Year in Review

Jackson Estate Planning Council

A. Published

In Re Guardianship of Mary Ann Malloy and In Re Guardianship of Dana Jenkins

Case No. 358006

This published opinion arises out of a dispute between an insurance company and a professional guardian but implicates the important question of what it means to be a guardian of a legally incapacitated individual. The case addresses the question of what, if anything, a court-appointed professional guardian actually has to do herself or himself vis a vis what can be delegated to others.

The COA holds that the guardian can pretty much delegate all of the duties of a guardian so long as the court-appointed individual remains "responsible" for the delegated duties

The insurance company points to MCL 700.5103 which provides a mechanism for a guardian to delegate the powers of the guardian to another person for up to 180 days by executing a power of attorney, and by also notifying the probate court; neither of which occurred in these cases.

Siding with the professional guardian, the COA distinguishes between the "powers" of a guardian and the "duties" of the guardian, so that, as in this case, where the guardian delegated essentially all activities of a guardian to his employees, the guardian has not violated any aspect of EPIC and is entitled to be paid under the no-fault statute for these services because the court-appointed professional guardian retained the powers of the guardian and remained accountable to the court for the ward's care.

Now on Appeal to the Michigan Supreme Court

In re Shelly Ann-Marie Sangster, R.N.

Case No. 352147

The undisputed facts seem to be that a man met a woman at a casino. The man was 75 years-old, had cancer, and had recently lost his spouse of 50+ years. The woman was a nurse and needed a place to stay.

The man and the nurse worked out a deal whereby she came to live with him and provide assistance with cleaning, cooking, shopping and other household chores. He paid her a few hundred dollars a week and otherwise assisted her by purchasing her some clothes and other "necessities."

At some point, the man became amorous toward the woman, and the woman (who did not share his romantic feelings) decided it was time for the relationship to end. So, she moved out.

Morality Police

All these allegations, and more, ended up in a hearing at which the then-deceased man's children sought to have the woman's nursing license revoked on the basis that she displayed bad moral character. The children succeeded in having the nurse's license revoked at the administrative level, and that result was affirmed by the Michigan Court of Appeals.

Henderson v Department of Health and Human Services

Case No. 359840

Facts are: In February, Deborah created an irrevocable trust. The terms of the trust provided she retained no rights to any of the trust property. She then transferred her assets, including funds she withdrew from her IRA, into this irrevocable trust. Then, two months after creating and funding this trust, Deborah applied for long term care Medicaid benefits.

To the surprise of no one who knows anything about Medicaid planning, Deborah was assessed a divestment penalty on the value of the assets transferred into the irrevocable trust. That is, she was told that she would not be eligible for Medicaid benefits for about two years because she put her property into an irrevocable trust the terms of which make it the equivalent of giving her assets away; conduct which Medicaid policy refers to as "divestment" and which triggers a period of ineligibility.

A Shocking Theory

It seems that Deborah's attorney decided that the imposition of a divestment penalty was a mistake on the part of the Department. As a result, the Department's decision was contested in an administrative hearing. Then, after losing at the administrative level, this appeal was filed with the Michigan Court of Appeals. In this appeal, the Appellant argues that the Hegadorn case abolished divestment.

My Blog post on this was called "Worst Medicaid Case Ever."

In Re Estate of Virgil F. Hoppert

Case No. 362694

A, B and C enter into an agreement granting each other a right of first refusal on the land they own as tenants in common. The agreement identifies the events that would trigger the right to exercise an option to purchase and defines the time limits under which the option must be exercised.

B violates the agreement by deeding the property to a third party, D, without notice to A and C. When B dies (a triggering event), A fails to exercise the option within the time allowed by the agreement, arguably because of the confusion created by B's violative deed to D (combined with bad legal advice).

D dies thereafter.

The case arises when A sues the estate of D for title.

In this appeal, two issues are decided:

Restraints on Real Property Alienation

D's estate argues that the agreement was void as an illegal restraint on alienation, and therefore that A's claim fails.

The trial court held the agreement was not and illegal restraint on alienation, and the COA affirms. In doing so, the COA tracks Michigan's common law from 1874 to present. The COA finds that while Michigan law on the issue is "not a model of clarity," over time the law has evolved to become increasingly accepting of agreements imposing purchase options on real property, provided only that the terms of such agreements are "reasonable." In this case it finds the terms are reasonable.

A wins on this issue.

Strict Adherence

While A wins on the validity of the option agreement, he loses the case because he did not exercise his right to purchase the property in a timely

manner after B died. While the trial court forgives A's delay in exercising his option due to the confusion generated by B's stray deed, the COA does not. Rather, the COA reverses the trial judge, finding that Michigan law imposes "strict compliance" with the terms of these agreements.

Accordingly, A loses the appeal and the right to purchase the real estate at issue.

Kilian v TCF National Bank

Case No. 358761

MCL 700.7905(1)(a) says:

(a) A trust beneficiary shall not commence a proceeding against a trustee for breach of trust more than 1 year after the date the trust beneficiary or a representative of the trust beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the trust beneficiary of the time allowed for commencing a proceeding.

This published case addresses two aspects of this statute, and concludes, under questionable circumstances, that the information provided by the Bank/Trustee at issue was sufficient to allow the Trustee to avail itself of the statutory protection.

Part I: One Year

The most troubling part of this case is that while this Trustee sent out annual reports to the beneficiaries, the cover letter with the reports merely stated: "please review this statement carefully and notify us as soon as possible if there are any discrepancies, questions or concerns."

As the statute above says, to get the protection, the Trustee has to inform "the trust beneficiary of the time allowed for commencing a proceeding,"

This case holds that the Trustee didn't have to say "you have one year to object." Rather this case holds that language about letting them know "as soon as possible" if they have any "questions or concerns" is sufficient.

Really? That's what "informing the trust beneficiaries **of the time allowed**..." means? Yikes!

Part Two: Adequately Disclosed

The second issue relates to the same statute, and to what it means to "adequately disclose the existence of a potential claim."

In this case the Trust owned a resort (leased cabins it seems) that fell into disrepair during the trustee's tenure. Appellants complained that the annual reports didn't flag them to the fact that the Trustee was allowing the property to be mismanaged. Among other things, they point the fact that for several years running, the Trustee reported the value of the real property as unchanged. The appellants argue that the Trustee's failure to have the property periodically appraised lulled them to complacency when in fact the property was going to seed, and during which time the notes in the Trustee's files indicate that the Trustee was aware that things were going south.

In an extensive discussion the COA upholds the trial court's finding that, nonetheless, the information provided gave the beneficiaries sufficient information to alert them to the situation.

In Re Petition of Emmet County Treasurer for Foreclosure

Case No. 359447

Personal Representative has the ability to claim excess from sale of foreclosed property (new right) can be exercised by named devisee of unprobated will because they have sufficient standing to file a claim (real party in interest).

All goes to estate recovery anyhow ....

Estate of Carol Peasley v Glemboski,

Case No. 361181

The case holds that "grandchildren and grandparents are immediate family members for purposes of bystander recovery for negligent infliction of emotional distress."

In other words, when these grandchildren saw their grandparent die in a fiery car crash, they had standing to be compensated for their emotional distress. Prior to this decision, they did not meet the test as they were not considered members of the decedent's "immediate family."

In Re Gregory Hall Trust

Case No. 361528

Greg takes his house out of trust and transfers it to one of the children, Ken. When Greg dies, the other two kids say that Ken's share of the trust has to be reduced by the value of the house. Ken says the house was a gift and he still gets his third of the residue.

Litigation includes extension discovery involving electronically stored information (what the rules now call ESI). Ken and his spouse appear to engage in conduct intentionally obstructive, throwing away old cell phones and making stored computer data difficult or impossible to retrieve. Ken loses on the grounds of his egregious discovery violations.

A. Unpublished

(1) Unpublished Guardianship/Conservatorship Cases

In Re Guardianship and Conservatorship of JEK

Case No. 364111

There is no such thing as a temporary conservator only a special conservator and you can't use a special conservator to act as a temporary conservator. A special conservator is only used as a tool to implement a protective order. So, if you want someone to act fast, you have to appoint a conservator and make the necessary findings to do so.

If PAD exists, you can't appoint a temporary guardian because you can't make the finding that "no one has apparent authority."

Unfortunately, unpublished.

In Re Conservatorship of DPV

Case No. 362139

Fourth time up on appeal, COA reams trial judge for bullying family and protecting public fiduciaries.

Hear this:

> *There was no abuse of the judicial process here on the VanPoppelens' part. Rather, the VanPoppelens fought for several years for the freedom to manage DPV's assets, just as they provided hands-on personal care for their loved one. For years, the family had to fight to ensure DPV's finances were being properly managed while watching DPV's assets being unnecessarily drained by private conservator and guardian fees. And when they raised legitimate concerns that DPV's assets were not properly managed, the court accused the VanPoppelens of harassment and abuse of the judicial system.*

And this:

> *The probate court stretched and strained for excuses to appoint a private conservator/guardian, unnecessarily diverting fees away from the assets needed for DPV's in-home care. The probate court then expressed shock, annoyance, and anger at DPV's closest family members for monitoring the conservator/guardian's actions and discovering his errors.*

In re Guardianship of Tyler J. Newland

Case No. 360274

In this case, the hospital wanted the patient discharged, but the patient advocate resisted, arguing that more treatment was needed, or would at least increase the likelihood of a successful transition back to the community. The evidence cited to support the patient advocate's removal were things like: the patient advocate "challenged recommendations and opinions of numerous providers," and was "interfering with [the hospital's] ability to continue discharge planning."

Someone more cynical might ask: Isn't that the job of the patient advocate?

In Re Conservatorship of A. Barbara Greer

Case No. 359531

The important holding in this case is that a conservator can execute a ladybird deed without first asking for court permission. The facts and other nuances of the case have the potential to cloud this otherwise important rule (as important as a rule can be in an unpublished opinion).

Chalgian and Tripp represented the Appellees = prevailing party.

Estate of Richard Maine v Key

Case No. 360072

A and B own property as tenants in common.

Deed 1: From A and B to A, B and C as joint tenants (not expressly with rights of survivorship)

Deed 2: From A to B and C

Deed 3: From C to B reserving a life estate in C.

The Probate Piece

At all relevant times, C is a legally incapacitated individual subject to court appointed guardianship and conservatorship. Probate court approval was not sought for any of the deeds at issue (as would be required any time a conservator conveys an interest in real property belonging to the ward).

The Case

After C dies, litigation arises over the validity of the deeds and the interest held by C at his death.

Trial judge rules that Deeds 2 and 3 are void because they both altered the interests of C, a protected person, without court approval. Accordingly, the property reverts to the ownership as expressed in Deed 1.

The COA reverses in part, finding that while Deed 3 was void for lack of probate court approval, Deed 2 is valid because it did not convey any of C's rights in the property and therefore did not run afoul of any EPIC restrictions.

Carrie Reynolds v Revocable Living Trust of Donald W. Reynolds

359803

On February 25, 2019, Macomb County Probate Judge Harrison appointed a full guardian over Donald Reynolds, and found that he was "totally without the capacity to care for himself," and further, that by clear and convincing evidence, Donald was "impaired to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions and is an incapacitated individual."

On May 9, 2019 Donald allegedly signed a trust amendment cutting out Appellant, his surviving spouse.

In a lower court proceeding Appellant contested the validity of the trust amendment based on lack of capacity. Then Macomb County Probate Judge Marlinga ruled against her and dismissed her case on summary disposition.

My argument was simple:

Taking the facts in a light most favorable to Appellant, there is no way that a court can find there is no genuine issue of a material fact – that is, no genuine issue as to Donald's mental capacity to amend his Trust, when barely two months before signing the amendment, a different probate judge in the same county issued a written order which found, by clear and convincing evidence, that Donald lacked the ability to make or communicate informed decisions.

I lost.

I was right.

Wah Wah WAAAAH.

In Re JLD Living Trust.

Case No. 361850

This is a case in which the probate court determined the validity of an older person's estate plan in the context of a guardianship and conservatorship proceeding.

The subject of the case is only referred to as JLD. I'll call him "Jack."

Jack was never married and had no kids. He had one sibling, and that sibling had children. Jack's estate plan left everything to those nieces and nephews, and these nieces and nephews are the appellants in this case.

Appellants lived some ways away and had limited contact with Jack, but take an interest when Jack begins to show signs of decline. They petition to become Jack's guardian and conservator, which request the trial judge grants. In that process, the Appellants produce a psychological evaluation that finds some age-related cognitive impairments, although at the time of the proceedings Jack is living alone, managing his own affairs and driving confidently.

Jack objects but also says that if the court must appoint someone over his affairs, it should not be these nieces and nephews. Accordingly, the trial judge appoints neutrals to fill both roles.

Sensing that Jack's attitude towards them is turning, appellants also petition for, and obtain, a court order saying Jack cannot modify his estate plan without court approval. We'll call this the "EP Order."

Following the appointment of a guardian/conservator, the spouse of someone Jack worked with ("Sadie") assumes an increased interest in Jack and becomes an advocate for his wants and needs.

Jack has another psychological evaluation conducted which finds he is competent to handle most of his affairs, and also that he has "testamentary capacity."

Using this new medical evaluation, Jack petitions to have his estate plan modified leaving it all to Sadie and her spouse (cutting out the nieces and

nephews). The trial court approves the new plan. Appellants appeal. The Court of Appeals affirms.

Lifetime Litigation

A question in such cases is whether the probate court has the authority to litigate the validity of estate planning documents in a guardianship or conservatorship proceeding. This case says you can, citing "generally" 700.5401–700.5433 – which is basically all of the law on conservatorships. But because these appellants requested and obtained the EP Order which expressly gave the trial judge the power to decide whether Jack would be allowed to change his estate plan, any conversation on this topic in this opinion has to be viewed as dicta. Pretty clearly, in this case, the appellants opened that can of worms on their own.

EP Changes by Protected Persons

Cases in which people subject to guardianship or conservatorship change their estate plans also invoke questions about how the trial court's findings re capacity of the protected person intersects with the validity of the documents they execute. The settled rule is that the existence of such court protections do not preclude the person from having testamentary capacity. [I have had these cases and personally believe that the legal basis of this rule is archaic and needs to be readdressed by an appellate court that wants to take the time to do so seriously.] That said, again, in this case, (1) the subsequent psychological evaluation of Jack is persuasive and (2) the appellants had, by obtaining the EP Order, conceded that the trial court would have the ability to approve such changes within the context of the CA/GA proceedings – essentially waiving any objection on these grounds.

A curious related issue was raised by the appellants as to Jack's Trust. Jack's Trust expressly stated that the Jack would be removed as Trustee and the Trust would become irrevocable upon his "incapacity." Appellants sought to argue that the trial court's finding that Jack was a "legally incapacitated individual" precluded any amendment to his Trust. In response to this argument, the COA claims that the appellants fumbled the handling of this issue and, in doing so, waived it. (I also think they waived it when they sought and obtained the EP Order.)

Undue Influence

The COA also finds that the appellants waived their undue influence claim.

Discussion of when to pull the trigger

(2) Unpublished but Interesting Non-Guardianship Cases

Re Raymond J. Nicholson Revocable Trust Agreement

Case No. 360862

MCL 700.1205 is a section of EPIC that provides a unique method for discovery. Part 1 of that statute says:

(1) The court may order a person to appear before the court and be examined upon the matter of a complaint that is filed with the court under oath by a fiduciary, beneficiary, creditor, or another interested person of a decedent's or ward's trust or estate alleging any of the following:

(a) The person is suspected of having, or has knowledge that another may have, concealed, embezzled, conveyed away, or disposed of the trustee's, decedent's, or ward's property.

(b) The person has possession or knowledge of a deed, conveyance, bond, contract, or other writing that contains evidence of, or tends to disclose, the right, title, interest, or claim of the trustee, decedent, or ward to any of the trust or estate.

(c) The person has possession or knowledge of a decedent's last will.

In this recently issued unpublished decision, the Michigan Court of Appeals looks at the case in which a Trustee filed a complaint pursuant to section 1205 requesting a business partner of the decedent/settlor be examined as to matters related to those business interests held in the deceased settlor's trust.

After one brief hearing, and halfway through the second day of an oral examination in the courthouse (but without the judge present), the trial judge issued an order dismissing the case. The examination was discontinued, and an appeal followed.

In the process of remanding the case, this panel of the Court of Appeals provides some clarity about how Section 1205 can be used.

First, the COA holds that a Complaint filed under Section 1205 is a stand-alone civil cause of action. That is to say, it does not have to arise in the context of another pending civil case or proceeding.

Second, the COA holds that discovery is available in the context of an action filed under Section 1205.

For litigators who turn to section 1205 on occasion, having clarification on these two points is helpful.

In Re Estate of Carolynn Ann Horton

Case No. 362550

Trial court granted summary disposition in favor of the party defending the validity of a beneficiary designation that had been challenged by Appellant as being the product of undue influence. The trial judge found that the Appellant had failed in its attempt to establish a presumption of undue influence because Appellant had failed to provide evidence sufficient to create a genuine issue that a confidential or fiduciary relationship existed between the decedent and the alleged perpetrator.

In reversing the trial judge, the COA touches on two issues worth note.

First, the COA clarifies that a fiduciary or confidential relationship sufficient to give rise to the presumption need not be a formal fiduciary relationship, such as an agent appointed under a power of attorney. Here, the perpetrator helped the decedent pay her bills and do her banking. This was enough to establish a confidential relationship for the purpose of giving rise to the presumption, and it was for this error that the trial court's decision was reversed.

The second (and what I think is the more significant point) made by the Court of Appeals would probably correctly be characterized as dicta. It goes to the question of whether, once the presumption is established, a trial court may, notwithstanding, find that the presumption has been rebutted and still grant summary disposition. This is a critical issue, and there are cases out there that seem to go both ways. In this case, the COA implies that a trial judge cannot grant summary disposition once the

presumption is established, and offers a seemingly logical explanation as to why that must be the rule.

Ronald Schaddelee Irrevocable Trust

Case No. 362521

Trustee who signs declaration of trust ownership acknowledging that all accounts in which settlor has interest shall be trust assets and that trustee shall not receive any inheritance but through the trust, can nonetheless keep the proceeds from an account on which she is the named beneficiary. COA discounts the document as something akin to a general assignment.

In Re Estate of Leroy Edward Murray

Case No. 357107

Sandra and Leroy obtained a marriage license, hired a pastor and went through with a marriage ceremony in a church. Two of Leroy's six children were in attendance.

The opinion doesn't reveal what Sandra wore or whether either of Leroy's children cried. What it does say is that, when Leroy died several years later, his children claimed that the wedding was a sham, that Leroy died single, and therefore, that they (the kids) are the sole heirs to his estate. After a four-day evidentiary hearing, the probate judge ruled that the marriage was not valid. In an unpublished decision, the Michigan Court of Appeals affirmed.

The key fact in the case is that the wedding license expired one day before the wedding ceremony was performed. The kids testified that the one-day delay was intentional, and that Leroy understood that he was not 'really' married. Sandra agrees that they knew they were a day late, but she says that when they went to the County Clerk to file the license, and to pay for an extension if needed, the folks at the counter told them they didn't need an extension and that it was all good. And in fact, the marriage license was accepted, stamped, and filed.

There are other facts about how Sandra and Leroy carried on after the wedding ceremony, but in the end, the date problem proved insurmountable to Sandra.

In Re James Kurtz Protection Trust

Case No. 360605

The challenge when planning for second marriages where each of them has children from prior relationships is that the client has to decide how it will go for the surviving spouse when they are dead.

There are really only two options:

Option A. Unfettered Control. With this approach you give the surviving spouse the right to amend the trust and to make withdrawals of principal for any purpose. The surviving spouse can serve as Trustee. The upside of this approach is that it's easy and it assures that the surviving spouse will be able to enjoy life to the fullest after you're gone. The downside is that the surviving spouse can (and probably will) either change the trust or take the property out of trust and leave what is left when they die to whomever they choose – and that almost certainly won't be your children.

Option B. Put the Surviving Spouse in a Box. With this approach, the trust becomes irrevocable when you die, and someone other than your spouse serves as trustee (either a bank or maybe one of your kids). Typically, income is distributed to the surviving spouse, but invasion of principal is limited to some "ascertainable standard." The upside of this approach is that it protects your children in the event your surviving spouse does not outlive the money. The downside is that your spouse will likely have a miserable time of it, battling for money s/he wants to use, especially if one of your children is trustee.

The Kurtz Case

Apparently, no one explained these options to the lawyer who drafted the estate plan for James and Barbara Kurtz. That lawyer drafted a joint trust that became irrevocable when the first of them died, and distributed the remaining trust property among their five children (two of his and three of

hers) when the survivor passed. But ... the trust also granted the surviving spouse the unfettered right to invade principal. So, predictably, after Barbara died, James used his right to invade the trust principal to restructure the assets and revise the estate plan to provide only for his descendants.

In Re James Kurtz Protection Trust (click on the name to read the case) is unpublished. In this case, the trial court held that the right to invade principal is inherently inconsistent with the purpose of having the trust become irrevocable at the first death, and therefore everything James did to undermine the original 'divide-by-five' outcome was void. With a minor tweak or two, the Michigan Court of Appeals affirmed.

Conclusion and Comments

To get to their desired result, the COA asserts that the trust was inherently ambiguous and that the surviving spouse breached his fiduciary duty by taking the steps he took to undermine the intent of that original document while he was acting as Trustee. I guess I can go along with ambiguity, although in this case the line between ambiguity and sloppy legal work seems blurred. As for breach of fiduciary duty, it's hard for me to see how a trustee who follows the express terms of the trust, even to the extent that doing so benefits himself, is guilty of breach.

Planning for couples with children from prior relationships isn't easy. I've learned to have "the conversation" and to explain the options, making the client decide whether they want their spouse to be put in a box or not. How much money, how long they have been a couple, where the money came from – all considerations. And sometimes, when planning for these couples, a third option is to give the survivor unfettered control over the joint trust but carve out a life insurance policy or dedicate a specific asset that goes to the children of the first of them to die.

Chakmak Family Trust v Koss

Case No. 359169

Husband and Wife own homestead as tenants by entireties. Prior to leaving for a trip, they execute a deed conveying their homestead to themselves as co-trustees of their joint trust. They give the deed to their attorney with the instruction that he record the deed only in the event that they die simultaneously on their upcoming trip. Otherwise, their express intent at the time of signing the deed is that: if there is no simultaneous death, the real estate will pass to the survivor per the existing joint tenancy.

Husband dies.

After husband dies, the wife ladybird deeds the house to her child.

Then wife dies.

The deed to trust is never recorded.

Beneficiary of ladybird deed seeks quiet title when beneficiaries of joint trust challenge her ownership.

Issue is whether deed in the drawer was delivered when it was executed, because if it was delivered, the subsequent ladybird deed had no legal significance.

The Michigan Court of Appeals holds that the property is a Trust asset because when the couple executed the deed conveying it to themselves as co-trustees, they accomplished delivery and the instructions to their lawyer re recording were, more or less, irrelevant.

Billie Montgomery v Estate of Bud Montgomery

Case No. 360607

Billie gave Bud money to buy a tractor. Undisputed.

Bud dies ten years later and Billie comes to Bud's estate to claim the tractor as collateral for the loan that he says was never repaid

Bottom line of this case is that, the reason the Court can't determine the validity of Billie's claim is because Billie waited until Bud died to do something about it. In other words, the Court will never know whether Bud would agree that it was a loan, and if so, whether it was unpaid? Accordingly, Billie loses because of laches.

The case provides a good discussion of the affirmative defense of laches, and in doing so, reminds of that "familiar principle" that "one who waits until the death of a witness has prevented denial of his claim or disclosure of the truth is guilty of laches . . . ."

Estate of Clisson J. Finney

Case No. 361305

X deeds real estate to Y with understanding that Y will hold the subject property for the benefit of Z, and convey the property to Z at the appointed time.

X dies.

PR is appointed personal representative of X's estate and petitions to set aside said deed and recover the subject property to the estate. PR argues that the deed to Y is invalid as it violates the statute of frauds because the interest of Z is not expressed in a writing.

Trial Court denies PR's petition, and the Court of Appeals affirms.

COA explains that while the statute of frauds may hinder Z from making a claim to enforce the oral agreement between X and Y, it does not

invalidate the deed which is a writing, and which on its face conveys good title in the subject property to Y.

It's probably worth noting that the only issue on appeal was the application of the statute of frauds. Other theories under which the validity of the deed may have been challenged, such as mistake or fraud, were either not raised or not preserved.

In Re Ralph A. Siddell Living Trust

Case No. 359979

In order to trigger the six-month statute of limitations for contesting a trust, it is not necessary to give the potential contestant a copy of any prior versions of the trust or to otherwise notify them of how their interests were altered by the final version

(3) Unpublished Non-Guardianship Borderline Cases

Mashni Revocable Trust v Estate of Boulos Mashni

Case No. 358017

COA provides a primer on oral family loans, looks at SOL, SOF and equitable estoppel in context of distinguishing between installment loans, demand loans and event triggered loans.

In Re Helen Tenney Miller Trust

Case No. 360247

Creditor of entities, shares of which entities are owned by a Trust, are not creditors of trust unless and until they pierce the corporate veil of those entities. Hence the trustee has no duty to such creditors and they lack standing to contest the manner in which the trustees have administered the trust.

In Re Estate of Joel Solomon Weingard

Case No. 359979

Court rule that requires use of SCAO forms be used is important. And while trial court should have rejected the pleadings which were not on SCAO approved forms, it's not such an egregious error that would require reversal of the trial court's decision. See MCL 600.855 and MCR 5.113(A)

Margaret Gathright v Mission Hills Memorial Gardens, Inc. et al

Case No. 362182

Wife finds someone else in grave next to husband – which she had already bought and paid for. Wife sues township cemetery owner. Township asserts governmental immunity. Wife says the "Prepaid Funeral and Cemetery Sales Act" pierces governmental immunity and the COA agrees.

In Re Rhea Brody Trust

Case No. 362214

Disinherited Child says: Sure, Mom cut me out of her trust, but that was only because I was going through bankruptcy. Everyone knows, and I can prove, that she was going to put me back in once my bankruptcy situation was resolved. Problem is she became demented before she had a chance to make that change, and now she's dead.

Child seeks reformation of the trust, calling it a "mistake" and relies on MCL 700.7145 which says:

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Court of Appeals retorts: Maybe she did intend to do that, but the trust she signed clearly disinherited you, which is exactly what she believed she was doing, intended to do, and accomplished. There's no mistake about it.

Accordingly, the decision of the trial judge dismissing the complaining Child's case is affirmed.

In Re Estate of Terry Broemer

Case No. 360571

Decedent dies without a surviving spouse and no descendants. Nehra, a stepchild, informally opens an intestate estate and is appointed PR, giving notice to a cousin who is the only then-known heir.

Sometime later, before the administration of the estate is complete, Sly (another non-heir), appears with an unsigned pour-over will and unsigned trust, and offers the will under MCL 700.2503 (document intended to be a will), which will is admitted along with an order that adopts the terms of the trust as the dispositive provisions of the will (a neat trick, the legal authority for which is never addressed in this opinion). The dispositive provisions of the trust are a third each to Nehra, Sly and another non-heir.

Importantly, notice of the hearing to admit the will under 700.2503 was published and sent directly to all then-known heirs, which included appellant. The order from the hearing is likewise served on known heirs.

An attorney then appears claiming to represent nearly one hundred heirs contesting the admission of the will. The parties participate in mediation and a settlement is reached. Approval of the settlement agreement is noticed out and a hearing is conducted.

Appellant received notice of both the mediation and hearing to approve the settlement, and did not attend or object. In addition, Appellant received a check pursuant to the settlement agreement and signed a receipt accepting said check in full satisfaction of her interest in the estate.

Then, when the estate is ready to be closed, a non-heir files a petition seeking to set aside the settlement and claiming to represent Appellant via a power of attorney. Said non-heir agent shows up at a hearing on her petition and presents argument. The trial court dismisses her petition because Appellant had notice every step of the way and also accepted payment in full satisfaction of her rights. The trial judge also notes that this interloper is not a lawyer and lacks standing.

In affirming the trial court, the Court of Appeals specifically relies upon and endorses the finding that this person is practicing law without a license and lacks standing.

(4) Unpublished Non-Guardianship Cases that are Not Particularly Interesting

In Re Franz Weiser Revocable Trust

Case No. 363537

Grandkids are expressly cut out of 2018 trust, and were likewise cut out of 2015 will (the estate planning document immediately predating the 2018 Trust).

Trial judge has hearings on whether the grandkids have a right to see the Trust, and after deciding that they do, schedules a status conference. But the day before the status conference, the trial judge sua sponte issues a written order dismissing the case altogether.

The COA finds that the trial judge was too quick on the draw and remands the case "for further proceedings."

Another CT Case.

Estate of Desiree Chase v Starfish Family Services

Case No. 359534

James and Jennifer had a child who grew up to have serious mental health challenges, and who died of suicide under circumstances that gave rise to a lawsuit which resulted in a financial recovery. In the context of the wrongful death action, the two (separated) parents litigated how the money recovered through the lawsuit should be divided between them.

The process for a wrongful death proceeding is spelled out in MCL 600.2922. It directs the Court to divide the recovered funds in 'fair and equitable' manner, taking into consideration the injuries suffered by the respective parties, injuries such as loss of support or loss of society and companionship.

In this case, Jennifer claimed that she was entitled to 100% with no share to James. James claimed he should get 75%, and 25% should go to Jennifer.

The trial judge gave Jennifer what she asked for, finding that all of the loss was suffered by her, and none by James.

The Michigan Court of Appeals affirmed that decision.

Typical of an opinion written to justify the affirmation of a lower court decision, this panel of the COA recites facts in a manner that seems to intentionally minimize the role James played in his child's life. Even suggesting that, at times, James' involvement had a negative impact on his deceased child's development.

Despite this slant, and notwithstanding the fact that Jennifer was obviously much more involved in the child's life, it seems clear that James tried in his way to remain attached to his child and to provide some support and guidance. And it seems noteworthy that, shortly before the child took her own life, she Facebook messaged James that she loved him.

In a more compassionate concurrence, one member of the panel writes separately to say that it is unfair to characterize James as a "deadbeat dad." Noting that, while his relationship may have been imperfect, many parent-child relationships are. Nonetheless, the concurring judge goes along with the all-and-nothing result, finding that James was simply asking for too much. Had he made a more reasonable demand (something less than 75%), the concurring COA judge seems to suggest, the result would have likely been different.

In Re Esther Kratzer Revocable Trust

Case No. 357860

This is a classic farm family story. If you practice in any rural areas, you've probably heard this one before.

Dad and Son farm together for decades on land owned (in trust) by Dad and Mom.

At some point Dad phases out of actively farming and Son does it all. But Son still consults with Dad about crops and weather and whatnot.

When Mom dies and Dad goes into assisted living, Son and Dad keep talking, and they decide it's time to spruce up the farmhouse, which Son lives in and which Son will inherit when Dad is gone. Dad approves the plan and Son spends Trust money making the house nicer.

When Dad dies, Son becomes Trustee, and during an extended period of trust administration, Son continues to do things the way they was always done, including commingling funds from the farm business with his personal accounts and with trust money. The "accountings" he provides to his siblings are sporadic and jumbled.

In time, the siblings decide to sue Son (their brother) for the money that was spent fixing up the house, and for failing to account.

The Trial Court nails Son for both failing to account and self-dealing on the home repairs.

In this case, the Michigan Court of Appeals agrees that Son breached his duties as Trustee by failing to adequately account, but they reverse the Trial Court on the issue of the farmhouse improvements.

As to the farmhouse, the COA says the undisputed evidence is that those improvements were made with Dad's ok, while Dad was still Trustee and sole present beneficiary. Although Dad delegated much of his Trustee responsibilities to Son, Son was not the Trustee. What's more, even if Son were the de facto Trustee, his fiduciary duty would have been to Dad and fixing up the farmhouse was not a breach as to Dad because Dad wanted it done.

In Re Henry Hawkins Memorial Family Educational Trust

Case No. 359029

Hawkins Trust is about a testamentary trust that continues for 20 years, during which period the Trustees have unfettered discretion to distribute trust property among certain individuals for defined educational purposes. When the 20 years is up, the Trustees proceed to distribute the remaining trust property, but some of those to whom distributions were or could have been made want an accounting of the Trustees' activities during their tenure.

The trial court says these people are not trust beneficiaries and are not entitled to accountings. The COA reverses, and in doing so dissects the statutory scheme set forth in the MTC with respect to types of persons entitled to information, as well as when and what type of information each type is entitled to receive.

The COA finds that the MTC creates four classes of persons entitled to some information: (1) distributees, (2) permissible distributees, (3) qualified trust beneficiaries, and (4) nonqualified trust beneficiaries. The COA finds also that appellants in this case fall into one or more classes such that they are entitled to accountings.

Hawkins Trust is the kind of case you may not want to read right away – but rather squirrel away until the until the issue comes up in practice – and it does.

Estate of Evelyn R. Ragsdale v Katie Bishop

Case No. 358734

An interesting case brings to the fore the respective duties of a personal representative and the trustee of revocable trust in the situation in which the estate is insufficient to satisfy the claims. The COA makes it clear that both the PR and Trustee were acting inconsistently with their duties when they settled the case in a manner that failed to protect the interests of Shriner's Hospital. Although the issue is made more dramatic because this Trust expressly expanded the exposure of trust assets to unfunded devises, it seems that the balance of interests would be the same even if the only concerns were creditor claims or administrative expenses.