JAEPC: Year and 1/3 In Review

September 11, 2020

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LEGISLATION

LEGISLATURE CREATES NEW PROCESS FOR DISPUTES OVER VISITING VULNERABLE ADULTS

Michigan guardianship law has been amended to allow probate courts to appoint limited guardians to supervise visitations with incapacitated adults. Specifically, a new section MCL 700.5306(6) provides grounds for a limited guardian to be appointed for the sole purpose of supervising access with a ward.

The elements of this new cause of action are:

1. A person is incapacitated;
2. Another person has "care and custody" of them;
3. The person with care and custody has denied someone else access to the incapacitated person.
4. The incapacitated individual desires contact with the person who is being denied access; and
5. Visits between the incapacitated person and the person who has been denied access are in the best interests of the incapacitated person.

All of these must be established by clear and convincing evidence.

The new law takes effect March 19, 2020. To read the law as amended, click here.

While I think all probate practitioners would agree that isolation of vulnerable adults is a serious concern, many would (and did) argue that this problem is already being dealt with by probate courts using their existing powers. See for instance: In Re Guardianship of Dorothy Redd.

PUBLISHED DECISIONS

PUBLISHED OPINION CLARIFIES JOINT ACCOUNT RIGHTS

This case was handled by our firm: Chalgian and Tripp. We represented the Appellant at trial an in the Court of Appeals.

This case clarifies a heretofore confusing issue involving joint accounts and the rights of joint account owners pre-death.

Most importantly, this case is published.

While many cases address the issue of survivorship rights in joint accounts, this case deals with the question of what happens when one joint account owner removes assets from a joint account before the other account owner dies.

Our client made his accounts joint with a person with whom he had a long relationship, but to whom he was not married. He got sick. When it was evident that his condition was rapidly depleting his savings, the non-client co-owner went to the bank and removed essentially all the money she could get.

At trial, the non-client co-owner argued that she had the same rights to the money as our client, and therefore that she did nothing wrong by defunding these accounts. This was her position even though evidence at trial showed that she contributed nothing to the accounts, and that any significant withdrawals from the account had to be made with the approval of our client.

The trial judge accepted their argument, and ruled in favor of the non-client owner largely based on the application of cases related to survivorship rights in joint accounts. We appealed.

The appellate court reverses and remands to the trial court, holding that our client's claims of conversion were wrongly dismissed, and also that our client's claims of breach of fiduciary duty and constructive trust may likewise be revived. On remand, the trial court is tasked with determining damages for the conversion.

CAUTIOUS OPTIMISM GREETS MSC DECISION ON SBO TRUSTS

The SBO Trust is back – or is it?

Yesterday the Michigan Supreme Court released its long awaited decision in the case of Hegadorn v The Department of Human Services. [Click on the name to read the opinion.]

To summarize, for twenty years the "Solely for the Benefit Trust" ("SBO Trust") was the primary Medicaid planning tool for married couples in Michigan. In August 2014 that reign ended when the Michigan Department of Human Services (now the Michigan Department of Health and Human Services aka "DHHS") reinterpreted their rules and started treating assets held in SBO Trust as available resources. That change led to litigation challenging the DHHS interpretation, which litigation was unsuccessful in the Court of Appeals. The case was then taken up to the Michigan Supreme Court.

The majority opinion in this case holds that DHHS was wrong when it determined that assets in an SBO Trust can be considered available resources. They say:

The SBO trusts at issue all contain language stating that distributions or payments from the trust may only be made to or for the *benefit* of the *respective community spouse* and that the trust resources may be used only for the *community spouse's benefit*. The ALJs and the Court of Appeals recognized this but erred by concluding that payments to or for the benefit of the community spouses were available to the institutionalized spouses. Because the community spouses are not themselves applying for or receiving Medicaid benefits, they are not "the individual" referred to in 42 USC 1396p(d)(3)(B). Thus, the Court of Appeals erred by holding that the possibility of a distribution from each SBO trust to each community spouse automatically made the assets held by each SBO trust countable assets for the purposes of the respective institutionalized spouses' initial eligibility determination. Accordingly, we reverse the Court of Appeals judgment because

it was premised on an incorrect reading of the controlling statutes and thus was contrary to law. It follows that the ALJs' decisions are also contrary to law and cannot stand, given that they all suffer from the same faulty reasoning employed by the Court of Appeals.

And yet, the majority does not simply order DHHS to approve the applications at issue. Rather it offers the following cryptic explanation of their remedy:

The question now becomes what relief should be granted. ... The sheer complexity of the Medicaid program and the Department's legitimate concerns about potential abuse are paramount considerations in determining what relief is warranted. We further note that, given the reasoning employed in resolving the administrative appeals, the ALJs may have forgone consideration of alternative avenues of legal analysis. In light of these concerns, we decline to order that the Department approve plaintiffs' Medicaid applications at this time. Instead, we vacate the final administrative hearing decision in each case and remand each case to the appropriate administrative tribunal for the proper application of the any-circumstances test. If the ALJs determine that circumstances exist under which payments from the trusts could be made to or for the benefit of the institutionalized spouse, then the ALJs should explain this rationale and affirm the Department's decision. However, if no such circumstances exist, the ALJs should reverse the Department's decisions and order that the Medicaid applications be approved.

One has to wonder, if, as the opinion says, DHHS was wrong in concluding that assets in an SBO are available resources to the institutionalized spouse, what "alternative avenues of legal analysis" or "circumstances" test are they expecting the ALJ to apply?

The McCormack Concurrence

In a lengthy concurring decision, Justice Bridget McCormack, the Chief Justice on the MSC, argues that while the assets in an SBO may not be available resources, the funding of an SBO within five years of application would result in a divestment, and accordingly the decision of the MSC will provide no benefit to the elder law bar or their clients. While her reasoning seems strained, she has

clearly offered the DHHS an avenue to continue to fight the use of SBO trusts in Medicaid planning. And, as Justice McCormack correctly notes, the majority expressly avoided the question of a divestment analysis in their opinion.

Conclusion

The immediate impulse to rejoice at this important decision needs to be tempered. The MSC could have given the elder law bar a clear victory and reinstated the SBO trust without qualification, and nearly all of their opinion seems to be consistent with that result. And yet, they chose to pull their punches and leave open the possibility that, in the end, this may prove to be a Pyrrhic victory. Time will tell.

COA GIVES SPECIAL NEEDS COMMUNITY BIG WIN IN PLACEMENT CASE

This is a published decision about a guardianship over a person with a developmental disability (a "DD guardian"), and more specifically, the powers of a DD guardian versus Community Mental Health ("CMH") with respect to the transfer of the protected person from one CMH facility to another. As probate lawyers understand, DD guardianships are not controlled by the probate code ("EPIC") but rather by the mental health code.

The case is called: In Re Guardianship of Lisa Brosamer. Click on the name to read the case.

In this case, Lisa, the protected person, had lived in a CMH home called "College Avenue" for 10 years. When CMH notified the guardian that it intended to move Lisa to another CMH home, the guardian filed a petition in the local probate court seeking to enjoin the move.

The controlling law, MCL 330.1536 says:

(1) A resident in a facility may be transferred to any other facility, or to a hospital operated by the department, if the transfer would not be detrimental to the resident and the responsible community mental health services program approves the transfer.

(2) The resident and his or her nearest relative or guardian shall be notified at least 7 days before any transfer, except that a transfer may be effected earlier if necessitated by an emergency. In addition, the resident may designate 2 other persons to receive the notice. If the resident, his or her nearest relative, or guardian objects to the transfer, the department shall provide an opportunity to appeal the transfer.

(3) If a transfer is effected due to an emergency, the required notices shall be given as soon as possible, but not later than 24 hours after the transfer.

At the hearing, CMH relied on affidavits supporting the proposition that this move would not be detrimental to Lisa. The guardian presented testimony from several witnesses, including Lisa's doctor, who said that the change would be harmful to Lisa. The probate court granted the injunction, and this appeal followed. The COA affirmed the trial court.

The decision of the COA is stunning, and the fact that this is a published opinion, even more so. Clearly the statute allows CMH to make this decision and provides that the remedy for an objecting party, such as a guardian, is an administrative appeal.

The opinion would be more sensible if the COA was taking the position that the probate court order only maintained the status quo until the administrative appeal process played out. But that is not what they say. Rather the COA says: "For purposes of this appeal, we will assume that the order serves as a permanent injunction from transferring Lisa to any facility at any time without court approval." Clearly, therefore, the COA has given the probate court the power to circumvent the nearly unfettered authority of CMH over the placement of its residents granted to it by MCL 330.1536.

This case represents a huge win for the special needs community. But I believe the decision stands on shaky ground, and I would be surprised if the State does not seek leave to appeal this decision to the Michigan Supreme Court. We'll see.

GETTING GREIFF OVER ERWIN

When the Court of Appeals drops an F bomb in the first paragraph you can guess where this case is going. It's going to demonize the mean, despicable, and mentally ill spouse, Hermann, so that we will cheer the COA along as it stretches the law beyond recognition in order to get a result that doesn't leave saintly spouse Anne out in the cold.

And, in this published COA opinion, that's exactly what you get.

You may remember the Erwin case that came out of the Michigan Supreme Court a couple years back. Erwin dealt with the question of when a spouse who isn't around for at least a year before the other spouse dies, will or won't be treated as a "surviving spouse" for EPIC allowances and inheritance purposes. As we noted then, the MSC was opening a can of worms by endorsing the proposition that you needed something other than a calendar to make a determination. But they went there, and held that the term "willfully absent" required a finding of emotional and physical separation. And so the concept of "fault" (which had long been banished from divorce proceedings) was injected into the probate concept of "surviving spouse."

As they say, what goes around comes around. So here is Erwin's come around.

Saintly spouse Anne files for divorce and obtains a court order excluding Hermann from the marital home. Hermann answers by saying that he's against the dissolution of the marriage. They dink around in family court for 12 months plus a few days, during which time they have no contact, and then Hermann dies.

The result leaves Anne in the worst possible situation. She gets nothing under the divorce decree that remained unsigned and sitting on the judge's desk when Hermann died, and would also seem to be without the ability to claim the rights of a surviving spouse under EPIC. Unless, unless, the Court somehow applies the Erwin analysis to reach a more favorable result. While the trial court could not be so disingenuous, the COA had no such compunction....

.... at least two of the three that is. There is a dissenting opinion which argues that they must follow the law and accept the inequitable result that it demands. To my thinking, the dissent makes more sense than the majority.

NOTABLE UNPUBLISHED DECISIONS

SIX MONTH DISCOVERY RULE PROTECTS EP ATTORNEY IN MALPRACTICE ACTION

s any estate planning attorney knows, representing both parties to a marriage in the estate planning process is dicey enough; and when it comes to second marriages, especially when all of the children are not from the same union, the potential for representational conflict and other problems increases exponentially.

The facts of this case are classic:

W has one child, marries H who has no children. They have two children together.

H introduces W to EP Lawyer with whom H has a prior relationship. EP Lawyer shows H and W the documents he prepares for W that favor H and the children W has by H (but not the child she brought into the marriage). Unbeknownst to H, before the documents are signed, W works with EP Lawyer to revise the documents to provide only for the children (including the child that she brought into the marriage) to the exclusion of H.

When W dies, H sues EP lawyer for malpractice, silent fraud and breach of fiduciary duty.

The trial court dismissed the malpractice case against the EP Lawyer because it found that H knew or should have known about the possible malpractice more than six months prior to the time he filed his complaint (MCL 600.5838b). Further, the trial court concluded that the silent fraud and breach of fiduciary duty claims were subsumed by the malpractice action. The result is that all of the causes of action were summarily dismissed. In this unpublished opinion, the COA affirms these outcomes.

To read Spiro Voutsaras v Arlyn J. Bossenbrook click on the name.

While the case disappoints in that it fails to get to the meaty issues involved in conflicted representations, and fails to even clarify whether the EP Lawyer did or did not represent H or owe him any duty; there are, notwithstanding, some

interesting discussions and summaries of the law in this 7 page opinion that make it a worthwhile read for those who regularly draft estate planning documents. These include: a discussion about when representation ends in the context of estate planning for the purposes of calculating the six month discovery rule, and what types of activities may or may not cause it to be extended; a curious footnote discussion about discovery of attorney files and work product; as well as good summary of the law related to analyzing when one type of action is subsumed by another, and specifically in the context of suits for legal malpractice.

COURT TRANSCRIPT ISN'T A WILL OR ORAL TRUST

In an unpublished opinion, the Court of Appeals concludes that despite the fact that Malrey Beetris Collier testified in open court that her two children would share equally in her estate when she died, the child that got cut out of her will cannot use those statements as a basis for setting aside her will or otherwise altering the disposition of her estate.

The offended child argued creatively, but unsuccessfully, that either the statements her mother made at the hearing should be the basis for an oral trust or that the transcript of the hearing should itself be admitted as a document intended to be a will under MCL 700.2503.

To read In Re Estate of Malrey Beetris Collier, click here

Oral Trust

The COA's explanation as to why testimony of a witness regarding her testamentary intentions (which testimony was non-responsive to the question asked) does not meet the requirements of an oral trust, seems strained. The COA oddly relies almost entirely on a 1965 Michigan Supreme Court decision, while failing to even cite MCL 700.7407 which was adopted in 2010 and which requires clear and convincing evidence of an oral trust.

That said, I think the result is the same.

MCL 700.2503

I have written several times about the growing use of MCL 700.2503 to admit documents which fail to meet the technical requirements of a formal will or holographic will. You will recall that in In Re Estate of Sabry Mohamed Attia, the COA said that an unsigned draft of a will could potentially be admitted as a will, if other proofs were satisfied. And in In Re Estate of Duane Francis Horton II, the COA upheld a trial court's application of the statute to admit a digital message saved on a smartphone as the will of a decedent. Here, however, the COA would not stretch the statute so far as to conclude that the transcript of an

oral statement (even an oral statement made in open court) could satisfy the requirements of the statute and thereby be treated as a will. [Click on case names to read those cases.]

Again, I think the result is correct.

Conclusion

Perhaps Ms. Collier was being intentionally dishonest when testifying in Court. More likely she was mistaken about her estate plan. Hard to say. But the case presents an interesting set of facts, and it's fun to speculate what her disappointed child might have been able to do to avoid a result that seems to be inconsistent with her mother's intentions.

PROMISES V REALITY IN THE WORLD OF CHARITABLE GIVING

It's not just basketball and football programs that have allowed our largest institutions of higher education to become so wealthy. As development officers at these institutions know, college professors who work at those universities, and particularly those professors who don't have kids, can be a gold mine.

The newly published case of Bellamy Trust v University of Michigan (click on the name to read the case) tells the story of one such professor, and how his vision about the legacy he was creating at the University of Michigan ran into the chain saw of reality shortly after his death.

Dr. Bellamy was an expert in classical Arabic literature, and dedicated his life to these studies while teaching at UM. He left several million dollars to the University to fund a professorship to continue his work. But shortly after he died, the University appointed an expert in pre-modern Arabic studies to the position that Dr. Bellamy's estate had funded. At least one witness said he overheard the department chair explain that the University was no longer particularly interested in the subject of classical Arabic literature, and using Dr. Bellamy's money to pay for this professor's salary helped with the department budget.

The case is about standing, which issue becomes complicated because, as is commonly done, although the money was paid to the University by the Trustee of Dr. Bellamy's Trust, the terms of the gift were not set forth in his Trust but rather in a Gift Agreement between Dr. Bellamy and the University. The University's position was therefore that the Trustee of Dr. Bellamy's Trust lacked standing with respect to enforcement of the Gift Agreement, and that they only needed to satisfy Michigan Attorney General's charitable division (which the University presumably reasonably believes is not likely to interfere with internal decisions of a major public university, particularly where those decisions arguably save state tax dollars).

The University wins at the trial court level, but is reversed by the COA. While this decision is helpful, it's fact specific and should not reassure anyone that

UM, or any other charity, is going to change the way it looks at testamentary gifts in the future.

Charities promise the moon to those considering making large gifts, only to look at those gifts in a more practical manner once the funds are deposited in their accounts. What this case offers estate planners who commonly work with charitably inclined clients of high net worth, I think, is a reminder that our job, the work of the planner, is to draft documents that will, in light of this reality, provide a process whereby the conditions placed on these gifts will be respected after our clients die. Creating documents that provide standing to people with skin in the game, people who are motivated for whatever reason to enforce those conditions, would seem to be the critical element to such planning.

DRAFTING TRAP PROVES LITIGATOR'S LIFE LINE

The Michigan Trust Code provides for a fairly strict statute of limitations to contest the validity of a trust agreement that "was revocable at the settlor's death." Most estate planning lawyers presumably operate on the assumption that this protection applies to the revocable trust agreements they routinely draft for their clients. But as this (unfortunately) unpublished Court of Appeals decision explains, whether or not a trust was revocable at the settlor's death may depend on what the trust says about the incapacity of the settlor while alive.

MCL 700.7604 says that a trust contest must be started within two years from the date of the death of the settlor, if the trust was revocable when they died. The statute also provides a six month statute of limitations if the trustee provides sufficient notice, the requirements of which notice are defined in the law. Click here to read MCL 700.7604.

In Linda Dice v Esther G. Bennett Revocable Trust (click on the name to read the case) a trust was contested two years and nine months after the death of the settlor. The trustee moved for summary disposition based on the statute of limitations for such contests as provided for in MCL 700.7604. The trial court granted that motion. But the litigants appealed and the COA reversed. The decision of the COA exposes a litigation opportunity that I expect few trust drafters or probate litigators have considered.

The Esther G. Bennett Revocable trust agreement included a settlor incapacity provision that said:

In the event two registered physicians, one of whom should be the Grantor's personal physician, deliver an instrument to the Successor Trustee certifying that the Grantor during her lifetime has become incapable of managing her own affairs, the Grantor shall cease to be the Trustee, and the successor trustee shall, upon giving its acceptance of trust, become sole Trustee without requiring action or permission of any nature or kind whatsoever from the Grantor, and shall possess and be subject to those rights, duties and obligations which it would assume if it had

been named as the initial trustee hereunder. Until two registered physicians shall certify that Grantor has again become capable of managing Grantor's own affairs, any attempt by Grantor to exercise any reserved rights and powers under this Trust, including but not by way of limitation, the right of modification, revocation, amendment, withdrawal or principal and/or receipt or direction of income, or the sale of principles of this trust estate, or change of beneficiary of any insurance policy subject to this Trust, shall be void and during such period of time this Trust shall be irrevocable and not amendable.

In analyzing this case, he COA notes that the definition of revocability in the MTC is a default definition, and can be overridden by the terms of the trust itself. Here the Court concluded that the facts of this case, and the language of this trust agreement, caused this trust to have become irrevocable upon the settlor's incapacity and, accordingly, the statute of limitations set forth in MCL 700.7604 did not apply.

Interestingly, in this case, a fact issue remains as to whether the medical reports obtained through discovery were sufficient to meet the requirement that two doctors certified the settlor's incapacity. But that's an issue for another day. For the purposes of this blog post, it is enough to say to our readers who draft trust agreements: It's probably a good idea to look at the language you include in your settlor incapacity provisions and consider whether a modification may be warranted. And to the litigators who handled this case: Bravo. I doubt that many of your colleagues would have recognized this opportunity or pursued it was well.

MEDICAID POLICY CHANGES

SBO TRUST PART 2: MEANING REVEALED

Just a month ago I wrote about new DHHS policy re the treatment of "solely for the benefit" trusts (aka, "SBO trusts") in Medicaid planning. [See SBO Trusts Targeted Again]. As discussed at the time, the proposed policy was confusing and vague.

Now the proposed policy discussed in that post has been revised, and the meaning is revealed.

The bottom line is:

Under this new proposed policy an SBO Trust for as Spouse is divestment. And that is true even though transferring assets to "another" solely for the benefit of a community spouse would not be divestment. Same definition of "solely for the benefit" applies. Which seems to mean that you can still do the same thing, just call it something else.

I'm serious. Click here to read it for yourself.

Helpfully, the new proposed policy includes the proposed BEM language. [As an aside, I will thank our own David Shaltz for that. He has been writing DHHS since the first policy announcement, asking for clarification. This is apparently their response to David's inquiries.]

I'm sure better minds will improve and elaborate, but to me it seems like the same type of planning will continue with these cautions/changes:

- Transfers must be to "another" person (who is not called a "Trustee");
- There still has to be a writing describing this arrangement, but the writing will be called an "arrangement" or "written arrangement" as opposed to a trust.

To those that created this policy, it presumably makes no never mind that a written arrangement of this type would, under any reasonable construction, be deemed a trust agreement. But fine. As I often tell clients (and other lawyers who care to listen), there are many examples in Medicaid planning where policy

is disconnected from logic or reason. When that occurs, we simply follow policy and stay away from the invitation to try to make sense of it. That will be my approach to this change as well.

Implementation of the new policy has been moved back to November 1, 2020.

PACE ADOPTS DIVESTMENT RULES

The Michigan Department of Health and Human Services has announced that beginning July 1, 2020, Medicaid divestment rules will apply to PACE programs.

PACE is the Program for All Inclusive Care for the Elderly. PACE programs are available in much, but not all, of the State.

Divestment is the term DHHS uses to refer to the process by which applicants are penalized for transferring assets during the five years prior to applying for Medicaid benefits (aka the "lookback period").

In January 2015, shortly after Michigan's use of PACE programs was expanded, DHHS announced that divestment rules would not apply to PACE programs, making PACE the outlier among Medicaid long term care benefits. [To read that post click here.] As of July 1, that distinction will no longer exist.

MEDICAID SPEND DOWN ON "HOUSEHOLD GOODS" TO BECOME MORE DIFFICULT

The Michigan Department of Health and Human Services (DHHS) released new language for the Bridges Eligibility Manual yesterday, which includes a change to the definition of "Household Goods." The change is an additional clarifying sentence. That sentence is:

Items are considered a person's household goods when they are currently used, or in the case of an institutionalized person, were previously used by the person in his or her own residence.

In Medicaid planning, household goods are one type of exempt asset. That means they don't count toward the asset limit which is used to determine eligibility.

In cases where someone seeking Medicaid assistance in long term care has too much in countable assets, often the first consideration is whether it makes sense to "spend down" by using the countable resources to purchase exempt resources. In other words, if someone is seeking eligibility but they have $3,000 in the bank and they need to get down to below $2,000, maybe they just go buy a new couch and big screen tv for their house (their house being another type of exempt asset).

This new language seems designed to preclude that type of planning in the future for people who are no longer living in their homes, which would include single people in assisted living or nursing homes who are applying for Medicaid assistance.

The new language won't make much difference in married couple situations, at least when the community spouse remains in the home.

While the new language doesn't address what the result of violating this policy would be, presumably the result would be that the new couch and tv (using the example above) would be countable assets.

Another change will appear in BEM 405 and will state that:

Transfers by the applicant or the applicant's spouse to a trust will be evaluated as a divestment. This does not apply to transfers to a special needs trust for a spouse.

This language addition is presumably in anticipation of the new policy on SBO Trusts which I recently blogged about.

Both of these changes are scheduled to take effect October 1, 2020.

BONUS

PROBATE APPEALS: BY THE NUMBERS

If you like statistics, you might find this interesting.

With the assistance of a law clerk, we cataloged every case appealed from a probate court between June 1, 2016 and May 30, 2019 (three years), to see what we could find out.

We came up with 144 cases. For the purposes of this blog post, I decided to ignore 26 of those cases. I ignored some cases because, although they arose from a probate court decision, the issues involved were not traditional probate questions. That is, they were only tangentially probate cases. I also decided to disregard the mental health commitment cases. Although these are probate matters, the issues they raise on appeal are so distinct from the other types of probate cases, that it just seemed helpful to leave them out.

As to the remaining cases, here's what we found:

Publication

90% of probate cases are unpublished (just 12 published out of 118 cases in three years)

Nature of Dispute

58.4% of the cases appealed involved issues related the administration of a trust or decedent's estate. This category includes a variety of issues that come up in the context of administration, including, for example: efforts to remove or surcharge a fiduciary, fee disputes, and litigation involving property rights or values.

20.3% involved the validity of a will, trust or other testamentary document.

12.7% were guardianship or conservatorship matters that related to the need for, or the appointment of, a fiduciary.

The remaining 8.5% dealt with administrative issues in guardianship or conservatorship matters.

Outcome

Most cases are affirmed. Of course, just because a trial court decision was not affirmed doesn't mean the trial court was reversed. A case that was not affirmed may have been reversed, remanded, vacated, affirmed in part and reversed in part, etc.. But rather than try to slice things too finely, I simply calculated the likelihood of complete affirmation.

72% of all cases are affirmed in full on appeal.

The likelihood of affirmation seems to vary somewhat with the type of matter. Among trust and estate administrative matters, the likelihood of affirmation is slightly higher than average: 76%. For cases involving the validity of a testamentary document, affirmation occurs only about 62.5% of the time. For guardianship and conservatorship cases, the Court of Appeals affirmed 68% of the cases decided during the three years reviewed.

Conclusions

Only a small percentage of probate cases are published: 10%.

A significant majority of the time, the trial court's decision is affirmed in whole: 76%.

This post deals only with cases in the Court of Appeals. While a few of these cases were taken up by the Michigan Supreme Court, I did not track those.