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).

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DT: May 25, 2010

RE: In re Adrienne Gierman
STATE OF MICHIGAN COURT OF APPEALS

MAJOR LEAGUE MEMORIES:

As the probate review is somewhat short, I thought we would have a guest editorial from Alan Harvith, a true baseball fan. As readership grows we are actually getting a lot of responses and I invite your comments.

"The baseball game I remember most was played on June 24, 1962 in Detroit.

Sunday afternoon, Detroit Tigers played against the mighty New York Yankees. When the game started I was at home playing catch in the yard with my friend and neighbor, Sheldon Davis. However, my older brother, Elliott, was at the game and Sheldon, who just got his driver's license, offered to pick him up after the game with the provision he could drive my dad's new

car. My parents were delighted because they didn't want to drive back to Tiger Stadium (Sheldon, who later became a renowned surgeon was always a responsible kid).

When the time came, Sheldon and I jumped into the car and headed downtown. The first thing I did was turn on the radio and tune in the ball game. The Tigers were trailing by a run and, as we got closer to the stadium, Rocky Colavito drove in a run to tie the game in the bottom of the 6th inning. Tigers 7; Yankees 7.

We pulled up to the stadium and actually parked our car on the street right in front of the gate. Because it was the top of the 7th inning, there were no ushers working the entrance and we just walked in, went to the grandstand and found my brother. We agreed to stay for the two remaining innings. Many of the fans had already left the game so it was not difficult to relocate our seats a few rows behind and between the Yankee dugout and backstop.

You could not ask for a better seat to see a game even if it was for only two innings – we couldn't stop smiling – what could be better? What could be better? Extra innings would be wonderful as the game was 7 – 7 and it was not in the 9th inning.

The seats were so good we hoped he game would never end. I was never so close to Elston Howard, Clete Boyer, Mickey Mantle, Moose Skowron, Roger Maris, Bobby Richardson and Yogi Berra – these were the New York Yankees and I could read the trademark on their Louisville Sluggers. The Tigers were a bunch of rag tags in comparison. My brother loved Charley Maxwell and Bobo Osborne. Caseh and Colavito were in the game along with a real unsung hero, second baseman, Dick McAuliffe.

The game just kept going on, and on and on. We hit a landmark at the top of the 16th inning because we actually sat through an entire 9 inning game. I wasn't even thinking about my dad's new car parked on the street, in front of the stadium, for all I knew it was towed away but I couldn't care less. Hank Aguirre was pitching and from our seats we had a perfect sight line to the #37 on the lefty's back.

The game continued, we were not into the 20th inning and it was still 7 – 7. The hot dog vendor was not giving the remaining dogs away free. Remember those heavy 50 pound metal cases the vendors strapped around their necks and dragged up and down the grandstand stairs? I loved those contraptions, they held the hot dogs in a water heated covered compartment on one side, the warm buns in another compartment on the other side and there was also a spot where mustard and relish was stored. These guys could whip out a hot dog, throw it into a bun, slap it with mustard and relish in about 5 seconds. What a great job! That could have been the best meal in my life; nothing could spoil this magnificent experience.

Nothing but a two run Yankee homer in the top of the 22nd inning. Now the Tigers were behind 9 – 7 and Jim Bouton (I read his book) mowed through the heart of the Tiger line up and it was over, Yankees 9 Tigers 7. The game lasted 7 hours and I was there for over 5 hours. Five hours in the best seat ever watching these great heroes.

As I recall there were very few people left in the stands by the end of the game. Those who stayed were all shaking their heads, talking to one another in amazement, all knowing we were witnessing some kind of history and certainly a game never to be forgotten.

By the way, my dad's car was still in the same spot, no ticket and no tow truck. When I got home, my parents didn't say a word why we were so late; Sheldon's parents weren't mad

because he missed dinner at his house. It was as if they knew where we were, and *somehow* they could see the smiles on our faces for all 16 innings of baseball."

By: Alan Harvith

REVIEW OF CASE:

Reference Files: Standing to Object to Fiduciary's Account
Accounts
Actions of Fiduciary

Conservator is a daughter of Adrienne Gierman. Adrienne Gierman had other children who, throughout the proceedings, supported the position of conservator.

Yvonne Wilcox is the Ward's sister. She did not like what the conservator was doing. She filed a petition to remove her. The lower court spent a great deal of time approving the accountings and actions of the guardian and conservator and told the Plaintiff to communicate with the Guardian Ad Litem relative to her complaints. The Probate Court found and determined that the sister, in light of EPIC, had no standing and dismissed the Petition for Removal.

The Court of Appeals spent seven (7) pages reviewing the propriety of conservator's actions. If Plaintiff had no standing, nothing else should have been decided either by the lower court or the Court of Appeals.

This case can be taken for the statement that in the absence of a showing that a person is "another party interested in the estate" only an heir-at-law has standing. Plaintiff here, if she could have shown she was a Will beneficiary or the Ward's POD pension rights were being affected, might have had standing.

A court can hear an accounting even if there are no objections, but by saying they are allowing the account because there are no objections they are not waving their right to look at the account, merely saying that formal hearing is not necessary.

AAM:jv:662207v2
Attachment

STATE OF MICHIGAN

COURT OF APPEALS

In re Adrienne Gierman

YVONNE WILCOX,

Plaintiff-Appellant,

v

JACQUELINE HOLM, Conservator,

Defendant-Appellee.

UNPUBLISHED
March 11, 2010

No. 288264
Ionia Probate Court
LC No. 06-000215-GA

Before: Talbot, P.J. and Whitbeck and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right orders of the probate court denying plaintiff's petition to terminate or modify defendant's conservatorship of Adrienne Gierman, and allowing defendant's first annual account of Gierman's estate. We affirm.

Plaintiff argues that the trial court erred in allowing defendant to continue as conservator, determining that plaintiff was not an interested person with the authority to contest the account, and allowing the account. Appeals from a probate court decision are on the record, not de novo. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW 2d 265 (2008). The factual findings of the probate court are reviewed for clear error, while the court's dispositional rulings are reviewed for an abuse of discretion. *Id.* A court's factual findings are clearly erroneous when there is no supporting evidence for the findings or the reviewing court is left with a definite and firm conviction that a mistake was made. *Hill v Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007). An abuse of discretion occurs when a decision results in an outcome falling outside the range of principled outcomes. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 625; 750 NW2d 228 (2008).

Adrienne Gierman moved from Florida to Michigan in April 2004 to reside with her daughter, defendant. Gierman had been having difficulty at her work as a nurse in Florida as a result of cognitive impairment, and also apparently wished to aid defendant with caring for her children. Gierman attempted to work in Michigan, but was granted disability in September 2004. Gierman granted defendant power of attorney in October 2005, and defendant was then granted guardianship and conservatorship over her mother in October 2006 due to the increasingly debilitating symptoms of Gierman's Alzheimer's disease. Gierman was moved to a

care facility around February 2007. Gierman's sister, plaintiff, was residing in Florida and became concerned with defendant's decisions regarding Gierman's health care and finances. Plaintiff filed a petition seeking to remove defendant as guardian and conservator of Gierman, and attempted to object to defendant's first annual accounting of Gierman's estate.

The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, governs this dispute because these proceedings were commenced after EPIC's effective date of April 1, 2000, and no accrued rights will be impaired by its application. *In re Duane v Baldwin Trust,* 274 Mich App 387, 391 n 2; 733 NW2d 419 (2007). By statute, the probate court has exclusive subject-matter jurisdiction over "a proceeding that concerns a guardianship, conservatorship, or protective proceeding." MCL 700.1302(c). The court may appoint a conservator if an individual is unable to manage property and business affairs effectively for reasons including mental illness or deficiency, as is the case here. MCL 700.5401(3). A person "interested in the welfare of an individual for whom a conservator is appointed" may file a petition to remove a conservator and appoint a successor conservator. MCL 700.5415(1)(d). After a hearing establishing good cause, the court may remove a conservator and may appoint a successor conservator. MCL 700.5414.

