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## **PROBATE LAW CASE SUMMARY**

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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.

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**DT:** June 16, 2010

**RE:** William T. Manuel Trusts  
STATE OF MICHIGAN COURT OF APPEALS

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### **BASEBALL MEMORIES:**

ARMANDO GALLERAGA

There is very little I can add to the near perfect game saga. Mistakes, however, are plentiful in baseball lore, often beneficial to those involved.

One memorable misdeed made the player more recognizable and more valuable, in terms of money, than he ever made in the game of baseball. The last day of the 1950 season found the wiz kids from Philly one game up on the Dodgers. If the Dodgers won, a playoff would occur.

In the bottom of the ninth inning Cal Abrams, of the Dodgers, walked. Pee Wee Reese singled and Abrams stopped at second. Duke Snider then singled to center. Two mistakes then occurred. The third base coach, Milton Stock, waived Abrams home. This was mistake number one – given hall-of-famer, Richie Ashburn’s arm. Mistake two, Abrams made a wide turn instead of taking the shorter route; compounding his coach’s error. Abrams was tagged out and the Philly’s went on to win the pennant. Abrams, a lifetime 269 hitter, then suddenly made the banquet circuit.

**REVIEW OF CASE:**

Reference Files: Standing  
Conveyancing  
Proof of the Existence of a Trust

Petitioner/Appellee was disinherited in a final trust document. He sought to remove the trustee named in the trust document in which Petitioner was disinherited. Petitioner argued that a previous Trust existed, in which he was a beneficiary and that a certain Deed vested title in that pre-existing Trust. The Lower Court ruled that he did not have standing to raise the issue of removal and that, since it was not proved that the “pre-existing” Trust was in existence, the Deed was void; a subsequent Deed was, therefore, valid.

The reader of the Appellant Decision is somewhat in the dark because they cannot see copies of the Deed(s) from which they might learn exactly who the grantor and grantee were.

The Lower Court and Court of Appeals ruled that if you are not a beneficiary of a Trust you have no standing to petition to remove the trustee, and further that the final Trust was the owner of the property in question.

The Court of Appeals also ruled that the voided Deed was not evidence of the substance of the Trust it purported to grant an interest to and, therefore, since there was no other independent proof of the existence of the purported Trust, there was no Trust and the Deed to it was void.

The case provides lessons for the lawyer drafting estate planning documents:

1. If there are a multitude of Trusts, name them in a manner that they may be differentiated.
2. If a Trust document is revoked, there should be some certain evidence of its revocation. Unlike a Will, which often recites that it revokes previous Wills, there are times when numerous Trusts exist. Separate evidence of revocation or even writing the word “revoked” on the Trust would be of benefit.
3. When there are multiplicity of Trusts make sure that if they are to own land the grantor, who is in the chain of title, is the grantor, and the grantee, if a Trust, is described with particularity.

STATE OF MICHIGAN  
COURT OF APPEALS

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In re WILLIAM T. MANUEL TRUSTS

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HENRY MANUEL,

Petitioner-Appellant,

v

THERESA McCANN, TRUSTEE,

Respondent-Appellee.

UNPUBLISHED

May 11, 2010

No. 288922

Oakland Circuit Court

LC No. 2007-312331-TV

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Before: CAVANAGH, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Petitioner Henry Manuel appeals as of right from the trial court's order granting summary disposition in favor of respondent Theresa McCann, petitioner's sister and the trustee of their father's trust, with regard to ownership of their father's property located at 3192 Loon Lake Shores in Waterford, Michigan, (the Loon Lake property) and ruling that petitioner (who was not a beneficiary to the trust) lacked standing to remove respondent as trustee or request an accounting of the trust assets. We affirm.

William T. Manuel ("William") and his wife, Ada, had four children, John Manuel (John), Daisy Presson (Daisy), respondent, and petitioner. It appears that William used trusts as his preferred method of estate planning. Both parties acknowledged the existence of the "Revocable Living Trust Agreement" created on March 28, 1974, (the 1974 trust), in which William named himself as trustee, named John and Comerica Bank as co-successor trustees, and specified that upon the deaths of both him and Ada, the trust would be dissolved and the trust assets would be distributed equally among his four children and their descendants. Petitioner provided two unsigned copies of "amendments" to the 1974 trust, which purportedly were executed in the 1970s as well, that again specified that he would be entitled to a one-quarter share of the trust assets upon the deaths of both William and Ada.

