



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 2007-2012 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. Mr. May maintains an “AV” peer review rating with Martindale-Hubbell Law Directory, the highest peer review rating for attorneys and he is listed in the area of Probate Law among Martindale-Hubbell’s Preeminent Lawyers. He has also been selected by his peers for inclusion in *The Best Lawyers in America*® 2013 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2012 by

Woodward/White, Inc., of SC). He has been included in the Best Lawyers listing since 2011.

He is a member of the Society of American Baseball Research (SABR).

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DT: July 30, 2013

RE: **George W. Scheer Inter-vivos Trust**
STATE OF MICHIGAN COURT OF APPEALS

QUESTIONS FROM SARAH – BASEBALL:

Question: Why do players wear different uniforms at away games?

Answer: The simplistic answer is because those are the rules. Since uniforms are substantially similar, darker uniforms are used for away games and lighter uniforms for home games (usually gray v white) so that the teams can be differentiated. It also helps umpires make decisions when the proximity of two opposing players to their call might be important. During the 1970s Charlie Finley decided to stay within the letter of the rule, but to branch out with bright colors. Most away jerseys have the name of the team spelled out in block letters whereas the home team usually has an emblem or an initial. One might say that if the fans didn’t know who their home team was



playing they could look on the field and, if they could read, figure out who their team was playing against.

Sarah also asks:

Question: How we got a player from Cuba?

Answer: Cuba restricts exit of its citizens. Cuba is a great place for baseball. Fidel Castro always thought of himself as a pitcher. Those athletes who believe they have great potential merely escape and usually seek asylum in neighboring Spanish speaking islands; from there they can get to the United States. Also, since they are not coming from a country originally that is subject to Major League Baseball draft rules, the player can avoid the baseball draft and maximize his earning potential.

REVIEW OF CASE:

Reference Files: Discretion
 Trustee’s Opinion – Conclusive
 Distribution of Assets

The facts of this case are simple. Appellants thought they should receive more, in terms of a distribution, because of the manner in which trustee made a distribution. Appellee believed that the powers in the Trust superseded any equity of any inequality.

The Lower Court determined that the trustee’s powers allowed him to make the distribution in question and ruled accordingly. The Court of Appeals affirmed. The essential language of the Court of Appeals’ Decision looks at the Trust itself, which gave the trustee, the power to make distributions in cash or in kind and then “at values to be determined by trustee whose decision as to value shall be conclusive”.

Naturally, this would not apply to cash because that might have been an abuse of discretion, but we are talking about a trustee using a date of death valuation to make his determination.

This is a victory for trustees using powers vested in them by Settlers.

AAM:jv:747061
Attachment

STATE OF MICHIGAN
COURT OF APPEALS

In re GEORGE W. SCHEER Inter-vivos Trust.

ROBERT A. SCHEER,

Appellant,

UNPUBLISHED
July 18, 2013

v

BARBARA A. KRANTZ and DAWN KRANTZ,

Appellees.

No. 311094
Clare Probate Court
LC No. 07-015026-TV

Before: SAWYER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

This matter is before the Court on the probate court's order directing the final distribution of trust assets. Appellant and appellees presented differing proposals regarding how the remaining assets were to be distributed. The probate court accepted appellees' proposal, which was actually the plan developed by the Successor Trustee. We affirm.

George Scheer and his wife, Pauline (who predeceased George), held significant assets in individual inter-vivos trusts, principally real estate and a large number of shares in the Isabella Bank and Trust (IBT). Ultimately, following their deaths, the assets were to be distributed to their two children, appellant and appellee Barbara Krantz, and four grandchildren (including appellee Dawn Krantz). The two children were to each receive 25% of the trust assets and each of the four grandchildren were to receive 12.5% of the assets.

Not long after George Scheer's death a dispute arose among the beneficiaries. This was resolved by a settlement agreement by which a major portion of the assets, including most of the real estate and some of the bank stock, was distributed to the beneficiaries in varying amounts and not in strict proportion to each beneficiary's pro-rata share of the trust. The remaining assets, primarily shares of the bank stock, were held back pending final clearance by the IRS. Once that clearance was obtained, however, another dispute arose regarding the manner in which the remaining assets were to be distributed. At this point, there remained slightly less than 14,000 shares of the bank stock and almost \$200,000 in cash.

It is undisputed that, in the interim distribution, appellant received less than his pro-rata share and that the grandchildren received more than their shares.¹ What is disputed is how to distribute the remaining assets to achieve an appropriate distribution consistent with the terms of the trust. Appellant presented a plan by which he would receive a cash payment of \$116,500 in cash to equalize his shortfall in receipts in the interim distributions. The remaining assets would then be distributed proportionately to equalize the final distribution consistent with the terms of the trust. Appellees, on the other hand, proposed to distribute the assets in the manner proposed by the Successor Trustee, which proposed that the cash and bank stock be distributed in proportion to the percentage amount of the remaining assets each beneficiary was entitled to in order to meet the terms of the trust. For example, appellant was entitled to 43% of the remaining assets to achieve an overall distribution of 25% of the assets to which he was entitled under the terms of the trust. The Successor Trustee's proposal would distribute 43% of the cash and 43% of the stock to appellant.

Appellant's objection to the Successor Trustee's proposal is based on (1) that it would give him a disproportionately greater share of the bank stock and (2) that the Successor Trustee used the values of the stock as of the time of the grantor's death to determine the distribution, while the value of the stock has significantly declined since that time.² While appellant presents two issues on appeal, they essentially argue the same thing: it is inequitable to require him to take a disproportionate share of the stock which has a market value significantly less than the valuation used to determine the distribution. Appellant cites only to general principles of law, such as the trustee's fiduciary duty and the restriction under MCL 700.7503(3) that preferences not be given to one charge over another of the same class.

If the controlling principle here was that of equity, we might agree with appellant. But what controls are the settlement agreement and the trust document. The settlement agreement provided that the assets held back from the interim distribution were to be distributed according to the terms of the trust. And the trust gives the Trustee the power to make distribution in cash or in kind and to determine the value of the property distributed in kind.

We review the language of the trust de novo. *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005). That interpretation is governed by the principle that the intent of the grantor is to be carried out as closely as possible. *Id.* at 527. And if the language is unambiguous, we are to carry out the intention that is given in the document's plain language. *Id.* And this dispute can be resolved by looking to the clear and unambiguous directives of the trust document. Among the powers given to the trustee is the power to "make distributions in

¹ In fact, one of the grandchildren, David Krantz, received more than his full share from the interim distributions. Apparently, the beneficiaries agreed that, while David would receive nothing in the final distribution, he would not be required to refund his overpayment.

² The Successor Trustee values the stock at \$40.00 per share, while the stock had dropped at one point to approximately \$17.00 per share, and had only recovered to approximately \$25.00 per share at the time of the final distribution.

cash or in kind, at valuations to be determined by TRUSTEE, whose decisions as to values shall be conclusive." Art XII(Q).

By adopting the Successor Trustee's proposal, the trial court was merely giving effect to this power. While the Successor Trustee could have chosen a different method of making the final distribution, including adopting appellant's proposal, the method the Successor Trustee did choose was within the trustee's authority. Therefore, the trial court did not err in adopting it.

Affirmed. Appellees may tax costs.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Pat M. Donofrio