



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.

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DT: July 9, 2012

RE: In re Jack R. Bates and Sally A. Gardner Trust
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL STATS:

There has been a movement by the dormant sluggers. Albert Pujols has started to figure out American League pitching. He is nowhere near his H. R. per A. B. average, but is one (1) for 24 with 13 dingers. This has moved him to a total of 458 homers. He trails Chipper Jones by two (2) on the all time active list.

A-Rod has also awakened; passing Griffey, Jr. is up to 642 lifetime. He trails Willie Mays by 18. It is possible he will beat his time by October.

There's still some power in Jim Thome's bat. He has five (5) four baggers and has tied Señor Steroid, Sammy Sosa at 609 lifetime homers. He is 42 years old.



REVIEW OF CASE:

Reference Files: Civil Action v Civil Proceeding
Right to Invoke Court Jurisdiction to Determine Title
Interested Party v Qualified Trust Beneficiary

Appellee wanted the Lower Court to determine title to certain jewelry. Appellee claimed ademption by way of inter vivos gift. Appellee proceeded by way of Petition for Supervision and, in essence, to determine title. Appellant moved to dismiss because Appellee was not a Qualified Trust Beneficiary; her share having been revoked. The Lower Court found that, because Appellee claimed an interest in property, she, therefore, was an interested person and thence a Qualified Trust Beneficiary. The Motion to Dismiss for Lack of Standing was denied.

The Court of Appeals, appropriately, ruled that just because you are an interested party you are not a Qualified Trust Beneficiary; that portion of the Probate Court Order was vacated. Nevertheless, because a court can make a right decision for the wrong reason, the Court of Appeals found that one need not be a Qualified Trust Beneficiary to bring a petition to enforce property rights. Being an interested party was sufficient, and because the Lower Court was being asked to determine title to property in a Trust, standing was proper.

The right of Petitioner to proceed by way of petition was held to be broad enough so that no civil action was necessary.

AAM:jv:716323
Attachment

STATE OF MICHIGAN
COURT OF APPEALS

In re JACK R. BATES AND SALLY A.
GARDNER TRUST.

CHERILYN POPOVITS,

Appellee,

v

JACK R. BATES, as Trustee,

Appellant.

In re SALLY GARDNER TRUST.

CHERILYN POPOVITS,

Appellee,

v

JACK R. BATES,

Appellant.

UNPUBLISHED

May 29, 2012

No. 302432

Genesee Probate Court

LC No. 08-183145-TV

No. 302435

Genesee Probate Court

LC No. 08-182987-TV

Before: RONAYNE KRAUSE, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, Jack R. Bates, as trustee of the Jack R. Bates and Sally A. Gardner Trust (Joint Trust), appeals as of right the probate court's January 25, 2011 order denying his motion to dismiss appellee Cherilyn Popovits' petition to supervise the Joint Trust for lack of standing. Bates also appeals as of right the probate court's January 25, 2011 order denying his motion to dismiss Popovits' petition to supervise the Sally Gardner Trust (Gardner Trust) for lack of standing. The court denied both motions on grounds that Popovits was a "qualified trust beneficiary." For the reasons set forth in this opinion, we vacate the probate

court's orders holding that Popovits is a "qualified trust beneficiary;" however, in all other respects, we affirm the court's orders denying Bates' motions to dismiss for lack of standing.

I. FACTS AND PROCEDURAL HISTORY

In 1983 Sally A. Gardner executed a revocable living trust (i.e. the Gardner Trust); Gardner reserved the right to amend the trust. The trust provided that upon Gardner's death, the trust assets were to be distributed to Gardner's daughter Popovits and to her son.

In 1997, Gardner married Bates, and in 2004 she and Bates executed a revocable living trust (i.e. the Joint Trust). The Joint Trust provided that both settlors and the surviving settlor reserved the right to amend or terminate the Joint Trust in whole or in part. The trust provided that, upon the death of the surviving settlor, 50-percent of the remaining assets would be distributed to Gardner's beneficiaries including Popovits. Gardner then executed a fifth amendment to the Gardner Trust wherein she revoked the provisions governing the distribution of the trust's assets and replaced them with a provision directing that all of the remaining assets in the Gardner Trust be distributed into the Joint Trust.