On August 19, 1999, William executed the William T. Manuel Living Trust (the 1999 trust), naming himself as trustee and naming respondent as the successor trustee in the event of

his death or disability.<sup>1</sup> The trust provided that upon the deaths of both William and Ada, John and Daisy would each get a one-quarter share of the trust property, respondent would get half the trust property, and petitioner would get nothing. The trust stated, "I acknowledge the existence of my child, HENRY MANUEL, and have intentionally, and with full knowledge, chosen not to provide for HENRY MANUEL or his issue." On the same day, William executed his last will and testament, providing for the distribution of all his property to the 1999 trust on the event of his death and appointing respondent his personal representative. Ada died soon after the trust was executed. On October 4, 1999, William transferred the Loon Lake property to the 1999 trust. William died in 2006.

The record indicates that petitioner has a long history of legal and financial difficulties and would often turn to his parents for financial assistance. According to respondent, William decided not to make petitioner a beneficiary of the 1999 trust because he had given petitioner significant amounts of money during his life and would pay many of petitioner's legal bills. Apparently, even this lawsuit was commenced as part of a settlement agreement arising from the efforts of certain of petitioner's creditors to recover money owed to them.

On August 27, 2007, petitioner filed a petition to remove respondent as successor trustee of William's trust. In this initial petition, petitioner claimed that according to the 1974 trust, he was entitled to a one-quarter share of all property held by the trust upon the death of both his parents. Petitioner then claimed that William had deeded the Loon Lake property to the 1974 trust in 1993, so he was entitled to a one-quarter share of the proceeds from the sale of this property. According to petitioner, because the Loon Lake property had already been transferred to the 1974 trust, the later transfer of the property to the 1999 trust was invalid. Petitioner also claimed that respondent unduly influenced William to create the 1999 trust, and asked the court to remove respondent as successor trustee of the 1999 trust and require a full accounting of all William's assets, including those in the 1999 trust. With his petition, petitioner submitted a copy of a quit claim deed dated April 8, 1993, (the 1993 deed) that purported to show that William and Ada had quit-claimed the Loon Lake property to the "William T. Manuel and Ada Manuel Living Trust," not the 1974 trust.

Respondent acknowledged in her response that William wanted her to be the trustee of his estate and that petitioner had no interest in the 1999 trust, per William's express wish. Respondent claimed that the 1974 trust lacked assets and did not exist. Respondent also filed a motion for summary disposition pursuant to MCR 2.116(C)(5), (8), and (10). In her brief in support of this motion, she argued that the 1993 deed was null because the William T. Manuel and Ada Manuel Living Trust did not exist. Respondent also maintained that petitioner did not have the authority to request her removal as trustee of the 1999 trust because he was not a beneficiary under the trust.

Although the lower court file is spotty, it appears that after respondent pointed out that the 1993 deed purportedly transferred the Loon Lake property to the William T. Manuel and Ada

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<sup>1</sup> The trust also provided that if respondent were unwilling or unable to serve as trustee, John would be named the successor trustee.

Manuel Living Trust, petitioner dropped his claim that the 1993 deed transferred the property to the 1974 trust and instead claimed that the William T. Manuel and Ada Manuel Living Trust existed and, therefore, the transfer was valid.<sup>2</sup> In support of his position, petitioner claimed that affidavits by himself, John, and Daisy, as well as a 1995 complaint and lis pendens listing the William T. Manuel and Ada Manuel Living Trust as a party to litigation, established the trust's existence.

However, only John's affidavit is included in the lower court record. In the affidavit, John claimed that he was named as successor trustee of all his parents' trusts, including the "William T. Manuel and Ada Manuel Individual Living Trust," until the 1999 trust named respondent trustee. He also claimed that he was the successor trustee to the "William T. Manuel and Ada Manuel Trust," and that as co-trustee of this trust, he did not execute the 1999 deed transferring the Loon Lake property to the 1999 trust. However, John made no mention of the William T. Manuel and Ada Manuel Living Trust in his affidavit.

Although the affidavits signed by petitioner and Daisy were not included in the lower court record, it appears that the trial court was aware of these affidavits as well.<sup>3</sup> Petitioner attached both affidavits to his brief on appeal in this case. In his affidavit, petitioner claimed that he was aware of the William T. Manuel and Ada Manuel Trust and that he transacted business with, and transferred real property to, this trust. Although petitioner mentioned the William T. Manuel and Ada Manuel Trust three times in his affidavit, he made no mention of the William T. Manuel and Ada Manuel Living Trust. More tellingly, he claimed that the Loon Lake property was transferred in 1993 to the William T. Manuel and Ada Manuel Trust (as opposed to the William T. Manuel and Ada Manuel Living Trust). Similarly, Daisy mentioned the William T. Manuel and Ada Manuel Trust in her affidavit, but she made no mention of the William T. Manuel and Ada Manuel Living Trust. Instead, she claimed that the Loon Lake property was transferred to the William T. Manuel and Ada Manuel Trust.

Accordingly, it appears that the 1993 deed indicating that the Loon Lake property was transferred to the William T. Manuel and Ada Manuel Living Trust was the only "evidence" presented to the trial court indicating this trust's existence. Petitioner attaches to his brief on appeal copies of a 1995 complaint and notice of lis pendens in a lawsuit in which the William T. Manuel and Ada Manuel Living Trust was named as a co-plaintiff along with William, Ada, and Noreen E. Manuel.<sup>4</sup> However, neither the complaint nor the lis pendens was included in the lower court file, and the trial court did not indicate that either the complaint or the lis pendens was included among the evidence provided by the parties for his review.<sup>5</sup>

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<sup>2</sup> In this reply, petitioner also requested summary disposition in his favor pursuant to MCR 2.116(I)(2).

<sup>3</sup> Petitioner attached both these affidavits to his brief on appeal.

<sup>4</sup> Apparently Noreen was petitioner's wife.

<sup>5</sup> Although neither the complaint nor the notice of lis pendens was included in the lower court file and, therefore, are not part of the record provided for this Court to review, we will briefly summarize the contents of these documents. The notice of lis pendens makes no mention of the  
(continued...)

On August 1, 2008, the trial court issued an opinion and order granting respondent's motion for summary disposition pursuant to MCR 2.116(C)(5), (7), and (10) with regard to petitioner's claims regarding ownership of the Loon Lake property.<sup>6</sup> The trial court then ordered "that the Loon Lake property is an asset of the William T. Manuel Trust u/a/d 3/28/74 and the William T. Manuel Trust u/a/d 8/19/99." Finally, the trial court determined that petitioner lacked standing to challenge the 1999 trust.

First, petitioner challenges the trial court's determination that the William T. Manuel and Ada Manuel Living Trust does not exist. Because at least a question of fact remains regarding whether the trust exists, petitioner argues, the trial court should not have granted respondent's motion for summary disposition. Instead, petitioner claims, the trial court should have recognized that the Loon Lake property had been deeded to either the William T. Manuel and Ada Manuel Trust or the William T. Manuel and Ada Manuel Living Trust in 1993, that this trust probably provided for all assets to be distributed evenly among William and Ada's four children after their deaths, and that as a result, petitioner was entitled to a share of the proceeds of the sale of the Loon Lake property.

Petitioner does not dispute the trial court's conclusion that proof of the existence of the William T. Manuel and Ada Manuel Living Trust must be established in order to survive a motion for summary disposition. He argues only that summary disposition was inappropriate because the William T. Manuel and Ada Manuel Living Trust *does* exist (or that, at the very least, the evidence provided to the trial court is sufficient to establish a question of fact regarding the trust's existence).

It appears that the trial court granted summary disposition pursuant to MCR 2.116(C)(10). We review *de novo* the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "A trial court tests the factual support of a plaintiff's claim when it rules upon a motion for summary disposition filed under MCR 2.116(C)(10)." *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). "The court's task is to review the record evidence, and all reasonable

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(...continued)

William T. Manuel and Ada Manuel Living Trust, except in the heading. The complaint states that the William T. Manuel and Ada Manuel Living Trust "is a trust entity with its principal location at 3192 Loon Lake Shores, Waterford, Michigan, County of Oakland." The complaint addresses the defendants' attempts to foreclose on a mortgage on property located at 8215 Ellis Road in Clarkston, Michigan, (the Ellis Road property) and claims that either William and Ada or the William T. Manuel and Ada Manuel Living Trust were the actual owners of the property. According to the complaint, plaintiff and his wife had transferred title to the Ellis Road property to either William and Ada or the William T. Manuel and Ada Manuel Living Trust one day before the mortgage at issue in the complaint was executed. An attached affidavit signed by William indicated that he only attested that plaintiff and his wife had transferred the Ellis Road property to William and Ada or to the William T. Manuel and Ada Manuel Living Trust. William did not affirm in his affidavit that the William T. Manuel and Ada Manuel Living Trust actually existed.

<sup>6</sup> Similarly, the trial court denied petitioner's motion for summary disposition pursuant to MCR 2.116(I)(2) with respect to this same issue.

inferences therefrom, and determine whether a genuine issue of material fact exists to warrant a trial." *Harrison v Olde Fin Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

In support of his position, petitioner references the affidavits signed by him, John, and Daisy. However, none of these affidavits establishes that the William T. Manuel and Ada Manuel Living Trust exists; instead, these affidavits discuss the existence of the William T. Manuel and Ada Manuel Trust, and claim that the Loon Lake property was transferred to *this* trust, contrary to the 1993 deed.<sup>7</sup> In his brief on appeal, petitioner argues that the 1995 complaint and notice of lis pendens naming the William T. Manuel and Ada Manuel Living Trust as a plaintiff also establish the trust's existence. However, neither the complaint nor the notice of lis pendens is included in the lower court record, and a petitioner cannot expand the record on appeal. MCR 7.210(A); *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002) ("This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal.").

Because petitioner could not produce an actual copy of the William T. Manuel and Ada Manuel Living Trust, he relies on secondary evidence to establish its existence. Yet in order to recognize the existence of a lost document, the court must be provided with proof of its execution, loss, and inability to be retrieved, as well as evidence establishing the substance of the document. See *Thompson v Flint & Pere Marquette R Co*, 131 Mich 95, 99-101; 90 NW 1037 (1902); *Henry v Gates*, 118 Mich 379, 381; 76 NW 765 (1898). Petitioner does not provide any testimony or other evidence regarding the contents of the William T. Manuel and Ada Manuel Living Trust. In particular, he provides no evidence regarding who was named the trustee and successor trustee of that trust, whether he was included as a beneficiary of that trust, and the nature of any possible trust distribution to which he might be entitled. Although he and two of his siblings provided affidavits claiming that William intended to provide for all his children equally after his death, any use of this alleged intent to establish that petitioner was a named beneficiary of the William T. Manuel and Ada Manuel Living Trust would be speculative at best, especially in light of evidence indicating that William intentionally excluded petitioner from the 1999 trust. Similarly, petitioner provides little testimony or evidence establishing that the William T. Manuel and Ada Manuel Living Trust was executed and indicating why it is lost and irretrievable. In fact, the affidavits that petitioner provides appear to indicate a certain level of confusion regarding which trust is even being discussed.

In fact, petitioner only provided the trial court with one document included in the lower court record that even mentioned the existence of the William T. Manuel and Ada Manuel Living Trust. This document, the 1993 deed, makes one reference to the William T. Manuel and Ada Manuel Living Trust and provides no indication regarding the substance of the trust. In the

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<sup>7</sup> We acknowledge that our insistence on distinguishing between two similarly named trusts might appear meticulous. However, petitioner claims that William created several similarly named trusts over the years, and petitioner's case rests on his ability to establish that a particular deed transferred the Loon Lake property to a particular trust that actually exists. Petitioner has the burden of proving the existence of the William T. Manuel and Ada Manuel Living Trust, not a similarly named trust, and must be held to that burden.

absence of any evidence regarding the substance, execution, and loss of the William T. Manuel and Ada Manuel Living Trust, the 1993 deed is insufficient to establish that this trust ever existed. Because the existence of the William T. Manuel and Ada Manuel Living Trust has not been established, the 1993 deed is void. *Price v Nat'l Union Fire Ins Co*, 294 Mich 289, 292; 293 NW 652 (1940). The trial court's determination on this point was not in error.<sup>8</sup>

Further, even if the evidence that petitioner provided was sufficient to establish the existence of the William T. Manuel and Ada Manuel Living Trust, petitioner has failed to establish that the trustee of this trust lacked the authority to transfer the Loon Lake property to the 1999 trust. In his brief on appeal, it appears that petitioner does not dispute that William would have had the authority to transfer the property if he were the sole trustee of his various trusts. Instead, petitioner simply argues that William could not transfer the property because John, as co-trustee, did not sign off on the transfer of the Loon Lake property to the 1999 trust. Yet John's affidavit was unclear regarding whether William typically named him a co-trustee or a successor trustee to the various trusts that he established before 1999, while Daisy claimed that John was typically named the successor trustee of William's trusts. Petitioner does not appear to dispute that William typically named himself trustee of his various trusts. Accordingly, petitioner fails to establish that if the William T. Manuel and Ada Manuel Living Trust existed, William was *not* its sole trustee.

Further, petitioner provides no indication regarding the amount of discretion that William, as a trustee of the purported William T. Manuel and Ada Manuel Living Trust, might have had to transfer trust property to himself and his wife in their individual capacities or to another trust that he established. More specifically, assuming that William would be the trustee of the purported William T. Manuel and Ada Manuel Living Trust, petitioner failed to provide any indication that William did not have the authority to transfer the Loon Lake property to another trust that he created.

Next, petitioner challenges the trial court's determination that he lacks standing to petition for removal of respondent as trustee of the 1999 trust and to demand an accounting of William's assets. However, petitioner only mentions his lack of standing in the first sentence of his argument regarding this issue, when he states, "The Lower Court's Opinion and Order, granted Summary disposition on Petitioner/Appellant, Henry Manuel's claims to remove McCann as Trustee, in that the Court found that he had no standing." Although petitioner briefly mentions that John and Daisy (who are named beneficiaries in the 1999 trust) would have standing to pursue such an action, this is the only other mention of standing that he makes in his argument. Petitioner uses the balance of his argument to criticize the trial court for failing to address his concerns that William was unduly influenced by respondent to sign the 1999 trust, that a 1999 warranty deed did not properly transfer all William's Loon Lake property to the 1999 trust, and that William would have wanted all his children (including petitioner) to share equally

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<sup>8</sup> Because the trial court's grant of summary disposition to respondent was appropriate, we need not consider petitioner's claim that the trial court should have granted summary disposition in his favor pursuant to MCR 2.116(I)(2).

in his estate, because this is what the 1974 trust dictated. Yet such arguments are immaterial to the question whether petitioner has standing to challenge the 1999 trust.

Accordingly, petitioner has failed to provide any sort of argument addressing the question of his standing to challenge the 1999 trust on appeal. Specifically, petitioner has failed to provide any argument or citation to authority in support of his stated position that the trial court erroneously failed to recognize that he has standing to petition for removal of respondent as trustee of the 1999 trust and to demand an accounting of William's assets, instead discussing other issues that are completely irrelevant to the matter at hand.

It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. [*LME v ARS*, 261 Mich App 273, 286–287; 680 NW2d 902 (2004), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Consequently, petitioner has abandoned his claim of error on appeal. In light of petitioner's abandonment of this issue, we affirm the trial court's determination that petitioner lacks standing to petition for removal of respondent as trustee of the 1999 trust and to demand an accounting of William's assets.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Peter D. O'Connell  
/s/ Kurtis T. Wilder