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**IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO**

E. Elaine Roebke, Admin. of the  
Estate of Allison Roebke,

Case No. G-4801-CI-0202202926-000

Plaintiff,

Judge Lindsay D. Navarre

v.

**DEFENDANTS' MOTION TO DISMISS**

ADCO Firearms, LLC, et al.,

Robert J. Bahret (0014985)  
Andrew J. Ayers (0022334)  
ROHRBACHERS CRON MANAHAN  
TRIMBLE ZIMMERMAN CO., L.P.A.  
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Attorneys for Defendants

Defendants.

Now comes Defendants ADCO Firearms, LLC and Steven E. Thompson, by and through counsel, and move the Court to enter an order dismissing Plaintiff's complaint pursuant to Civ.R. 12(B)(1) and 12(B)(6). The basis for said motion is set forth in the accompanying memorandum in support.

**MEMORANDUM IN SUPPORT**

This case involves the tragic death of Allison Roebke on July 8, 2020. Her mother, Elaine Roebke, applied to the Lucas County Probate Court to be appointed as the administrator of the Estate of Allison Roebke on October 14, 2021. The Court entered an order appointing Elaine Roebke as administrator on that same date. The purpose for the appointment was for the purpose of pursuing a wrongful death claim

only. (See pleadings from the Lucas County Probate Court, Case No. 2021 EST 2295, Estate of Allison Elaine Roebke a.k.a. Allison E. Roebke attached as Exhibit A.)

Pursuant to authority granted by the Lucas County Probate Court, the present action was filed on July 6, 2022 by E. Elaine Roebke, Administrator of the Estate of Allison Roebke.

On September 9, 2022, Elaine Roebke, as Administrator of the Estate of Allison Roebke filed a motion asking the Lucas County Probate Court to close the Estate of Allison Elaine Roebke as there were no assets to administer and "the Estate is no longer pursuing a personal injury claim". Also on September 9, 2022, the Court enter an order closing the estate and discharging the Administrator from any further responsibility or authority. (See Motion to Close Estate and Order granting said motion attached hereto as Exhibit B.)

There has been no effort made to reopen the Estate and the period of limitations in this matter has now run.

Under Ohio law, only a personal representative may bring a wrongful death action. R.C. § 2125.02 provides:

A civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next-of-kin of the decedent.

In the absence of an appointed administrator, no one has the capacity to bring a wrongful death action or prosecute such an action. *Burchett v. Larkin*, 192 Ohio App.3d 418, 2011-Ohio-684, 949 N.E.2d 516 (4<sup>th</sup> Dist.) As noted by the Court in *Burchett*, the interpretation of R.C. § 2125.02(A) is that only a personal representative has the legal capacity to sue or pursue an action. In the absence of the appointment of a personal representative, no party has authority to sue or prosecute an action, as that authority extends solely from the grant of Letters of Authority by the probate court.

Because there is no personal representative appointed to prosecute this action, this Court lacks jurisdiction over the subject matter of the action and the complaint fails to state a claim upon which relief can be granted, as no party has the authority to pursue the action.

WHEREFORE, because the Plaintiff lacks authority to pursue this action and this Court therefore lacks subject matter jurisdiction in the matter, the Court should dismiss Plaintiff's complaint.

Respectfully submitted,

/s/ Robert J. Bahret  
Robert J. Bahret  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **Defendants' Motion to Dismiss** has been sent on this 17<sup>th</sup> day of March, 2023, by email transmission only to: Sean R. Alto, Esq. at [seana@cooperelliott.com](mailto:seana@cooperelliott.com) and Chelsea C. Weaver, Esq. at [chelseaw@cooperelliott.com](mailto:chelseaw@cooperelliott.com), attorneys for Plaintiff.

/s/ Robert J. Bahret  
Robert J. Bahret  
Attorney for Defendants

PROBATE COURT OF LUCAS COUNTY, OHIO  
JACK R. PUFFENBERGER, JUDGE

FILED  
LUCAS COUNTY PROBATE COURT  
JACK R. PUFFENBERGER, JUDGE  
2021 OCT 14 P 2:08  
DECEASED

ESTATE OF Allison Elaine Roebke a.k.a. Allison E. Roebke

CASE NO. 2021 EST 2295

**\*\* WRONGFUL DEATH ONLY \*\***  
**ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY**  
[For Executors and all Administrators]

Name and Title of Fiduciary E. Elaine Roebke a.k.a. Evelyn E. Roebke, Administrator

On hearing in open Court the application of the above fiduciary for authority to administer decedent's estate, the Court finds that;

Decedent died [check one of the following]  testate -  intestate - on July 8, 2020

domiciled in Lucas County, Ohio

[Check one of the following]  Bond is dispensed with by the Will -  Bond is dispensed with by law.  Applicant has executed and filed an appropriate bond, which is approved by the Court; and  that Attorney \_\_\_\_\_ agrees to be co-signor on all estate accounts and that estate assets will remain within Lucas County.

Applicant is a suitable and competent person to execute the trust.

The Court therefore appoints applicant as such fiduciary, with the power conferred by law to fully administer decedent's estate. This entry of appointment constitutes the fiduciary's letters of authority.

Date 10/14/21 **JOURNALIZED** Judge Jack R. Puffenberger AC

OCT 14 2021

**CERTIFICATE OF APPOINTMENT AND INCUMBENCY**

The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the appointment and letters of authority of the named fiduciary, who is qualified and acting in such capacity.

\_\_\_\_\_  
Probate Judge/Clerk

[Seal]

By \_\_\_\_\_

**ORIGINAL ISSUE**

OCT 14 2021



\_\_\_\_\_  
Date



FILED  
LUCAS CO. PROBATE COURT  
JACK R. PUFFENBERGER, JUDGE  
2022 SEP -9 PM 3: 22

**IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO  
PROBATE DIVISION**

In The Matter of  
The Estate of Allison E. Roebke, Deceased

Case No. 2021 EST 2295

Judge Jack R. Puffenberger

**ENTRY GRANTING MOTION TO  
CLOSE ESTATE**

This date, this cause came to be heard upon the Motion to Close Estate in this matter.  
The Court finds said Motion well taken and finds that the same should be granted.

It is THEREFORE ORDERED, ADJUDGED and DECREED that the Estate of Allison  
E. Roebke be closed.

It is further ORDERED, ADJUDGED and DECREED that the Administrator is hereby  
discharged.

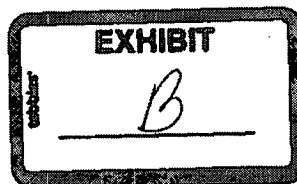
Date

9/9/2022

  
Judge Jack R. Puffenberger

**JOURNALIZED**

SEP 09 2022



FILED  
LUCAS CO. PROBATE COURT  
JACK R. PUFFENBERGER, JUDGE

2022 SEP -9 PM 3: 22

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO  
PROBATE DIVISION

In The Matter of  
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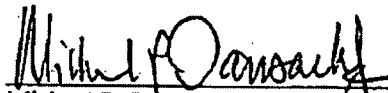
MOTION TO CLOSE ESTATE

Michael P. Dansack, Jr. (0030028)  
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CO., L.P.A.  
1450 Arrowhead Dr.  
Maumee, OH 43537  
(419) 843-2001  
(419) 843-3622 Fax  
Attorney for Administrator,  
Elaine Roebke

NOW COMES Elaine Roebke, Administrator of the Estate of Allison E. Roebke, deceased, by and through her attorney, Michael P. Dansack, Jr. and prays the Court for an Entry closing the Estate of Allison E. Roebke. Movant states that she was appointed Administrator on October 14, 2021 for the sole purpose of pursuing a personal injury claim. The Estate contains no assets that require administering. Further, Movant states that the Estate is no longer pursuing a personal injury claim.

WHEREFORE, Movant requests that the Estate of Allison E. Roebke be closed.

Respectfully submitted,



Michael P. Dansack Jr., Attorney for  
Elaine Roebke, Administrator of  
the Estate of Allison E. Roebke