



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 2010 issues of Michigan Super Lawyers magazine featuring the top 5% of attorneys in Michigan and 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).

For those interested in viewing previous Probate Law Case Summaries, click on the link below.
<http://www.kempklein.com/probate-summaries.php>

DT: June 4, 2010

RE: Estate of Cecil P. Byrnes, by its Personal Representative, Henry A. Woudstra, Cecilia J. Neuville, Ronald C. Byrnes and Donald M. Byrnes v Darlene S. Lewicki and Cecil Edward Byrnes
STATE OF MICHIGAN COURT OF APPEALS

MAJOR LEAGUE STATS:

We are now into June and the two active players who are in or close to the top 20 lifetime batting average hierarchy are still Albert Pujols and Ichiro Suzuki. Albert has an average of .3302 and Ichiro has an average of .33306. Ichiro got his 2100th base hit.

There has been movement in the lifetime Home Run area. Alex Rodriguez is up to 590 Home Runs. Manny Ramirez has passed Mike Schmidt and is now at 550 Home Runs and Jim Thome remains tied with Rafael Palmerio at 569 Home Runs. Albert Pujols has moved up to 62nd place with 378 Home Runs. Ken Griffey, Jr. has retired at 630.

The bottom of the top 20 is a three way tie between Frank Thomas, Willie McCovey and Ted Williams, all at 521. Since none of them is active, this is likely to remain the same until Albert Pujols passes 500.

REVIEW OF CASE:

Reference Files: Rescission
 Mental Competency Deed
 Attorney as Scrivener

This is an excellent decision emanating out of a Circuit Court action to void a Deed because of lack of competency of the Grantor. The Deed was done in the hospital.

The Scrivener attorney testified that the Grantor was his client but admitted he was called to the hospital by one Edward Byrnes and drafted the Deed pursuant to his specifications. (The Court of Appeals does not tell us whether Edward Byrnes is the same person as the Defendant Cecil Edward Byrnes). The attorney acknowledged that he was a mere Scrivener and did not inquire as to whether the Decedent fully understood the terms and conditions of the Deed and its legal ramifications. The attorney acknowledged he did not obtain any information before the Decedent's execution of the Deed to determine whether the Decedent was under the influence of prescribed medications or any form of impairment.

The Court of Appeals sustained the rescission.

Because the trial court was in a better position to make judgments on evidence, the finding of the Circuit Court as to incompetence was appropriate.

An attorney, under these circumstances, is not of the same quality of witness Scrivener attorneys as elucidated in previous Decisions of the Court of Appeals which seem to place their blessing upon attorney/scriveners. This one did not do his due diligence.

The Doctrine of Fairness was discussed. Fair does not actually just determine the amount of the compensation, but is inextricably tied to the Decedent's mental competency and does not refer to a "separate or distinct equitable determination."

Errata

John Boss correctly points out to me that my review of the Kenneth A. Hope Trust No. 1 ("Hope") on May 19, 2010 is in error, wherein it states the Hope case and the Burke case were will cases. The Hope case was a trust case.

AAM:jv:663250v2
Attachment

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF CECIL P. BYRNES, by its Personal
Representative HENRY A. WOULDSTRA,
CECILIA J. NEUVILLE, RONALD C. BYRNES,
and DONALD M. BYRNES,

UNPUBLISHED
May 11, 2010

Plaintiffs-Appellees,

v

DARLENE S. LEWICKI and CECIL EDWARD
BYRNES,

No. 289916
Sanilac Circuit Court
LC No. 07-031731-CH

Defendants-Appellants.

Before: TALBOT, P.J., and FITZGERALD and M.J. KELLY, JJ.

PER CURIAM.

Defendants appeal as of right the order voiding a quitclaim deed that transferred decedent's interest in real property to defendants. We affirm.

Decedent Cecil P. Byrnes owned approximately 300 acres of farmland, which was subdivided into three parcels. On December 18, 2006, decedent was admitted to Lapeer Regional Medical Center for chest pain, acute respiratory failure, and chronic renal failure, with the anticipation that he would not survive. On December 22, 2006, while in the hospital, decedent executed a quitclaim deed transferring all 300 acres of his farmland to defendant Darlene Lewicki, his sister-in-law, which was inconsistent with his existing estate plan. The deed reserved a life estate for only one of decedent's children, Cecil Edward Byrnes (hereinafter referred to as Edward Byrnes). Decedent died on December 27, 2006. Following his death, plaintiffs filed a lawsuit challenging decedent's competence to execute the quitclaim deed and alleging undue influence by Edward Byrnes. A bench trial was conducted, resulting in the trial court issuing a written opinion declaring the deed void based on the decedent's mental incompetence at the time of execution.

