

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

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June 10, 2026

In the Court of Appeals of Georgia

A26A0155. DUNCAN et al v. DUNCAN.

HODGES, Judge.

Jack and Dennis Duncan (collectively “appellants”) appeal from the superior court’s order removing them as co-executors of their mother’s estate. Among their challenges to the superior court’s order, the appellants challenge the superior court’s subject matter jurisdiction. Specifically, the appellants argue that the superior court, like the probate court before it, determined the validity of a trust to reach its result, and such a conclusion exceeded the jurisdictional authority of both courts. Because the superior court lacked jurisdiction to address this question, we agree and reverse.

The facts of this case are straightforward and undisputed. In 1999, Eva Rowland created the Rowland Living Trust, naming herself as trustee. In 2002, Rowland

amended the trust to transfer her property into it. In 2003, Rowland conveyed her home and surrounding property to the trust by warranty deed. In 2008, Rowland amended her trust to name the appellants as her successor co-trustees in the event she became unwilling or unable to serve as trustee. The trust provides that, upon Rowland's death, the trustee will leave Rowland's home and five acres of surrounding property to Rowland's husband, 1/3 of the remainder to Jack, 1/3 of the remainder to Dennis, and 1/3 of the remainder for her other two sons Alfred and Mark, and also provides for the distribution of certain personal property.

In late 2011, Rowland executed a last will and testament, leaving her home and five acres to her husband, to be sold and with the proceeds to be divided upon his death. The will also devises the remainder of her property, both real and personal, to all four of her sons in equal shares. The will names the appellants as co-executors of her will. The will makes no express reference to the trust, and there was no deed executed to remove the home from the trust.

Rowland died in 2012, and her husband passed away in 2014. Following the husband's death, Mark filed a petition in the probate court to remove the appellants as co-executors of Rowland's estate. Mark alleged that the appellants have not sold

their mother's property, nor equally divided the remaining property, to her surviving children in accordance with Rowland's will. Following a hearing and briefing, the probate court granted Mark's petition, concluding that, based on the 2011 will, "Rowland's intentions were to revoke the provisions of her trust regarding her real property." The probate court further concluded that a successor executor should carry out the provisions of Rowland's will.

The appellants filed a petition for review to the superior court to challenge the probate court's order. After Mark answered the petition, the superior court conducted a hearing on the matter and granted Mark's request to remove the appellants and appoint a third party administrator. While not the acme of clarity, the brief superior court order appears to have concluded that the will revoked the trust. The superior court concluded that (1) that the trust was revocable while Rowland was alive, (2) Rowland's last will and testament evidenced her intention to make a different disposition of her property than what was in the trust, and (3) Rowland had the authority to modify the trust document and her property. Based on these conclusions, the superior court removed appellants as co-executors. The instant appeal follows.¹

¹ While, generally, appeals from decisions of the superior courts reviewing inferior judicatories by petition for review require the appellants to file a discretionary

While the appellants raise three enumerations of error to challenge their removal as co-executors of their mother's estate, do not need to reach these issues because the superior court's order clearly exceeded its jurisdictional authority. The appellants argue that the probate court lacked subject matter jurisdiction to make any adjudication regarding the trust, and, because the probate court lacked jurisdiction, the superior court was equally jurisdictionally infirm to consider the issue. Mark has admitted in *judicio* that the probate court lacked jurisdiction to rule on issues related to the trust,² but urges this Court to find that the superior court could do so on appeal.

Georgia's appellate Courts have, for over a century, clearly held that superior courts have no broader subject matter jurisdiction than probate courts (formerly courts of ordinary) when reviewing such court's decisions on appeal. *Goodman v. Little*, 213 Ga. 178, 179 (97 SE2d 567) (1957) ("The superior court on the trial of an appeal from the court of ordinary has no broader powers than the court of ordinary

application, this rule does not apply to the review of decisions of the probate courts. OCGA § 5-6-35(a)(1).

² Mark's brief concedes, "[a]ppellants correctly state the [p]robate [c]ourt lacked jurisdiction to rule in issues related to the trust." See *Moring v. Moring*, 228 Ga. App. 662, 663 (1) (492 SE2d 558) (1997) ([A] probate court does not have jurisdiction to remove a trustee.").

itself had.”); *Maloy v. Maloy*, 134 Ga. 432, 438 (68 SE 80) (1910) (“[T]he court of ordinary had no jurisdiction to grant such relief, and the superior court, on appeal from the court of ordinary, had none.”); accord *Davison v. Hines*, 291 Ga. 434, 438(2) (729 SE2d 330) (2012) (“[W]here [the] probate court lacks jurisdiction to determine a particular issue, the superior court does not have jurisdiction to decide the matter on appeal, and its lack of jurisdiction [cannot] be waived by the parties.”) (citation and punctuation omitted). The parties have cited no reason for this Court to chart a different course today, and we conclude that both the probate court and superior court lacked jurisdiction to rule on issues related to the trust.

Mark asserts that the appellants have not met their burden of persuasion because they failed to transmit a copy of the transcript of the probate court proceeding on appeal. Mark would have us conclude that without a transcript we cannot divine what issues were raised in the probate court. Mark is, of course, correct that if “the transcript is necessary for review and appellant omits it from the record on appeal, the appellate court must assume the judgment below was correct and affirm.” *Quarterman v. Lee*, 291 Ga. App. 603 (662 SE2d 234) (2008) (citation and punctuation omitted). Both lower court orders, however, clearly made conclusions regarding the validity of

the trust. Also, Mark expressly moved the probate court to “decide ... whether the Last Will and Testament of the Decedent effectively revoked the trust with regard to the real property owned by the Decedent.” As such, it is clear from the record that the lower courts erroneously determined the validity of the trust, and a review of the transcript is unnecessary to resolve this appeal. See *Mikell v. Hortenstine*, 334 Ga. App. 621, 622–23 n. 3 (780 SE2d 53) (2015) (explaining a transcript is not necessary to resolve an appeal where error is apparent from the face of the order).

It is apparent from the superior court’s order that the appellants’ removal as co-executors was predicated upon revoking the trust. Because the superior court lacked jurisdiction to remove appellants as trustees, we must reverse the superior court’s order. See *Yancey v. Hall*, 265 Ga. 466, 468(1) (458 SE2d 121) (1995) (“It follows that the order removing [a party] as executor must be reversed, since the superior court had no jurisdiction to address that issue.”).

Judgment reversed. Barnes, P. J., and Markle, J., concur.