

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-365

MICHAEL R. BOYER

vs.

JACQUELINE BOYER.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following the death of the parties' father (the decedent), the plaintiff filed an equitable complaint in the Probate and Family Court against his sister, the defendant, alleging that the defendant committed conversion and undue influence.¹ The complaint sought monetary damages, attorney's fees and costs, and "such other and further equitable relief as the court deems proper and just." After trial, the Probate and Family Court judge concluded that the defendant had exercised undue influence over the decedent and that the defendant owed in excess of \$131,500 to the plaintiff. The judge ordered the sale of the decedent's home, which the defendant had inherited via the

¹ The plaintiff later filed an amended equitable complaint that included a claim for intentional interference with an inheritance or gift.

decedent's will, with the proceeds to be used to pay the money owed to the plaintiff.² The defendant appeals from the judgment, arguing that the Probate and Family Court lacked subject matter jurisdiction over the plaintiff's undue influence claim.³ We affirm.

There is no merit to the defendant's contention that the Probate and Family Court did not have subject matter jurisdiction over the plaintiff's undue influence claim. Under G. L. c. 215, § 2, "[p]robate courts shall be courts of superior and general jurisdiction with reference to all cases and matters in which they have jurisdiction" Section three of that statute generally "gives that court jurisdiction over the administration of estates and of all matters relative to the estates of deceased persons" See Buzzell v. Schulz, 273 Mass. 372, 374 (1930). Furthermore, G. L. c. 215, § 6, specifically grants the Probate and Family Court jurisdiction over "all cases and matters of equity cognizable under the general principles of equity jurisprudence and, with reference

² The judge concluded that the court lacked jurisdiction over the plaintiff's claims for conversion and intentional interference with an inheritance or gift and dismissed those two claims.

³ The defendant also appealed from an order of a single justice of this court denying the defendant's motion to stay the judgment pending appeal, pursuant to Mass. R. A. P. 6 (a), as appearing in 454 Mass. 1601 (2009). See Boyer vs. Boyer, No. 20-P-0104. Because we affirm the judgment, the defendant's appeal from the denial of her motion to stay judgment is moot. Accordingly, we shall dismiss that appeal.

thereto, shall be courts of general equity jurisdiction," and over "all cases and matters in which equitable relief is sought relative to: (i) the administration of the estates of deceased persons." Accordingly, the powers of the Probate and Family Court are "broad and flexible, and extend to actions necessary to afford any relief in the best interests of a person under its jurisdiction." Matter of Moe, 385 Mass. 555, 561 (1982). The Probate and Family Court clearly had subject matter jurisdiction over the plaintiff's claim that the defendant exerted undue influence over the decedent.⁴ The claim sought equitable relief relative to the administration of the estate of a deceased person. See G. L. c. 215, § 6; Buzzell, 273 Mass. at 374-375.

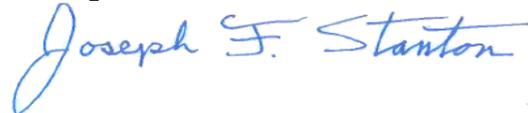
The defendant's other arguments are not properly before us. Twice, the defendant entered signed statements pursuant to Mass. R. A. P. 9 (d), as amended, 417 Mass. 1601 (1994), indicating that the defendant would not order transcripts for inclusion in the record appendix, "as these are irrelevant to the appeal on

⁴ Relatedly, the defendant contends that the Probate and Family Court judge erred by failing to dismiss until after trial the plaintiff's claims for conversion and intentional interference with an inheritance or gift. The defendant, however, has failed to identify any prejudice she faced as a result, or any relief we might provide in this appeal, as both claims were ultimately dismissed for lack of subject matter jurisdiction. See Coca-Cola Bottling Co. of Cape Cod v. Weston & Sampson Eng'rs, Inc., 45 Mass. App. Ct. 120, 123-124 (1998), citing Mass. R. Civ. P. 61, 365 Mass. 829 (1974).

lack of subject matter jurisdiction."⁵ The defendant's arguments on issues beyond that of subject matter jurisdiction are accordingly waived. In any event, by reason of the defendant's failure to provide an adequate record of the proceedings in the Probate and Family Court, we would be unable to fully consider the defendant's other arguments even if they were not waived. An appellant's obligation under Mass. R. A. P. 18 (a), as appearing in 481 Mass. 1637 (2019), to include materials "which are essential for review of the issues raised on appeal . . . is a fundamental and long-standing rule of appellate civil practice." Cameron v. Carelli, 39 Mass. App. Ct. 81, 84 (1995), quoting Shawmut Community Bank, N.A. v. Zagami, 30 Mass. App. Ct. 371, 372-373 (1991).⁶

Judgment affirmed.

By the Court (Green, C.J.,
Neyman & Grant, JJ.⁷),



Clerk

Entered: April 7, 2021.

⁵ The defendant subsequently filed a "re-notice of appeal," in which she expressly stated that her appeal "is limited to the issue of jurisdiction of the court."

⁶ In the exercise of our discretion we deny the plaintiff's motion for appellate attorney's fees and costs.

⁷ The panelists are listed in order of seniority.