



*Every month I summarize the most important probate cases in Michigan. Now I publish my summaries as a service to colleagues and friends. I hope you find these summaries useful and I am always interested in hearing thoughts and opinions on these cases.*

## **PROBATE LAW CASE SUMMARY**

**BY:** Alan A. May



Alan May is a shareholder who is sought after for his experience in guardianships, conservatorships, trusts, wills, forensic probate issues and probate. He has written, published and lectured extensively on these topics.

He was selected for inclusion in the 2007 through 2011 issues of *Michigan Super Lawyers* magazine featuring the top 5% of attorneys in Michigan and is listed in the 2011 and 2012 compilations of *The Best Lawyers in America*. He has been called by courts as an expert witness on issues of fees and by both plaintiffs and defendants as an expert witness in the area of probate and trust law. He is listed by Martindale-Hubbell in the area of Probate Law among its Preeminent Lawyers.

He is a member of the Society of American Baseball Research (SABR).

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**DT:** April 19, 2012

**RE:** AWAD Estate

STATE OF MICHIGAN COURT OF APPEALS

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### **BASEBALL MEMORIES:**

For the last month I have been enjoying memories of the 1968 season because of the birth of my grandson Ryland. I decided to put together a set of '68 Topps for him. Each card was a trigger. As I sorted the cards the names and faces of superstars passed before me. Only now, in retrospect, do I see that I had a chance to see the greats on an everyday basis. Mays, Mantle, Maris, Bunning, Killebrew, Aaron, Frank and Brooks Robinson, Clemente, Yastrzernski, Jenkins, Rose, Morgan, Bench, Oliva, Marichal and even three players named 'May' – Dave, Jerry and Lee, the last of which had two cards with two different spellings of the name May.

But the greatest memories of all were of the 1968 Tigers.

Much has been written about the 1968 Detroit Tigers, a team of destiny. In a period of civil upheaval, it was a time that made us forget the devastation Detroit had endured the year before and, for a moment in time, consider ourselves one people with a common cause.

We had been cheated out of a pennant in 1950 and 1961 and lost the pennant on the last day in 1967 and we knew – we just knew that this had to be the year.

Whatever Denny McLain did after 1968 to sully his image, '68 year was his year. His 31 victories ranks, for me, with Mark the bird "Fidrych" 1976 Rookie year, and the 2011 year of Verlander. McLain just didn't lose and he was the last pitcher to pass the 30 win mark. I remember key hits by Eddie Matthews, the great hall of famer, who had just enough, in the twilight of his career, to help the Tigers get to the top. Entering the Series, everyone said Brock and Flood would steal Freehan blind. They didn't. At the end, Freehan and Lolich jumped into each other's arms. Then, there were the Northrop grand slams during the year, one in the Series and a game winning triple in game 7. Dick McAuliff lifting his right leg when he swung. Mayo Smith letting Lolich bat in a clutch situation and getting a hit (Lolich also homered in game 2 of the series).

Great role playing by Don Wert, Ray Oyler, Mike Marshall and Earl Wilson and Joe Sparma. Steady fielding by Mickey Stanley and a load of RBIs by Kaline, Cash and Horton.

Oddly, the most vivid memory I have is looking into the Tiger dugout and watching Willie Horton on the bench smoking a cigarette.

### **REVIEW OF CASE:**

Reference Files:       Sanctions without Petition  
                              Sanctions "In Lieu"  
                              Collateral Estoppel  
                              Heirs' Right to Sue "In Lieu" – Fiduciary  
                              Fiduciary Responsibility to Pursue Court of Appeals  
                              Conversion  
                              Subsumed Action

This is a well reasoned 14 page Opinion on a variety of issues apparently over \$50,000.

The case concerned three (3) siblings' efforts to maximize their interest in their mother's estate and minimize each others.

Appellee filed a Plan of Distribution. Appellant concurred but raised objections to the fiduciary fees awarded, lack of fees awarded her, her siblings actions and the fiduciaries' actions.

The Appellate Court found that all the Appellant's complaints were subject to collateral estoppel as Appellant agreed to the overall plan of distribution which said issues were subsumed within the plan.

One interesting issue was whether a fiduciary must pursue an action or whether that function could be relegated to the heir who wanted the action brought. The Court of Appeals said 'yes' it can because:

1. It was agreed to and collateral estoppel applies
2. The heir proceeded with discovery on the action

3. The examination and discovery section on conversion allow an heir to complaint.

The court has cited *In re Hague*, 237 Mich App 295 that a chose in action is property and, therefore, capable of being assigned.

Appellee asked for sanctions by way of Response rather than separate petition. The Court of Appeals indirectly approved of this and said denying Appellant a fee was in lieu of a sanction order.

AAM:jv:711867  
Attachment

STATE OF MICHIGAN  
COURT OF APPEALS

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In re AWAD Estate.

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CATHOLIC FAMILY SERVICES, Personal  
Representative for the Estate of EMIL ELIAS  
AWAD,

UNPUBLISHED  
January 12, 2012

Appellee,

v

MARIE AWAD,

No. 300891  
Bay Probate Court  
LC No. 09-047102-DE

Interested Person-Appellant.

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Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Interested person and appellant, Marie Awad ("Awad"), appeals the probate court's order and supplemental order for complete estate settlement with respect to the Estate of Emil Elias Awad ("decedent"). We affirm.

The decedent died intestate on May 4, 2009. On June 19, 2009, a petition for probate and appointment of personal representative was filed, in which the heirs nominated appellee Catholic Family Services ("CFS") as personal representative. The heirs were the decedent's three daughters, Awad, Camille Hanley ("Hanley"), and Nadia Awad ("Nadia"), and they each executed a renunciation of the right to act as personal representative. On July 23, 2009, an order of formal proceedings was entered, appointing CFS as personal representative, along with letters of authority for CFS. On August 11, 2009, attorney George Phillips began representing CFS relative to the probate proceedings, substituting for CFS's prior attorney, Richard Milster. CFS, in its position as the personal representative, agreed to pay for Phillips' services at the rate of \$200 per hour, and notice was provided to the heirs. On August 20, 2009, a notice to creditors was filed, along with a proof of publication. On October 23, 2009, an inventory was filed, reflecting that the probate estate was comprised of \$50,000 in cash and an undetermined sum with respect to household furniture, furnishings, and personal effects that were "in the possession

of one or more of the heirs.”<sup>1</sup> The record reflects that a sizable sum passed to the heirs outside of probate.

On November 25, 2009, CFS filed a petition to approve a plan of administration. In the petition, CFS alleged that it had received over 500 pages of documents from the heirs identifying and supporting issues that they wished CFS to address. In an attached summary, the following issues were set forth by CFS: all heirs asserted that \$15,000 went missing before or after decedent’s death; all heirs claimed that decedent’s cufflinks were missing; Awad was accused by the other two heirs of exercising undue influence over decedent relative to equalizing three joint accounts; Hanley and Nadia asserted that decedent had actually gifted the \$50,000 that was included in the estate to Hanley; Nadia and Hanley claimed that Awad owed the estate \$120,000 to \$140,000 in student loans made to her by decedent in the 1980s; Awad contended that Hanley owed the estate one year’s interest on the \$50,000 that she took before it was returned (\$371 short), along with owing \$45 for cat grooming; Awad maintained that various items of personal property should be included in the estate (scooter, furniture, appliances, electronics, piano, ambulatory aids, a car, etc.); Awad demanded details regarding a \$137 Consumers Energy bill and an explanation concerning a \$350 medical bill; Awad claimed an exemption from administrative fees; and, Awad made numerous assertions relative to events preceding decedent’s death with respect to his intent, mental state, and competency, as well as guardianship proceedings.<sup>2</sup> CFS’s petition indicated that it had concluded that the issues would be impractical to pursue or were unmeritorious and unreasonable, resulting in no benefit to the estate if addressed by CFS. CFS proposed moving all of decedent’s personal property into storage, having the court order the heirs to deliver to CFS any personal property in their possession, and conducting an auction of the property. As to other issues raised by the heirs, CFS thought it would be best to have them handle those matters themselves, and it asked the court to grant the heirs two months of discovery so they could pursue any issues and then file motions themselves with the court for resolution.<sup>3</sup> CFS envisioned closing the estate after an auction and after the end of discovery and court resolution of issues still remaining following the completion of discovery, with any other matters being deemed abandoned at that point.

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<sup>1</sup> We note that decedent owned an HVAC business, which included hardware, tools, and other supplies.

<sup>2</sup> An attached list of claims against the estate included, in part, requests by Nadia and Hanley for \$7,500 each in funeral and caregiver expenses, a request for \$10,000 by Awad for a loan made to decedent, a request for \$2,863 by Awad for expenses incurred prior to decedent’s death, a request for \$1,925 by Awad for certain attorney fees, and a request by attorney Milster for \$7,119 in attorney fees. The record also contains a November 5, 2009, letter from Awad to attorney Phillips, in which Awad sets forth a laundry list of questions, complaints, demands, and allegations of wrongdoing by her sisters.

<sup>3</sup> CFS noted that it informed the heirs that all communications should be in writing and copied to all others; however, Awad submitted materials to CFS with a directive that CFS keep the communications confidential.

