



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).

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DT: February 5, 2015

RE: **In Re Patulski Estate**
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL STATS:

VAN LINGLE MUNGO

This name was so sonorous that jazz pianist David Frishberg composed and sang a song in 1969 made up of the names of ballplayers from the forties. Each verse ended with the name Van Lingle Mungo.

Not unusual for this composer to do as he was an avid baseball fan and a fellow member of SABR.

The lyrics are his, but let us compose an All-Star team of those named in the song.

Right Handed Pitcher - naturally Van Lingle Mungo by modern standards, his records were pretty good. 120 wins and 115 losses with a 3.47 era.

Left Handed Pitcher – no hit Johnny Vander Meer – the Dutch Master threw two consecutive no hitters.

Catcher – Ernie Lombardi

First Base – there are many named, but I choose Johnny Mize

Second Base – Eddie Basinski

Shortstop – Lou Boudreau

Third Base – Heeney Majeski

Outfield – Barney McCoskey

Outfield – Augie Bergamo

Outfield – Phil Caveretta

Okay baseball fans, who did I have to squeeze in? He played a majority of games at a position other than I listed him?

REVIEW OF CASE:

Reference Files: Stay of Appeal
 Probate Benchbook as Reference
 Appointment of Fiduciary

The most important part of this case to the clients is undue influence and repayment to the estate of money wrongfully taken were not issues on appeal. The issues on appeal related to whether a person not having priority should be appointed as personal representative. The Court of Appeals correctly cites *In re Abramovitz's Estate*, 278 Mich 275 to the effect that if the allowance of the claim to exercise the secondary right would result in the defeating of the main purpose to be obtained, it must be refused. *Abramovitz* was citing a South Carolina case. Part of the *Abramovitz* case goes on to talk about lack of confidence in honesty, mutual recriminations, accusations of attempting to obtain material advantage, unwillingness to agree to impartial person to administer property. The annotator stresses to the reader that there should be facts to support these claims, not merely allegations. There is other case law to the effect that the enmity is not sufficient grounds either for the lack of appointment or removal.

It is also interesting that instead of citing law on stay, the Court of Appeals cites the Probate Benchbook, which is an ICLE publication.

This author has written in the Probate Journal on stays of proceedings and what is and what is not stayed and the reader is referred to Michigan Probate and Estate Planning Journal Volume 27 Winter 2007 Number 1.

AAM:kjd
Attachment
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STATE OF MICHIGAN
COURT OF APPEALS

In re PATULSKI Estate.

JOLENE THOMPSON, Personal Representative
for the Estate of MIRIAM PATULSKI,

UNPUBLISHED
December 11, 2014

Appellee,

v

BRUCE A. PATULSKI,

Nos. 317275 and 317449
Manistee Probate Court
LC Nos. 12-000052-DE
12-000152-CZ

Appellant.

Before: RONAYNE KRAUSE, P.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Appellant appeals as of right from the probate court's order revoking a June 1, 2005 will and invalidating a March 4, 2009 codicil, admitting a June 29, 2005 will to probate, and denying appellant's request to adjourn a jury trial. We affirm.

I. BACKGROUND

This case involves the estate of Miriam Patulski. The present dispute arose when a will dated June 1, 2005, naming appellee, the decedent's daughter, as personal representative, and a codicil dated March 4, 2009, naming appellant, the decedent's son, as personal representative were both offered for probate. Following a petition to appoint a personal representative, the probate court chose West Michigan Bank & Trust to serve as third-party personal representative of the estate pending proceedings to determine the validity of the will and codicil.

Appellee and James Patulski, the parties' brother, filed a complaint against appellant, alleging that he unduly influenced the decedent to deed him several parcels of real property and to sign the March 4, 2009 codicil, illegally withdrew \$144,961.08 from the decedent's credit union accounts pursuant to his authority as the decedent's power of attorney, and illegally withdrew \$16,272.80 from an account the decedent held with Edward D. Jones. Believing continued third-party representation would exhaust the assets of the estate, appellee and James Patulski petitioned the court to remove West Michigan Bank & Trust as personal representative and appoint appellee as successor personal representative. The court agreed.

In July 2013, roughly two weeks before trial, appellant requested an adjournment and sought admittance to probate of a will, dated June 29, 2005, that named appellant as the estate's personal representative. After a hearing, the court issued an order revoking the June 1, 2005 will and invalidating the March 4, 2009 codicil, and admitting to probate the June 29, 2005 will. Although the request to adjourn the jury trial was denied, the court later rescheduled trial for late September 2013. Pursuant to the jury's verdict following trial, the probate court issued a judgment voiding four deeds previously assigned to appellant, ordering appellant to reimburse the estate the sum of \$434,883.24 for illegally misappropriating and converting estate funds, ordering appellant to return several items of personal property, and awarding attorney's fees to the estate in the sum of \$21,036.77.

H. DISCUSSION

Appellant first argues that the probate court erred in not appointing him personal representative of the estate when it admitted the June 29, 2005 will to probate. We disagree.

We review the court's decision regarding the appointment of a personal representative for an abuse of discretion. *In re Kramek Estate*, 268 Mich App 565, 576; 710 NW2d 753 (2005). A trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Appellant contends that when the probate court admitted the June 29, 2005 will, it was obligated to appoint him as the estate's personal representative unless it specifically articulated reasons for not doing so predicated on the factors listed in MCL 700.3611. However, MCL 700.3611 only governs removal of a personal representative who is already appointed.

It is MCL 700.3612 that governs the scenario in which the court appoints a personal representative and later discovers a valid will naming an alternative personal representative. MCL 700.3612 states the following:

Except as otherwise ordered in formal proceedings, the probate of a will after the appointment of a personal representative in intestacy or under a will that is superseded by formal probate of another will . . . *does not terminate the personal representative's appointment*, although the personal representative's powers may be reduced as provided in section 3401.^[1] *Termination occurs upon*

¹ MCL 700.3401(4) provides as follows:

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, after receipt of notice of the commencement of a formal probate proceeding, a previously appointed personal representative shall refrain from exercising the power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding may also request an order restraining the acting personal

appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. . . . [Emphasis added.]

Appellant correctly notes that, as the named personal representative in the June 29, 2005 will, he has statutory priority to become personal representative. MCL 700.3203(1)(a) (“a person nominated by a power conferred in a will” has first priority for appointment as personal representative). Although “[a]ll presumptions are in favor of the person to whom the statute gives preference,” *In re Abramovitz’s Estate*, 278 Mich 271, 274; 270 NW 294 (1936), the right of a party with statutory preference to be appointed personal representative is secondary to “[t]he right of those interested to have collection and distribution If the allowance of the claim to exercise this secondary right would result in defeating the main purpose to be attained, it must be refused,” *Id.* at 275, quoting *Ex parte Small*, 69 SC 43; 48 SE 40 (1904).

In this case, appellant’s request to remove appellee as personal representative and be appointed in her place came on the eve of a trial set to determine whether appellant unduly influenced the decedent to transfer several parcels of real property into his name and illegally withdrew funds from the decedent’s accounts. Because the court had significant reason to question appellant’s honesty, trustworthiness, and ability to manage and distribute the estate in a manner most beneficial to the interested parties, the court was within its authority to deny his request for appointment, even upon admitting to probate a will naming him as personal representative. Accordingly, the lower court did not abuse its discretion.²

Appellant next argues that with this appeal pending, the probate court was required to stay all proceedings associated with the estate, including the jury trial, and that failure to do so rendered the verdict and resulting judgment void. Again, we disagree.

representative from exercising that office’s powers and may request the appointment of a special personal representative. In the absence of a request under this subsection or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

² Moreover,

[w]hen the heirs are in dispute over the property, profess lack of confidence in the honesty of each other, engage in mutual recriminations and accusations of obtaining or attempting material advantage from the estate and are unwilling to agree that an impartial person shall administer the property, the court is justified in holding the nominee of any of them “unsuitable” because his appointment could hardly fail to provoke suspicion, cause dissension and incite probable litigation to the injury of the estate. . . . [*In re Abramovitz’s Estate*, 278 Mich at 275-276.]

Affirmed.

/s/ Amy Ronayne Krause
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens