Defamation

Breach of Fiduciary - Texas Theft Liability Act

Failure to establish and maintain books and records of accounts

Failure to perform specific obligation required by the trust instruments (divide by 5)

Theft:

 Misapplication of fiduciary property held in trust for the benefit of an elderly person

Conspiracy to commit misapplication of fiduciary property held in trust for the benefit of an elderly person.

Aiding and abetting misapplication of fiduciary property.

Fraud

Conversion

 Curtis v Brunsting into estate of Nelva Brunsting (personam into rem)

Living Trust (in personam) into Probate estate (in rem)

Extortion

Violation of a federal preliminary injunction

## Damages

 Texas Theft Liability Act

Principal

Loss of use (income)

 Interest on the loss of income

[Dailey v. McAfee](https://casetext.com/case/dailey-v-mcafee?jxs=txcode,txregs,txrules,txsct,txapp,txappciv&p=1&q=&sort=relevance&type=case#uh6292395ef9c4d90037e2da99), No. 01-18-01060-CV (Tex. App. Aug. 18, 2020)

Statutory probate courts are courts of limited jurisdiction. See Stauffer v. Nicholson, 438 S.W.3d 205, 213 (Tex. App.—Dallas 2014, no pet.) (citing In re United Servs. Auto. Ass'n, 307 S.W.3d 299, 302-03 (Tex. 2010)) (contrasting limited jurisdiction of statutory probate courts with general jurisdiction of district courts); see also Narvaez v. Powell, 564 S.W.3d 49, 54 (Tex. App.—El Paso 2018, pet. denied). Dailey argues that the probate court had jurisdiction over her declaratory judgment action pursuant to Chapter 32 of the Texas Estates Code. See TEX. EST. CODE §§ 32.001(b), 32.005(a), 32.007(4). Section 32.001(b) grants a probate court "pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy." Id. § 32.001(b). In order for a probate court to assert jurisdiction over matters incident to an estate, a probate proceeding must already be pending in the probate court. See Narvaez, 564 S.W.3d at 57-58 (stating "probate courts exercise their ancillary or pendent jurisdiction over non-probate matters only when doing so will aid in the efficient administration of an estate pending in the probate court") (citing Shell Cortez Pipeline Co. v. Shores, 127 S.W.3d 286, 294-95 (Tex. App.—Fort Worth 2004, no pet.)). We note that McAfee does not dispute that Carl's probate proceeding was pending when Dailey filed her petition for declaratory judgment in June 2014. We further note that if Carl's probate proceeding was closed when Dailey filed her petition for declaratory judgment, the probate court would not have had jurisdiction to hear the petition. See Narvaez, 564 S.W.3d at 57-58. There is nothing in the appellate record, however, that reflects the status of the probate proceeding when the petition was filed. See PNS Stores, Inc., 379 S.W.3d at 273 (stating trial court's prior judgment is void and subject to collateral attack if record affirmatively demonstrates that court lacked subject matter jurisdiction over suit). Because the appellate record does not demonstrate that the probate proceeding was closed when Dailey filed her petition, we must presume that the default declaratory judgment is valid. See id. (stating courts presume that judgment being collaterally attacked is valid unless record establishes jurisdictional defect, effectively rebutting presumption).

## Ancillary Jurisdiction

1. Pour Over Will
2. Letters Testamentary / Independent Administration
3. Approved Inventory
4. Drop Order
5. Carl’s Original Petition
6. Carl’s Resignation

## Summary Judgment

Findings of fact