STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 9, 2026)

ERIN MALLOY, KEVIN MALLOY and THOMAS MALLOY,	:	
Appellants,	:	
	:	
v.	:	**C.A. No. PP-2024-03180**
	:	
DAVID C. FIXLER and NANCY G. ABRAMS, in their capacity as Co-Executors of the ESTATE OF ARTHUR I. FIXLER,	:	
***Appellees*.**	:	

DECISION

REKAS SLOAN, J. This probate appeal presents a narrow jurisdictional question: whether the Cranston Probate Court (Probate Court) had subject-matter jurisdiction to hear disallowed civil claims asserted against an insolvent estate. The Court does not decide the merits of those claims. For the reasons set forth below, the Court concludes that the Probate Court possessed such jurisdiction, reverses the May 15, 2024 decision, and remands for further proceedings. Jurisdiction is pursuant to G.L. 1956 § 33-23-1.

I

Facts and Travel

Arthur I. Fixler (Fixler) was an attorney who had assisted the Malloy family in the 2011 sale of a limited partnership interest in Bayside Village Associates. (*See* Am. Reasons of Appeal ¶ 6; Appellants' Mem. in Supp. of their Appeal (Appellants' Mem.) at 2.) The proceeds of that

sale were deposited into Fixler's clients' account[1] maintained at BankRI. (Am. Reasons of Appeal ¶ 7.) Appellants, Erin Malloy, Kevin Malloy, and Thomas Malloy (collectively Appellants), who are some[2] of the siblings in the Malloy family, allege that they were each entitled to $118,133 from those proceeds. *Id*. ¶ 8. However, between 2011 and 2020, Fixler wrote hundreds of checks to himself from that clients' account, which Appellants allege was embezzled from them. *Id*. ¶ 10.

Following Fixler's death, Appellants discovered there were insufficient funds in the clients' account to pay what they claim to be entitled to and subsequently filed a claim for reimbursement from the Rhode Island Bar Association Client Reimbursement Fund (RIBA Client Reimbursement Fund). *Id*. ¶ 14. The RIBA Client Reimbursement Fund "was established to provide a public service and to promote confidence in the administration of justice and the integrity of the legal profession by providing some measure of reimbursement to victims who have lost money or property because of theft or misappropriation by a Rhode Island attorney, and occurring in Rhode Island during the course of a client-attorney relationship. The Rhode Island Bar Association, through a committee, administers the Fund. The Fund is funded by annual contributions made by attorneys who are members of the Rhode Island Bar Association." *See* Rhode Island Bar Association, *Lawyer's Fund for Client Reimbursement*, https://ribar.com/?pg=client-reimbursement-fund (last visited Jan. 7, 2026). However, the RIBA Client Reimbursement Fund is not a fact-finding tribunal; therefore, it denied Appellants' claims until they receive a finding or adjudication of Fixler's defalcation from either a judge or tribunal.

[1] Rhode Island Rules of Professional Conduct require attorneys to segregate client funds and the funds of third parties in a separate so-called "client account." Sup. Ct. R. Prof. Conduct 1.15(a); *In re Ricci*, 735 A.2d 203, 208 (R.I. 1999).

[2] There are six Malloy siblings. Two are not involved in this appeal. *See* Am. Reasons of Appeal ¶ 8.

See id. ¶ 15; *see also* Estate's Mem. in Supp. of Decision of the Cranston Probate Court (Appellees' Mem.) Ex. E. In an attempt to receive such a finding that would allow them to get some recovery from the RIBA Client Reimbursement Fund, Appellants filed a proof of claim[3] against Fixler's estate in the Probate Court. (Appellees' Mem. Ex. F, at 4.) However, Appellees David C. Fixler and Nancy G. Abrams—co-executors of Fixler's probate estate (collectively Appellees)—disallowed the claim, explaining they had no knowledge or information about it. (Appellants' Mem. Ex. B.) The parties then agreed to a distribution of any funds that remained in the clients' account to the Appellants, which was significantly less than what Appellants claim to be owed, and in exchange, Appellants signed an Indemnification Agreement and Release. *See* Appellees' Mem. Ex. J.

The Probate Court first concluded that the estate was insolvent. Appellees' Mem. Ex. C. In addition, the Probate Court set a hearing date to consider the Appellants' request for a hearing on their claims and the "Estate's arguments that such a hearing is neither authorized [n]or warranted[.]" *Id*. Thus, the Probate Court would not hear Appellants' underlying claims until that threshold issue of jurisdiction was determined. *Id.* After receiving memoranda, the Probate Court entered an order finding that, although G.L. 1956 § 33-11-24 gives it exclusive jurisdiction to hear disallowed claims in insolvent estates, that jurisdiction does not extend to criminal matters or to attorney-client accounts or so-called IOLTA[4] accounts. Appellants' Mem. Ex. C (Probate Decision). The Probate Court found that it does not have jurisdiction over Appellants' claims. *Id.*

[3] A "proof of claim" is defined as "[a] creditor's written statement that is submitted to show the basis and amount of the creditor's claim[.]" *See* Black's Law Dictionary 1471 (2024 ed.)

[4] IOLTA is an acronym for "Interest on Lawyers' Trust Accounts."

Appellants appealed from the Probate Decision by initiating the instant action on June 3, 2024 and filed their amended reasons of appeal on June 11, 2024. *See* Docket. Having been fully briefed by both parties, this matter is ripe for adjudication.

II

Standard of Review

"'It is well established that a probate appeal to the Superior Court is *de novo* in nature."' *Smile of the Child v. Estate of Papadopouli*, 272 A.3d 99, 105 (R.I. 2022) (quoting *Larkin v. Arthurs*, 210 A.3d 1184, 1190 (R.I. 2019)) (further internal quotation omitted). In that regard such a review "is not an appeal on error but is to be heard de novo in the superior court." Section 33-23-1(b). Thus, "[t]he findings of fact and/or decisions of the probate court may be given as much weight and deference as the superior court deems appropriate, however, the superior court shall not be bound by any such findings or decisions." *Id*.

However, since this appeal presents a single threshold issue: whether the Cranston Probate Court had subject-matter jurisdiction to hear the Appellants' disallowed claims, this Court's review is *de novo* as to that legal determination only. If jurisdiction exists, the appropriate remedy is remand to the Probate Court for further proceedings.

III

Analysis

For any court to properly hear a claim, it is axiomatic that such a court must have subject-matter jurisdiction over that type of claim in the first place. *Long v. Dell, Inc.*, 984 A.2d 1074, 1079 (R.I. 2009). Our Supreme Court has stated that:

> "[S]ubject-matter jurisdiction is an indispensable requisite in any judicial proceeding. . . . Subject-matter jurisdiction is the very essence of the court's power to hear and decide a case. Black's Law Dictionary defines subject-matter jurisdiction as, '[j]urisdiction over

> the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things.'" *Long*, 984 A.2d at 1079 (quoting Black's Law Dictionary 931 (9th ed. 2009)) (further internal quotations and citations omitted).

Appellants argue that the plain and unambiguous language of § 33-11-24 requires the Probate Court to hear its claims against Fixler's probate estate. (Appellants' Mem. 7.) That statute, in its entirety, states:

> "A personal representative, at any time during administration, may represent the insolvent estate to the probate court, and apply for the probate court to examine and determine claims. If the probate court finds the estate is probably insolvent, it *shall* hear and determine all disallowed claims and the priority of payment among all presented claims." Section 33-11-24 (emphasis added).

Given that the Appellees represented, and the Probate Court agreed, that the Fixler estate was insolvent, Appellants argue that the Probate Court was required to hear the disallowed claim. (Appellants' Mem. 7-8.)

Appellees counter that Appellants are seeking a finding that Fixler is criminally responsible for embezzling from a non-probate asset—the IOLTA account—and probate courts do not have jurisdiction to conduct hearings regarding a decedent's criminal conduct (embezzlement) relating to a non-probate asset (IOLTA account), "especially when such a finding would not bear on the administration of an Estate – the fundamental core of the Probate Court's jurisdiction – because the Estate has no assets." (Estate's Reply Mem. in Supp. of the Decision of the Cranston Probate Court (Appellees' Reply) 4.) This ignores the plain and unambiguous language of § 33-11-23, which, in its entirety, states:

> "*All* claims against an insolvent estate which are disallowed *shall* be heard and decided by the probate court." Section 33-11-23 (emphasis added).

Based on this statute alone, it seems clear that the Probate Court has subject-matter jurisdiction over *all* claims against an insolvent probate estate. In addition, even though Appellees argue that resolving such claims would not "bear on the administration of an Estate . . . because the Estate has no assets," that would be the case for every insolvent estate and would render meaningless multiple statutes within chapter 11 of title 33 addressing insolvent estates.[5] (Appellees' Reply 4.) Moreover, establishing the validity or amount of the claim may be necessary to preserve rights against others, such as a professional malpractice policy, a co-obligor, a guarantor, or other fiduciaries. Furthermore, even if a probate estate cannot pay now, a proven claim may allow the claimant to pursue newly discovered assets or after-acquired assets. It should be noted that Appellees admit there are still personal assets that need to be liquidated but they deem them to be of "no market value." (Appellees' Mem. at 7, n.4.)

Further, the Court disagrees with the position of the Probate Court and Appellees that the claim being asserted by the Appellants was criminal in nature or along the lines of a disciplinary action against an attorney. *See* Probate Decision. The Probate Court held, "[n]owhere [in G.L. 1956 § 8-9-9] does the authority [of the Probate Court] extend to oversight of criminal matters[.]" *Id.* It also held, "the Probate Court does not have jurisdiction over attorney client accounts, or IOLTA. This jurisdiction is the exclusive purview of the [Rhode Island] Rules of Professional Conduct . . . and, therefore, under the review of the Disciplinary Counsel if there is a question as to the status of an IOLTA account." *Id.* Additionally, the Probate Court reasoned that the funds in such accounts are not part of a deceased attorney's estate. *Id*; R.I. Sup. Ct. Art. V, R. 1.15(g)(3)(i).

At the heart of their claims, Appellants collectively allege that Fixler, acting as their family's attorney, embezzled funds exceeding $250,000 that were rightfully theirs. *See generally*

[5] *See* G.L. 1956 §§ 33-11-23, 33-11-24, 33-11-28, 33-11-29, 33-11-32, 33-11-34.

Appellants' Mem. Ex. A; *see also* Am. Reasons of Appeal ¶¶ 8-13. Those facts, if proven, constitute a felony. *See* G.L. 1956 § 11-41-3 (providing punishment for the embezzlement of amounts greater than $100 is a fine of not more than $50,000 or imprisonment not to exceed twenty years); *see also* G.L. 1956 § 11-1-2 (defining a felony as any criminal act punishable by a fine of more than $1,000 or a term of imprisonment for more than one year). However, Appellants, as private parties, have no standing to prosecute a felony. *See* G.L. 1956 § 12-12-1.2 (providing felonies "may be prosecuted by indictment or information signed by the attorney general or one of the attorney general's designated assistants"). Therefore, Appellants' claims cannot be properly considered as a criminal prosecution because they lack standing to prosecute such a claim. *Id*. In addition, the death of Fixler prevents any meaningful criminal punishment.

Similarly, in an attorney disciplinary action, only the Rhode Island Supreme Court's Disciplinary Counsel has authority to bring such actions, not Appellants. *See* R.I. Sup. Ct. Art. III, R. 5(b)(3). Further, even if the Supreme Court's Disciplinary Counsel brought a disciplinary action, it would, at most, result in a sanction of disbarment, suspension, public censure, or "an order for restitution, community service, pro bono legal service, or substance-abuse treatment or other counseling." R.I. Sup. Ct. Art. III, R. 3. The Supreme Court's Disciplinary Counsel does not assist clients who allege an attorney has misappropriated funds to recover those funds. *See* Rhode Island Judiciary, *Disciplinary Board Frequently Asked Questions*, https://www.courts.ri.gov/programs-services/Pages/disciplinary-board-faqs.aspx (last visited Jan. 7, 2026). Rather, the purpose for imposing a sanction is "to protect the public and to maintain the integrity of the profession"—neither of which would be achieved by imposing a sanction on Fixler, as he is deceased. *In re Ricci*, 735 A.2d 203, 208 (R.I. 1999) (citing *In the Matter of Scott*, 694 A.2d 732, 736 (R.I. 1997)). Therefore, even if a disciplinary action were to be brought, it would

be an ineffective approach in this case because posthumously imposing a sanction such as disbarment or suspension would not serve to discipline Fixler.

This Court views Appellants' claims as an attempt to hold Fixler civilly liable, under the tort theory of conversion, for his alleged misappropriation of funds, not an attempt to criminally prosecute Fixler. This is permissible under G.L. 1956 § 9-1-2, which states: "Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender[.]" Additionally, "it shall not be any defense to such action that no criminal complaint for the crime or offense has been made[.]" *Id*. Further, § 9-1-6 provides that a cause of action for conversion survives the death of a defendant and § 9-1-7 provides such an action may be brought against either the administrator or executor of an estate.

Appellants are not seeking to incarcerate or disbar Fixler; rather, they are looking to establish a monetary claim, as evidenced by the proofs of claim filed by each Appellant. *See generally* Appellants' Mem. Ex. A ("Leaving me a balance unpaid of $101,109.08.[6] This is my claim."). Accordingly, the Probate Court should have considered Appellants' claims as based on a civil action for conversion—and determined such claims accordingly.

In addition, the Appellees' argument that the IOLTA account is not considered a probate asset misses the point. For example, hypothetically, if someone steals money from a trust account and goes on a spending spree and buys a car, a house, and a multitude of luxury items and that car and house are titled in the name of the thief, and then the thief dies, the car and house are initially part of the probate estate until a constructive trust is imposed which essentially removes those

[6] Each Appellant's probate proof of claim is identical except for the last two sentences which reflect a different monetary amount. *See generally* Appellants' Mem. Ex. A.

assets from being administered in the probate estate. Thus, assuming the Appellants can prove that the IOLTA funds were converted, whatever those funds were used to purchase theoretically became assets of the decedent's probate estate. Even if the Probate Court did not have jurisdiction over the client account from which the funds were allegedly taken from, it does have jurisdiction over Fixler's estate—which controls such funds (as evidenced by its release of such funds) as well as any assets obtained from the allegedly converted funds. In addition, although the funds at issue may have been originally held in a non-probate bank account, the Appellants' proofs of claims themselves are asserted against the estate. *See generally* Appellants' Mem. Ex. A. The non-probate character of the asset which was converted does not divest the Probate Court of jurisdiction to determine whether such claims should be allowed or disallowed.

Here, Appellants bring what appears to be a tort claim against the insolvent Fixler estate, which was disallowed by the executors. Under this set of facts, a probate court should first hear a claimant's proof of claim by considering the evidence and ruling on the merits of the claim. Thereafter, if the parties are satisfied with that result, the matter ends there; if one party is aggrieved by the decision, they may then appeal to the Superior Court for the merits of the claim to be heard *de novo*.

Nothing in this decision suggests that the Probate Court should conduct a criminal trial, make findings of criminal guilt, or exercise disciplinary authority over attorneys. The claims asserted are civil in nature and concern only allowance or disallowance of monetary claims against a probate estate.

IV

Conclusion

For the foregoing reasons, the May 15, 2024 decision of the Probate Court is reversed because the Probate Court incorrectly declined subject-matter jurisdiction. The matter is remanded for further proceedings consistent with this Decision. The Court holds only that the Probate Court possesses jurisdiction to determine, in the first instance, whether the Appellants have asserted cognizable civil claims against Fixler's probate estate and whether those claims should be allowed or disallowed pursuant to §§ 33-11-23 and 33-11-24. The Court expressly does not reach the merits of the claims made by Appellants against the estate or any asserted defenses.

Counsel shall confer and submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Erin Malloy, et al. v. David C. Fixler, et al.**
CASE NO:	**PP-2024-03180**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 9, 2026**
JUSTICE/MAGISTRATE:	**Rekas Sloan, J.**

ATTORNEYS:

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