



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 2007-2014 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*® 2015 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2014 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).

For those interested in viewing previous Probate Law Case Summaries, go online to: <http://www.kempklein.com/probate-summaries.php>

DT: September 12, 2014

RE: **Kayla Covington, Plaintiff-Appellee v Daniel M. Knoblock, Defendant-Appellant**
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL STATS:

None today

REVIEW OF CASE:

Reference Files: Breach of Fiduciary Responsibility
Self-Dealing
Fees
Denial of Fees

In this case there were two beneficiaries (distributees of a Trust) one of whom was trustee. Trustee did about everything wrong that a trustee could do. The Trust ordered him to sell the sole asset which was a condominium. In lieu of selling it, he transferred it to himself for a dollar (\$1.00) took out a line of credit on it, and put the money into his own bank account. He then claimed fees for doing this and asked for attorney fees for defending himself in the Trust.

The Lower Court found, and the Court of Appeals confirmed, a breach of duty. The Court of Appeals confirmed the Lower Court's Judgment against the trustee in and the amount of the value of the property.

The Court of Appeals correctly ruled that pursuant to MCL 700.7901(1)(2)(h) that you could reduce or deny compensation to a trustee for breach of Trust. The Lower Court had denied all fees. The Court of Appeals affirmed.

The Court of Appeals correctly ruled that since the Trust was not being defended or benefited that the fees of the trustee could not be charged against the Trust. Of course, it is the law of Michigan that, if the trustee had been totally exonerated, he would have been allowed to be paid fees from the Trust, and perhaps even assess them under *In re Hammond*.

AAM:jv:778444

Attachment

STATE OF MICHIGAN
COURT OF APPEALS

KAYLA COVINGTON,

Plaintiff-Appellee,

v

DANIEL M. KNOBLOCK,

Defendant-Appellant.

UNPUBLISHED

July 22, 2014

No. 316109

Macomb Probate Court

LC No. 2012-205220-CZ

Before: BECKERING, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Defendant, Daniel Knoblock, appeals as of right the probate court's order that found he had breached his fiduciary duties as trustee of a family trust, denied him compensation for his administration of the trust and the attorney fees he incurred, and granted judgment in favor of plaintiff, Kayla Covington. We affirm.

This case arises from defendant's administration of the Knoblock Family Living Trust (Trust). The Trust was established by Norbert and Janet Knoblock for the benefit of their children, being plaintiff, defendant, and Norbert's son Brian Knoblock. The primary asset of the Trust was a condominium in Warren. Under the Trust, defendant was appointed as trustee after the death of Janet Knoblock, the surviving grantor, in 2009. Brian relinquished all of his rights under the Trust, making plaintiff and defendant the Trust's sole beneficiaries with the Trust's assets to be equally distributed between them. Plaintiff, defendant's sister, filed this action in the probate court alleging that defendant breached his fiduciary duties by not placing the condominium on the market within a reasonable time after Janet Knoblock's death, transferring it to himself by quitclaim deed for \$0, and distributing nothing to her as the only other beneficiary of the Trust.

Following a bench trial, the probate court found that defendant violated his duties under the Trust by failing to sell the condominium in a timely manner. It also found that defendant violated his fiduciary duties by transferring the property to himself for \$0, taking out a personal line of credit on the property and depositing the funds into his own personal bank account, and by depositing money that he obtained by leasing the condominium into his personal bank account. The probate court entered judgment in favor of plaintiff against defendant in the amount of \$32,185.30 for plaintiff's share of the value of the condominium. It also awarded

plaintiff costs and attorney fees in the amount of \$12,251.51, denied defendant compensation for his administration of the Trust, and denied defendant attorney fees incurred in this action.

Defendant argues that the probate court erred in finding that he violated his fiduciary duty under the Trust in not selling the condominium promptly. We disagree. "The standard of review on appeal in cases where a probate court sits without a jury is whether the court's findings are clearly erroneous." *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2d 772 (2003). "A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id.* "[T]his Court reviews de novo the language used in wills and trusts as a question of law." *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005), citing *In re Bem Estate*, 247 Mich App 427, 433; 637 NW2d 506 (2001).

