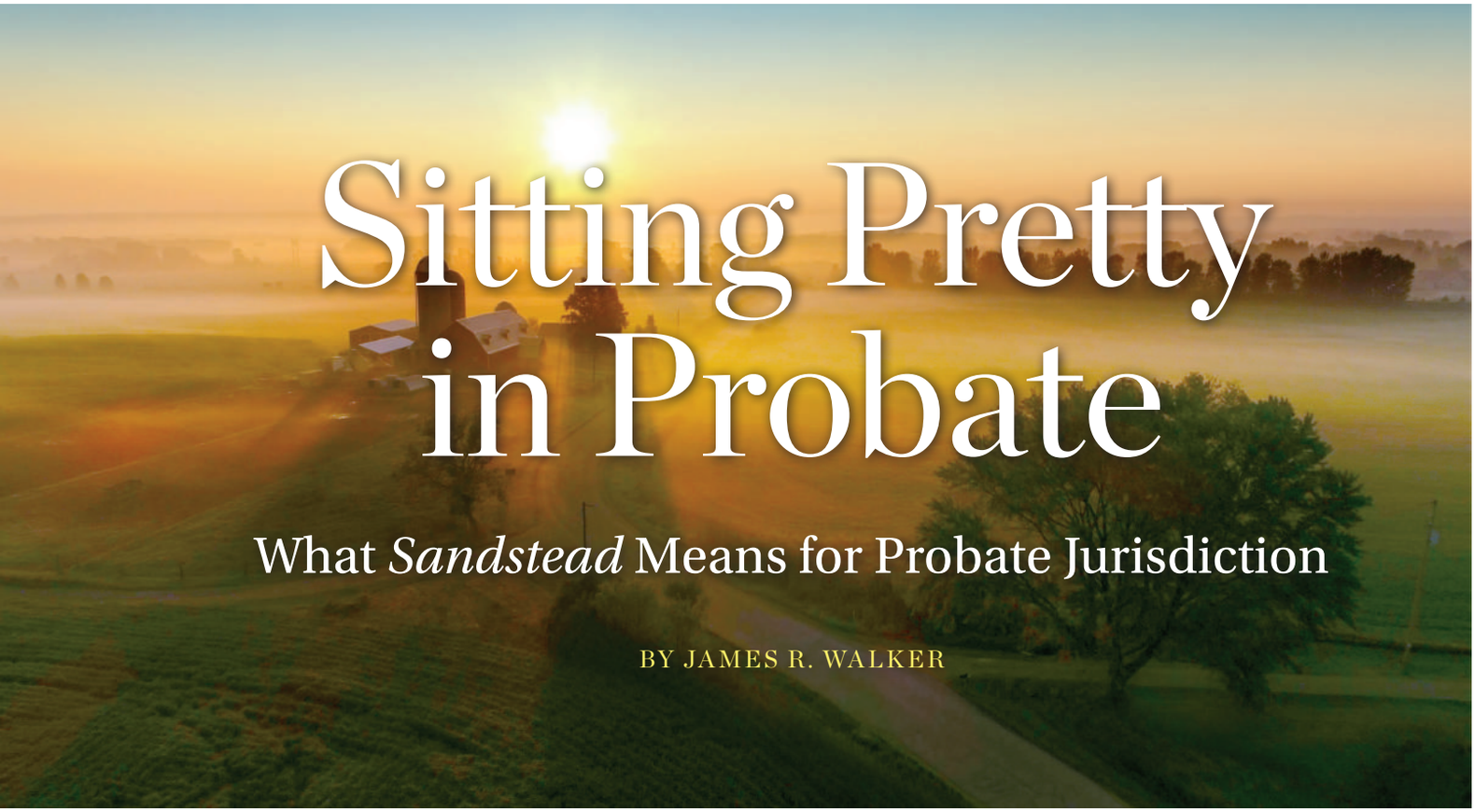

Sitting Pretty in Probate

What *Sandstead* Means for Probate Jurisdiction

BY JAMES R. WALKER

This article looks at subject matter jurisdiction in probate court. It focuses on the impact the Colorado Supreme Court's recent decision in Sandstead-Corona v. Sandstead.

Probate litigation often involves vexing disputes regarding jurisdiction,[1] standing,[2] and the scope and exercise of equitable powers and judicial discretion.[3] Unfortunately, certainty and predictability have not always been the hallmarks of such disputes.

Issues involving jurisdiction are crucial because, unlike district courts with plenary powers, courts "sitting in probate" are constrained by limited subject matter jurisdiction.[4] Notably, litigants must understand that a probate court judgment exceeding the court's jurisdiction remains subject to attack.

This article considers subject matter jurisdiction in probate court, with an emphasis on the Colorado Supreme Court's recent decision in *Sandstead-Corona v. Sandstead*, which clarifies subject matter jurisdiction.[5]

Sandstead-Corona v. Sandstead

In spring 2018, the Colorado Supreme Court threw its shoulder into the probate arena with an important decision. In *Sandstead*,[6] the Court extended probate jurisdiction by upholding the use of an implied trust for a multiparty bank account that held farm sales proceeds.

By recognizing the "logical relationship" between the accounts and the proper and orderly administration of the probate estate, the *Sandstead* Court concluded that the trial court sitting in probate had the requisite subject matter jurisdiction.[7] The Court brushed aside the assertion that the probate court lacked jurisdiction because the accounts were "not part of the probate estate."[8]

The *Sandstead* Nexus

Sandstead rests on the fundamental conclusion that there is a necessary nexus or connection between nonprobate bank accounts and probate administration. *Sandstead*'s conclusion was based on competent evidence that the decedent intended for farm sales proceeds to be handled as part of her dispositive plan.[9] This evidence allowed the Court to find that the action satisfied CRS § 13-9-103(3), which provides that a probate court "has jurisdiction to determine every legal

and equitable question arising in connection with decedents' . . . estates."[10]

The phrase "in connection with" "contemplates a logical and contextual relationship or association exhibiting 'coherence' or 'continuity.'"[11] Applying this definition in the context of a probate court's jurisdiction, prior decisions of the Colorado Court of Appeals had interpreted the phrase "in connection with" to authorize the court to resolve disputes logically related to an estate, even when the disputes involved nonprobate assets.[12] Before *Sandstead*, only divisions of the Colorado Court of Appeals had addressed the scope of this jurisdictional provision, and thus whether the probate court possessed the necessary power to impose equitable remedies.[13] *Sandstead* provides much needed guidance on this important jurisdictional concept.

Statutory Displacement

Under its Title 13 jurisdictional grant, a court sitting in probate may "impose or raise a trust with respect to any of the property of the decedent or any property in the name of the decedent, individually or in any other capacity, in any case in which the demand for such relief arises *in connection with* the administration of the estate of a decedent."[14] (Emphasis added.) But this Title 13 "in connection with" jurisdictional award must be applied through the lens of CRS Title 15: CRS § 15-10-103 instructs that "[u]nless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions."

"Statutory displacement" traces back to the original 1969 Uniform Probate Code (UPC), but it was not until 2015 that the Colorado Supreme Court specifically analyzed how and when such displacement occurs. In *Beren v. Beren*,[15] the Court found that a trial court sitting in probate abused its discretion in formulating equitable relief for a surviving spouse. The Court concluded that the plain language of the statutory elective share provision disallows the probate court from basing an equitable remedy on how the augmented estate performs after the decedent's death, because the Colorado statutes comprehensively addressed how the augmented estate performs after the decedent's death.[16]

"'Statutory displacement' traces back to the original 1969 Uniform Probate Code (UPC), but it was not until 2015 that the Colorado Supreme Court specifically analyzed how and when such displacement occurs."

Twenty years earlier, in *Lunsford v. Western States Life Insurance*, the Colorado Supreme Court addressed the comparable question of when the Probate Code displaces the probate court's common law authority.[17] In *Lunsford*, the Court concluded that the Probate Code's "slayer statute" provision did not preempt common law principles barring payment of life insurance policy proceeds to the insured's murderer.[18]

In sifting through this displacement issue, *Beren* acknowledged and respected the General Assembly's authority to modify or abrogate common law but also insisted that the Court would only recognize such changes when they are clearly expressed.[19] *Beren* emphasizes that the Probate Code will displace common law powers when there has been explicit legislative direction.[20]

When applying the canons of statutory interpretation and sorting through conflicting provisions, *Beren* also directs that effect must be given to both specific and general provisions.[21] If the conflict between the two is irreconcilable, the special provision controls over the general one. In sum, *Beren* supports a finding that a particular statutory provision displaces a probate court's general equitable authority when an exercise of equity conflicts with the plain language of the specific provision and the two provisions cannot be reconciled.

Equitable Powers of Courts Sitting in Probate

Colorado's probate courts have long exercised equitable powers.[22] Equity plays a critical role in a probate court's authority to remedy unique circumstances by ensuring that parties are treated fairly and the decedent's intent is upheld.[23]

The Colorado General Assembly granted probate courts broad equitable jurisdiction in CRS § 13-9-103(3) to determine legal and equitable questions in connection with decedents' estates, and a district court sitting in probate "has jurisdiction over all subject matter vested by article VI of the [Colorado] constitution and by articles 1 to 10 of title 13, C.R.S."[24]

In probate litigation, a common use of equitable powers is a court-mandated implied trust. In addition to its jurisdictional guidance, *Sandstead* addressed when this equitable device is warranted.[25]

Colorado recognizes two kinds of implied trusts, resulting and constructive.[26] Resulting trusts have loosely been classified as "intent-enforcing"[27] and generally arise (1) when an express trust fails in whole or in part; (2) when an express trust is fully performed without exhausting the trust estate; and (3) when property is purchased and the purchase price is paid by one person and, at that person's direction, the vendor conveys the property to another person.[28] In each of these situations, the facts give rise to an inference that the person taking title to the property was not intended to have the beneficial interest.[29]

In contrast, a constructive trust is a "remedial device designed to prevent unjust enrichment."[30] Constructive trusts "are raised by equity in respect of property which has been acquired

by fraud, or where, though acquired originally without fraud, it is against equity that it should be retained by him who holds it."[31]

Constructive Trusts and Confidential Relationships

Constructive trusts are frequently employed in cases involving confidential relationships. A confidential relationship may arise when one person occupies a position of superiority over another with the opportunity to use that superiority to the other's disadvantage.[32] Further, a confidential relationship may arise if (1) one party has taken steps to induce another to believe that he or she can safely rely on the first party's judgment or advice; (2) one person has gained the confidence of the other and purports to act or advise with the other's interest in mind; or (3) the parties' relationship is such that one is induced to relax the care and vigilance that one would ordinarily exercise in dealing with a stranger.[33] Generally, to establish the existence of a confidential relationship, the plaintiff must show that he or she reposed a special trust or confidence in the defendant, reposing such trust in the defendant was justified, and the defendant either invited or ostensibly accepted the plaintiff's trust.[34]

If a confidential relationship is shown to exist, the person in whom the special trust is placed must act in good faith and with due regard for the interests of the one reposing the confidence.[35]

There is no separate and distinct cause of action for a breach of a confidential relationship per se.[36] Rather, the existence of a confidential relationship is simply one of the elements to be considered in determining whether there is fraud, undue influence, overreaching, or other improper conduct.[37]

Examining the Confidential Relationship

In *Page v. Clark*, the Colorado Supreme Court observed that a constructive trust can arise when two parties have a "confidential relationship" that caused one party to act less vigilantly than he or she would have done had he or she been dealing with a stranger.[38] Colorado courts have recognized that confidential relationships often arise between close family members.[39] The Colorado Supreme Court has noted that a confidential relationship may arise when one party has justifiably reposed confidence in another, but for such a relationship to arise from a property transfer, the transferor must be justified in his or her belief that the transferee will act in the transferor's interests.[40]

Once a party demonstrates that a confidential relationship exists, a transaction may be set aside if that relationship has been abused.[41] A party can demonstrate an abuse of the confidential relationship by showing, for example, that the party who possesses the property at issue refused to act in accordance with the parties' mutual intent.[42] In such circumstances, the imposition of a constructive trust may be proper, because when property has been acquired in circumstances where the holder of legal title may not in good conscience retain the beneficial interest, equity converts the holder into a trustee.[43]

The Court in *Sandstead* found that the decedent's daughter was in a confidential relationship with the other parties who had an interest in the funds and that she abused that relationship by misspending those funds, contrary to the parties' interests.[44] With these factual findings, the Court upheld the use of an implied trust.

Constructive Trusts in the Joint Tenancy Context

Equitable remedies are not restricted to cases involving bank or brokerage accounts. At least one division of the Court of Appeals has applied equitable principles to impose a constructive trust when a parent placed property in joint tenancy with one child with the understanding that the child would share the property with his or her siblings after the parent died.[45]

In *Weeks v. Esch*, a mother, in an attempt to avoid probate, transferred ownership of all of her property, real and personal, to herself and her daughter, in joint tenancy.[46] The mother

later sold one property and, despite the title interest of the daughter, intended that the sale proceeds be divided equally among herself and all of her children.[47] Thereafter, and just days before her mother's death, the daughter, allegedly at the mother's direction, withdrew all of the sale proceeds funds on deposit in certain joint bank accounts and deposited those funds into her own account.[48]

Understandably concerned, the daughter's siblings challenged these transfers, and the trial court found that the mother had transferred her property to the daughter intending for the daughter to divide that property equally among all of the children.[49] The trial court also found that a confidential relationship existed between the mother and daughter, and accordingly ruled that the daughter held the property under a constructive trust.[50] The daughter appealed, contending that the necessary elements of a constructive trust had not been established, but the Court of Appeals rejected this argument, concluding that the trial court had properly determined that a confidential relationship existed between the mother and daughter, thereby justifying the constructive trust remedy.[51]

Estate Fragmentation

Sandstead illustrates fundamental problems inherent in efforts to "avoid probate."[52] As noted by a leading academic, "estate planning, which at one time involved not much more than the drafting and execution of a will, is now laden with a multitude of fragmented techniques designed to pass along assets at one's death without the necessity of court supervision."[53]

Unfortunately, in their desire to avoid probate, clients often underestimate the importance of estate planning and fail to seek comprehensive guidance. Instead, they rely on piecemeal advice from non-lawyers to avoid probate through creative asset titling. Writing on the diminishing role of wills, Professor Schenkel noted that clients are often advised by bank employees on how to title bank accounts and designate beneficiaries on payable-on-death forms. Similarly, stockbrokers and investment firm employees offer advice on transfer-on-death designations for brokerage accounts and beneficiary designations for retirement accounts. Insurance company employees advise on beneficiary designations for their products. Further, these "bank workers, stockbrokers and life insurance professionals are rarely steeped in the myriad rules relating to the ownership of property and the transfer of wealth at death . . . . These financial advisors often do not have the client's complete estate plan in mind and generally do not have any incentive to advise clients on the best way to accomplish an overall testamentary plan."[54]

> "*Sandstead* recognizes the probate court's authority to address and remedy this confusion through an equitable remedy, provided the requisite connection can be established between disputed assets and the probate estate."

In 1984, Yale Law School Professor John Langbein published an article on the "nonprobate revolution," describing how wealth changed during the 20th century and how the use of will substitutes and the "rise of financial intermediation" led to the decline of probate. He observed that "[f]inancial intermediaries operate a noncourt system for transferring account balances and other property on death with little or no lawyerly participation."[55] In an article just four years later, Professor Langbein noted that older, real estate-based, family-centered wealth has given way to financial assets—that is, stocks, bonds, bank deposits, mutual fund shares, insurance contracts, and the like—that now comprise the dominant form of wealth.[56]

Uniform laws have attempted to address this nonprobate trend. In UPC II, the commonly used joint bank account was renamed as a multiple-person account and recognized as a nontestamentary nonprobate transfer upon death.[57] The UPC comments refer to this method of transfer as nontestamentary and state that the instrument does not have to be executed in compliance with will formalities or probated, and that the personal representative has no powers or duties with respect to such assets.[58]

Even with these trends and legislative responses, confusion between probate and nonprobate assets is common. *Sandstead* recognizes the probate court's authority to address and remedy this confusion through an equitable remedy, provided the requisite connection can be established between disputed assets and the probate estate.

Beyond *Sandstead*

Although *Sandstead* clarified probate jurisdiction regarding nonprobate asset administration, questions about subject matter jurisdiction remain in the area of creditor claims and wrongful death litigation.

Courts interpreting the scope of a probate court's subject matter jurisdiction over creditors' claims have rendered inconsistent decisions. For example, in its 1952 decision *Hoff v. Armbruster*, the Colorado Supreme Court determined that a district court, rather than a probate court, had jurisdiction to impose a constructive trust on the decedent's estate.[59] *Hoff* involved a dispute concerning a contract to make reciprocal and irrevocable wills between two spouses. The Court saw the probate court's jurisdiction as narrow, stating that a claim "to enforce specific performance of a contract to leave property by will [does not] relate to probate matters. . . ."[60]

The Wrongful Death Wrinkle

Six years later, in *Meyers v. Williams*, the Colorado Supreme Court confirmed that the determination of a wrongful death claim was a matter appropriate for the probate court.[61] In *Meyers*, claimants timely notified the probate court of their claim against the estate, but then pursued their claim in a separate proceeding in district court and obtained a judgment there. The Colorado Supreme Court overturned the verdict, finding that the district court lacked subject matter jurisdiction to hear the claim. The *Meyers* Court held that the probate court had "sole and exclusive jurisdiction of claims presented before it."[62] Other cases decided after the Colorado Probate Code's enactment limit probate jurisdiction over creditors' claims. In *In re Estate of Van Trump*, a litigant asserted wrongful death claims in the probate court and sought declaratory relief.[63] The Court of Appeals found subject matter jurisdiction lacking in the probate court with the cryptic statement that "the declaratory judgment action is a statutory action, . . . [it] should be initiated as a separate action apart from the probate proceeding."[64]

Relying on *Van Trump*, in *In re Gill* the Denver Probate Court concluded that a wrongful death claim was beyond the court's subject matter jurisdiction.[65] Here, the claimants sought to litigate the merits of the wrongful death claim in the probate court rather than in a separate proceeding, and the insurance company sought a declaratory judgment in probate court on insurance coverage. Relying on CRS § 13-9-103, the Denver Probate Court held that a wrongful death claim has nothing to do with an estate, its administration, or probate law. Instead, the claimant must first obtain a judgment in the underlying non-probate statutory action before the claimant could have an "asserted right" in any property of the probate estate.

Although the wrongful death acts of most states provide that the personal representative of the estate may bring an action for wrongful death, in Colorado, standing to bring an action for wrongful death is given solely to those relatives of the decedent listed in CRS § 13-21-201(1).[66] Thus, neither the estate of the decedent nor the personal representative of the estate has standing to bring an action for wrongful death.[67]

"Although the wrongful death acts of most states provide that the personal representative of the estate may bring an action for wrongful death, in Colorado, standing to bring an action for wrongful death is given solely to those relatives of the decedent listed in CRS § 13-21-201(1)."

In many wrongful death cases, which state law applies may be unclear. For example, in *Drake v. Hodges*, the Colorado Supreme Court addressed wrongful death claims of a Wyoming resident killed in a Colorado automobile accident.[68] The Court stated:

> With regard to defendants' contention that this action was not brought by the real party in interest or for the benefit of those entitled to share in recovery under the Colorado statute, we believe they are in error. The tort was committed in Colorado and no common law right existed to bring such an action. The sole right is based on the Colorado statute . . . which gives a right of action to the wife of decedent. Had plaintiff established jurisdiction over defendants and brought suit in a Wyoming court, the action still would have been based upon, and governed by, the Colorado statute and could only have been brought by the widow as therein provided.
>
> . . .
>
> Had the accident here under consideration occurred in Wyoming, this right of action would have been under the Wyoming statute providing that it should inure to the personal representatives of the deceased person for the benefit of his or her dependents, but it having occurred in Colorado, the action was properly and necessarily brought in the name of the wife of decedent.[69]

As illustrated by these cases, practitioners handling creditor's claims or wrongful death claims must pay strict attention to possible jurisdictional constraints. Although helpful in addressing non-probate assets, *Sandstead* did not reach these issues.

Conclusion

Challenges to subject matter jurisdiction have complicated Colorado probate litigation, but the Colorado Supreme Court's 2018 *Sandstead* decision provides clarity for handling equitable claims in cases involving nonprobate assets. For guidance on subject matter jurisdiction over other claims, such as creditors' claims or wrongful death actions, practitioners should continue to sift through relevant case law. CL

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"SITTING IN PROBATE"—GENERALLY

Original and Exclusive Probate Jurisdiction	Concurrent Probate Jurisdiction	No Probate Jurisdiction
Proceedings in all matters of probate, settlement of estates of deceased persons, appointment of administrators, and settlement of accounts and such other jurisdiction as may be provided by law. Colo. Const. art. VI, §§ 9(3) and 14.	None.	Actions brought pursuant to the Colorado Wrongful Death Act, including insurance contractual disputes associated with such wrongful death claims. *In re Gill*, 14 *Quinnipiac Prob. L. J.* 377 (2000).

"SITTING IN PROBATE"—DECEDENTS' ESTATES

Original and Exclusive Probate Jurisdiction	Concurrent Probate Jurisdiction	No Probate Jurisdiction
Proceedings involving the administration, settlement, and distribution of estates of decedents, probate of wills, granting of letters testamentary and of administration, determination of heirship in probate proceedings, and devolution of title to property in probate proceedings, construction of wills, and all other probate matters. CRS § 13-9-103(1)(a), (d), (e), (h), (j), and (l).	None.	Legal malpractice claims brought against lawyers providing estate planning and trust administration services where the claimants did not seek to recover assets of the estate. *Levine v. Katz*, 167 P.3d 141 (Colo. App. 2006).
Proceedings to determine every legal and equitable question arising "in connection with decedents' . . . estates, so far as the question concerns any person who is before the court by reason of any asserted right in any of the property of the estate or by reason of any asserted obligation to the estate . . . ." CRS § 13-9-103(3).	None.	

"SITTING IN PROBATE"—TRUSTS

Original and Exclusive Probate Jurisdiction	Concurrent Probate Jurisdiction	No Probate Jurisdiction
Proceedings initiated by interested parties concerning "internal affairs of trusts." CRS § 15-16-201(1); Uniform Probate Code § 1-302.	None.	
Proceedings brought by a trustee or beneficiary concerning the administration of a trust. CRS § 15-5-203(1) (Colorado Uniform Trust Code).	None.	
	Proceedings involving trusts and third parties, such as proceedings by or against creditors or debtors of trusts. CRS § 15-5-203(2) (Colorado Uniform Trust Code).	
Not applicable.	Actions and proceedings to determine the existence or nonexistence of trusts created other than by will of actions by and against creditors or debtors of trusts, and other actions and proceedings by involuntary trustees and third parties. CRS § 15-16-204.	Not applicable.

NOTES

1. Difficult probate jurisdictional questions are not reserved to state courts. Perplexing jurisdictional problems are found in the law of federal jurisdiction and the scope of the judicially created "probate exception." *See Dragan v. Miller*, 679 F.2d 712, 713 (7th Cir. 1982) (Posner, J.) (describing the federal jurisdiction probate exception as "one of the most mysterious and esoteric branches of the law of federal jurisdiction"); Pfander and Downey, "In Search of the Probate Exception," 67 *Vand. L. Rev.* 1533 (2014).

2. *Baker v. Wood, Ris & Hames*, 364 P.3d 872 (Colo. 2016) (dissatisfied estate beneficiaries do not have standing to bring legal malpractice or contract claims against drafting attorney).

3. *Beren v. Beren*, 349 P.3d 233 (Colo. 2015). *See also In re Estate of Leslie*, 886 P.2d 284, 287 (Colo.App. 1994) (affirming assessment of administrative costs and fees incurred by the estate against a particular party despite the lack of a specific provision authorizing such action). Indeed, the Probate Code is "equitable in nature." *Id.*

4. *See* CRS § 13-9-103.

5. *Sandstead-Corona v. Sandstead*, 415 P.3d 310 (Colo. 2018).

6. *Id.*

7. *Id.* at 318.

8. *Id.* at 317.

9. *Id.* at 314.

10. *Id.*

11. *See People v. Baer*, 973 P.2d 1225, 1230 (Colo. 1999).

12. *See In re Estate of Owens*, 413 P.3d 255 (concluding the district court sitting in probate had jurisdiction to impose a constructive trust on funds in payable-on-death bank accounts because resolving the issues surrounding those assets was essential to the proper and orderly administration of the decedent's estate).

13. *See also In re Estate of Murphy*, 195 P.3d 1147, 1151–52 (Colo.App. 2008) (concluding the probate court had jurisdiction over a party's petition to partition certain real property, notwithstanding the fact that the parties disputed whether the property at issue was property of the estate, because resolving the questions of title presented by the petition was essential to the proper, orderly distribution of estate property).

14. CRS § 13-9-103(3)(b). *See also In re Estate of Lembach*, 622 P.2d 606, 607 (Colo.App. 1980) ("Since all probate courts may exercise subject matter jurisdiction vested by articles 1 through 10 of title 13, the specific enumeration of the Denver Probate Court's subject matter jurisdiction is applicable to all district courts sitting in probate matters.").

15. *Beren v. Beren,* 349 P.3d 233 (Colo. 2015).

16. *Id.* at 242.

17. *Lunsford v. W. States Life Ins.*, 908 P.2d 79, 80–81 (Colo. 1995).

18. *Id.* at 87–88.

19. *Beren*, 349 P.3d at 238.

20. *Id.*

21. *Id.* at 239.

22. *Bohm v. Bohm*, 10 P. 790 (Colo. 1886); Bintliff, "A Jurisdictional History of the Colorado Courts," 65 *Univ. Colo. L. Rev.* 577, 593 (1994).

23. *See, e.g., Garrett v. Arrowhead Improvement Ass'n*, 826 P.2d 850, 855 (Colo. 1992). *See also In re Estate of Fuller*, 862 P.2d 1037, 1039 (Colo. App. 1993) (stating that where no legal remedy is adequate, "equity may then intervene to fashion a remedy"); *Fed. Deposit Ins. Corp. v. Mars*, 821 P.2d 826, 832 (Colo.App. 1991) (echoing the equitable maxim that "[t]here can be no wrong without a remedy") (citation omitted).

24. CRS § 15-10-302(1).

25. *Sandstead*, 415 P.3d at 318.

26. *Page v. Clark*, 592 P.2d 792, 797–98 (Colo. 1979).

27. *See Shepler v. Whalen*, 119 P.3d 1084, 1089 (Colo. 2005).

28. *Page*, 592 P.2d at 797.

29. *Id.*

30. *Mancuso v. United Bank of Pueblo*, 818 P.2d 732, 737 (Colo. 1991).

31. *Page*, 592 P.2d at 798 (quoting *Botkin v. Pyle*, 14 P.2d 187, 191 (Colo. 1932)). *See also Mancuso*, 818 P.2d at 737.

32. *United Fire & Cas. Co. v. Nissan Motor Corp.*, 164 Colo. 42, 433 P.2d 769 (Colo. 1967).

33. *First Nat'l Bank of Meeker v. Theos*, 794 P.2d 1055, 1061 (Colo.App. 1990), *accord In re Marriage of Page*, 70 P.3d 579 (Colo.App. 2003).

34. *Steiger v. Burroughs*, 878 P.2d 131 (Colo. App. 1994).

35. *Nicholson v. Ash*, 800 P.2d 1352, 1355 (Colo. App. 1990).

36. *Bock v. Brody*, 870 P.2d 530, 533 (Colo. App. 1993), *aff'd in part, rev'd in part on other grounds*, 897 P.2d 769; *Todd Holding Co. v. Super Valu Stores, Inc.*, 874 P.2d 402 (Colo.App. 1993).

37. *Theos*, 794 P.2d at 1061. *See also Jarnagin v. Busby, Inc.*, 867 P.2d 63 (Colo.App. 1993).

38. *See Page*, 592 P.2d at 798.

39. *See Lewis v. Lewis*, 189 P.3d 1134, 1142–43 (Colo. 2008) ("Claims arising between close family members or confidants, where one party reasonably relies on the assertions of another in absence of a written document stems [sic] from a confidential relationship between the parties.").

40. *Page*, 592 P.2d at 798.

41. *Id.*

42. *See id.* ("The refusal to perform the promise to reconvey is itself a sufficient abuse of confidence to allow the conveyance to be set aside."); *Lewis*, 189 P.3d at 1143 ("[W]hen close family members or confidants act with a mutual purpose, unjust enrichment occurs when one party benefits from an action that is a significant deviation from that mutual purpose.").

43. *Page*, 592 P.2d at 798.

44. *Sandstead*, 415 P.3d at 320.

45. *See Weeks v. Esch*, 568 P.2d 494, 495 (Colo. App. 1977).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 495–96.

52. Langbein, "The Nonprobate Revolution and the Future of the Law of Succession," 97 *Harv. L. Rev.* 1108 (1984).

53. Schenkel, "Testamentary Fragmentation and the Diminishing Role of the Will: An Argument for Revival," 41 *Creighton L. Rev.* 155, 156 (2008).

54. *Id.* at 162.

55. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession, 97 Harv. L. Rev.* 1108 (1984). Harvard Law School Professor Robert Sitkoff has also described how clients are dying with a host of non-probate arrangements. He noted Harvard Law School's change in his trust and estate curriculum (or "canon") with significant class time devoted to non-probate transfers and the use of "will substitutes." In his view, non-probate transfers are more important than ever in wealth transfer and wealth succession. *See* Dukeminier et al., *Wills, Trusts, and Estates* (Wolters Kluwer 9th ed. 2013).

56. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission, 86 Mich. L. Rev.* 722, 723 (1988).

57. UPC § 6-101.

58. UPC § 6-101 cmts.

59. *Hoff v. Armbruster*, 244 P.2d 1069 (Colo. 1952).

60. *Id.* at 1073.

61. *Meyers v. Williams*, 324 P. 2d 788 (Colo. 1958).

62. *Id.* at 790.

63. *In re Estate of Van Trump*, 517 P.2d 856 (Colo.App. 1973).

64. *Id.* at 859.

65. *In re Gill*, 14 *Quinnipiac Prob. L. J.* 377 (2000).

66. *Jones v. Hildebrant*, 432 U.S. 183, 185 (1977) ("An action for wrongful death under Colorado law is an action which may be brought by certain named survivors of a decedent who sustain a direct pecuniary loss upon the death of the decedent"); *Reighley v. Int'l Playtex, Inc.*, 604 F.Supp. 1078, 1080 (D.Colo. 1985) ("The statute gives standing only to those individuals specifically designated.").

67. *Nat'l State Bank of Boulder v. Brayman*, 497 P.2d 710, 713 (Colo.App. 1972) ("In Colorado, the wrongful death statute does not initially authorize a claim for relief to the personal representative of the deceased. This action, in the first instance, vests in the surviving spouse to the exclusion of all others") *rev'd on other grounds* 505 P.2d 11; *Pizza Hut of America, Inc. v. Keefe*, 900 P.2d 97, 102 (Colo. 1995) ("The Keefes' wrongful death claim was brought pursuant to the provisions of section 13-21-202 . . . Section 13-21-201 transfers the cause of action created by section 13-21-202 to the decedent's heirs, who in this case are the decedent's parents"); *McCord v. Affinity Ins. Group, Inc.*, 13 P.3d 1224, 1227 (Colo.App. 2000) ("After a person's death, two types of claims may be brought against the person or persons who cause the death. Statutorily defined and limited damages are available to certain enumerated persons under the wrong death statutes. (citations omitted). In addition, the personal representative of the estate may bring a claim for other, specified damages on behalf of the estate pursuant to the survival of claims statute."); *Publix Cab Co. v. Colo. Nat'l Bank of Denver*, 338 P.2d 702, 706 (Colo. 1959) ("Where, as here, the defendant has injured another, but has not caused his immediate death, and he later dies, two distinct actions exist. The executor may bring an action under the Survival Statute . . . . The other action may be brought by the heirs under the Death Statute").

68. *Drake v. Hodges*, 161 P.2d 338 (Colo. 1945).

69. *Id.* at 340–41.