On appeal, defendants contend that the trial court's determination that decedent was mentally incompetent at the time he executed the deed was against the great weight of the evidence. As discussed by this Court in *Webb v Smith (After Remand)*, 204 Mich App 564, 568; 516 NW2d 124 (1994):

When reviewing equitable actions, this Court employs review de novo of the decision and review for clear error of the findings of fact in support of the equitable decision rendered. A trial court's findings are considered clearly erroneous where we are left with a definite and firm conviction that a mistake has been made. [Citations omitted.]

To execute a valid deed, a grantor must be legally competent. *Barrett v Swisher*, 324 Mich 638, 641; 37 NW2d 655 (1949). Legal competence to execute a deed exists if a grantor:

“had sufficient mental capacity to understand the business in which he was engaged, to know and understand the extent and value of his property, and how he wanted to dispose of it, and to keep these facts in his mind long enough to plan and effect the conveyances in question without prompting and interference from others.” [*Id.*, quoting *Hayman v Wakeham*, 133 Mich 363, 365; 94 NW 1062 (1903).]

Based on a review of the lower court record, we defer to the trial court's finding that decedent was mentally incompetent at the time he executed the deed. Evidence existed that when decedent executed the deed he had a very limited life expectancy and had been prescribed several medications intended to assist with pain management and provide palliative care. Decedent's physicians agreed that several of the prescribed medications could have impaired the decedent's ability to respond coherently or render him susceptible to the influence of others. However, there was conflicting evidence regarding the overall impact of the medication on decedent's mental competence and his coherence when interacting with others. Of particular note was the trial court's determination that Edward Byrnes was not a credible witness and distinctions pertaining to the decedent's ability to make medical decisions as compared to more complex business decisions. As the trier of fact, the trial court was in the best position to evaluate the credibility of the witnesses and we defer to the trial court's credibility determinations. *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003).

We also reject defendants' assertion that because the attorney who drafted the deed testified that decedent was mentally competent, the trial court's contrary finding was against the great weight of the evidence. The trial court did not deem the attorney's testimony to be reliable. Although the attorney considered decedent to be his client, the record shows that the attorney came to the hospital at the behest of Edward Byrnes and drafted the quitclaim deed in accordance with his requests and specifications. The attorney failed to ascertain, or even inquire, whether decedent fully understood the terms and conditions contained in the deed or its legal ramifications, rendering his function to that of a mere scrivener. The attorney acknowledged that he did not obtain any information, before the decedent's execution of the deed, to ascertain whether the decedent was under the influence of prescribed medications or any other form of impairment. Because the trial court was in the best position to determine the credibility and reliability of the attorney's testimony, we defer to the trial court's findings on this matter. *Amb's*, 255 Mich App at 651.

Defendants also argue that the trial court used an incorrect standard to determine whether to void the deed. Specifically, defendants assert that the trial court erred when it considered the fairness of the transaction. Although we need not address this issue based on our affirmation of

the trial court's ruling regarding the decedent's lack of mental competency to execute the deed, we will briefly review the issue for purposes of clarification.

A court sitting in equity may set aside a conveyance "executed for a grossly inadequate consideration when there is great weakness of mind in the person executing it from age, sickness, or any other cause, which would not amount to an absolute disqualification." *Clement v Smith*, 293 Mich 393, 396; 292 NW 343 (1940). In considering whether to void the deed, a court may look to the "circumstances surrounding the transaction, the history and character of the man, the fairness of the transaction, and the probabilities that one in the possession of his faculties would make a transfer of his property in a given case." *Hemphill v Holford*, 88 Mich 293, 297; 50 NW 300 (1891).

Defendants misconstrue the trial court's use of the term "fairness" to suggest its determination to make an equitable distribution of the property. Rather, as that term is used, in case law and the specific circumstances of this case, the term "fairness" is inextricably tied to the decedent's mental competency and does not refer to a separate or distinct equitable determination. Because the trial court found the circumstances surrounding the execution of the deed were suspicious and that decedent was not competent when he executed the deed, it was proper for the court to inquire into the fairness of the transaction when deciding whether to void the deed. *Low v Low*, 314 Mich 370, 375; 22 NW2d 748 (1945).

Finally, defendants mistakenly contend that the trial court's determination that the deed was void based on undue influence was against the great weight of the evidence. Although allegations of undue influence were raised at trial, a review of the trial court's opinion shows that its decision to void the deed was not premised on these allegations or evidence. Rather, the trial court's decision was based solely on its determination that decedent was not competent at the time of signing the deed because of his fragile health status and the impact of medication on his ability to comprehend the full impact of his actions. Because the trial court did not render an opinion on the issue of undue influence, defendants' argument was not properly preserved for appellate review. *Heydon v MediaOne of Southeast Michigan, Inc*, 275 Mich App 267, 281; 739 NW2d 373 (2007).

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Michael J. Kelly