

OHIO COURT OF APPEALS, FIFTH APPELLATE DISTRICT, RICHLAND
COUNTY

Smith v. Avery

2026-Ohio-1931 · No. 2025 CA 0106 · Decided May 26, 2026

SUMMARY

The Ohio Court of Appeals, Fifth Appellate District, affirmed a probate court judgment interpreting the Robert H. Fox Revocable Living Trust and directing distribution of its assets to Robert Fox's heirs. The court held that the plaintiffs had standing, the declaratory-judgment action was timely and not barred by claim preclusion, and no evidentiary hearing was required. It also rejected the successor trustee's proposed interpretation that would have made him the trust beneficiary.

CASE DETAILS

COURT	Ohio Court of Appeals, Fifth Appellate District, Richland County
WRITING FOR THE COURT	David M. Gormley; Craig R. Baldwin; Robert G. Montgomery
JURISDICTION	Ohio Court of Appeals, Fifth Appellate District, Richland County
DECIDED	May 26, 2026
DOCKET	2025 CA 0106
DISPOSITION	affirmed
PROCEDURAL POSTURE	Darin Avery appealed the Richland County Court of Common Pleas, Probate Division's judgment in a declaratory-judgment action interpreting the Robert H. Fox Revocable Living Trust and distributing its assets. The appellate court affirmed.
STANDARD OF REVIEW	Declaratory-judgment appropriateness and whether to hold an evidentiary hearing are reviewed for abuse of discretion; Civ.R. 12(B) (6) rulings, standing, trust interpretation, accrual of a cause of action, and claim preclusion are reviewed de novo.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Darin Avery, Trustee of the Robert H. Fox Revocable Trust v. Brad Smith, Lisa Paul, Laurel Selvey, Rodney Allen Fox, Vicki Papazian, Richard Fox, Tangela Taylor, Mikayla Taylor, Nancy Fidler, Josh Smith, Sean Smith

TOPICS

trust administration

trusts

probate procedure

statutory interpretation

appellate procedure

PRACTICE AREAS

trusts and estates

probate

declaratory judgment

appellate procedure

QUESTIONS PRESENTED

1. Whether the probate court had authority under Ohio's declaratory-judgment statutes to determine the rightful beneficiaries and distribute trust assets after the named beneficiaries died without issue.
2. Whether the plaintiffs had statutory standing to seek construction and administration of the trust.
3. Whether the plaintiffs' declaratory-judgment action violated the trust's no-contest clause.
4. Whether the action was barred by the statute of limitations or claim preclusion.
5. Whether the trial court abused its discretion by resolving the dispositive motions without holding an evidentiary hearing.
6. Whether the trust document directed distribution of the remaining assets to Robert Fox's heirs under Ohio intestate-succession law or to the successor trustee.

HOLDINGS

1. The probate court properly exercised jurisdiction to determine the rightful beneficiaries of the trust and to distribute its assets, even though the plaintiffs' proposed theory of distribution was rejected.
2. The plaintiffs had standing to bring the declaratory-judgment action because R.C. 2721.05 confers standing on persons interested in trust administration and the plaintiffs had a direct pecuniary interest in determining the trust's proper construction.
3. The plaintiffs' action to construe and enforce the trust did not violate the trust's no-contest clause.
4. The action was not barred by the statute of limitations because no justiciable controversy arose, and no limitations period began to run, until the named beneficiaries had died and the successor trustee disputed the relatives' entitlement to the trust assets.
5. Claim preclusion did not bar the plaintiffs' action because the 2003 estate-closing order did not litigate or decide who would receive the trust assets after Gregory and Jeffrey died without issue.
6. The trial court did not abuse its discretion by deciding the dispositive motions without holding an evidentiary hearing.
7. The trust's assets were required to be distributed to Robert Fox's heirs under Ohio intestate-succession law, not to Gregory's or Jeffrey's estates and not to the successor trustee.

KEY QUOTATIONS

"The Trust assets had to go somewhere, and the probate court would have abdicated its responsibility had it left the Trust's property in administrative limbo." (§ 14)

“Avery’s competing interpretation — that the reference to “Trustor” in Article IV, Section 7(F) is a scrivener’s error that should be read as “Trustee” — is a bridge too far.” (¶ 47)

FACTUAL BACKGROUND

Robert H. Fox created and funded a revocable living trust in 1991, naming his two adult sons, Gregory and Jeffrey, as beneficiaries. Robert died in 2003, and the sons later became trustees; both died intestate in 2022 without spouses or children. After Darin Avery was appointed successor trustee, he refused to distribute the trust assets, prompting distant relatives to seek a declaration of the rightful beneficiaries. The trial court concluded that the trust's residuary provision directed distribution to Robert's heirs under Ohio intestacy law.

PROCEDURAL HISTORY

After the deaths of the trustor, his wife, and their two sons, distant relatives filed a declaratory-judgment action in the probate division seeking interpretation of the trust and distribution of its assets. The trial court denied Avery's motions to dismiss and for summary judgment, interpreted the trust, and awarded its assets to five of Robert Fox's heirs. Avery appealed, raising eight assignments of error concerning jurisdiction, standing, the no-contest clause, limitations, claim preclusion, an evidentiary hearing, and trust interpretation. The appellate court overruled all assignments and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Arnott v. Arnott*, 2012-Ohio-3208, ¶¶ 1, 13
- *State v. Thompson*, 2015-Ohio-92, ¶ 18 (5th Dist.)
- *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983)
- *Daddario v. Rose*, 2022-Ohio-3537, ¶ 19 (5th Dist.)
- *Fioresi v. State Farm Mut. Auto. Ins. Co.*, 26 Ohio App.3d 203, 203-204 (1st Dist. 1985)
- *First Natl. Bank v. Miami Univ.*, 121 Ohio App.3d 170, 174 (12th Dist. 1997)
- *Moore v. Middletown*, 2012-Ohio-3897, ¶ 20
- *State ex rel. Abraitis v. Gallagher*, 2015-Ohio-2312, ¶ 13
- *Apple-Chamberlain v. Apple*, 2025-Ohio-5388, ¶ 48 (6th Dist.)
- *Natl. City Bank v. de Laville*, 2009-Ohio-5725, ¶ 20 (6th Dist.)
- *Gauthier v. Gauthier*, 2025-Ohio-501, ¶ 34 (12th Dist.)
- *AJZ’s Hauling, LLC v. TruNorth Warranty Programs of North America*, 2023-Ohio-3097, ¶ 16
- *Cundall v. U.S. Bank*, 2009-Ohio-2523, ¶ 27
- *Corron v. Corron*, 40 Ohio St.3d 75, 79 (1988)
- *Grava v. Parkman Twp.*, 73 Ohio St.3d 379 (1995)
- *Rogers v. Whitehall*, 25 Ohio St.3d 67, 69 (1986)

- *Lycan v. Cleveland*, 2022-Ohio-4676, ¶ 23
- *Hapgood v. Warren*, 127 F.3d 490, 493 (6th Cir. 1997)
- *BancOhio Natl. Bank v. Dixon*, 1991 Ohio App. LEXIS 4838, *2 (5th Dist. Oct. 3, 1991)
- *Ameritech Publishing, Inc. v. Matejkovic*, 2008-Ohio-2112, ¶ 9 (12th Dist.)
- *Hooten v. Safe Auto Ins. Co.*, 2003-Ohio-4829, ¶ 14
- *Nichols v. Bixler*, 2021-Ohio-129, ¶ 14 (5th Dist.)
- *Domo v. McCarthy*, 66 Ohio St.3d 312, 318 (1993)
- *In re Estate of Taris*, 2005-Ohio-1516, ¶ 29 (10th Dist.)
- *Clark v. Beyoglides*, 2021-Ohio-4588, ¶ 24 (2d Dist.)
- *Stevens v. Radey*, 2008-Ohio-291, ¶ 8

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