

**THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.**

**NOTICE: Motions for reconsideration must be
received no later than 4:30 pm on the 10th day after
the decision was issued to be deemed timely filed.
<https://www.gaappeals.gov/rules>**

October 20, 2026

In the Court of Appeals of Georgia

A26A1282. SMITH et al. v. WHITLOCK et al.

PIPKIN, Judge.

This case involves a dispute over the validity of a will and a deed executed on the same day in December 2020 involving the same real property. Following a jury trial, the Meriwether County Superior Court entered a final judgment declaring the will and the deed invalid and making an award of attorney fees and expenses of litigation under OCGA § 13-6-11. However, in response to a pretrial motion to dismiss, the superior court was required to transfer the case to the Meriwether County Probate Court. See Ga. Const. of 1983, Art. VI, Sec. I, Par. VIII (requiring “[a]ny court” to “transfer to the appropriate court in the state any civil case in which it

determines that jurisdiction ... lies elsewhere”). Accordingly, we vacate the superior court’s judgment and remand with direction.

1. On January 28, 2021, 84-year-old Ellis W. Paulk, Sr. (“Decedent”) died, leaving behind five adult children: (1) Ellis Paulk, Jr. (“Junior”); (2) Debra P. Smith (“Debra”); (3) Sandra P. Whitlock (“Sandra”); (4) Joyce Fett (“Joyce”); and (5) David Paulk (“David”). On December 15, 2020, less than two months before Decedent died, Debra and David drove him to a lawyer’s office where he executed a new will. According to the will, when Decedent died, Junior would receive \$3,000, Sandra and Joyce would receive \$20 each, David would receive Decedent’s house, the surrounding acreage, and certain other listed items, and the rest of Decedent’s estate would be divided between Debra and David. Then, after executing the new will, Decedent executed a warranty deed transferring his house and the surrounding acreage to David.

Five days after Decedent’s death, Debra wrote letters to Junior, Sandra, and Joyce informing them that their father had died. Each letter included a copy of the new will and a cashier’s check for the amount specified in it. The will nominated Debra to serve as executor of Decedent’s estate, and Sandra wrote to Debra asking her to file

the will in the Meriwether County Probate Court so that its validity could be determined. Debra declined to do so, however, despite having previously worked for a law firm for 18 years and having notarized and witnessed numerous wills as part of her job. Instead, Debra and David simply divided up the rest of Decedent's property between themselves, including a \$100,000 certificate of deposit.

On October 13, 2021, Sandra, Junior, and Joyce (collectively, "Appellees") filed a verified complaint against Debra and David (collectively, "Appellants") in Meriwether County Superior Court. The complaint sought a declaration that the December 15, 2020 will was invalid due to undue influence, duress, and lack of capacity; a declaration that the December 15, 2020 deed was invalid due to undue influence, duress, lack of capacity, and fraud; cancellation of the deed; and an award of attorney fees and expenses of litigation as damages under OCGA § 13-6-11. On November 16, 2021, Appellants filed an answer and defenses, specifically arguing that the superior court lacked subject matter jurisdiction over the case because the validity of the will and the contents of Decedent's estate were issues within the exclusive original jurisdiction of the probate court.

Following discovery, on February 25, 2025, Appellees filed an amended complaint that, among other things, added an allegation that the will and the deed were both fraudulently backdated. On May 1, 2025, Appellants filed an amended answer and defenses and a motion to dismiss or, in the alternative, motion for summary judgment. Appellants specifically argued in both filings that the superior court lacked subject matter jurisdiction due to the probate court's exclusive original jurisdiction to determine the validity of the will.

On August 4, 2025, the superior court entered an order rejecting Appellants' argument that the complaint must be either "dismissed or transferred." The superior court therefore denied Appellants' motion to dismiss and alternative motion for summary judgment. Following a jury trial from August 11 to 12, 2025, the superior court entered a September 24, 2025 judgment declaring the December 15, 2020 will invalid; declaring the December 15, 2020 deed invalid and ordering that it be cancelled; and awarding Appellees \$25,000 in attorney fees and expenses of litigation under OCGA § 13-6-11 due to Appellants' having caused them unnecessary trouble and expense.

2. Appellants contend that the superior court erred in denying their motion to dismiss and alternative motion for summary judgment instead of transferring the case to the probate court. We agree.

By statute, probate courts have exclusive original jurisdiction (as opposed to appellate jurisdiction) over “[t]he probate of wills” and “[a]ll matters and things as appertain or relate to estates of deceased persons.” OCGA § 15-9-30(a)(1), (11). See also OCGA § 53-5-1(a) (“The probate court shall have exclusive jurisdiction over the probate of wills.”). Thus, a probate court is “the only court that can in the first instance judicially determine whether or not any given paper is the true will of the person by whom it purports to have been executed.” *Israel v. Wolf*, 100 Ga. 339, 341 (28 SE 109) (1897). “Superior courts lack subject matter jurisdiction to hear the probate of a will,” i.e., to decide “the issue of devisavit vel non.” *SunTrust Bank v. Peterson*, 263 Ga. App. 378, 380(1) & n.2 (587 SE2d 849) (2003).

It is well established that the inclusion of a claim for cancellation of a deed in a complaint to declare a will invalid does not confer subject matter jurisdiction over the case on superior courts. See, e.g., *Elliott v. Johnson*, 178 Ga. 384, 385-86 (173 SE 399) (1934) (affirming superior court’s dismissal of petition for cancellation of two wills

and a deed due to exclusive original jurisdiction of probate courts); *Turner v. Holbrook*, 145 Ga. 603, 603-04 (89 SE 700) (1916) (affirming superior court's dismissal of petition to cancel two deeds and to declare a will invalid). Moreover, "the rule that equity seeks always to do complete justice will not bring into [a superior court's] equitable jurisdiction matters over which another court has exclusive jurisdiction." *Furr v. Jordan*, 196 Ga. 862, 871(1) (27 SE2d 861) (1943) (citation modified). Thus, a "superior court, in the exercise of its equity powers, has no jurisdiction ... to decree, for any reason, the cancellation of an alleged will, upon which no action has ever been taken by the [probate court]." *Id.* (citation modified).

The superior court's reliance on OCGA § 23-2-91 was somewhat misapplied. By its terms, the statute only authorizes a superior court to interfere with an executor or administrator's "administration of [an] estate[]," OCGA § 23-2-91, and then only in narrow, statutorily prescribed circumstances. See *Abercrombie v. Hair*, 185 Ga. 728, 731(3) (196 SE 447) (1938) (explaining that "superior courts are not ordinarily empowered on equitable petition ... to pass upon the validity of a will, or to interfere with due administration already in progress in a [probate] court"). The statute does

not authorize a superior court to invade the probate court's exclusive original jurisdiction over the probate of wills and the issue of devisavit vel non.

Since 1983, the Georgia Constitution has contained a provision requiring "[a]ny court" to "transfer to the appropriate court in the state any civil case in which it determines that jurisdiction ... lies elsewhere." Ga. Const. of 1983, Art. VI, Sec. I, Par. VIII. As a result, in response to Appellants' motion to dismiss and alternative motion for summary judgment, the superior court was required to transfer the case to the probate court. Accordingly, we vacate the superior court's judgment and remand this case to the superior court with direction to transfer the case to the Meriwether County Probate Court.

Judgment vacated and case remanded with direction. Dillard, P. J., and Gobeil, J., concur.