurisdiction is not a statutory probate court under this Code unless the court is designated a statutory probate court under Chapter 25, Government Code.”). Statutory probate courts have a more extensive jurisdictional reach.

3. Counties With a Statutory Probate Court

If the county has a statutory probate court, then it is the statutory probate court that exercises original jurisdiction of probate proceedings. TEX. PROB. CODE ANN. § 4C(c). In such counties, no other courts created by statute (i.e., county courts at law) have probate jurisdiction. TEX. GOV. CODE ANN. § 25.0003(e). Dallas County has three statutory probate courts. TEX. GOV. CODE ANN. § 25.0591.

B. Probate Proceedings and Matters Related to Probate Proceedings

1. Exclusive Jurisdiction of Probate Proceedings

Probate courts have exclusive jurisdiction of “probate proceedings.” TEX. PROB. CODE ANN. § 4A(a). The Probate Code lists the types of matters that are “probate proceedings” for purposes of establishing exclusive jurisdiction. See TEX. PROB. CODE ANN. § 3(bb). Among those types of matters, three can most directly implicate fiduciary duty litigation:

(1) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;

(2) a claim arising from an estate administration and any action brought on the claim; and
(3) the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate.

_Id._ at § 3(bb)(4), (5), (6). When probate proceedings are filed in a probate court, the court’s jurisdiction is exclusive, and any subsequent action on the case taken in another court is void. _Fernandez v. Bustamante_, 305 S.W.3d 333, 341 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding). As to the duration of the probate court’s jurisdiction, “[o]nce jurisdiction attaches, it continues until the estate is closed.” _Graham v. Graham_, 733 S.W.2d 374, 378 (Tex. App.—Amarillo 1987, writ ref’d n.r.e.).

2. **Jurisdiction of “All Matters Related to the Probate Proceeding”**

In addition to exclusive jurisdiction of a “probate proceeding,” probate courts also have jurisdiction “of all matters related to the probate proceeding,” _TEX. PROB. CODE ANN._ § 4A(a), and “pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.” _Id._ at § 4A(b). What constitutes a “matter related to a probate proceeding” depends on the type of court exercising original probate jurisdiction. _Id._ § 4B. Additionally, jurisdiction over contested or uncontested probate proceedings is usually exclusive if the court exercising probate jurisdiction is a statutory probate court. _Id._ at § 4F. If the court exercising probate jurisdiction is instead a county court at law or a constitutional county court, this jurisdiction of contested proceeding is essentially concurrent with the district court.

The following chart outlines what is considered to be a “matter related to a probate proceeding” over which each type of probate court has jurisdiction.

<table>
<thead>
<tr>
<th>Matter related to probate proceeding</th>
<th>Constitutional County Court</th>
<th>County Court at Law</th>
<th>Statutory Probate Court</th>
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<td>an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>an action against a surety of a personal representative or former personal representative</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>a claim brought by a personal representative on behalf of an estate</td>
<td>✓</td>
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Because Dallas County has statutory probate courts, this paper will primarily focus on the rules in that genre of probate court. With respect to statutory probate courts, all matters on this list "must" be brought in the statutory probate court, unless another court has concurrent jurisdiction by statute. TEX. PROB. CODE ANN. § 4F(a).

C. Guardianship Matters

Jurisdiction in guardianship matters follows the pattern of jurisdiction in cases involving decedents’ estates. Compare TEX. PROB. CODE ANN. §§ 605-609 (guardianship) with id. §§ 4A-5B (decedents’ estates). Of course, guardianship proceedings can spawn breach of fiduciary duty claims.

D. Claims Against Certain Types of Fiduciaries

1. Deceased Fiduciary

A plaintiff may have a breach of fiduciary duty claim against a deceased fiduciary. If that claim is liquidated, then it constitutes a “claim for money owed by the decedent” and must be brought in probate court. TEX. PROB. CODE ANN. § 3(bb); Cross v. Old Republic Sur. Co., 983 S.W.2d 771, 775 (Tex. App.—San Antonio 1998, pet. denied).
“For purposes of the probate claims procedures, a claim is liquidated if liability is settled, rather than contingent, and damages are certain, rather than indeterminate.” Id. at 775. Indeed, most tort claims, such as breach of fiduciary duty, are usually unliquidated. See Wilder v. Mossler, 583 S.W.2d 664, 667 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ) (holding that breach of fiduciary duty claims against executrix and trustee were not “claim[s] for money” because they “dealt with unliquidated potential liability of the kind that require fact-findings to ascertain their amount”). Thus, in most cases, a claim for breach of fiduciary duty against a deceased fiduciary will be unliquidated, is not required to be litigated in probate court, and could possibly be resolved in district or county court.

Remember, however, that statutory probate courts have exclusive jurisdiction of matters related to a probate proceeding, except for the matters listed in TEX. PROB. CODE ANN. § 4H (discussed below). Importantly, this includes “any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.” TEX. PROB. CODE ANN. § 4B(c); see above, Part II.2.c. Because an estate is not a legal entity and is therefore incapable of being sued directly and instead must be sued through its personal representative, Henson v. Estate of Crow, 734 S.W.2d 648, 649 (Tex. 1987), claims for a deceased fiduciary’s breach will generally have to be brought in statutory probate court.

2. Personal Representative

Claims by or against the personal representative of a decedent’s estate, including claims for breach of the personal representative’s fiduciary duties, must be brought in the statutory probate court overseeing the administration of the estate. [Add citation and reference to dismissing from a district court.]

III. EXCLUSIVE DISTRICT COURT JURISDICTION

A. Trusts

The general rule is that district courts have exclusive jurisdiction of matters concerning trusts, but there are important exceptions for probate courts that are relevant to breach of fiduciary duty claims. See TEX. PROP. CODE ANN. § 115.001. County courts at law exercising
probate jurisdiction and statutory probate courts have jurisdiction over the “interpretation and administration” of a testamentary trust or an inter vivos trust, if the will creating the trust or the will of the decedent who created the trust, respectively, has been admitted to probate in the court.\(^2\) Additionally, if the personal representative of an estate is a party in that capacity, the statutory probate court will have exclusive jurisdiction as just discussed. The Property Code makes further exceptions providing that a court that creates a management trust under TEX. PROB. CODE ANN. § 867 or TEX. PROP. CODE ANN. § 142.005 has continuing supervisory jurisdiction over the trust.\(^3\)

Subject only to narrow exceptions relating to small claims and justice courts, the district courts have exclusive jurisdiction over all other “proceedings by or against a trustee and all proceedings concerning trusts.” See TEX. PROP. CODE ANN. § 115.001(a) & (d). These include, for example, proceedings to:

1. construe a trust instrument;
2. determine the law applicable to a trust instrument;
3. appoint or remove a trustee;
4. determine the powers, responsibilities, duties, and liability of a trustee;
5. ascertain beneficiaries;
6. make determinations of fact affecting the administration, distribution, or duration of a trust;
7. determine a question arising in the administration or distribution of a trust;
8. relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;
9. require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and
10. surcharge a trustee.

\(^2\) See TEX. PROB. CODE ANN. § 4B.
\(^3\) See TEX. PROP. CODE ANN. §§ 115.001(d), 142.005(d); TEX. PROB. CODE §§ 606A(a)(7), 867.
TEX. PROP. CODE ANN. § 115.001(a). This list is merely illustrative, not exhaustive. Id. at § 115.001(a-1). It is important to remember, however, that these jurisdictional restrictions apply only to express trusts, and not to constructive trusts, resulting trusts, business trusts, or security interests such as deeds or mortgages. Id. at § 111.003.

IV. CONCURRENT STATUTORY PROBATE COURTS AND DISTRICT COURT JURISDICTION

A. Trusts

Statutory probate courts have concurrent jurisdiction with the district courts in actions “by or against a trustee” and in any action “involving an inter vivos trust, testamentary trust, or charitable trust.” TEX. PROP. CODE ANN. § 4H(2), (3); see TEX. PROP. CODE ANN. § 115.001(d); see also Gammill v. Fettner, 297 S.W.3d 792, (Tex. App.—Houston [14th Dist.] 2009, no pet.) (holding, under this jurisdictional provision as previously embodied in § 5(e), that the district court had concurrent jurisdiction to hear a case involving a testamentary trust with the statutory probate court managing the previous trustee’s estate). These cases clearly implicate fiduciary duty claims.

B. Powers of Attorney

Statutory probate courts have concurrent jurisdiction with the district courts in actions “against an agent or former agent under a power of attorney arising out of the agent’s performance of the duties of an agent” and in any action “to determine the validity of a power of attorney or to determine an agent’s rights, powers, or duties under a power of attorney.” TEX. PROP. CODE ANN. § 4H(3), (4). Agents, of course, owe fiduciary duties to their principals.

C. Certain Actions Involving the Personal Representative of an Estate

Ordinarily, actions by or against the personal representative of an estate in his or her capacity as personal representative must be brought in the statutory probate court. But with respect to actions “involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate” the district court has concurrent jurisdiction. TEX. PROP. CODE ANN. § 4H(4). The Probate Code defines the class of “interested persons” in an estate as the “heirs, devisees, spouses, creditors, or any
others having a property right in, or claim against, the estate being administered[,] and anyone interested in the welfare of an incapacitated person, including a minor.” TEX. PROB. CODE ANN. § 3(r).

Lopez-Franco v. Hernandez, 351 S.W.3d 387 (Tex. App.—El Paso 2011, pet. denied) illustrates this exception to exclusive jurisdiction. In Lopez-Franco, a man was shot and killed. Id. 390. His life insurance policy named three beneficiaries: his mother, his son, and a young daughter. Id. His daughter died several months after him from injuries sustained in the same shooting incident. His mother contested the other two beneficiaries’ rights to proceeds from the insurance policy. In turn, the insurance company filed an interpleader action in district court to determine the proper distribution of the proceeds. Because the insured’s daughter had died by the time the interpleader action commenced, the insurance company named as a defendant the mother of the man’s daughter, as the personal representative of the daughter’s estate, together with the other two beneficiaries. See id. at 393.

After losing in the district court, the insured’s mother challenged the judgment by arguing that the matter could only be brought in a statutory probate court because it involved a personal representative of the daughter’s estate. See id. at 392. The court of appeals rejected her position, concluding that the district court had concurrent jurisdiction because “[t]here was no evidence” that the other two defendants “had any claims against [the daughter’s] estate which would make them ‘interested’ persons.” Id. at 393.

But more often than not, a claim involving a breach of fiduciary duty against a personal representative of an estate will be brought by someone who is interested in the estate. Unless the claim triggers concurrent jurisdiction in some other manner (e.g., because the claim involves trusts or powers of attorney), jurisdiction is likely to be exclusive in the statutory probate court.4

4 It also should be noted, although not a fiduciary duty claim, any action for personal injury brought by or against the personal representative of a decedent’s estate in his or her capacity as a personal representative, or any survival or wrongful death action brought by or against the personal representative in that capacity, may be brought in either statutory probate court or district court. TEX. PROB. CODE ANN. § 4H.

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V. TRANSFER AND ASSIGNMENT PROVISIONS

A. A Statutory Probate Court Can Reach Out to Take Over a Cause of Action Related to a Probate Proceeding Filed Elsewhere

A statutory probate court may, on the motion of a party or person interested in the estate, transfer to itself from a district court, county court at law, or constitutional county court a “cause of action related to a probate proceeding pending in the statutory probate court” or a cause of action in which the personal representative of an estate pending before the court is a party. After granting such a motion, the statutory probate court may consolidate the transferred cause of action with the other proceedings in the statutory probate court regarding the estate. TEX. PROB. CODE ANN. § 5B(a). This provision can be utilized to prevent duplicative or dueling litigation between the courts.

B. Contested Probate Proceedings Can be Moved to a Statutory Probate Court or a District Court

1. Contested Probate Proceeding in County With No Statutory Probate Court or County Court at Law

In a county with no statutory probate court or county court at law exercising probate jurisdiction, the judge in a probate matter before the constitutional county court “may, on the judge’s on motion, or shall on the motion of any party” either request that a statutory probate court judge be assigned to hear a contested matter, or transfer the case to district court. TEX. PROB. CODE ANN. § 4D(a). If a statutory probate court judge is assigned to the matter, he or she has all the jurisdiction and authority of a statutory probate court in the matter, as does the district court judge if the matter is instead transferred to a district court. See id. § 4D(e)-(f). Upon resolution of the contested matter, the proceeding shall be returned to the county court. Id. Once a contested probate proceeding is transferred to a district court, the district court has jurisdiction of any subsequently filed contested matters in the proceeding, and the county court “shall transfer” those matters to the district court. Id. § 4D(h). Additionally, “[a]ny matter related to a probate proceeding in which a contested matter is transferred to a district court may be brought in a district court.” Id. § 4D(g).

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5 This transfer provision does not apply to actions by or against a personal representative for personal injury, death, or property damages. Id. § 5B(b).
2. **Contested Probate Proceeding in County With a County Court at Law But With No Statutory Probate Court**

In a county that does not have a statutory probate court, but does have a county court at law exercising original probate jurisdiction, a constitutional county court hearing a contested probate proceeding “may, on the judge’s on motion, or shall on the motion of any party” transfer the proceeding to the county court at law. TEX. PROB. CODE ANN. § 4E(a). If only the contested matter is transferred, the transferee county court at law “shall” return the matter to the transferor constitutional court for further proceedings upon resolution of the contested matter. *Id.* § 4E(b).

VI. **SPECIAL CONSIDERATIONS**

A. **Independent Executors**

The exclusive jurisdiction provision for statutory probate courts is not to be interpreted as expanding the courts’ control over independent executors. TEX. PROB. CODE ANN. § 4F(b). That is, the exclusive jurisdiction provision must be read in harmony with the provision of the code allowing for independent administration. For instance, TEX. PROB. CODE ANN. § 145(b) provides, “Any person capable of making a will may provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisal, and list of claims of his estate.” The statutory probate courts’ grant of exclusive jurisdiction over probate proceedings cannot abrogate the independence granted the executor by a testator’s will.

B. **Charitable Trusts**

In proceedings involving charitable trusts, notice must be given to the attorney general, and the attorney general is a proper party and may intervene in such proceedings. TEX. PROP. CODE ANN. §§ 123.002, 123.003. If the attorney general is not given notice as required, any judgment or settlement in a proceeding involving a charitable trust is voidable upon motion by the attorney general. *See id.* § 123.004.

Section 123.005 of the Property Code states that venue for claims for breach of fiduciary duty “by a charitable entity or a fiduciary or managerial agent of a charitable trust” shall be in a “court of competent jurisdiction in Travis County or in the county where the defendant resides or
has its principal office,” and to the extent that this venue provision conflicts with the Probate Code, this section trumps. See id. § 123.005(a). Additionally, “[a] statutory probate court of Travis County has concurrent jurisdiction with any other court on which jurisdiction is conferred by Section 4A, Texas Probate Code, in a proceeding brought by the attorney general alleging breach of a fiduciary duty with respect to a charitable trust created by a will that has been admitted to probate.” Id. § 123.005(b).

For purposes of chapter 123 of the Property Code, a “charitable trust” is a “charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.” Id. § 123.001(2). A “charitable entity,” in turn, is defined as a “corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3) of the Internal Revenue Code of 1986.”

C. Pooled Trust Subaccounts

The court that orders the establishment of a subaccount of a pooled trust meeting the requirements of 42 U.S.C. § 1396p(d)(4)(C) for the sole benefit of a minor, disabled, or incapacitated beneficiary has exclusive jurisdiction of a “subsequent proceeding or action that relates to both the beneficiary and the subaccount.” See TEX. PROB. CODE ANN. § 915; id. § 910 (definitions).

D. Breach of a Marital Fiduciary Duty

Spouses owe fiduciary duties to each other. Toles v. Toles, 113 S.W.3d 899, 916 (Tex. App.—Dallas 2005, no pet.). A claim of violation of spousal fiduciary duty may occur in a contested divorce proceeding, in which case it is essentially a claim for fraud on the community. See id.

E. Constructive Trusts

Several courts of appeals in the past have held that constitutional county courts and county courts at law exercising probate jurisdiction lacked jurisdiction to impose constructive trusts. See, e.g., In re Estate of Alexander, 188 S.W.3d 327, 331-32 (Tex. App.—Waco 2006, no
pet.); Green v. Watson, 860 S.W.2d 238, 244 (Tex. App—Austin 1993, no writ) (op. on reh’g). If a constructive trust was part of the remedy requested, these courts reasoned, and if the county court would be unable to grant adequate relief in the absence of a constructive trust, then a district court could “oust the jurisdiction” of the county court in order to provide the proper remedy. See Green, 860 S.W.2d at 243-44; In re Stark, 126 S.W.3d 635, 639-40 (Tex. App.—Beaumont 2004, orig. proceeding).

This line of cases was, however, entirely based on the statutory language of section 5A of the Probate Code, which was repealed by Acts 2009, 81st Leg., ch. 1351, § 12(h), effective September 1, 2009. See Enax v. Noack, 12 S.W.3d 609, 612 (Tex. App.—Houston [1st Dist.] 2000, no pet.) (published in part); Estate of Alexander, 188 S.W.3d at 331-32; Stark, 126 S.W.3d at 639-40; Green, 860 S.W.2d at 244. The old Section 5A(b), applicable to statutory probate courts, provided that matters “appertaining to” or “incident to” an estate included “the interpretation and administration of testamentary trusts and the applying of constructive trusts.” The former Section 5A(a), which applied to county courts at law and constitutional county courts, had no such provision for jurisdiction over trust matters and failed to mention constructive trusts supporting the court’s rulings that constructive trusts could not be imposed. See Enax, 12 S.W.3d at 612 (comparing jurisdictional provisions for county courts and statutory county courts side by side).

But Section 4B, which replaced section 5A, extended jurisdiction over testamentary trusts to county courts at law, eliminated the explicit reference to constructive trusts, and added jurisdiction over “the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate.” See TEX. PROB. CODE ANN. § 4B. Most significantly, the jurisdiction over such matters conferred to county courts at law is identical to the jurisdiction granted to statutory probate courts. As this was an expansion of the jurisdiction of both statutory probate courts and county courts at law over trusts, it appears that the reasoning in those opinions holding that a county court at law lacked jurisdiction to impose a constructive trust may have been abrogated by statute.
VII. CONCLUSION

The interplay of probate and district court jurisdiction is not a straightforward matter. This is especially apparent in the context of breach of fiduciary duty claims, because they can arise in such vastly different contexts. Moreover, the Probate Code is in constant flux. Given these realities, the practitioner pursuing or defending a breach of fiduciary duty claim should carefully study in which courts the claim can be brought (or transferred to) and, out of those courts, which one is likely to be most advantageous for her client.