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: October 18, 2016

RE: **In re Lamarche Estate**
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:

MIGUEL CABRERA IS A CERTAINTY FOR THE HALL OF FAME

I only saw Hank Greenberg play once and I was only 3 years old. By the time I could really appreciate George Kell he has been traded to Boston. Eddie Matthews came to Detroit towards the end of his career so I really did not see a lot of him.

The only player in the Hall of Fame who was a Tiger, who I saw a great deal of, was Al Kaline. Because of this, in making my case for Miguel Cabrera, I will compare my memories of Al Kaline to Miguel Cabrera and analyze their statistics.

Al Kaline's real name was Albert William Kaline. Miguel Cabrera's real name is Jose Miguel Cabrera Torres. Bet you didn't know that.

Al Kaline spent the majority of his baseball life in right field although he played some in left and some in center, and even played some third base. Miguel Cabrera has played first and third base throughout most of his career.

Kaline was one of those wonders who came right out of high school and went straight to professional baseball and never went to the minors. He also stayed with one team throughout his entire career. Cabrera spent 3 years in the minors before coming up to Florida at age 20. Kaline came to the major leagues at age 18 and at age 20 won the American League Batting Championship, batting .340. Cabrera has won the American League Batting Championship 4 times at age 28, 29, 30 and 32 batting .344, .330, .348, and .338 in those respective years. Kaline has never won an MVP although he finished 23rd, 2nd, 3rd, 10th, 20th, 6th, 9th, 6th, 2nd, 14th, 16th, 7th, 5th, and 24th. Cabrera has won it twice.

Kaline never won a Triple Crown. Cabrera did win a Triple Crown in the year 2012 hitting 44 home runs, driving in 139 runs and batting .330. Cabrera has won the home run title twice and the RBI title twice. Kaline succeeded in neither. Kaline had over 3,000 hits. Cabrera has 2519 hits and would catch Kaline if he played for 3 more years. He is now 32 years of age and Kaline played until and including age 39.

Both have had major injuries in their careers and overcame them well.

Many fans thought that Miguel Cabrera was done for as a baseball player because of an incident in spring training when He had an altercation with police and was dead drunk. However, he overcame that and to my knowledge there has never been another incident.

Kaline was a master with the glove with a lifetime fielding average of .980. He made a phenomenal number of sensational catches. Cabrera is no fielding slouch. If I had guessed, I would of said that Kaline was better but he wasn't in terms of raw statistics. Cabrera's fielding average was .987 to Kaline's .982.

Each had great players following them in the batting order. Kaline for a good portion of his career had Rocky Colavito and Norm Cash. Cabrera had Victor Martinez.

Their lifetime batting averages were similar and the jury is still out in allowing how much lower Cabrera will go determined on the basis of the more longevity the lower the batting average gets during one's career. Kaline finished at .297 and Miggy has a phenomenal .321. Homeruns are comparable but Cabrera leads here too. He currently has 446 and Kaline retired with 399. Cabrera will probably get more than 500 during his career. Kaline's highest OPS was .940 and he finished with an average of .855. Cabrera has broken 1000 three times and his average is .961.

This fan sees nothing but Hall of Fame in Cabrera's future. How do you feel?

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: Medicaid Repayment
Notice - Necessary

Appellant received Medicaid benefits starting in 2010. Formal notice of the right to be reimbursed was served in July of 2012. Appellant admitted the notice was proper as of July 2012, but sought to retain benefits received before actual notice of received. The Lower Court, a probate court in Delta County, granted summary disposition claiming that the notice served in 2012 governed 2010 and placed reliance on the *Keyes* case, 310 Mich App at 269.

The Appellate Court unanimously agreed and denied the argument presented in under the *Clark* case as to the lack of validity of notice in that case. The Court seemed to say, not even reluctantly, that the *Keyes* case covered and once notice was properly given, the Department of Health and Human Services could reach back and recoup the Medicaid. The notice given was deemed to be sufficient notice. The Court of Appeals in citing *Keyes* said that there was an opportunity to contest when notice was received.

Regardless of what the *Keyes* case says, and it does say what the instant Court says it says, I think that both it and the *Keyes* case should not be the law. Not everyone is a lawyer and when they get notice that there is going to be recoupment after death, the person in question has an opportunity to either accept or reject the receipt of Medicaid benefits. Allowing someone to obtain those benefits without complying with the statutory notice to me is a deprivation of property without due process of law. How do you feel?

AAM:mpg
Attachment
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STATE OF MICHIGAN

COURT OF APPEALS

In re LAMARCHE ESTATE.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Appellee,

v

MARGARET MILKEWICZ, Personal Representative of the Estate of ANGELINE LAMARCHE,

Appellant.

