

**In the Court of Common Pleas  
Clark County, Ohio  
Probate Division**

Daniel C. Harkins, Administrator with )  
Will Annexed for the Estate of Donald A. )  
Staccia a/k/a Donald A. Staccia, PhD a/k/a/ )  
Donald A. Staccia, Sr., Deceased )

Plaintiff, )

Vs. )

Charles E. Rife, et al. )

Defendant. )

Case No. 20080337 B & D

**FILED**  
CLARK COUNTY PROBATE COURT

**Entry**

DEC 24 2008

Re: City of Springfield's Motion  
To Dismiss and Transfer Venue

**RICHARD P. CAREY**  
PROBATE JUDGE

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The matter came before this Court on November 26<sup>th</sup>, 2008, to consider the Motion of Defendant, City of Springfield (the "City"), to Dismiss and for Change of Venue. This Court gave an oral Decision from the Bench; and now journalizes that Decision.

In its motion, the City presents that the above numbered cases pending before this Court, and concerning Quiet Title Actions involving the "Plum Street" properties, should be dismissed and transferred to the Franklin County, Ohio Court of Common Pleas. As its basis, the City suggests that this Court lacks jurisdiction to hear the same.

Some history. According to the pleadings and reports filed herein, it is alleged that one Donald Staccia died testate on March 27, 2003, a resident of Clark County, Ohio, and owning various parcels of real property located on Plum Street, Springfield, Clark County, Ohio. No estate proceedings were opened in this Court. This notwithstanding, it is alleged that the decedent's son, Donald Staccia, Jr. negotiated the



sale of said properties to the City, executed the pertinent deeds and received compensation therefore at offices located in Clark County, Ohio. A Special Administrator, Attorney Daniel Harkins was appointed by this Court on May 28<sup>th</sup>, 2008 to investigate the circumstances of these, and other, transactions, and to collect and preserve the effects of the Decedent. His report was tendered to this Court on August 5<sup>th</sup>, 2008. This Court then appointed the Special Administrator to serve as the Administrator With the Will Annexed of the Estate of the Decedent on September 19<sup>th</sup>, 2008.

Harkin's August report, and statements at the subsequent Hearing on the same, indicated that unless the matter was resolved by agreement of all of the parties of interest, including the City, that he, as Administrator, would find it necessary to file Quiet Title actions in Clark County to address and clear potential Estate assets. This Court assemble all interested parties, including the City, on at least two occasions in order to conduct "pre-filing" hearings with the goal of reaching a global settlement. No settlement was reached and this Court authorized the Administrator to file any actions appropriate to the proper administration of the Decedent's estate. To that end, the Administrator filed an Inventory with this Court on October 16<sup>th</sup>, 2008, listing all of the real property germane to this matter as located in Clark County, Ohio. The Administrator then filed the instant Quiet Title actions in this Court on October 21<sup>st</sup> and 22<sup>nd</sup>, 2008.

The City, however, filed a comparable lawsuit in the Court of Common Pleas, Franklin County, Ohio on October 16<sup>th</sup>, 2008---five days prior to the Administrator's first lawsuit. The City obtained service of process on the first party defendant on October 23<sup>rd</sup>, 2008---two days prior to the Administrator's successful service of process on a party defendant on October 25<sup>th</sup>, 2008.



The City contends that insofar as it first instituted “proper proceedings” and first obtained “service of the required process” in its Franklin County lawsuit, that Franklin County has exclusive jurisdiction over the matter. In support, the City directs this Court’s attention to the Ohio Supreme Court’s Decision in *Miller v. Court of Common Pleas of Cuyahoga Cty.* (1944), 143 Ohio St. 68. The City quotes the ruling therein:

“It is a fundamental rule that, as between courts of concurrent and coextensive jurisdiction, the one whose power is first invoked by the institution of proper proceedings and the service of the required process acquires the right to adjudicate upon the whole issue and to settle the rights of the parties to the exclusion of all other tribunals...” (*Miller*, p. 70)

This Court first notes that with respect to the disposition of real estate which is the subject of an open estate, this Court does not share concurrent and coextensive jurisdiction with the Franklin County Common Pleas Court. Rather, this Court has exclusive jurisdiction. ORC Sec. 2101.24.

Secondly, this Court finds a significant distinction between *Miller* and the matter before this Court. *Miller* concerned competing lawsuits filed in the general division of common pleas courts in two separate counties. With respect to civil actions in common pleas courts, it is well understood that jurisdiction therein cannot attach until a civil action is commenced---which occurs when a complaint is filed with that court. Civ. R. (3)(A). The probate court’s jurisdiction, on the other hand, is invoked when any action---which may or may not constitute a civil complaint---is filed with the court. To this extent, then, this Court’s jurisdiction is not dependent upon the filing of a civil complaint or the perfection of service of process upon a party defendant.

In the matter at hand, this Court’s jurisdiction was invoked when a Motion to Appoint a Special Administrator was filed herein on May 28<sup>th</sup>, 2008. Indeed, and on said



date, this Court appointed a Special Administrator pursuant to ORC Sec. 2113.15. The Special Administrator filed with this Court the Decedent's Will for admission to Probate on June 16<sup>th</sup>, 2008---which, of course, then dictated in which court letters testamentary could issue. ORC. Sec. 2113.01. And then on September 19<sup>th</sup>, 2008, this Court issued Letters Testamentary to the Administrator; and the formal administration of the Estate of the Decedent commenced. Therefore, "proper proceedings"---borrowing the language of the *Miller* Court---were commenced and perfected in this Court well before any lawsuit was filed in Franklin County. As such, it matters not the date when either party filed their lawsuits with respect to each other----both were filed subsequent to the date this Court assumed jurisdiction.

The parties have also raised the issue of venue. This Court notes that more than one county may claim proper venue over an action. Civ. R. (3)(B). The Court recognizes that Franklin County may enjoy proper venue insofar as one of the defendants may reside in that county. Clark County, too, may be the county of proper venue insofar as some of the defendants reside in this county, the transactions purportedly occurred within this county, the real property rests within this county, and the administrator was appointed in this county. Civ. R. (3)(B)(1,3,5 and 8).

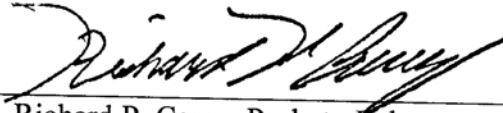
The City asks this Court to transfer venue to Franklin County. This Court finds two things of import: first, this Court has exclusive jurisdiction over the subject matter as stated above; and second, venue lies more appropriately with this Court and in Clark County insofar as there exist more enumerated factors suggesting Clark County as the county of proper venue under Civ. R. (3)(B).





For the foregoing reasons, this Court denies the Motion of the City to Dismiss the above-captioned matter and Transfer venue.

IT IS SO ORDERED.



Richard P. Carey, Probate Judge  
Clark County, Ohio Common Pleas Court

Dated: December 24<sup>th</sup>, 2008

Mailed to all interested parties on December 29<sup>th</sup>, 2008.

**FILED**  
CLARK COUNTY PROBATE COURT

DEC 24 2008

**RICHARD P. CAREY**  
PROBATE JUDGE