Under MCL 700.1302(b), a probate court has "exclusive legal and equitable jurisdiction" over proceedings concerning the administration and distribution of trust assets and "the declaration of rights that involve a trust, trustee, or trust beneficiary[.]" This jurisdiction includes the determination of questions arising in the administration of a trust, including the construction of a trust. MCL 700.1302(b)(v). Here, the probate court acted within its jurisdiction and, based upon the facts set forth at trial, neither erred in its interpretation of the Trust, nor clearly erred in determining that defendant breached his fiduciary duties. In the second amendment to the Trust, Article 11, Section 1 provides that "[a]fter the death of the survivor" of the original trustors, "our Trustee shall sell the real property [meaning the condominium] then owned by us and used as our principal residence." The Trust further provides that the trustee is then to divide all Trust property, which would include the proceeds from the sale of the condominium, equally between plaintiff and defendant.¹ Pursuant to the plain language of the Trust, defendant did not have the authority to transfer the condominium to himself for no consideration, nor did he have the authority to lease the condominium. Rather, Article 11, Section 1 required defendant to sell the condominium. The terms of the Trust clearly direct that the condominium was to be sold after the survivor trustor's death, not whenever the trustee decided to sell it. In addition, MCL 700.7801 imposes upon a trustee the duty to "administer the trust in good faith, *expeditiously*, in accordance with its terms and purposes, for the benefit of the trust beneficiaries . . ." (Emphasis added). Thus, defendant breached his duty to comply with the terms of the Trust when he failed to sell the condominium in the manner set forth in Article 11.

¹ The Trust initially provided that 1/3 of the proceeds of the sale of the condominium were to go to Brian; however, he disclaimed his interest in this property.

Further, the probate court did not clearly err in finding that defendant compounded his breach by transferring the property to himself by quitclaim deed for \$0, mortgaging the property with a line of credit, withdrawing \$44,250 against the property and depositing those funds into his personal bank account, and by depositing rental income from the condominium into his personal bank account. See MCL 700.7811(2) (“A trustee shall keep trust property separate from the trustee’s own property.”); MCL 700.7802(1) (explaining that a trustee is to avoid conflicts of interest); *In re Harold S. Ansell Family Trust*, 224 Mich App 745, 748-749; 569 NW2d 914 (1997) (explaining that a trustee has a duty to avoid conflicts of interest and self-dealing). Although certain general terms of the Trust gave defendant the authority to exercise some measure of control over the condominium, the Trust did not grant defendant the authority to take the condominium for himself. In addition, those general provisions do not prevail over the specific provisions found in Article 11, Section 1 that require defendant to sell the condominium at the death of the last surviving trustor. See *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 719; 706 NW2d 426 (2005) (providing that where a contract contains specific and general terms, the specific terms will control over the general terms). The probate court did not clearly err in finding that defendant breached his fiduciary duties. See *In re Bennett Estate*, 255 Mich App at 549.

Defendant next argues that the probate court erred in denying him \$5,000 in annual compensation for administering the Trust as provided in the Trust. We disagree. Initially, defendant has, despite his efforts, failed to identify any portion of the Trust setting forth an annual fee for the trustee.² The only portion of the Trust that provides for the payment of a fee to the trustee is Article 13, Section 4, which provides: “Our Trustee shall be entitled to reasonable compensation set at the sum of \$5,000.00 dollars payable without the need for a court order.” The probate court denied compensation to defendant pursuant to MCL 700.7901(1) and (2)(h) because defendant had breached his fiduciary duties. MCL 700.7901(1) and (2)(h) provide that a “violation by a trustee of a duty that the trustee owes to a trust beneficiary is a breach of trust” and “[t]o remedy a breach of trust that has occurred or may occur” a court may “[r]educe or deny compensation to the trustee.” As noted above, defendant breached several of his fiduciary duties. As such, we find that the probate court did not err in its decision to deny defendant compensation for his performance as trustee. See MCL 700.7901(2)(h).

Finally, defendant argues that, under Article 14, Section 1 of the Trust, he is entitled to be reimbursed for the attorney fees he incurred in defending this action. We disagree. Article 14, Section 1, Subsections (p) and (q) give the trustee “the power to prosecute or defend actions, suits, claims or proceedings for the protection or benefit of the trust and our Trustee in the performance of our Trustee’s duties” and “to employ agents, including attorneys[.]” The trial court’s findings indicate that defendant was not defending this action for the protection or benefit of the trust or himself as trustee in the performance of his duties. Rather, defendant was sued

² Defendant cites Article 9, Section 1 in support of his argument that he was entitled to \$5,000 per year as trustee. This section of the Trust provides for an annual withdrawal of \$5,000 from Trust assets, but it expressly applies only to a surviving trustor’s right to withdraw principal, not to a trustee.

because he had been serving his *own* purposes, and in doing so he breached his fiduciary duties owed to the trust. Thus, the probate court was entitled to “[r]educe or deny compensation to the trustee.” MCL 700.7901(2)(h). The probate court did not err when it refused to allow defendant to be reimbursed for the attorney fees that he incurred in defending this action.

Affirmed.

/s/ Jane M. Beckering
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher