

## Colorado Appellate Opinion Regarding Probate Court Jurisdiction

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The Colorado Court of Appeals recently issued an opinion reinforcing the breadth of the probate court's jurisdiction. *In re Estate of Arlen E. Owens*, 2017COA53.

In *Owens*, the decedent's brother filed a petition to set aside nonprobate payable-on-death ("POD") transfers, alleging that at the time the decedent executed certain beneficiary designations, he lacked testamentary capacity and was unduly influenced by his caretaker. The caretaker filed an objection based on jurisdiction, which the court denied. After an evidentiary hearing on the petition, the trial court set aside the beneficiary designations and imposed a constructive trust over the transferred assets held by the caretaker.

The Colorado Court of Appeals upheld the trial court's order and specifically discussed the broad jurisdiction of the probate court or in this case, the district court sitting in probate.

The *Owens* court held that the probate court has jurisdiction over a dispute involving POD transfers, even though such assets are not part of the "probate" estate, adopting the same reasoning used by the court in *In re Estate of Murphy*, 195 P.3d 1147 (Colo. App. 2008) (finding that the probate court's jurisdiction extends to disputes over joint tenancy assets owned by the decedent). Further, the resolution of the dispute in *Owens* relating to the POD transfers was essential to the proper and orderly administration of the estate since the assets, but for the POD designations, would be part of the estate. *Owens* at ¶ 13, citing *Murphy*, 195 P.3d at 1151-52 and C.R.S. § 15-10-302(2).

The *Owens* court also reinforced the holding in *Murphy* by stating that the probate court's jurisdiction extends "to determine every legal and equitable question arising *in connection with* decedents' . . . estates, so far as the question concerns any person who is before the court by reason of any asserted right in any of the property of the estate." *Owens* at ¶ 12, citing *Murphy*, 195 P.3d at 1151 (emphasis added) (*quoting* § 13-9-103(3)(103(3)(a), C.R.S. 2016). A probate court's jurisdiction "may extend even to property claimed by the estate that may ultimately not belong to the estate." *Owens*, at ¶ 13, citing *In re Estate of Lembach*, 622 P.2d 606, 608 (Colo. App. 1980).

The *Owens* court also reinforced a probate court's ability to impose a constructive trust. *Owens* at ¶ 16, citing *Lembach*, 622 P.2d at 608. Specifically, probate courts

have jurisdiction [i]n any case in which a district court could grant such relief in a separate action brought therein, to impose or raise a trust with respect to any of the property of the decedent or any property in the name of the decedent, individually or in any other capacity, in any case in which the demand for such relief arises *in connection with* the administration of the estate of a decedent[.] § 13-9-103(3)(b) (emphasis added).

*Owens* at ¶ 12. In sum, *Owens* confirms the probate court's broad jurisdiction to address claims, assets and property connected to an estate. [Click here](#) to view the *Owens* opinion.

The Colorado Court of Appeals also recently issued an opinion with an interesting discussion of the scope of a “proceeding” under the Colorado Probate Code and finality issues for purposes of appeal. [Click here](#) to view the opinion *In re the Estate of Paul J. Gadash*, 2017COA54.

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