

Michigan Probate Case Law Update 2026

Jackson Area Estate Planning Council

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Guardianship and Conservatorship Cases

In re Guardianship of GM

Court: Mich Ct App, Docket #373743 (released unpublished, then published October 24, 2025)

GM had always lived in filth with questionable roommates. Adult Protective Services petitioned for her guardianship and conservatorship. The Court ordered cognitive testing which showed indications of mental illness but normal cognitive ability — no discernible memory loss and no executive function deficit. Further, witnesses (including one of her children) testified that GM had always been “eccentric” in this way. Despite this record, the trial judge willingly obliged with the request of APS to appoint guardianship and conservatorship over GM. The Michigan Court of Appeals reversed, holding that Adult Protective Services failed to meet the clear and convincing evidence standard to support the relief granted.

Take Away: Eccentricity and squalor are not incapacity.

In re Conservatorship of MJP

Court: Mich Ct App, Docket No. 372825 (2026)

Child petitions to have a conservator appointed over parent, alleging that bullying and financial exploitation of the parent by another sibling warrants the appointment, and specifically relying on the published case of In Re Townsend in which case the Court of Appeals held that a showing that a person meets the definition of a “vulnerable adult” under the Social Welfare Act can also satisfy the requirements of MCL 700.5401(3)(a) which is the prong requiring a showing that the proposed ward is unable to make and communicate informed decisions.

The trial court allowed a limited purpose evidentiary hearing and concluded that the evidence presented did not establish that the ward was a vulnerable person with impacted decision-making and that MCL 700.5401(3)(b), the second prong that requires a finding that the ward’s property “would be wasted or dissipated unless proper management is provided . . .”, had also not been met. The Court of Appeals affirmed.

This hearing was initiated by a motion for summary disposition and to terminate discovery, which argued, among other things, that the case needed to be cut short because the petitioner was abusing discovery so as to force a competent adult (the proposed ward) to reveal the details of her personal finances. The trial court was clear that a conservatorship case was not the forum to “force a person to expose all of his or her financial records.”

Take Away: Conservatorship proceedings are not the forum for questioning a competent adult’s decision-making as good or bad.

In re Estate of Nancy Ann Mannausa

Court: Mich Court of Appeals, Docket No. 370656 (2026)

During a guardianship proceeding where a doctor’s statement of incapacity is filed, an attorney appears claiming representation of the proposed ward. A conservatorship proceeding is then brought during the guardianship’s pending proceeding. The conservatorship pleading alleges that the attorney claiming to represent the proposed ward is exploiting her in large legal fees, including the creation of power of attorney documents appointing someone other than the petitioner in both the guardianship and conservatorship proceedings. The court appoints a professional fiduciary as conservator. That conservator then files for authority to reimburse the guy nominated on those questionable power of attorneys by the proposed ward’s supposed attorney throughout the guardianship and conservatorship proceedings. The reimbursement is for \$15,000 which was supposedly loaned to the ward to pay attorney fees. The trial judge is indignant, both on the grounds of the amount of legal fees incurred during this process, and also on the proposition that ward knowingly borrowed money from someone that she could not recognize when he was pointed out to her during a court proceeding. Accordingly, the trial judge denied the request. The Court of Appeals remanded the case to the trial court with instructions to make specific findings (was it a loan or a gift, and if it was a loan, was the ward capable of agreeing to such a loan). We all wait eagerly to hear the outcome from Antrim County...

Take Away: How attorneys get paid during guardianship and conservatorship proceedings should be carefully considered in light of messiness of this case.

In re Conservatorship of JK

Court: Mich Court of Appeals, Docket No. 373855 (2026)

When one child becomes the conservator over parent in 2023, she claims that another child converted \$87,000 back in 2017 – well before JK had any cognitive impairment. The evidence presented is merely records that money was moved from parent’s account to “bad” child’s

account. “Bad” child admits the money was moved but says it was a gift. That’s about all there is to this case. And yet the trial judge, based almost entirely on their assessment of the respective credibility of the parties, concluded and found that “bad” child had converted parent’s money and was liable to repay it. The Court of Appeals affirmed and thereby concluded that the burden of proving conversion was met simply by one child being a more credible witness than the other.

Take Away: It may be possible to prove conversion with little to no evidence.

In re Estate of Frank Anthony Karwoski

Court: Mich Court of Appeals, Docket No. 37198 (2026)

The conservator sells a coin collection and, after the ward passes, is breeched for not collecting more than \$400,000 for these coins. The additional value of the coins is verified by the challenger by a handwritten list from decedent valuing the coins for over \$400,000 and from the challenger’s own internet research valuing the coins for more than that. The trial court found that the decedent’s list was hearsay and even if admitted carried no weight as there is no basis for knowing where he came up with the figures. Likewise, the trial judge disregards what the internet search as “insufficient to properly establish value.” [Not sure why the internet research results wouldn’t be rejected as hearsay as well.] The petition for breach was dismissed pursuant to MCR 2.116(C)(10) – no genuine issue of material fact. On appeal, the Court of Appeals affirmed stating that neither verification is “substantively admissible” and that even if they were, they would carry insufficient weight to forestall dismissal.

Also interesting, the challenger complained that MCR 2.116(C)(10) specifically states that the grounds for dismissal are that there are no genuine issues for trial “except for damages” and therefore asks: How is it that they have to prove damages to avoid having their case dismissed?

The Court of Appeals said, essentially, you don’t have to prove what the damages are to survive summary, but you have to prove that there are damages.

Take Away:

- 1) Internet research and personal opinions are not acceptable verification of value.**
- 2) To survive a motion for summary disposition, you must prove there are damages even if you cannot quantify the amount of said damages.**

In re Conservatorship of GT

Court: Mich Court of Appeals, Docket Nos. 371518, 371519, 371523 (published April 14, 2026)

The probate court held a guardian ad litem (“GAL”) report as confidential in this minor guardianship proceeding - keeping the report from the parties and yet relying on the contents of

the report in reaching a decision. The Court of Appeals remanded the case, saying that by holding the GAL report confidential, trial judge ran afoul of MCR 5.121(D)(2) which provides that “[a]ny interested person shall be afforded an opportunity to examine and controvert reports received into evidence.” The same rule says that interested persons may cross examine a GAL who files a report, provided the GAL is “reasonably available” and subject to court-imposed limitations for “good cause.” In the opinion, the COA clarifies that parties should be provided a copy of a GAL report without having to ask for it.

Take Away: All interested parties have a right to review the GAL report and cross-examine the GAL.

Public Act 68

This new law requires an appraisal be conducted and shared with the Court anytime a petition is filed for the sale or encumbrance of real estate belonging to a protected person. And the appraisal can’t be older than six months. This took immediate effect July 23, 2026.

Take Away: The expense and burden on a sale of real estate under a conservatorship just increased.

Public Act 69

This new law requires a guardian to notify a court within 14 days of a temporary change in residence if the move is made before a petition to approve a permanent placement is filed. It also prohibits a court from granting a guardian the authority to change an incapacitated individual’s residence in a non-emergency situation unless the court first finds that certain conditions are met, including whether the move is to the least restrictive environment suitable to that individual’s unique needs, abilities, and resources. This took immediate effect July 23, 2026.

Take Away: The expense and burden on placement under a guardianship just increased.

Undue Influence Case

In re Estate of Lawrence Lowell Washington Jr.

Court: Mich Court of Appeals, Docket No. 376103 (2026)

The elements of the presumption of undue influence were found met leaving the only issue at trial to be if the presumption could be rebutted. The trial court found it was not and rejected a Will submitted by the influencer. The Court of Appeals affirmed but dodged the question of what burden of proof is required to rebut the presumption of undue influence, adopting instead the language of the trial court that the evidence presented in this matter was not “sufficient” to do so.

Take Away: While the law around the presumption of undue influence continues to be unclear, this case tells us how undue influence decisions are currently being reviewed.

Trust Cases

Gregg A. Ecker v. Karen S. Nickel

Court: Mich Court of Appeals, Docket No. 366482 (July 14, 2026)

A Trustee who was removed after beneficiaries initiated a civil action against her appealed the resulting order on the basis that the matter was misplead. The Court of Appeals affirmed, holding that while the initial pleading was incorrectly labeled as a civil action (as opposed to a probate proceeding), and while such an error is substantive, at the end of the day the erroneous label did not rob the probate court of jurisdiction to remove a trustee where proper cause was found.

Take Away: Note the distinction between probate proceedings and civil actions.

In re Fowler Trust

Court: Mich Supreme Court, Docket No. 167501 (decided July 20, 2026)

A settlor's revocable trust was named beneficiary of both her 401(k) and her life insurance policy. A wrongful death judgment creditor sought to reach those proceeds after her probate estate proved insolvent. The probate court allowed recovery against the life insurance but not the 401(k); the Court of Appeals held both were reachable; the Supreme Court held neither was recoverable in a unanimous decision.

Take Away: a beneficiary designation to a revocable trust does not strip the character of the underlying asset. Exempt assets remain exempt in the trustee's hands.

In re Estate of Neal D. Nielson

Court: Mich Court of Appeals, Docket No. 368054 (April 27, 2026)

Neal's probate estate consisted of cash, coins and household tangible personal property. In his Will, Neal leaves to Paula "my household furniture and furnishings, automobiles, books, pictures, jewelry, art objects, hobby equipment and collections, wearing apparel, and other articles of household or personal use or ornament..." Neal's children seek to claim their exempt property allowance out of the items gifted to Paula.

MCL 700.2405(1) says: If the estate is otherwise sufficient, property specifically devised shall not be used to satisfy rights to homestead allowance or exempt property. The question is whether the language in Neal's will constitutes a "specific" devise or a "general" devise.

Although the trial court concludes that the gift to Paula is a general devise and therefore subject to invasion of the children exercising their claim to exempt property, in this published opinion, the Court of Appeals reverses – finding instead that the gift to Paula constitutes a specific devise. As it turns out, EPIC does not define either term, hence the COA resorted to the common law. There is a helpful discussion in this published opinion but most importantly, the term "my" preceding the list is indicative of a specific devise, not to be generalized because the items were listed in categories, and the designation for the property to pass to children if spouse is not surviving suggested Neal's intent was that his children not receive this property unless Paula predeceased him.

Take Away: Be intentional in writing a personal property distribution as a specific or general devise to carry out your client's intentions.

In re Kathryn Plan Revocable Trust

Court: Mich Court of Appeals, Docket No. 373195 (2026)

Within 3 months of the Trustee taking the fiduciary role, beneficiaries demand accountings from Trustee with a petition to remove Trustee when arbitrary deadline is not met. The Michigan Court of Appeals reversed a trial court's decision to remove Trustee, holding that the Trustee's failure to comply with the unreasonable demands of combative beneficiaries is insufficient grounds for removal under the Michigan Trust Code. In reversing the trial court, the Court of Appeals relies on MCL 700.7706 along with the proposition that "hostility between a Trustee and beneficiaries, by itself, without evidence that the administration of the Trust has been affected, does not provide a basis for removing a Trustee."

Take Away: Be reasonable in your demands of a Trustee.

In re Robert W. Ashcraft Trust

Court: Mich Ct App, Docket No. 372846 (published March 10, 2026)

In this case, the Court of Appeals construes the meaning of that provision of the Michigan Trust Code which allows someone other than the Trustee to recover legal fees from a Trust. Prior to the adoption of the Michigan Trust Code in 2010, the common law established a framework for the awarding of such fees built upon the proposition that the litigant non-trustee beneficiary would have to show that the legal work they financed provided “a benefit to the estate.” The MTC basically codified those cases in MCL 700.7904(1).

The context of this case is that a trust beneficiary litigated with the trustee over the amount that the trustee could legitimately offset from their own share for use of trust property during the course of administration. That litigation resulted in a reduction in the offset amount to the advantage of said beneficiary.

The trial court denied the request for reimbursement of legal fees from the trust. The Court of Appeals affirmed. In doing so, the Court of Appeals notes that the statute provides an exception from the American Rule in the context of trust administration. The Court of Appeals construed the statute through the lens of the common law cases it relied upon and felt that the awarding of such fees was only optional with broad discretion to the trial court and that the reimbursement should be for legal fees which resulted in a benefit to the entire estate, not just to an individual beneficiary or some class of beneficiaries less than the whole.

Take Away: Trust reimbursement for legal fees after successful litigation are limited to a benefit to the entire estate and are subject to broad discretion of the court.

Medicaid Cases

In re Estate of Sizick (Gries v. Dep’t of Health & Human Servs)

Court: Mich Supreme Court, Docket No. 166921 (2026)

This case is wrapped up in a history of case law on protective orders. The good news is that the result simplified what you need to know going forward because it was able to overturn *In re Estate of Schroeder*. Attorney Norm Harrison fought the Department of Health and Human Services (“DHHS”) all the way up to the Michigan Supreme Court to defend a Saginaw Probate Court protective order which transferred an institutionalized spouse’s assets and most of his income to his “Community Spouse” based on her financial need. The Probate Court awarded the

protective order but when a Medicaid application was filed with the order used to set a new Initial Asset Assessment Date, the DHHS refused to follow their own policy which requires the transferred amount of income and assets match the court ordered amounts. Instead, DHHS appealed the protective order, and the Court of Appeals vacated the order in reliance on *In re Estate of Schroeder*, which had barred the probate court from considering Medicaid eligibility before a formal determination was made by the DHHS. The Supreme Court reversed, not only allowing the protective order to stand again, but displacing *Schroeder*'s bar to Medicaid eligibility consideration in those proceedings.

Take Away: Protective proceedings are restored as a viable community spouse planning tool.

Estate of Charla Brown v. Dep't of Health & Human Servs

Court: Mich Ct App, Docket No. 368825 (published March 26, 2026)

Charla Brown paid her daughter and a family friend for in-home personal care. After she entered a nursing home and applied for Medicaid, DHHS imposed a divestment penalty because the arrangement lacked the BEM 405 requirements. Charla's estate appealed an Administrative Law Judge ("ALJ") decision that found the BEM 405 requirements to be an irrebuttable presumption of divestment. They were successful in circuit court to reverse the ALJ so the DHHS appealed to the Court of Appeals. The Court of Appeals found that the irrebuttable presumption imposed by Michigan's DHHS was unlawful and remanded the case to the ALJ to be reviewed under the proper legal framework. The case is currently awaiting an ALJ decision on remand.

Take Away: BEM 405's personal care contract policy cannot automatically impose a divestment penalty on a Medicaid recipient; instead, the DHHS is required to analyze divestment under the governing federal law requirements.