Plaintiff argues that the court abused its discretion in denying her petition because defendant was indifferent to Gierman's interests and engaged in "self-dealing" with regard to the funds from Gierman's accounts. There was testimony that defendant used Gierman's funds to pay $1,193 in gas and electric bills at defendant's home, where Gierman was residing, from November 2006 through January 2007, and to pay a moving company $1,582 of the $4,655 total cost when defendant moved to a new location in April 2007. The court noted that Gierman's personal property was valued at only $200 in the initial inventory. Defendant also paid her husband $6,350 for five months of "in-home care" of Gierman before she was moved to a facility.

Plaintiff also protests alleged deficiencies in defendant's accounting.[1] Plaintiff noted that, according to bank records, Gierman's condominium was sold in January 2006 and $58,228 deposited in Gierman's account, but only $2,817 remained in the account when defendant filed an initial inventory as conservator. However, these transactions took place before defendant was appointed as conservator, and the court considered them irrelevant to its consideration of the petition. Plaintiff also noted that the accounting shows the questioned expenses for moving, utilities, and in-home care, as well as $1,090 in unexplained miscellaneous expenses and $1,616 in checks that defendant was researching because she did not recall writing them.

A conservator must keep suitable records of the estate administration and exhibit those records on the request of an interested person. MCL 700.5417(2). A conservator is a fiduciary of an estate, subject to the same obligations and standards of care as a trustee. MCL

[1] The court found that defendant had not filed the annual accounting that was due in October 2007 until April 2008, and then it was sent back for amendment because the initial balance of the accounting did not match the value of the initial inventory. During an August 5, 2008 hearing, the court found that a first amended accounting was received and sent to defendant's siblings, but not to Gierman's appointed guardian ad litem (GAL) or plaintiff.

700.1104(e); MCL 700.5416. MCL 700.1212(1) describes the duties and obligations of a fiduciary as such:

> A fiduciary stands in a position of confidence and trust with respect to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary. A fiduciary shall observe the standard of care described in section 7302 and shall discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality ~~between heirs, devisees, and beneficiaries; care and prudence in actions;~~ and segregation of assets held in the fiduciary capacity. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule.[2]

There is a breach of fiduciary duty when a position of influence has been acquired and abused, or when confidence has been reposed and betrayed. *Baldwin Trust*, 274 Mich App at 401.

Courts will strictly enforce a trustee's duty to keep and render a full and accurate accounting of his trusteeship. *In re Goldman Estate*, 236 Mich App 517, 523; 601 NW2d 126 (1999). Here, the first annual accounting was submitted six months late, and was amended three months later. MCR 5.409(C)(1) and (5) state that conservators must file an annual accounting with a copy of corresponding financial institution statements or a verification of funds on deposit. Additionally, MCR 5.310(C)(2)(c) requires that the content of the accounting include the following:

> All accountings must be itemized, showing in detail receipts and disbursements during the accounting period, unless itemization is waived by all interested persons. A written description of services performed must be included or appended regarding compensation sought by a personal representative. This description need not be duplicated in the order. The accounting must include notice that (i) objections concerning the accounting must be brought to the court's attention by an interested person because the court does not normally review the accounting without an objection; (ii) interested persons have a right to review proofs of income and disbursements at a time reasonably convenient to the personal representative and the interested person; (iii) interested persons may object to all or part of an accounting by filing an objection with the court before allowance of the accounting; and (iv) if an objection is filed and not otherwise resolved, the court will hear and determine the objection.

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[2] MCL 700.7302 states:

> Except as otherwise provided by the terms of the trust, the trustee shall act as would a prudent person in dealing with the property of another, including following the standards of the Michigan prudent investor rule. If the trustee has special skills or is named trustee on the basis of representation of special skills or expertise, the trustee is under a duty to use those skills.

MCR 5.310(C)(2)(d) also requires that conservators make "proofs of income and disbursements reasonably available for examination by any interested person who requests to see them or as required by the court."

Plaintiff states broadly that the GAL and the court did not require defendant to comply with the court rules. However, defendant's accounting was eventually filed and accepted, and contains sufficient itemized attachments of receipts and disbursements.

Defendant's fiduciary duties have also included a restraint from self-interest. *In re Messer Trust*, 457 Mich 371, 380 n 9; 579 NW2d 73 (1998). EPIC also addresses potential conflicts of interests between the conservator and the person the conservator is protecting. MCL 700.5421 states:

> A sale or encumbrance to a conservator, to the conservator's spouse, agent, or attorney, or to a corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or a transaction involving the estate being administered by the conservator that is affected by a substantial conflict between fiduciary and personal interests, is voidable unless the transaction is approved by the court after notice as directed by the court.

Transactions involving self-dealing should be closely scrutinized and courts should look to see whether the trustee's actions indicated any fraud, bad faith or overreaching on the part of the trustee. *In re Green Charitable Trust,* 172 Mich App 298, 314; 431 NW2d 492 (1988).

The money that defendant expended from Gierman's estate that went to defendant's husband and the expenses that contributed to payment of bills in defendant's name provided benefit to defendant as well as benefiting Gierman. A transaction involving the estate being administered by the conservator that is affected by a substantial conflict between fiduciary and personal interests is voidable unless the court approves the transaction. MCL 700.5421. On the record provided, there was no scrutiny of these expenses. This Court could find that a lack of inquiry by the court into the transactions that involve both the fiduciary and personal interests of defendant was an abuse of discretion.

However, EPIC authorizes conservators to expend money from the protected individual's estate to care for and benefit them. MCL 700.5425 provides, in part, as follows:

> A conservator may expend or distribute estate income or principal without court authorization or confirmation for the support, education, care, or benefit of the protected individual or the protected individual's dependents in accordance with the following principles:
>
> (a) The conservator shall consider a recommendation relating to the appropriate standard of support, education, and benefit for the protected individual or a dependent made by a parent or guardian, if any. The conservator shall not be surcharged for money paid to a person or organization furnishing support, education, or care to the protected individual or a dependent in compliance with the recommendation of the protected individual's parent or guardian unless the conservator knows that the parent or guardian derives

personal financial benefit from that payment, including a benefit by relief from a personal duty of support, or that the recommendation is clearly not in the protected individual's best interests.

(b) The conservator shall expend or distribute money reasonably necessary for the support, education, care, or benefit of the protected individual or a dependent with due regard to all of the following:

(*i*) The estate size, the conservatorship's probable duration, and the likelihood that the protected individual, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate.

(*ii*) The accustomed standard of living of the protected individual and the dependents.

(*iii*) Other money or sources used for the protected individual's support.

Arguably, it was reasonably necessary for defendant to expend estate assets to pay for the utilities and in-home supervision required for Gierman's support and care. Defendant testified that, based on her brief research, bringing someone else into the home to care for Gierman for required daily care or sending her to a day care facility was more expensive than paying her husband to perform this task. Defendant also explained that she had Gierman's account pay one-third of those utility bills because there were three adults in the home. Additionally, it could have been reasonably necessary to pay for moving Gierman's belongings when defendant's family moved to a new location. Defendant also stated that the portion of the moving costs attributed to Gierman was defendant's estimation based on weight of Gierman's possessions, and that Gierman had heavy furniture as well as boxes of books and magazines that Gierman wanted to keep. It is not necessary that the court approve or confirm these reasonably necessary expenses to support and care for Gierman. Trustees are not liable for mistakes or errors of judgment where they act in good faith within the limits of the law and the trust. *In re Harold S Ansell Family Trust*, 224 Mich App 745, 748-749; 569 NW2d 914 (1997).

The court had reserved its ruling on the petition to remove defendant as conservator until the accounting was reviewed, and then denied the petition after the accounting was not objected to by the GAL or Gierman's children. The court did not find that defendant's actions indicated any fraud, bad faith, or overreaching that would require scrutinizing the transactions, and approved the transactions by accepting the first annual accounting as approved by the interested parties. See MCL 700.5421; *In re Harold S Ansell Family Trust*, at 748-749. The denial of the petition under these circumstances was within the range of reasonable and principled outcomes.

Next, plaintiff argues that the probate court placed the interests of Gierman's children above her own, ignored statements previously made by Gierman protesting the way her money was spent, and allowed Gierman's resources to be unnecessarily depleted. Plaintiff appears to argue that, in refusing to remove defendant as conservator, the trial court chose to benefit Gierman's children at Gierman's expense.

