



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://kkue.com/resources/probate-law-case-summaries/>.

He is the published author of “Article XII: A Political Thriller.”

DT: September 28, 2016

RE: **In re Estate of John H. Kuflewski**
STATE OF MICHIGAN COURT OF APPEALS

“Alan, you cannot write about baseball all your life”

- Mrs. Pollinger
- 12th Grade English Comp
- Mumford High - 1959

BASEBALL STATS:

YEAR END WONDERS

Even among today’s world class athletes, a schedule that begins in mid-February with spring training and ends in October can be very taxing. Towards the end of the season players tire and

suffer injuries. One of the true marks of a great baseball player is the second half of the season and how they perform.

A few great second half players stand out.

The first is Joey Votto. Since the All Star break, which is considered mid-season, he has batted .410, had a slugging average of .640 and 11 homeruns. More impressive is Brian Dozier's 28 homers since the All Star break. Another great performer is Colorado's DJ LeMahieu. He has hit .373 with a slugging average of .519.

For homeruns alone, one need look no farther than the Yankees Gary Sanchez. He has maintained a post All Star average of .341 and hit 19 dingers. Our own Miggy isn't bad, hitting .329 and having 16 homeruns.

Caveat: MCR 2.119, MCR 7.212 and 7.215 take effect May 1, 2016 on propriety of citing unpublished cases

REVIEW OF CASE:

Referenced Files: Joint Account - Survivorship

This decision closely mirrors the *Estate of Stanley Morris v Mary Morris* decision, which I briefed on the 8th day of September, 2016.

The Court of Appeals in deciding whether an account was joint with rights of survivorship said the signature card alone did not provide evidence that the decedent intended the account to have rights of survivorship. Suppose the signature card stated that there was to be a right of survivorship? We don't know in this case.

Once again, I think this type of decision flies in face of the *Cullmann* decision. And that is "in the absence of fraud or undue influence, is prima facie evidence of the depositor's intention to vest title to the deposit in a surviving joint owner."

These recent rulings just beg for extrinsic evidence and as I say seem to "gut" the inference of survivorship.

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STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of JOHN H. KUFLEWSKI.

ROBERTA WATSON, Personal Representative of
the ESTATE OF JOHN H. KUFLEWSKI,

UNPUBLISHED
September 13, 2016

Appellee,

v

PATRICK GREENHOE and CLAUDETTE
GREENHOE,

No. 327848
Bay Probate Court
LC No. 14-049781-DE

Appellants.

Before: TALBOT, C.J., and O'CONNELL and OWENS, JJ.

PER CURIAM.

John Kuflewski died testate on September 6, 2014. His will devised a significant portion of the residue of the estate to appellee, Roberta Watson, and devised a smaller share to appellants, Patrick and Claudette Greenhoe. In this suit to recover estate property, the Greenhoses appeal as of right the trial court's order to disgorge a total of \$47,931 that the Greenhoses withdrew from Kuflewski's bank accounts shortly after his death. We affirm.

I. FACTUAL BACKGROUND

Kuflewski kept savings and checking accounts. Shortly before Kuflewski's death, while he was hospitalized and unable to communicate, Claudette deposited an inheritance check that Kuflewski received in his savings account. The Greenhoses and Watson were listed as signers on Kuflewski's checking account, and Watson and Claudette were listed as signers on Kuflewski's savings account. Shortly after Kuflewski died, Patrick withdrew \$22,050 from Kuflewski's checking account, and Claudette withdrew \$25,881.71 from Kuflewski's savings account. The Greenhoses asserted that they were entitled to half the funds in the accounts because the accounts were joint accounts with rights of survivorship. Watson asserted that the accounts had additional signatories as a matter of convenience, allowing the parties to assist Kuflewski with his financial affairs, but that the accounts did not have rights of survivorship.

After an evidentiary hearing, the probate court also concluded that the bank accounts were not joint accounts with rights of survivorship because there was no evidence that Kuflewski intended the accounts to pass to the authorized users on his death. Alternatively, the court determined that even if the accounts had survivorship rights, the funds were property of the estate because there was clear and persuasive proof that Kuflewski did not intend them to vest in the other signatories on his death. The court also determined that the inheritance check was part of Kuflewski's estate because there was no evidence that he had directed Claudette to deposit it into his savings account. The court ordered the Greenhoses to return the withdrawn funds to the estate.

II. STANDARDS OF REVIEW

We review for clear error the probate court's findings of fact. *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994). A finding is clearly erroneous when, "although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed." *Id.*

III. ANALYSIS

The Greenhoses contend that the trial court clearly erred when it found that (1) Kuflewski's banking accounts were not joint accounts with rights of survivorship, and (2) the inheritance check was not properly deposited into his savings account. We disagree.

"Michigan's joint ownership statute regarding bank accounts provides that a deposit made in a jointly held bank account with the right of survivorship, in the absence of fraud or undue influence, is prima facie evidence of the depositor's intention to vest title to the deposit in a surviving joint owner." *In re Cullmann Estate*, 169 Mich App 778, 786; 426 NW2d 811 (1988). Clear and persuasive proof to the contrary may rebut this presumption. *Id.* However, not every joint account carries a right of survivorship. *Leib v Genesee Merchants Bank & Trust Co*, 371 Mich 89, 95; 123 NW2d 140 (1963). A signature card establishing that an account is joint does not establish the intent that the account is payable to the survivor. *Id.*

In *Lieb*, the decedent and his nephew opened a checking account. *Id.* at 91. Both the decedent and nephew signed signature cards. *Id.* The purpose of the account was to allow the nephew to pay the decedent's bills. *Id.* at 94. The signature card alone did not provide evidence that the decedent intended the account to have rights of survivorship. *Id.*

This case is closely analogous to *Lieb*. In this case, there is no evidence in the record that Kuflewski intended the accounts to have a right of survivorship. While the signature cards indicate that the account was "joint," this alone does not establish survivorship rights. See *Lieb*, 371 Mich at 94. The evidence did establish, however, that Kuflewski had allowed additional signers on his account to assist him with paying bills. We are not definitely and firmly convinced that the probate court made a mistake when it found that the accounts did not have rights of survivorship.

Our conclusion on this issue renders discussion of the Greenhoses' second issue moot. See *BP 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). Because the trial court properly determined that Kuflewski's savings account was part of his estate, the

inheritance check is part of Kuflewski's estate regardless of whether Claudette properly deposited that check into the savings account.

We affirm.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Donald S. Owens