On December 15, 2009, a hearing was held on CFS's petition, and the probate court granted the petition, entering an order approving the administration plan. The order essentially granted all of the requests made by CFS in its petition.<sup>4</sup> With respect to the various issues posed by the heirs that bombarded CFS, the court found that it was "reasonable for the personal representative to disregard those demands unless and until an order of this Court directs otherwise." Further, the probate court found it reasonable for CFS to store decedent's personal property and to then arrange for an auction. Additionally, the court gave the heirs "2 months to carry out discovery and complete such efforts as they may wish to advance their perceived interests." The court also ordered that "[a]ny past or future demands or other communications by the interested persons will require no response and will not prejudice [CFS] unless those demands are made by petition to the Court." The probate court further ordered that any information or materials previously supplied by an heir to CFS, except for formal claims, shall be retained by CFS and not released to the other heirs, but CFS was ordered to release to all the heirs any claims that had been submitted along with supporting evidence. Awad was given until January 15, 2010, to make claims against the estate. Finally, the order set a hearing date of March 30, 2010, for a complete settlement of the estate.

In a petition filed on February 24, 2010, CFS stated that the auctioneer who was scheduled to conduct the auction changed his mind, making it necessary to engage the services of another auctioneer and making it impossible to hold the auction until May 2010, beyond the scheduled hearing to settle the estate. CFS also raised some objections to Awad's request for the production of documents.<sup>5</sup> On March 8, 2010, Awad responded to CFS's petition, arguing that CFS was continuing to unnecessarily prolong, and had been improperly prolonging from the very beginning, the probate proceedings, which was not to the estate's benefit, and which was quickly depleting the estate's assets that were already minimal. Awad also set forth arguments regarding her entitlement to the documents requested in discovery. Three days later, on March 11, 2010, Awad filed a petition seeking to remove CFS as personal representative. The petition accused CFS of failing to provide notice of appointment and notice regarding attorney fees, failing to provide an inventory with reasonable detail, failing to disclose conflicts of interest, failing to provide requested documents and information, failing to remain impartial, making false and

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<sup>4</sup> We note that Awad was represented by counsel at the hearing on CFS's petition. At the hearing, Awad indicated that there was no objection regarding discovery and that, except as to a few items, there was no objection to CFS collecting all of decedent's personal property for purposes of an auction.

<sup>5</sup> Awad had requested all documents pertaining to the decedent's estate planning, all documents regarding decedent's prior guardianship and conservatorship, all of decedent's bank records for the years 2004 through 2009, all of the correspondence sent to or received by Nadia, decedent's income tax returns for years 2004 through 2009, all documents sent to or received by attorney Milster, and all documents sent to or received by National City Bank.

misleading statements, acting as counsel for the other heirs, mismanaging the estate, failing to investigate assets, breach of fiduciary duties, and refusing to proactively resolve issues.<sup>6</sup>

On March 15, 2010, the probate court entered an order postponing the date scheduled for a complete estate settlement, excusing the estate's attorney from personally having any obligation to respond to Awad's request for production of documents, and ordering CFS to supply all of the heirs with some of the documents demanded by Awad in discovery. CFS was also ordered to provide Awad with the authority to subpoena and receive decedent's medical records. At the hearing, it was indicated that two boxes of photographs that Awad had wanted from Nadia and Hanley were turned over to Awad. On April 12, 2010, Awad retained new counsel.

On August 3, 2010, CFS filed a final account of fiduciary and a petition for complete estate settlement. The petition indicated that "[t]he household furnishings, personal effects and other personal property at the decedent's home were sold at auction on May 8, 2010."<sup>7</sup> The final account indicated that \$2,870 had actually been disbursed by the estate, which primarily encompassed the costs associated with the auctioneer and moving of personal property. This left a balance on hand of \$50,420. The attached schedule of fees, expenses, claims, and priorities totaled 68,637; therefore, the estate's assets were insufficient to pay all of the claims. In a schedule of distributions and payment of claims, CFS proposed, in part, the following distributions: \$8,019 to CFS for fiduciary fees, \$16,527 to attorney Phillips for fees and costs,<sup>8</sup> \$7,119 to attorney Milster (initial attorney for CFS) for fees and costs, \$2,345 to Awad for attorney fees she incurred relative to defending a petition for guardianship and conservatorship, \$5,672 to Nadia for funeral expenses, and \$5,672 to Hanley for funeral expenses. Awad filed objections, challenging the fees charged by CFS and its attorneys. She asserted that the charged fees were excessive and unnecessary given the size of the estate and the relative ease in which it was administered, that details were lacking on some of CFS's fees, and that CFS and counsel failed to carry out their duties in appropriate fashion. Awad reiterated a litany of complaints made earlier in Awad's petition to remove CFS as the personal representative. On September 24, 2010, CFS submitted a revised bill for services totaling \$3,982, reflecting a \$4,037 reduction apparently due to a mistake in the original bill.

On October 1, 2010, CFS filed an amended final account of fiduciary and amendment to the petition for complete estate settlement and schedule of distributions. The balance on hand was set at \$50,576, there was no change in the disbursement amount, and the fees, expenses, and claims now totaled \$72,585, reflecting the lower fees as modified by CFS but adding substantial

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<sup>6</sup> The record does not contain any subsequent documents or orders pertaining to this petition, and CFS remained the personal representative through the closing of the estate.

<sup>7</sup> An amended inventory was filed showing that the personal property was valued at \$2,294.

<sup>8</sup> Detailed billing statements from CFS and attorney Phillips were attached to the settlement petition. CFS billed for 145.8 hours at \$55 per hour, while Phillips billed for 72.1 hours at \$200 per hour, 8.8 hours at \$125 per hour (associate attorney), \$328 in paralegal fees, and the remaining amount covered costs.

newly-incurred attorney fees sought by Phillips, who was now asking for a grand total of \$24,512 pursuant to a detailed billing statement. CFS also submitted a revised proposal of distributions that was consistent with the change in the requested fees and costs by CFS and Phillips, and which also lowered Nadia and Hanley's allotment to cover funeral expenses to \$5,296 each. On October 4, 2010, CFS filed a response to Awad's objections and also requested that she be sanctioned under MCR 2.114 for filing frivolous, legally unsound, and factually inaccurate pleadings. CFS maintained that the fees and costs associated with probating the estate were substantially driven by Awad's unreasonable demands and behavior.

On October 14, 2010, a hearing was held on CFS's petition for complete estate settlement. At the hearing, all three sisters, including Awad, indicated that they were happy with the division of the personal property. Awad, however, stated that she was objecting to the amount of the fees charged by CFS and counsel on the basis of excessiveness, especially the amount tied to the auctioning of the personal property, which was about \$5,000 more than the amount netted in the auction. Awad asked the probate court to reduce the fees to a reasonable level. Awad also expressed an objection to the distribution of any amounts to her sisters, given their alleged improper behavior. As to the reimbursement of funeral expenses sought by her sisters, Awad complained that all of the money to pay for the expenses came out of the decedent's accounts, not out of their own pockets. Finally, Awad focused on an accusation that she had made earlier, which was that Hanley had removed \$50,000 from an account held by decedent prior to his death – the same \$50,000 that was now being probated. She asserted that Hanley then passed the \$50,000 to Nadia. In earlier guardianship and conservatorship proceedings, wherein CFS was the conservator, the probate court, according to Awad, had ordered the \$50,000 to be transferred to CFS for holding. Awad argued that had the \$50,000 remained in the account untouched by Hanley and Nadia, the funds would have been part of the money that passed outside of probate. Awad asked the court to order Nadia and Hanley to pay, out of their own personal funds, any probate administration fees and costs in light of their actions.

The probate court approved the fees requested by CFS, reduced, by 25 hours, the fees requested by attorney Phillips, leaving a total for him of \$19,512 (\$5,000 reduction), and eliminated the proposed distribution of \$2,345 to Awad for attorney fees she incurred in the guardianship and conservatorship proceedings, which eliminated distribution the court viewed as a sanction under MCR 2.114 for her actions. The court explained:

I will characterize that [eliminated distribution] . . . in the manner of a sanction for . . . her running up the attorney bill with the numerous objections that she filed, some of which she asked the Court to consider secretly, which was . . . ridiculous and something I've never encountered before. But Miss Awad has gone through three or four attorneys in this matter. And she has filed numerous pleadings requesting, and her attorneys have requested Mr. Phillips to repeat and repeat and repeat the work that he had done, and continue to justify the work that he has done. And the amount of objections that have been received from her, prior to the final objection to the . . . final accounting, many of those were frivolous in the Court's mind, and I believe that sanctions under MCR 2.114 are in order.



The probate court allowed distributions of \$5,672 apiece with respect to Nadia and Hanley's claims for funeral expenses. The order for complete estate settlement also awarded Nadia and Hanley each an additional \$1,022. Awad appeals.

The first argument on appeal concerns the \$50,000 that Awad claimed was taken by Hanley and then Nadia absent the decedent's permission. Awad argues that she provided CFS with videotapes of her father wherein he indicated that the \$50,000 was taken without his consent, approval, or permission and that he had requested return of the funds, but the money was never returned. Awad argues that the estate, through personal representative CFS, should have filed a conversion action against her sisters given the information provided by Awad.<sup>9</sup> Awad, citing MCL 700.3703,<sup>10</sup> contends that CFS alone had standing and was legally empowered to pursue a conversion suit against Nadia and Hanley. According to Awad, CFS had a duty to commence an action against her sisters, which could not have been pursued by Awad due to lack of standing and the fact that she was not a probate party. Awad describes the process that was utilized below, i.e., interested persons conducting discovery with the opportunity to then bring issues directly to the court's attention, as cumbersome and inherently flawed. She claims that she did not have legal authority, nor a duty, to conduct discovery. Awad asserts that if CFS had a problem administering the estate, it should have resigned as personal representative, instead of electing a course of action that violated Michigan law. It is Awad's position that the probate court erred by allowing CFS to ignore its responsibility to see that persons are held accountable relative to the possible theft of decedent's funds.

Awad is effectively claiming that the probate court erred in granting CFS's petition to approve a plan of administration, thereby allowing CFS to abdicate its duties as personal representative. "An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court." MCR 5.802(B)(1). A probate court appeal "shall not be tried de novo." MCL 600.866(1). "The standard of review on appeal in cases where a probate court sits without a jury is whether the court's [factual] findings are clearly erroneous." *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2d 772 (2003). A probate court's substantive decisions and dispositional rulings are reviewed for an abuse of discretion. *In re Clarence W Temple & Florence A Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008); *In re Weber Estate*, 257 Mich App 558, 560; 669 NW2d 288 (2003). Any questions of law tackled by a

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<sup>9</sup> Awad asserts that treble damages may have been recoverable under statute. See MCL 600.2919a (a person "may recover 3 times the amount of actual damages" for "converting property").

<sup>10</sup> MCL 700.3703(3) provides:

Except as to a proceeding that does not survive the decedent's death, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of another jurisdiction as the decedent had immediately prior to death.

probate court are reviewed de novo on appeal. *In re Bem Estate*, 247 Mich App 427, 433; 637 NW2d 506 (2001).

An initial problem with Awad's argument regards the doctrine of waiver. See *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002) (acquiescence evidenced an agreement to waive a secured right and a party cannot complain on appeal when its own unequivocal conduct established waiver, which is in keeping with the longstanding rule against harboring error as an appellate parachute). After CFS filed its petition to approve a plan of administration, Awad failed to file any response or objections to the proposed plan. At the hearing on the petition, Awad did not object to, and was essentially in agreement with, the general plan of administration proposed and requested by CFS. Awad agreed with the plan's discovery provision and simply voiced some suggestions regarding the parameters of discovery. Indeed, it was Awad who almost immediately thereafter engaged in discovery by serving a request for the production of documents.<sup>11</sup> Minimally, Awad failed to preserve her argument for appellate review.

Furthermore, the probate court's order granting the petition for a plan of administration did not preclude Awad from petitioning the court for an order directing CFS to investigate and possibly commence a conversion action against Hanley and Nadia.<sup>12</sup> The probate court's order provided that it was reasonable for CFS to disregard the heirs' demands "unless and until an order of [the] court directs otherwise." Awad does not cite any authority that precludes a probate court from entering such an order, and the order is consistent with the court's general authority to supervise the administration of an estate. MCL 700.3501 *et seq.* MCL 700.3415 also provided an avenue for Awad, an interested person, to petition the court on the matter of conversion.<sup>13</sup> See also MCL 700.1302(d). Awad never petitioned the probate court under MCL 700.3415 regarding the question of potential civil liability of her sisters. Moreover, the issue concerning the alleged conversion of the \$50,000 was raised by Awad and argued at the hearing on the petition for complete estate settlement, wherein Awad asked the court to order her sisters to personally pay for all of the estate's administration fees and costs because of their wrongdoing.

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<sup>11</sup> "The general discovery rules apply in probate proceedings[.]" and "[d]iscovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court." MCR 5.131.

<sup>12</sup> We do note that the \$50,000 was ultimately returned and apparently held by CFS as conservator.

<sup>13</sup> MCL 700.3415 provides:

[E]ach person interested in an estate . . . may make 1 or more independent requests to the court so that a question or assumption relating to the estate, including the status of an estate as testate or intestate, a matter relating to 1 or more claims, a disputed title, an account of a personal representative, and distribution, may be resolved or established by adjudication after notice without necessarily subjecting the estate to the necessity of a judicial order in regard to other or further questions or assumptions.

While the probate court did not directly address the issue in its ruling, it is clear from its distribution decision and the court's tone that it was rejecting Awad's argument.

We further note MCL 700.1205, which provides:

(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.

\* \* \*

(3) If fraud is perpetrated in connection with a proceeding or in a statement filed under this act or if fraud is used to avoid or circumvent the provisions or purposes of this act, a person injured by the fraud may obtain appropriate relief against the perpetrator of the fraud or restitution from a person, other than a bona fide purchaser, that benefited from the fraud, whether innocent or not. . . .

(4) If a person embezzles or wrongfully converts a decedent's property before letters of authority are granted, or refuses, without colorable claim of right, to transfer possession of the decedent's property to the personal representative upon demand, *that person is liable in an action brought by the personal representative for the benefit of the estate for double the value of the property embezzled, converted, or withheld.* [Emphasis added.]