In support of this charge, plaintiff suggests that the court refused to consider evidence of gifts to Gierman's family and statements that Gierman made to plaintiff about her finances. Plaintiff testified, despite defendant's objection, that Gierman reported to her that she had concerns with defendant's management of her money. However, the only concern on the record was that defendant was "stingy with her money," and that Gierman wished to buy her son a car after she sold her residence in Florida. Additionally, this transaction occurred while defendant was Gierman's power of attorney, prior to defendant's appointment as conservator, which is the subject of the instant petition.[3]

Plaintiff also raises an issue with the court's repeated mention of Gierman's children. Plaintiff specifically cites the statement, "I know [plaintiff] is concerned with the welfare of her sister but the children have priority here." However, this statement was made in the context of determining whether plaintiff had standing as an interested person to object to defendant's account. The court indicated that defendant's siblings had standing as heirs to object and was noting that they did not object to the account. Also during this exchange the court noted that the GAL had been appointed to represent Gierman's interests, and that the court was interested in reviewing the GAL's findings before the court made a determination on the petition.

Throughout the proceedings below, the court relied on the findings of the GAL. After defendant petitioned for guardianship, the GAL testified that he supported a psychiatrist's diagnosis that Gierman had dementia and needed someone to make informed decisions with regard to her residence, supportive services, financial matters, and medical treatment. The GAL stated that defendant's home was very appropriate, that defendant was looking out for the best interests of Gierman, and that he supported the granting of defendant's petitions for guardianship and conservatorship.

The court recommended that plaintiff relay her concerns to the GAL so he could investigate them, and did not dismiss plaintiff's petitions for lack of standing because he wanted the GAL to investigate the allegations. The court only made its final disposition on the petition to replace defendant as conservator after reviewing the report of the GAL, in which the GAL stated that defendant was acting in Gierman's best interests and that plaintiff's accusations were unfounded, or even frivolous. Despite plaintiff's suggestion that it would be more beneficial to Gierman if plaintiff cared for her in Florida, the GAL concluded that defendant was meeting Gierman's needs and recommended that defendant remain the guardian and conservator.

In sum, the record establishes that the probate court retained exclusive jurisdiction to determine how Gierman's estate was managed and expended for the use of Gierman. MCL 700.5402(b). After considering the interests of Gierman, as represented by the GAL, the other interested parties (Gierman's children) and plaintiff, the court concluded that there was no evidence to indicate that defendant, as guardian, was not exercising reasonable care in the discharge of her duties. The court then expressed concern about expenditures of defendant as conservator, waited for more inquiry into the matter, and denied plaintiff's petition regarding

[3] Defendant did testify that she gave Gierman's sister Joanne $500 for expenses when Gierman stayed with her. However, there was no evidence provided on when this occurred.

conservatorship after those concerns were considered. The court did not commit clear error in its findings or abuse its discretion in so holding. *Hill*, 276 Mich App at 308; *Woods*, 277 Mich App at 625.

Plaintiff next argues that the probate court erred when it ruled that plaintiff did not have standing to object to the account filed by defendant. EPIC requires that a person be interested in an estate in order to have the authority to take certain actions. Specifically, MCL 700.5415 provides as follows:

> (1) A person interested in the welfare of an individual for whom a conservator is appointed may file a petition in the appointing court for an order to do any of the following:
>
> (a) Require bond or security or additional bond or security, or reduce bond.
>
> (b) Require an accounting for the administration of the trust.
>
> (c) Direct distribution.
>
> (d) Remove the conservator and appoint a temporary or successor conservator.
>
> (e) Grant other appropriate relief.

The court rules provide for the authority to determine interested persons in the examination of the account. MCR 5.125(6) states:

> The persons interested in a proceeding for examination of an account of a fiduciary are the
>
> (a) devisees of a testate estate, and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125(B)(3),
>
> (b) heirs of an intestate estate,
>
> (c) protected person and presumptive heirs of the protected person in a conservatorship,
>
> (d) ward and presumptive heirs of the ward in a guardianship,
>
> (e) claimants,
>
> (f) current trust beneficiaries in a trust accounting, and
>
> (g) other persons whose interests would be adversely affected by the relief requested, including insurers and sureties who might be subject to financial obligations as the result of the approval of the account.

Plaintiff argues that she is an interested person under this rule because she is a presumptive heir and a beneficiary of Gierman's pension. However, because Gierman had three children living at the time of the action, plaintiff was not a presumptive heir.[4] Additionally there was no evidence presented that Gierman had a will naming plaintiff as a devisee. There was also no evidence that plaintiff was a beneficiary under a trust as referenced in MCR 5.125(6)(f), the only reference to beneficiaries in the rule. Arguably, plaintiff may be an "other person" under MCR 5.125(6)(g), whose interest would be affected because she was one of the beneficiaries of the pension. However, evidence was not presented that the pension could be depleted by ~~defendant's administration, and plaintiff did not make this argument or include this provision of~~ the court rule in her brief on appeal. Therefore, the trial court correctly held that plaintiff was not an interested person for purposes of examining and objecting to defendant's accounting.

Finally, plaintiff argues that the probate court erred in finding that it had to accept the annual account of defendant if no objections were filed. We disagree. Procedures for the conservator's accounting are contained in the court rules. After serving the account on interested persons, the court may require, or an interested person may request, an examination of proofs of income and disbursements that the conservator must make reasonably available. MCR 5.310(C)(2)(d). MCR 5.409(C)(1) states that the copy of the account provided to interested persons must include notice that any objections to the account should be filed with the court and noticed for hearing. An interested person may then object to the account, but the court may then order that they examine the proofs in attempt to resolve the objection before a hearing is held. MCR 5.310(C)(2)(c)(*iii*); MCR 5.310(C)(2)(d). MCR 5.310(C)(2)(c)(*iv*) provides that if an objection is filed and not otherwise resolved, the court will hear and determine the objection.

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[4] MCL 700.2103 sets forth the following order of intestate succession:

> Any part of the intestate estate that does not pass to the decedent's surviving spouse under section 2102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the following individuals who survive the decedent:
>
> (a) The decedent's descendants by representation.
>
> (b) If there is no surviving descendant, the decedent's parents equally if both survive or to the surviving parent.
>
> (c) If there is no surviving descendant or parent, the descendants of the decedent's parents or of either of them by representation.

Because Gierman had three surviving descendants at the time plaintiff filed her petition, plaintiff was not an heir at that time. Accordingly, plaintiff was not an interested person by means of being an heir.

MCR 5.409(C)(6) instructs the court to either review or allow accounts annually, and have a hearing at least once every three years to determine whether the accounts will be allowed. MCR 5.310(C)(2)(a) authorizes the court to order an interim accounting at any time the court determines that it is necessary. MCR 5.310(C)(2)(e) states, "Hearing on each accounting may be deferred in the discretion of the court. The court in any case at any time may require a hearing on an accounting with or without a request by an interested person." Further, MCL 700.5407(2)(c) empowers the court directly, or through the conservator, with "all the powers over the estate and business affairs that the individual could exercise if present and not under disability, except the power to make a will." Thus, the court had the discretion to hold hearings and review accounts even when an objection was not filed.

However, it is not evident that the court in this instance believed that it could not hold a hearing without an objection. MCR 5.310(C)(2)(c)(*i*) requires that the accounting served on interested parties must include notice that objections to the accounting must be brought to the court's attention because the court does not normally review the accounting without an objection. The Court is required to hold a hearing when there is an unresolved objection, MCR 5.310(C)(2)(c)(*iv*), but retains the discretion to hold a hearing when there are no objections, MCR 5.310(C)(2)(e). The court's statement that, in essence, an account is approved unless objections are filed was presumably a reflection upon its authority to allow the account if it is not objected to according to MCR 5.409(C)(6), and the court rule's observation that accounts are not typically reviewed absent an objection. The statement was not a definitive statement of law that the court had surrendered its discretion to review the account or hold a hearing at any time. The court exercised its discretion not to review the account in detail when, following the receipt of waivers and consents to the allowance of the account by all interested parties, it held that "[t]he first annual account appears to be correct and ought to be allowed." The court's determination was not erroneous.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Donald S. Owens