



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

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DT: August 31, 2012

RE: In re Verdries Estate
STATE OF MICHIGAN COURT OF APPEALS

BAD BOYS:

There are a surprisingly small number of players who have been suspended from baseball or whose alleged misconduct is barring them from the Hall of Fame. Even more surprising is that, of the few, a quality team can be fielded.

RHP:	Roger Clemens	–	no description necessary.
LHP:	Lefty Williams	–	1919 Black Sox scandal.
1B:	Rafael Palamero		
2B:	Joe Gedeon	–	1920 St. Louis Browns – consorting with gamblers
3B:	Pete Rose		

SS: Swede Risberg – Black Sox scandal
C: Mickey Owen – The one in 1941 who dropped the third strike by Tommy Heinrich in the '41 World Series. Suspended for life; Reduced to three years for playing in the Mexican League.

OF: Sammy Sosa
OF: Barry Bonds
OF: Mark McGuire
DH: Shoeless Joe Jackson
Owner: Horace Fogel – Publically said umpire(s) favored Giants (Philly)
Coach: Harry Howell – These two conspired to allow Lap Lajoie to get hits by playing their third baseman deep and telling Lajoie to bunt so he could get infield hit and deprive Ty Cobb of a batting title. (St. Louis)

Manager: Jack O'Conner – St. Louis
Coach: Cozy Doland – 1924 New York Giants offered to Heine Sand.
Owner: Phil Horace Gogel – Publically said umpire(s) favored Giants.
Owner: Marge Shott Reds – Slurs against African Americans, Jews, Asians, gays and a liking for Hitler (all of which was true but the grounds should have been terminal ugliness)

George Steinbrenner: – Yanks

REVIEW OF CASE:

Reference Files: Standing to Contest
Will Contest
Burden of Proof
Effect of Subsequent Conservator
Effect of Lack of Subsequent Guardian
Necessity of Evidentiary Hearing

This is a short four page unpublished case which, because of its clarity and importance, should have been published. Nevertheless, the cited cases remain in effect and the references cited both remain applicable despite the lack of precedential value.

Decedent executed a 2004 Will and a 2010 Will. Four (4) days post execution, the beneficiary of the 2010 Will filed in Probate Court to obtain a conservatorship for decedent because of dementia and inability to handle affairs. The Lower Court ruled that this fact basis created a rebuttable presumption of incompetency and, without an evidentiary hearing, set aside the subsequent document.

The Court of Appeals ruled that the personal representative of the antecedent Will had standing to contest the subsequent Will, as he had priority of appointment if the 2010 Will was set aside (nothing was said of whether the beneficiaries of the antecedent Will had priority).

The Court of Appeals' Decision said that the Lower Court got it backwards. The party alleging incompetency had the burden of proof:

- (A) There was no presumption raised because of the four (4) day subsequent conservatorship.
- (B) The lack of guardianship was probative in favor of the Respondent.
- (C) The grounds for conservatorship are not the same as the absence of criteria for a valid Will.
- (D) An evidentiary hearing must be held.

AAM:jv:720836
Attachment

STATE OF MICHIGAN
COURT OF APPEALS

In re Verdries Estate.

W. JOSEPH MILLS,

Petitioner-Appellee,

UNPUBLISHED

July 31, 2012

REGINA SPEARS-EVERETT,

Respondent-Appellant.

No. 306095

Kalamazoo Probate Court

LC No. 2011-0094-DE

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent Regina Spears-Everett appeals as of right from the trial court's order denying probate to the decedent's January 7, 2010 will in favor of the decedent's prior will, executed in October 2004. Respondent argues that the trial court erred in finding, without taking any evidence, that decedent was incompetent at the time the 2010 will was executed. We agree, and reverse.

The decedent executed a will in October 2004 (the 2004 will), leaving her estate to three charities and naming petitioner W. Joseph Mills as her personal representative.¹ On January 7, 2010, decedent executed a new will (the 2010 will) revoking the 2004 will and leaving her estate to respondent Regina Spears-Everett, and naming respondent her personal representative.

Four days after the execution of the 2010 will, respondent signed a petition to commit decedent to a hospital psychiatric ward because decedent had become forgetful regarding her bills, was flushing inappropriate objects down the toilet, and was not cleaning up after her cats. The probate court held a competency hearing on January 14, 2010, and determined that, based on the testimony of respondent and decedent's doctors, decedent was unable to attend to her own basic physical needs because of dementia. The probate court held a further hearing on June 15, 2010 and held that clear and convincing evidence supported the appointment of a conservator

¹ The parties variously refer to the will as being dated on the 18th and the 28th. The date is handwritten on the will, and it is not clear which date is correct

because decedent was not able to manage her financial affairs. The court appointed petitioner to be decedent's conservator.

Decedent passed away on January 23, 2011. Respondent filed an application for informal probate of the 2010 will on January 26, 2011. Petitioner then filed a petition for formal probate of the 2004 will on January 28, 2011. Each party objected to the probate of the will submitted by the other. The probate court held a hearing on April 21, 2011, at which it stated that because it had been necessary to appoint a conservator for decedent around the time that the 2010 will was executed, there was a rebuttable presumption that the 2010 will was invalid. Despite statements suggesting that the 2010 will might still be admitted, the court admitted the 2004 will to probate as a valid unrevoked will. Respondent filed a motion for rehearing, which the probate court denied.

I. STANDING

Respondent first argues that petitioner does not have standing to contest the 2010 will. Whether a party has standing is a question of law, which we review de novo. *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001). "An interested person . . . may commence a formal testacy proceeding . . ." MCL 700.3401(1). "'Interested person' . . . includes, but is not limited to . . . a person that has priority for appointment as personal representative[.]" MCL 700.1105(c). Petitioner is the personal representative nominated in the 2004 will. If he is correct that the 2010 will is invalid, then he has priority for appointment. As such, he has standing to contest the 2010 will. The cases cited by respondent all pre-date Michigan's Estates and Protected Individuals Code,² which contains the statutes cited above and took effect in 2000. Whatever the prior rule, the plain language of the statute instructs that a person nominated as personal representative has standing to contest a will.

II. VALIDITY OF 2010 WILL

Respondent's primary argument is that it was inappropriate for the probate court to assume that decedent was incompetent at the time the 2010 will was executed without hearing any evidence on the matter, essentially placing the burden upon respondent to prove competency. A probate court's factual findings are reviewed for clear error, while issues of statutory interpretation receive review de novo. *In re Townsend Conservatorship*, 293 Mich App 182, 186; 809 NW2d 424 (2011).

MCL 700.3407 states, in pertinent part:

(b) A proponent of a will has the burden of establishing prima facie proof of due execution in all cases and, if the proponent is also a petitioner, prima facie proof of death and venue.

² MCL 700.1101 *et seq.*

(c) A contestant of a will has the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.

(d) A party has the ultimate burden of persuasion as to a matter with respect to which the party has the initial burden of proof.

(2) If a will is opposed by a petition for probate of a later will revoking the former, the court shall first determine whether the later will is entitled to probate. . . .

According to subsection 2, the probate court should first have determined whether the later will, i.e., the 2010 will, was valid before admitting the 2004 will to probate. It is undisputed that the 2010 will was properly executed and that it revoked all prior wills. Petitioner raises arguments regarding both testamentary capacity and undue influence, but petitioner has the burden of proof on these points. The probate court did not take any evidence on either point. Instead, it decided that it would assume that decedent did not have the capacity to make the 2010 will unless respondent could prove otherwise. This procedure does not conform to the statute. Because the burden is on the petitioner to prove that decedent lacked capacity or was subject to undue influence, the probate court could not properly admit the 2004 will without first holding a full evidentiary hearing on the validity of the 2010 will. A probate court may not simply dismiss the most recent will.

Further, the probate court's reliance upon its factual findings during the conservatorship proceedings was misplaced. While those findings are relevant, the standard for appointing a conservator is not the same as the standard for determining if a person has the necessary capacity to make a will:

The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:

(a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, [or] mental deficiency

(b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money. [MCL 700.5401(3)].

By appointing a conservator, the probate court necessarily found that decedent could not manage her property effectively.

MCL 700.2501(2) lays out the requirements for a person to have the capacity to make a will:

An individual has sufficient mental capacity to make a will if all of the following requirements are met:

(a) The individual has the ability to understand that he or she is providing for the disposition of his or her property after death.

(b) The individual has the ability to know the nature and extent of his or her property.

(c) The individual knows the natural objects of his or her bounty.

(d) The individual has the ability to understand in a reasonable manner the general nature and effect of his or her act in signing the will.

These requirements were not altered by passage of EPIC. It is well settled that “[w]eakness of mind and forgetfulness are . . . insufficient of themselves to invalidate a will.” *In re Sprenger’s Estate*, 337 Mich 514, 521; 60 NW2d 436 (1953). By contrast, weakness of mind or forgetfulness may be sufficient to justify the appointment of a conservator where the individual can no longer effectively manage her property and pay her bills.

We also note that at the time of the conservatorship proceedings in 2010, the probate court declined to appoint a guardian for decedent, suggesting that the court did not believe decedent to be entirely incapable of caring for herself. See MCL 700.5306(3) and (4).

Petitioner argues that the probate court granted exactly the relief sought by respondent and that respondent harbored error as an appellate parachute. This is inaccurate. Respondent sought for the probate court to apply the proper burdens of proof and to determine the validity of the 2010 will before admitting the 2004 will. The probate court merely stated that it would still give respondent an opportunity to show that decedent had sufficient capacity to execute the 2010 will.

We reverse the trial court’s order of April 21, 2011, and remand for further proceedings. On remand, petitioner has the burden to establish lack of capacity or undue influence, and the 2004 will shall not be admitted to probate unless the probate court first finds, after a full evidentiary hearing, that the 2010 will is invalid. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck