

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY
DIVISION ONE

In Re: The Estate of)	No. ED97192
)	
ELVADINE RIDGEWAY, deceased.)	Appeal from the Circuit Court
)	of Audrain County
)	
)	
)	Hon. Kelly C. Broniec
)	
)	
)	FILED: June 26, 2012

Robert Ball appeals the judgment of the probate division of the circuit court dismissing his petition for discovery of assets. Respondents sought dismissal on the grounds that the petition was a veiled claim for breach of fiduciary duty, over which the probate division lacked subject matter jurisdiction, and therefore the petition failed to state a valid claim for relief. Appellant asserts that the trial court erred in that (1) the court has jurisdiction over a discovery of assets action pursuant to section 473.340; (2) the petition met the elements of the statute sufficient to state a cognizable claim; and (3) in ruling on the motion to dismiss, the court accepted evidence outside the record relating to the merits of the petition.

REVERSED AND REMANDED.

DIVISION ONE HOLDS: (1) Although the parties characterize the issue as one of jurisdiction, we interpret the question as whether the probate division has the *authority* to entertain the petition (J.C.W. ex rel Webb v. Wyciskalla, 275 S.W.3d 249 (Mo. banc 2009)), and here the probate division clearly has authority to resolve the matters raised in the petition pursuant to section 473.340. (2) The statute does not require identification of the specific property to be discovered. Appellant’s petition satisfied the statute in a manner sufficient to put Respondents on notice of the claim and survive a motion to dismiss for failure to state a claim. (3) Evidence outside the pleadings cannot serve as the basis for granting a motion to dismiss, and the requirements for conversion to summary judgment were not satisfied.

Opinion by: Clifford H. Ahrens, Presiding Judge Roy L. Richter, J., and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: Elton W. Fay

Attorney for Respondent: Robert V. Krueger

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