UNPUBLISHED
September 22, 2016

No. 327428
Delta Probate Court
LC No. 14-021537-CZ

Before: JANSEN, P.J., and K. F. KELLY and O'BRIEN, JJ.

PER CURIAM.

Margaret Milkewicz, as Personal Representative of the Estate of Angeline LaMarche (the estate), appeals as of right the probate court's May 4, 2015 order granting summary disposition to plaintiff, the Department of Health and Human Services (DHHS), pursuant to MCR 2.116(C)(4) and (C)(10).

Prior to her death in January 2014, Angeline LaMarche received $107,310.76 in Medicaid benefits. After she passed away, DHHS pursued recovery in that amount against the estate. The estate objected, asserting that a portion, but not all, of that amount was unrecoverable based on a lack of notice. Specifically, LaMarche first received notice of the potential for estate recovery in July 2012, approximately one year after she applied for and first received Medicaid benefits. In light of the estate's objection, DHHS filed this lawsuit and eventually moved for summary disposition pursuant to MCR 2.116(C)(4) and (C)(10), arguing, in part, that LaMarche received adequate notice. Specifically, DHHS argued that because LaMarche received notice of the potential for estate recovery in July 2012 and again in August 2013, the entire amount of Medicaid benefits that were received—including those that were received before July 2012—were recoverable. The estate readily admitted that the amount of benefits received after July 2012, $67,869.54, was recoverable. It argued, however, that the remaining amount, $39,441.22, was not recoverable based on a lack of notice. Specifically, the estate argued that allowing DHHS to recover for Medicaid benefits that were received prior to the July 2012 notice violated

constitutional and statutory protections. The probate court, relying solely on this Court's opinion in *In re Keyes Estate*, 310 Mich App 266; 871 NW2d 388 (2015), lv den 498 Mich 968 (2016), granted summary disposition in DHHS's favor. Specifically, the probate court concluded that *Keyes* was "dispositive of all issues" raised in this case.

On appeal, the estate again argues that allowing DHHS to recover for Medicaid benefits that were received prior to the July 2012 notice violated constitutional and statutory protections. Specifically, the estate argues that allowing DHHS to recover for Medicaid benefits in circumstances such as this violate an individual's constitutional right to due process and MCL 400.112(G)(7). We disagree.

As the probate court correctly concluded, *Keyes* is dispositive of the issues raised in this case. In that case, Esther Keyes received Medicaid benefits from April 2010 until her death in January 2013. *Keyes*, 310 Mich App at 268-269. It was undisputed, however, that Keyes was not provided notice of the potential for estate recovery until May 2012, more than two years after Medicaid benefits were first received. *Id*. at 269. The Department subsequently sought recovery in the amount of benefits received, "about $110,000," during that entire time period. *Id*. The estate objected, arguing that a portion of that amount was unrecoverable based on inadequate notice. *Id*. Specifically, the estate argued that allowing DHHS to recover for Medicaid benefits that were received prior to the May 2012 notice violated constitutional and statutory protections. *Id*. The probate court agreed with the estate, but this Court reversed and remanded. *Id*. at 275. This Court expressly "conclude[d] that the trial court erred because the Department sufficiently notified Esther that her estate could be subject to estate recovery." *Id*. at 273. This Court also expressly rejected the estate's constitutional arguments: "[T]he estate was personally apprised of the Department's action seeking estate recovery, and it had the opportunity to contest the possible deprivation of its property in the probate court. It received both notice and a hearing, which is what due process requires." *Id*. at 275. Thus, as the probate court correctly concluded, *Keyes* is dispositive of the issues raised in this case, and we are bound by *Keyes*. Indeed, the estate expressly admits that "the *Keyes* decision is dispositive of the issues of this case" in its brief on appeal.[1] Accordingly, we affirm the probate court's May 4, 2015 order granting summary disposition in DHHS's favor.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Colleen A. O'Brien

[1] While we appreciate the estate's argument that notice is required at the time of original enrollment based on *In re Estate of Clark*, unpublished opinion per curiam of the Court of Appeals, issued May 28, 2015 (Docket No. 320720), p 9 n 7 ("What is needed at the time of enrollment is a notice that [DHHS] might attempt to recover Medicaid expenses from the recipient's estate—which [DHHS] must provide with all enrollment applications, pursuant to MCL 400.112g(7)."), we ultimately find it unpersuasive. At a fundamental level, *Keyes*, not *Clark*, is binding on this Court. MCR 7.215(J)(1).