



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 12, 2012

RE: Conservatorship of PAUL SANTO
STATE OF MICHIGAN COURT OF APPEALS

SPRING TRAINING:

When I was in Florida I had the pleasure of watching the Tigers play the Cards in Jupiter, Florida. The stadium is a chip shot from I-95. It holds 6800 people. Every seat is close to a perfectly manicured field. The Cards share the field with the Marlins so that there is always a home game. The game had snowbirds from St. Louis and Detroit which added a little drama to a dull game.

The Tigers didn't bring a full squad, but I got a chance to see Clete Thomas and Drew Smily, who both played well. In addition to hot dogs and hamburgers you can have mahi mahi tacos or crab cake sliders. Beer is sold in the stands.

What struck me the most was that high schools play on a field like this throughout the year. It's no wonder warmer climate produces better players.

REVIEW OF CASE:

Reference Files: Guardian Ad Litem
 Prejudice

It is always a pleasure to review a case when the prevailing party was a Kemp Klein lawyer. Kudos to Debra Nance for her excellent work at both the trial and appellate level.

This short opinion affirms an Order allowing a conservator's request to abandon the protected person's real estate, to which the protected person objected. The issue concerned the Lower Court's appointment of a Guardian Ad Litem for Paul Santo and all other interested persons, one of whom was a relative of Paul.

In affirming the decision of allowance of abandonment, the Appellate Court said this about Guardian Ad Litem and prejudice.

First, the matter of prejudice was not raised in the Lower Court. The Appellate Court does not say this is fatal if Appellant can show plain error resulting in actual prejudice. He could not. The Appellate Court said conflict of interest is a question of fact requiring a show of clear error. Appellant never showed any prejudice.

For the practitioner, keep in mind that if a Guardian Ad Litem represents more than one party; it might have a negative effect if there is a conflict which causes prejudice.

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Attachment

STATE OF MICHIGAN
COURT OF APPEALS

In re Conservatorship of PAUL SANTO.

PAUL SANTO, a Protected Individual,

Appellant,

v

ADULT WELL BEING SERVICES, Conservator
for PAUL SANTO, a Protected Individual,

Appellee.

UNPUBLISHED

March 15, 2012

No. 302595

Wayne Probate Court

LC No. 2009-741900-CA

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Paul Santo appeals as of right the probate court order granting the petition of Santo's conservator, Adult Well Being Services ("conservator"), to abandon real property that was jointly owned by Santo and his sister Kathleen Santo. Because Paul Santo has not demonstrated any prejudice resulting from the alleged conflict of interest, we affirm.

The property in question is a vacant four-unit multi-family dwelling built in 1923 and located at 2484 Woodmere in Detroit. The property was in serious decay and was the subject of a nuisance suit by the city in 2009. The conservator was unable to obtain insurance for the property because of the need for numerous repairs. The estimated cost to repair the property was approximately \$45,000, which would have exceeded the value of the property. The conservator filed a petition requesting that the probate court allow the property to be donated or abandoned, or that the court issue an order directing it to expend funds to make repairs necessary to insure the property.

The probate court appointed a guardian ad litem for Paul Santo "and all other interested persons as provided by statute or court rule." The guardian ad litem submitted a report in which he asserted that repair or rehabilitation of the property would not be in the estate's best interests and "would be a cash drain." The report explained that the cost of repairs would be at least five or six times the value of the property and that vandals posed an obstacle to any repair effort. The report further stated that Kathleen Santo agreed that it was not worth investing money into the property and that a charitable deduction should be pursued, but that Paul Santo, although

agreeing that it would be foolish to invest money to renovate the property, wanted to retain the property and not attempt to sell or donate it. Following a hearing, the probate court issued an order allowing the conservator to abandon the property.

On appeal, Paul Santo argues that the probate court's order must be reversed because of a conflict of interest by the guardian ad litem in representing the interests of both him and Kathleen Santo. We disagree.

In general, a court's finding regarding a conflict of interest is a question of fact that we review for clear error. *Camden v Kaufman*, 240 Mich App 389, 399; 613 NW2d 335 (2000). In this case, however, the issue of an alleged conflict of interest was not raised in the probate court. Therefore, to be entitled to relief, Paul Santo must establish a plain error resulting in actual prejudice. See *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 601-602; 603 NW2d 824 (1999).

Paul Santo has not demonstrated or even discussed actual prejudice. The guardian ad litem's report advised the probate court on the different positions of Paul and Kathleen Santo regarding the disposition of the property. Paul Santo does not contend that the guardian ad litem failed to accurately state his position. Arguably, by contending that his limited capacity "restricted his ability to properly accumulate, evaluate, and present evidence at the hearing," Paul Santo implies that there was evidence that the guardian ad litem failed to marshal because of the alleged conflict of interest. However, Paul Santo does not identify any such evidence. Because Paul Santo has not provided any basis for concluding that he was actually prejudiced by an alleged conflict of interest inherent in the guardian ad litem's dual representation of both him and his sister, appellate relief is not warranted.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray