



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 2007-2013 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*® 2014 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2013 by

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

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DT: July 9, 2014

RE: In re Jeanice L. Spear Revocable Trust
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL STATS:

Looking forward to this year’s All Star Game I did a rundown as to how the starting eight (8) players, in each of the American and National League lineups, fared in their drafts. The results are interesting.

In this article I will deal with the American League.

Out of the starting eight (8) balloted All Stars, except for one player, the starting lineup was either undrafted or first round draft picks.

Catcher	-	Matt Wieters, 2007 first round pick; 5 th pick over all
First Base	-	Miguel Cabrera, undrafted
Second Base	-	Robinson Cano, undrafted
Third Base	-	Josh Donaldson, undrafted
Shortstop	-	Derek Jeter, 1 st round; 6 th pick overall 1992
Outfield	-	Jose Bautista, 20 th round 2000
Outfield	-	Mike Trout, 2009 1 st round pick, 25 th pick over all
Outfield	-	Yoenis Cespedes, undrafted

In the next article we will look at the National League.

REVIEW OF CASE:

Reference Files: Standard on Appeal – Removal of Trustee
Beneficiary Standing
Conflict of Interest Between Two Trusts

This four page unpublished case is redolent with important issues.

A Trust beneficiary wanted a trustee removed and the fees which were taken, presumably without a court order, returned to the Trust.

The lower court did remove the trustee and ordered some of the monies, taken by the trustee as fees, paid back.

A beneficiary who wanted the trustee fully paid and not removed appealed.

The Court of Appeals defined a standard to determine standing. The Court of Appeals first defined what an “aggrieved party” was under Section MCR 7.203(A); then cited a published case of *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286 (2006):

“To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency.”

“Further, the litigate seeking to appeal must have suffered a concrete and particularized injury and such injury must arise from either the trial court’s action or an appellate court judgment.”

“A party who could not benefit from a change in the judgment has no appealable interest.”

In applying this to the lower court case, the Court of Appeals determined that the beneficiary could not benefit by the reversal of the Order Removing the Trustee, and could not benefit from the reversal of the Order Reducing the Trustee’s Fees.

The court went on to make an interesting distinction, which is that the same beneficiary, although he could not object to the removal of the first trustee, did have standing to challenge the appointment of a successor trustee. This is an important distinction because the successor trustee could affect the interest of the beneficiary, for instance, (not mentioned by the court), if that fiduciary had a conflict of interest.

The Court of Appeals went on to say the standard of the appointment of the successor was abuse of discretion; which they appropriately defined under *In re Duane v Baldwin Trust*, 274 Mich App 387 (2007) to be one of a range of principled outcomes.

The court determined that there was no conflict of interest between the two Trusts sharing the same trustee when their competing interests in real estate. Because there was a method of resolution of the conflicting property issues embodied in the Trust. The Court of Appeals ruled, therefore, there was not an abuse of discretion in failing to remove the trustee who was a trustee of Trust with competing real estate interests.

AAM:jv:773383
Attachment

STATE OF MICHIGAN
COURT OF APPEALS

In re JEANICE L. SPEAR REVOCABLE TRUST.

KEITH SPEAR and JOY SIMMONS,

Petitioners-Appellees,

and

JAN MERILLAT,

Appellant,

UNPUBLISHED

May 29, 2014

v

DOYCE HUMPHREY, Former Trustee,

Respondent-Appellee,

and

FRANK C. RILEY, Successor Trustee,

Appellee.

No. 313682

Lenawee Probate Court

LC No. 11-047683-TV

Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

Trust beneficiary Jan Merillat appeals from an order of the probate court removing successor trustee, Doyce Humphrey, awarding Humphrey \$23,000 for his services, and appointing Frank C. Riley as successor trustee of the Jeanice L. Spear Revocable Trust. We affirm.

Settlor Jeanice L. Spear passed away in 2011 and her trust is the Jeanice L. Spear Revocable Trust. Her three adult children, Jan Merillat, Keith Spear, and Joy Simmons, are the beneficiaries under her trust, and her brother, Doyce Humphrey, was named the successor trustee. The trust assets purportedly included undivided one-half interests in several pieces of real property; the other one-half interests were assets in her husband's trust, the Curtis L. Spear

Revocable Trust. He predeceased his wife. The beneficiaries under the Curtis L. Spear Revocable Trust are the same, their three adult children, but Mary Paduan was named the successor trustee.

In December 2011, trust beneficiaries Keith Spears and Joy Simmons (petitioners) filed a petition seeking the formal administration of their parents' trusts. Petitioners claimed that the terms of the trusts created legal conflicts that required the court's intervention. In particular, they alleged, there were disputes regarding: (1) the proceeds from the sale of farmland located in Lenawee County; (2) the proceeds from the sale of real property in Florida; and (3) the fact that one trust beneficiary, Jan Merillat, was given exclusive use of a condominium by trustee Humphrey without the approval of trustee Paduan.

In May 2012, petitioners filed a petition seeking removal of both trustee Humphrey and trustee Paduan. Petitioners argued that they had requested an inventory from each of the trustees, as well as answers to interrogatories. Trustee Paduan did not answer the interrogatories and trustee Humphrey's answers to the interrogatories were incomplete, but indicated that he had written himself three checks from the trust in the amounts of \$29,201.61, \$17,625.61, and \$1,620.30. It also appeared that trustee Humphrey had conveyed by deed the trust's one-half interest in the condominium to trust beneficiary Jan Merillat. Petitioners requested that both trustees be removed, that trustee Humphrey return to the trust all funds he paid himself, and that both trustees be directed to provide a detailed accounting and inventory of trust assets, as well as complete answers to the interrogatories.

The trustees responded to the petition, asserting that trustee Paduan was "not an active trustee" because all of the assets from the Curtis L. Spear Revocable Trust were to be transferred to the Jeanice L. Spear Revocable Trust when Curtis died. Because Jeanice survived Curtis, the directives set forth in her trust should prevail. Further, the only remaining asset was a trust account. The Florida property was sold while settlor Jeanice was alive and the condominium was given to Jan Merillat in accordance with the trust directive. Accordingly, the trustees requested that the petition be denied, that trustee Humphrey be permitted to keep his fees disbursed from the Jeanice L. Spear Revocable Trust, and that the final distributions be made without the appointment of a new successor trustee.

In July 2012, the probate court entered an order (1) removing trustee Paduan and appointing Frank C. Riley as successor trustee of the Curtis L. Spear Trust, and (2) directing trustee Humphrey to provide additional discovery materials, including an itemized statement of his trustee fees and all 2011 bank statements for Jeanice's personal accounts. In September, trust beneficiary Jan Merillat's attorney filed an appearance on her behalf.

In October 2012, the probate court entered an order (1) scheduling an evidentiary hearing for the purpose of receiving testimony from Humphrey regarding his trustee fees, (2) directing both trustees to prepare inventories of the trusts, and (3) directing that appraisals be conducted on the condominium given to Jan Merillat, as well as on a parcel of real estate given to Joy Simmons in 1987.

On November 1, 2012, a two-day evidentiary hearing began. At its conclusion, the probate court awarded trustee Humphrey \$23,000 for his services and directed him to return the money he received in excess of that award to the trust. The court also removed Humphrey as trustee of the Jeanice L. Spear Revocable Trust and appointed Frank C. Riley as successor trustee. This appeal by trust beneficiary Jan Merillat followed.

Trust beneficiary Jan Merillat argues that the probate court abused its discretion when it awarded trustee Humphrey only \$23,000 for his services and removed him as trustee of the Jeanice L. Spear Revocable Trust. We conclude that trust beneficiary Jan Merillat does not have standing to appeal these decisions.

To have appellate standing, the party filing the appeal must be an "aggrieved party" under MCR 7.203(A) and Michigan case law. *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291; 715 NW2d 846 (2006). "To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency." *Id.*, quoting *In re Trankla's Estate*, 321 Mich 478, 482; 32 NW2d 715 (1948). Further, the litigant seeking to appeal "must have suffered a concrete and particularized injury" and such injury must arise from either the trial court's actions or an appellate court judgment. *Federated Ins Co*, 475 Mich at 291-292. In *Ford Motor Co v Jackson (On Rehearing)*, 399 Mich 213, 226; 249 NW2d 29 (1976), our Supreme Court, quoting 4 Am Jur 2d, Appeal and Error, §§ 182 and 184, also explained: "A party who could not benefit from a change in the judgment has no appealable interest" and "one may not appeal from a judgment, order or decree in his favor by which he is not injuriously affected."

In this case, the probate court held that trustee Humphrey was entitled to \$23,000 in fees for his services; thus, the court ordered him to return to the trust over \$25,000 that he had paid himself from the assets of the Jeanice L. Spear Revocable Trust. Clearly, trust beneficiary Jan Merillat did not suffer "a concrete and particularized injury" from this probate court action. To the contrary, she benefited from the probate court's order. Further, trust beneficiary Jan Merillat did not suffer "a concrete and particularized injury" from the probate court's removal of Humphrey as successor trustee of the Jeanice L. Spear Revocable Trust. Because she would not benefit from a change in the judgment regarding either Humphrey's removal as trustee or the amount awarded for his services, trust beneficiary Jan Merillat has no standing to appeal these decisions.

Trust beneficiary Jan Merillat also argues that the probate court abused its discretion when it appointed Frank C. Riley as successor trustee of the Jeanice L. Spear Revocable Trust because Riley is also the successor trustee of the Curtis L. Spear Trust. Merillat has standing to challenge the probate court's decision to appoint Riley because she is a beneficiary under both trusts and contends that the appointment will harm her interests. See *Federated Ins Co*, 475 Mich at 291-292. And we review the decision involving the appointment of a successor trustee for an abuse of discretion, i.e., a decision outside the range of reasonable and principled outcomes. *In re Duane v Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007). But Merillat has not established that the probate court abused its discretion by appointing Riley as successor trustee of the Jeanice L. Spear Revocable Trust.

Trust beneficiary Jan Merillat briefly argues that a conflict of interest exists because Riley is the successor trustee of both of her parents' trusts and "property ownership issues that are directly adverse in the Curtis L. Spear Trust and Jeanice L. Spear Revocable Trust" must be resolved. These alleged issues, however, were not specifically set forth in Merillat's brief on appeal. But according to successor trustee Riley's brief on appeal, "[u]nder the Curtis L. Spear Trust[,] adjustments in the distributions must be made to equalize the distributions based on the distributions from the Jeanice L. Spear Trust." In appointing Riley as successor trustee of the Jeanice L. Spear Revocable Trust, the probate court held that Riley was familiar with all of the property in both trusts and with the issues that needed to be resolved; therefore, the proper distribution of trust assets could be timely accomplished. Trust beneficiary Jan Merillat has failed to establish that the probate court abused its discretion by appointing Riley as successor trustee of the Jeanice L. Spear Revocable Trust.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Donald S. Owens

/s/ Michael J. Kelly
