

# **JAEPC: Year In Review**

**September 16, 2022**

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## **A. Michigan Supreme Court Cases**

### **In Re Estate of Hermann Von Greiff, June 10, 2022**

The lengthy saga continues with respect to the abandoned spouse rule as set forth in MCL 700.2801(e)(1), and specifically the issue of what it means to be “wilfully absent” for a year.

In Von Greiff the MSC stretches the facts beyond credulity to hold that the divorcing spouse, who left her husband in the hospital, filed for divorce and got a restraining order to keep him from being able to come home, and whose only contact with him during the 1 year+ before he died (and before the JOD was entered) was through legal counsel did not equate to a willful abandonment sufficient to extinguish her rights as a surviving spouse.

To get there they created a new presumption against the running of the clock while a divorce is pending.

The Probate Council filed an amicus brief (drafted by Drummond Black of CT) seeking the opposite outcome.

### **Kermath v Independence Village of Oxford, Order of the MSC of June 3, 2022.**

Virginia Kermath was a demented resident of a senior community, contracting for assistance with basic needs with an outside agency, and taking her meals in the assisted living wing of the facility, but her apartment was in the independent living wing. When she walked outside and froze to death because the doors locked behind her, the family sued the facility for negligence. The COA upheld the trial court's decision to dismiss the case because she was in independent living and the landlord had no duty. The MSC reversed and remanded holding that there is a common law duty of care and the harm was foreseeable.

They note:

A reasonable person could anticipate that an elderly resident living in an unlicensed independent-living facility where the average age of the residents exceeds 80 years old could become locked out of a building after exiting an automatically locking door on a cold winter morning.

## **B. Court of Appeals Cases – not about Medicaid Planning**

### **(1) Published**

#### **In Re Guardianship of Anna-Marie Bazakis, June 23, 2022**

Federal law preempts a probate court from directing or correcting a conservator or guardian with respect to Social Security benefits when a representative payee has been appointed. When there is no rep payee, the rule is less clear (I think).

#### **Forton v St. Clair County Public Guardian, September 23, 2021**

In hearing to remove a guardian, CMH worker testifies that guardian's spouse is supplying drugs to, and having sex with, the ward. After the guardian is removed, the guardian's spouse sues CMH and others for defamation. Case is dismissed because courtroom testimony is subject to "quasi-judicial immunity."

#### **Grablick Trust, December 16, 2021**

Joe and Sally are married many years. Joe has no children and treats Sally's only child, Katelyn, as his own, naming her in his trust, and referring to her therein as a "child." Joe and Sally divorce. Joe dies, and Joe's relatives contest Katelyn's interest in the trust noting that MCL 700.2806 and MCL 700.2807 terminate the interests of persons taking through an ex-spouse. The issue comes down to the meaning of the word "affinity" in the definition of relative. Was Katelyn related by "affinity"? or does affinity mean through marriage?

COA says Katelyn loses. Matter appears to be going up to the MSC, where both the elder law and probate sections support the COA decision.

#### **Estate of Terry L. Seybert, January 20, 2022**

Trial Court determining heirship can't make sibling of dead guy provide DNA.

#### **Security Mutual Life v Amira-Bell, July 21, 2022**

Insurance policy owner submits change of beneficiary form. Insurance company rejects it on technicality and tells him fix it and send it back. He dies before he sends it back.

Trial court gives effect to the proposed change that the insurance company rejected but the COA reverses. COA relied on "substantial compliance" rule which will only recognize an attempt to change beneficiaries on life insurance policies when the policy owner has done 'everything they can do' to make the change. And that is apparently not the case here.

**In Re Chad Londowski, February 17, 2022**

At least in a mental health hearing, the court appointed attorney must be competent (ie, "ineffective assistance of counsel" is grounds for an appeal). True for court appointed lawyers in guardianship matters too? Seems comparable liberty interests, etc.

**In Re Estate of Kinzie Renee Carlsen, December 16, 2021**

Plaintiff files frivolous wrongful death suit in circuit court. Defendant prevails on summary and asks for sanctions. At same time, Defendant files a contingent claim in the estate for the anticipated sanctions award. Circuit court in fact awards sanctions. Defendant amends their claim with precise amount. Defendant/PR says claim is untimely. COA and Trial Court agree, the claim is timely.

**In Re Estate of Eldridge Dean Huntington, September 16, 2021**

Decedent dies in California. Surviving spouse opens an estate in Michigan where decedent owns real property and elects spousal share under Michigan law. Kids of Decedent say she's forum shopping.

COA says where no California estate has been opened, you can elect a share under Michigan law, but PR has to determine what assets are in California to figure out what you have received and what you are entitled to.

**In Re Estate of Gregory Price Burnett, May 26, 2022**

Real property conveyed by husband without spouse joining the deed is not void because dower never voided a deed, rather only ever clouded title, and besides dower has been revoked.

**In Re Special Needs Trust fbo Talonda Moss, July 14, 2022**

When SNT set up for child with disabilities, and that child grows out of her disability, trust can terminate even though mom/trustee objects. MTC allows for termination of irrevocable trust based on change in circumstances.

**(2) Unpublished COA**

**Murin v Cooper, August 11, 2022**

Co-PR who is also a beneficiary of the estate, believes the attorney representing the co-PRs gave negligent advice causing financial damages to her as a beneficiary. She sues said lawyer for malpractice.

COA says, you don't have privity. Exceptions to privity rules in legal malpractice are narrow and this doesn't meet those narrow exceptions. Can't see as PR because all must agree in this intestate estate.

**In Re Guardianship of Ronald William Layton, August 11, 2022**

Petition for guardianship and conservatorship initiated. At initial hearing, everyone agrees the proposed ward doesn't have impairments sufficient to subject him to court protection. Nonetheless probate court issues orders designed to keep the peace. When subsequently one of the interested persons finds those orders offensive, that IP appeals asserting that none of the orders are valid because the court never established a basis for jurisdiction. COA says you can appeal an order for being outside the scope of the trial court's authority, but probate court jurisdiction was properly invoked when the petition for guardianship/conservatorship alleged the proposed ward was legally incapacitated.

**Biando v Shellenbarger, July 28, 2022**

Tortious interference is subsumed by claims of fraud, duress or undue influence and is not a stand alone cause of action in Michigan although other unpublished opinions may suggest otherwise.

**In Re Estate of Frederick Jewel Tiffany, May 26, 2022**

Child adds parent to DIY deed as <sup>TIC</sup> joint tenant. When parent dies and half her property shows up in estate inventory, Child seeks reformation to JWROS deed based on mutual mistake. Trial court bails out DIY deed-doer and COA affirms

**In Re Logan Benjamin Garner Special Needs Trust, May 5 2022**

Trial Judge finds that Bank's fiduciary fee may be reasonable, but that the lawyer's they use are too expensive for the size of trust at issue, and removes trustee based on expenses that are reasonable but "unaffordable" - does so over the objection of the family of special needs beneficiary.

COA affirms with little rationale or justification. Dissent does better job, I think, of connecting the facts to the law.

**In Re Edward and Elaine Jaye Trust, February 24, 2022**

Trial judge goes off on the several lawyers involved in a trust case, asserting that they are all just piling on for fees and doing nothing. So he sua sponte disbands the trust and removes the trustee

Judge's tirade includes:

*you've treated this court and me like a rube that can just continue to churn and churn and churn and churn*

COA says trial judge went too far without stating sufficient legal grounds and reverses the decision, but does not disqualify the judge/

**In Re Estate of Eldon Knoblock, April 21, 2022**

Married spouses own account jointly. They get divorced. JOD does not address account, which at the time holds \$1,000. One spouse continues to use the account after the divorce, and when that spouse dies several years later the account holds over \$100,000. Surviving ex-spouse says she knew nothing of the account, but that she is, nonetheless, the surviving owner and entitled to the funds. COA relies on boilerplate in JOD to justify not allowing ex to get the money.

**In Re Barbara A. Young Living Trust, April 21, 2022**

Trust makes specific devise of \$50,000 to each grandchild before residue to kids. Kids argue that there is no cash and therefore gifts to grandchildren are adeemed. COA says ademption doesn't apply in cash gift situations.

**In Re Linda Comps-Klinge Trust, March 17, 2022**

Trial judge dismisses case on summary notwithstanding request from non-moving party to amend their complaint. COA reverses explaining the leave to amend is "freely given when justice so requires."

**In Re John Adams Trust, January 27, 2022**

John dies and is survived by spouse, Ruth. Trust grants Ruth the right to withdrawal all trust property by filing a written statement with the probate court. She prepares the written statement and withdrawals the money but doesn't file anything with the court because her lawyer told her she didn't have to. When successor beneficiaries seek recoupment, trial judge bails Ruth out. But COA says the terms of the trust are unambiguous, and the money has to come back.

**In re Michael Eyde Trust, January 27, 2022**

Beneficiaries request copy of IRS estate tax return, asserting their statutory right to obtain information necessary to keep them reasonably informed re administration. Trustee resists, saying they don't need it and if they get it they should have to sign a confidentiality agreement. Trial Court tells trustee to give it up without any precondition. COA affirms.

**In Re Donald F. Clark Trust, January 20, 2022**

Husband funds his separate trust by withdrawing funds from accounts that are joint with wife. When he dies and surviving spouse realizes she has to go to a trustee to pay her bills, she seeks relief in court. In decision permeated by gender assumptions, COA says husband's invasion of marital accounts was consistent with course of conduct as between them, wife deferring to husband on financial matters, and therefore, no relief is available to her.

**In Re Conservatorship of David James Springstead, January 13, 2022**

COA construes law and court rule to conclude that a minor with a conservator can also have a next friend, notwithstanding seemingly clear language to the contrary in MCR 2.201(E).

**In Re Estate of Julianne Wagner Johnson**, December 16, 2021

Cluster over beneficiary and joint ownership forms from credit union account is rationalized.

**Grinnell Family Trust v Jennifer Blumhardt**, November 4, 2021

Lyle marries Jennifer near the end of his life, while he was sick and heavily medicated. He then changes his EP to benefit his wife. When he dies, kids seek to set aside the estate plan for lack of capacity and undue influence, but find that because of the marriage there is no presumption of undue influence, and that the surviving spouse would receive all of the assets as her elective share in any event.

**In Re Estate of David Ernest Hague**, October 14, 2021

Decedent names Chemical Bank as successor Trustee. But when he dies, Chemical Bank has been subsumed by TCF. Court says trust names Chemical Bank not TCF. so TCF has no standing to serve.

## C. Court of Appeals cases about Medicaid planning

### (1) Published

**Wiesner v Washtenaw County CMH**, February 17, 2022

State agencies do not have the right to appeal an administrative law decision to the circuit court. That option only belongs to a party challenging the state agency's action.

**Zalewski v Zalewski**, July 28, 2022

In case where separate maintenance agreement is used to impoverish nursing home spouse and create favorable protected spousal amount and income diversion for non-nursing home spouse, State (DHHS) lacks standing to intervene at trial court but likely has standing to appeal the outcome – although in this case they failed to file the right paperwork to do so.

### (2) Unpublished

**Stacy v Stacy, March 17, 2022**

Trial judge balks at entering separate maintenance agreement stipulated to by the parties, based on the court's perception that the divorce is a sham. COA says they are separated and at the objects of matrimony have been disrupted by his move to a nursing home, so those are not grounds to reject such a stipulated order. But the case is remanded to the trial judge, who would need to find that the agreement is product of fraud, mistake, illegality or unconscionability to refuse accepting it

**Conrad v Michigan DHHS, May 19, 2022**

Attorney General objects to probate court protective order on various specious grounds. Trial judge enters order notwithstanding objections. COA remands to trial judge with direction to do more analysis.

**In Re Estate of Jerome E. Sizick, May 26, 2022**

Same issue, same specious arguments and even same panel of the COA, as the Conrad case. Exact opposite result, one week later. Here COA chastises DHHS for baseless arguments on appeal.