On October 11, 2007, Gardner died of breast cancer. Immediately thereafter, Bates amended the Joint Trust and disinherited all of Gardner's beneficiaries, including Popovits. That same day, Bates created a third trust, the Jack R. Bates Living Trust (Bates Trust) and then terminated the Joint Trust and directed that all of its assets be deposited into the Bates Trust.

Shortly thereafter, on March 5, 2008, Popovits filed a petition in the probate court to supervise the Gardner Trust. Popovits alleged that she was a beneficiary of the Gardner Trust and that Bates had breached his duties as trustee by failing to respond to her inquiries concerning the trust and by failing to provide her with an accounting. Popovits also claimed that she owned certain jewelry that Bates had in his possession. Specifically, Popovits claimed that when Gardner was in hospice care before she died, Gardner gifted all of her jewelry to Popovits. According to Popovits, after Gardner died, attorney Sharon Miner, on belief that she was the successor trustee of the Gardner Trust, requested that Popovits relinquish all of the jewelry to the Gardner Trust. Popovits complied. Popovits alleged that Miner then gave the jewelry to Bates after she learned of the Joint Trust and learned that Gardner had appointed Bates successor-trustee of the Gardner Trust. Popovits claimed that she was the rightful owner of the jewelry pursuant to Gardner's inter vivos gift. She alleged that Bates had threatened to sell the jewelry and requested that the court replace Bates with an independent trustee. Popovits also requested that the probate court supervise the trust and enter a protective order restricting sale or transfer of the jewelry until it determined ownership of the jewelry.

Several days after filing the petition, Popovits filed another petition to supervise the Joint Trust. Popovits alleged that she was a beneficiary of the trust and claimed that Bates had breached his duties as trustee by, among other things, failing to provide Popovits with a copy of the trust and an accounting. Popovits also claimed that the disputed jewelry referenced in her first petition may have been property of the Joint Trust at some time before Gardner gifted it to her. Popovits requested that the probate court supervise the Joint Trust in order to determine ownership rights to the jewelry.

Bates filed objections to the petitions and moved to dismiss for lack of standing. Specifically, Bates argued that Popovits lacked standing because she was not a “qualified trust beneficiary” of either trust where Gardner had appointed the Joint Trust as the sole beneficiary of the Gardner Trust and where Bates had removed Popovits as beneficiary of the Joint Trust.

Popovits filed amended petitions in both cases and added claims for declaratory relief, damages and conversion. Popovits claimed that Bates’ breached his fiduciary duty by disinheriting her and by transferring assets from the Gardner Trust into the Joint Trust and then into the Bates Trust. Popovits again requested that the court resolve the issue concerning ownership of the jewelry.

On November 30, 2010, the probate court held a hearing and it denied Bates’ motions to dismiss on grounds that Popovits was an “interested party, therefore a qualified trust beneficiary.” However, before the court entered a written order, it held another hearing and articulated that its ruling applied to Popovits’ amended petitions. Finally, on January 25, 2011, the court entered written orders denying Bates’ motions to dismiss and holding that Popovits “is a ‘qualified trust beneficiary.’” Bates now appeals both orders as of right and contends that the probate court erred in concluding that Popovits was a “qualified trust beneficiary” with standing to invoke the court’s jurisdiction.

II. ANALYSIS

Whether a party has standing to assert a claim involves a question of law that we review de novo. *Prentis Family Foundation, Inc. v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 56; 698 NW2d 900 (2005). To the extent this requires interpretation of relevant statutory provisions, issues of statutory interpretation are also reviewed de novo. *Pecoraro v Rostagno-Wallat*, 291 Mich App 303, 311; 805 NW2d 226 (2011).

The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, governs the creation and administration of trusts in Michigan. See MCL 700.7101-MCL 700.7913. MCL 700.7201(1) governs the role of a court in the administration of a trust and provides, “[a] court of this state may intervene in the administration of a trust to the extent its jurisdiction is invoked by an *interested person* or as provided by law”. (Emphasis added).

In this case, Bates argued that Popovits could not qualify as an “interested person” because she was not a “qualified trust beneficiary.” Bates’ argument was based on his contention that MCR 5.125(C)(33) defined “interested person” for purposes of standing. MCR 5.125(C)(33) governs service of “interested persons” in trust proceedings and provides in relevant part that “persons interested in a proceeding affecting a trust” include “qualified trust beneficiaries.” EPIC, in turn, defines “qualified trust beneficiary” as a “trust beneficiary” who meets certain qualifications enumerated in the statute. See MCL 700.7103(g). In rejecting Bates’ arguments concerning standing, the probate court ruled that Popovits was an “interested party, therefore a qualified trust beneficiary.”

We conclude that the probate court erred in holding that Popovits had standing because she was a “qualified trust beneficiary.” Under the plain language of MCL 700.7103(g), a party must necessarily be a “beneficiary” of the trust in order to qualify as a “qualified trust

beneficiary.”¹ Hence, the probate court needed to first determine whether Popovits was a beneficiary of the trusts before determining whether she was a “qualified trust beneficiary.” Moreover, regardless of Popovits’ status as “qualified trust beneficiary,” MCR 5.125(C)(33) does not govern the definition of “interested person” for purposes of standing. Instead, MCR 5.125 governs service on individuals in a probate court proceeding. See MCR 5.125(A). For purposes of standing under MCL 700.7201(1), EPIC defines “interested person” in relevant part as follows:

“Interested person” . . . includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and *any other person that has a property right in or claim against a trust estate* . . . Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and by the supreme court rules. [MCL 700.1105(c) (emphasis added).]

Here, we find that Popovits qualifies as an “interested person” under the statute’s catchall provision which defines “interested person” as: “*any other person that has a property right in or claim against a trust estate.*” Popovits alleged that the subject trusts held property (i.e. the jewelry) that rightfully belonged to her before Bates transferred it into his own trust. In doing so, Popovits alleged facts that require the probate court to determine whether Gardner conveyed the jewelry to Popovits pursuant to an inter vivos gift, whether the jewelry was part of the corpus of one of the trusts at the time of transfer, and, if so, whether Gardner’s actions constituted a removal of the property from the trust. Hence, we find that Popovits had a “property right in or claim against” the trusts. As such, she is an “interested person” with standing to invoke the probate court’s jurisdiction to intervene in the administration of said trusts. MCL 700.7201(1).

In sum, we hold that Popovits is an “interested person” with standing to invoke the probate court’s jurisdiction over the trusts at issue in this case. MCL 700.7201(1). Therefore, although the probate court erred in concluding that Popovits was a “qualified trust beneficiary,” it properly denied Bates’ motions to dismiss for lack of standing and reversal is not warranted. See *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009) (“this Court will affirm where the trial court came to the right result even if for the wrong reason”).

Finally, we reject Bates’ argument that Popovits should have brought a civil action to address the issue concerning ownership of the jewelry. Popovits was not required to commence this case as a civil action under the governing court rule. See MCR 5.101(C). Moreover, EPIC provides a broad range of acceptable grounds on which an interested party may commence a trust proceeding including matters that relate to the administration, distribution and “internal affairs” of a trust. See MCL 700.1302(b); MCL 700.7201(3). Here, resolution of Popovits’ claims regarding ownership of the jewelry necessarily relates to the administration, distribution and internal affairs of the subject trusts. As such, Popovits did not err in filing a petition as opposed to a civil action.

¹ We express no opinion regarding whether Popovits was a beneficiary of either of the trusts as this involves a factual finding that lies within the purview of the probate court.

Affirmed in part and vacated in part, consistent with this opinion. We do not retain jurisdiction. No costs are awarded to either party. MCR 7.219.

/s/ Amy Ronayne Krause

/s/ Henry William Saad

/s/ Stephen L. Borrello