This provision indicates that, while the personal representative may be the party to file an actual civil action against a person accused of conversion under subsection (4), a beneficiary or interested person, such as Awad, can initially file a complaint under subsection (1) with the probate court concerning fraudulent conduct and, as a person injured by the fraud, possibly obtain restitution or other appropriate relief under subsection (3). Awad did not file a complaint with the probate court under MCL 700.1205.

Finally, we note that the issue concerning the alleged conversion was apparently dealt with and resolved in guardianship and conservatorship proceedings that took place toward the end of decedent's life. In *Hunter v Hunter*, 484 Mich 247, 276; 771 NW2d 694 (2009), our Supreme Court observed:

Principles of collateral estoppel generally prevent a party from relitigating an issue already established in the first proceeding. This Court has long recognized the applicability of these principles to probate court orders such as the guardianship orders in this case. Subsequently, we reiterated that orders of

probate courts have the force and effect of judgments and are *res judicata* of the matters involved and cannot be attacked collaterally. [Citations, quotation marks, and alteration omitted.]

MCL 700.5423(2)(aa) provides that a conservator may “[p]rosecute or defend an action, claim, or proceeding in any jurisdiction for the protection of estate property and of the conservator in the performance of a fiduciary duty.” Thus, Awad’s argument is also problematic on *res judicata* principles. In sum, reversal is unwarranted.

Awad next argues that the probate court committed error by approving the payment of fees and costs submitted by CFS and its attorneys, where they were excessive and consumed a majority of the estate’s property. Awad raises specific arguments under the broad umbrella of her general claim of error, each of which we shall address separately after recitation of the governing legal principles. This Court reviews for an abuse of discretion a probate court’s determination regarding the amount of fees to be awarded in a particular probated estate. *In re Humphrey Estate*, 141 Mich App 412, 439; 367 NW2d 873 (1985). A court abuses its discretion when it renders a decision that falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). “A personal representative is entitled to reasonable compensation for services rendered.” MCL 700.3719(1). For purposes of an accounting, “[a] written description of services performed must be included or appended regarding compensation sought by a personal representative.” MCR 5.310(C)(2)(c). “[A] personal representative, acting reasonably for the benefit of interested persons, may properly . . . [e]mploy an attorney to perform necessary legal services or to advise or assist the personal representative in the performance of the personal representative’s administrative duties, . . . [and] [a]n attorney employed under this subdivision shall receive reasonable compensation for his or her employment.” MCL 700.3715(w). MCR 5.313 provides in relevant part:

(A) An attorney is entitled to receive reasonable compensation for legal services rendered on behalf of a personal representative, and to reimbursement for costs incurred in rendering those services. In determining the reasonableness of fees, the court must consider the factors listed in MRPC 1.5(a).<sup>14</sup> The court may also take into account the failure to comply with this rule.

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<sup>14</sup> These factors include, in part, “the time and labor required, the novelty and difficulty of the questions involved, . . . the skill required,” “the fee customarily charged,” “the amount involved,” “the results obtained,” “the time limitations imposed by the client or by the circumstances,” and “the experience, reputation, and ability of the lawyer.” MRPC 1.5(a)(1).

(C) Regardless of the fee agreement, every attorney who represents a personal representative must maintain time records for services that must reflect the following information: the identity of the person performing the services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services.

\* \* \*

(F) Except when the compensation is consented to by all the parties affected, the personal representative must append to an accounting, petition, or motion in which compensation is claimed a statement containing the information required by subrule (C).

With respect to the required notice to interested persons concerning the retention of an attorney, the notice must provide "that the person may object to the [attorney] fees at any time prior to the allowance of fees by the court." Additionally, "interested persons may object to all or part of an accounting by filing an objection with the court before allowance of the accounting[.]" MCR 5.310(C)(2)(c)(iii). Further, MCL 700.3908 provides that "[a]fter the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution."

First, Awad contends that personal representative CFS was entitled to reasonable compensation for services rendered, but only if the services benefited the estate. Awad proceeds to examine the procedural history of the probate estate, claiming mismanagement and excessive billing on the part of CFS. More specifically, Awad asserts that, as to the personal property, she had been prepared to go through the property amicably with her sisters, she always acted in an effort not to deplete the estate's property, and the property remaining after the auction was divided amicably. Awad also complains that CFS and counsel together spent 125 hours and billed the estate \$7,400 in connection with the personal-property auction, with the proceeds of the sale totaling only \$2,000. She further complains that CFS and counsel recognized from the start that a sale of the personal property was necessary;<sup>15</sup> however, they failed to inspect the property for six months and took even longer to carry out the auction. According to Awad, instead of fattening their own pockets, CFS and counsel should have had "the property appraised and if nothing of value was found to arrange for a dumpster to dispose of the property as economically as possible."

We reject Awad's assertion that a reduction in fees is warranted on the basis that CFS and counsel mishandled the personal property and engaged in an unnecessary or ill-conceived auction to the detriment of the estate. Under MCL 700.3715(a), (b), (f), (k), and (w), unless otherwise restricted or limited by a court order in a formal proceeding, a personal representative, "*acting reasonably for the benefit of interested persons*," may retain a decedent's property pending distribution, may receive property, may "[a]cquire or dispose of property . . . for cash . .

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<sup>15</sup> We note the inherent contradiction in this argument, where Awad also maintained that she and her sisters were prepared to amicably divide the personal property.

at public or private sale," may abandon valueless estate property, and may "[e]mploy an attorney to perform *necessary* legal services." (Emphasis added.) We initially point out that the probate court reduced the fees by \$5,000, a fact unacknowledged by Awad. Although the court did not provide details on the fee reduction, it reflects an amount that equates to the approximately \$5,000 loss that Awad repeatedly claimed was suffered by the estate in carrying out the auction. Assuming, in relationship to conducting the auction, that CFS was not acting reasonably for the benefit of the heirs and that counsel was providing unnecessary legal services, any harm was defrayed by the fee reduction ordered by the court.

Moreover, CFS and counsel proceeded with the auction consistent with the probate court's order and, as indicated above, at the hearing on CFS's petition to approve the plan of administration, Awad did not challenge, and generally agreed to, the collection of personal property for purposes of a sale at auction. Thus, the issue was waived. Awad cannot complain now about the fees incurred by the estate in collecting the personal property, preparing it for auction, and in conducting the auction after she agreed to the process. Finally, with respect to the allegations that CFS and counsel were deficient in addressing the distribution of personal property and that Awad and her sisters were ready and willing to amicably divide the property, the record belies these claims. The mere fact that the sisters renounced their rights to act as personal representatives in favor of an outside party suggests unresolved differences. CFS's petition to approve the plan of administration also reflected the voluminous issues over which the three sisters fought. At the hearing on the petition in December 2009, six months after the probate estate was opened, it was clear that Awad and her sisters remained at odds over the personal property. Attorney Phillips noted:

[N]ormally, what we'd do is we'd take the personal property, we'd get all the parties together, have everybody take what they want, and then we would dispose of the rest, either throwing it out or auctioning it, if necessary, and so forth. But these ladies are at each other's throats and there's . . . no getting anyone in the same room or to agree to anything. And it's been very contentious.

When Awad's counsel suggested that some of decedent's HVAC equipment could be given to a relative if the heirs agreed, Nadia disagreed on the record, stating that she would rather have the equipment sold and the proceeds disbursed to the relative. There was also a discussion about some photographs that Awad wished to receive, but had not yet obtained. In a March 2010 hearing, it was indicated that Awad had finally received the photographs; however, there was no indication that the heirs had agreed on the disbursement of other items of personal property. We find no inappropriate actions on the part of CFS and counsel in handling the personal property and in conducting the auction.

Awad additionally argues that the billings submitted by CFS and counsel were excessive in relationship to addressing Awad's objections to the final account and petition for complete estate settlement. Awad fails, however, to identify the particular entries in the detailed billing statements submitted by CFS and counsel that represented or reflected excessive fees or billing. Part of the billed fees encompassed preparing for and simply attending the hearing to settle the estate, along with other fees unassociated with Awad's objections. Additionally, CFS and attorney Phillips had every right to bill for services rendered in addressing Awad's objections. We find no error.

Finally, in the context of Awad's argument over fees, she argues that the trial court erred in addressing her objections to the requested fees and costs, where the court failed to take testimony on the issues raised, failed to pose questions to CFS and counsel regarding the management of the estate, and where the court failed to examine the amount of the requested fees. We find that there is no merit in, nor record support for, the claim that the probate court failed to examine the amount of the requested fees, especially given the court's decision to reduce the fees by \$5,000. Also, we find no merit in the argument that the court was obligated and failed to pose questions to CFS and counsel regarding the management of the estate, where there was no need to do so given the court's intimate knowledge of how the estate was managed. The court ultimately found, as supported by the record, that it was Awad's actions and the acrimony between the sisters that contributed to the depletion of the estate and the increased fees, not mismanagement by CFS and counsel. Given the sufficiency of the existing record for purposes of our review, and considering the nature of Awad's particular appellate arguments regarding fees, there is no need or reason to reverse and remand for an evidentiary hearing on fees. See *Head v Phillips Campër Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999).

In Awad's third and final argument on appeal, she contends that the probate court erred in making decisions to allow or disallow claims and in handling her objections absent an evidentiary hearing and accompanying fact finding prior to entering the order for complete estate settlement. Awad presents challenges on four specific points, each of which we shall address separately. We first note, however, that Awad fails to cite any authority for the proposition that she was specifically entitled to an evidentiary hearing on the claims and objections. Due process typically "requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). Here, we find that Awad had notice of the hearing with respect to the final account of fiduciary and petition for complete estate settlement, that she was given a meaningful opportunity to be heard, and that the probate court was impartial. We also note that MCR 5.310(C)(2)(c)(iii) and (iv) provide that "interested persons may object to all or part of an accounting by filing an objection . . . and . . . if an objection is filed and not otherwise resolved, the court will hear and determine the objection." This provision does not mandate an evidentiary hearing, and the probate court did "hear and determine the objection[s]." In her written objections, Awad requested, in part, that the probate court schedule an evidentiary hearing on her objections, and Awad did file a witness list. However, at the hearing on the petition for complete estate settlement wherein Awad voiced her various objections without limitation or interference by the court, at no time did she ever ask the court to take testimony on any matter or to conduct an evidentiary hearing. Moreover, even upon examination of Awad's arguments, we find no basis for reversal.

First, with respect to the funeral expenses claimed by Awad's sisters, Awad notes that she objected below to these claims on the basis that the monies used by Nadia and Hanley came from an account that was held, following the decedent's death, by the three sisters as joint beneficiaries; an account that was distributed outside of the probate estate among all the sisters after the funeral expenses were paid out of the account. Awad maintains that the three sisters, "[i]n essence," contributed equally to the funeral expenses out of assets flowing from the account. Awad contends that the probate court erred by failing to take testimony on the issue and by authorizing the funeral-expense claims without engaging in any fact-finding. We find

that Awad's argument lacks merit. If, as Awad argues, the account passed outside of probate to the three sisters and funeral expenses were paid from funds out of the non-probate account, the beneficiaries on the account, i.e., the sisters, would be entitled to recover the funeral expenses from the estate, MCL 700.3805(1)(b), as the sisters became the owners of the account's funds on decedent's death. Awad did not claim below, nor does she claim on appeal, that she herself was or is entitled to reimbursement for the payment of funeral expenses, so the necessary corollary is that the funeral expenses were paid entirely out of Nadia and Hanley's own funds. Awad's argument falls short of necessitating an evidentiary hearing.

Awad next argues that the trial court erred with respect to her objection to the petition for complete estate settlement that was based on the alleged conversion of \$50,000 by her sisters, where the court failed to take testimony on the matter. Awad asserts that the court should have made Nadia and Hanley pay all of the estate's administration fees and costs because of their wrongdoing, as requested below. We again note that the probate court addressed the issue regarding the \$50,000 in the guardianship and conservatorship proceedings and was more than familiar with the facts surrounding the issue and the nature of Awad's arguments. And the court rejected Awad's requested relief. We also point out that, assuming the \$50,000 would have passed outside of probate had the money never been removed in the first place as asserted by Awad, it still would have become necessary to open the probate estate given the dispute over the personal property, and it was the fight over the personal property and the sisters' inability to work together that drove up the fees and expenses. Reversal is unwarranted.

Next, Awad contends that the probate court erred in rejecting her objection to attorney Milster's attorney fees that was predicated on the argument that some of those fees were incurred in connection with Milster's representation of Nadia relative to her unsuccessful efforts, pre-probate estate, to have a particular guardian and conservator appointed for the decedent. Awad argues that the court should have taken testimony on the matter. While Awad raised this argument in her written objections, she made no mention of the issue whatsoever during the entirety of the hearing. The probate court did rule that it was approving Milster's fees "for the work that he did on the conservatorship and the initial work that he did on the estate." Given the court's ruling, there was no need to take testimony on the issue, as the court acknowledged that some of Milster's fees were in connection with the conservatorship proceedings. But this does not mean that such fees were not allowable. Rather, just like any other pre-death expenses incurred by or on behalf of the decedent, or expenses pertaining to decedent and his care, they were expenses that could legitimately become the responsibility of the estate upon decedent's death. Awad provides no legal analysis to the contrary.

Fourth, and finally, Awad maintains that the probate court erred in denying her claim that was based upon expenses she incurred on behalf of her father in opposing efforts to have a particular guardian and conservator appointed. Again, Awad argues that the probate court should have conducted an evidentiary hearing and allowed testimony on the matter instead of summarily rejecting the claim. This argument is wholly devoid of merit where the probate court denied Awad's claim as a means of sanctioning her for violation of MCR 2.114 and not on the basis that such an expense was unrecoverable. She presents no appellate argument concerning imposition of the sanction under MCR 2.114. We also note that her argument conflicts with her previous contention that expenses and fees incurred in the guardianship and conservatorship proceedings should not be allowed relative to the probate estate.



**Affirmed. Having fully prevailed on appeal, CFS is awarded taxable costs pursuant to MCR 7.219.**

**/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald  
/s/ Patrick M. Meter**