



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 2007-2016 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*® 2017 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2016 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: April 25, 2017

RE: **In re Estate of Donnelly**
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:

Obituary

An era has just come to an end. Who's Who in baseball is no longer published! Each spring since I got my first allowance in 1948 I would go to Kay's Confectionery to buy my favorite statistical reference; Who's Who in Baseball. Kay's was on the west side of Livernois Avenue. I wasn't allowed to cross until I was 12 but I did anyway and I am still alive. The 48' edition had John Mize and Ralph Kiner on the cover. It cost 30 cents and it had all active players who played in 1947. The Tigers had finished second in 47' and I wanted to see how they would stack up in 48'. Kell had hit .320 and was fifth highest in the American League.

Every year about the same time I made the same quest though the venue changed when I got to U of M.

As a sports collection I amassed every edition and put them in plastic cases. I would buy two starting about 1990; one to keep in mint condition and one to read on the throne. Because of its diminutive stature it also fit neatly into my prayer book and I would read it at temple services.

This year nada. Not at a book store (few left) and not at any newsstands on either Lexington or Third.

Finally, I searched to find that many like me were making inquiry online. I found that Harris Publication has gone out of business.

Who's Who now joins Who's Who in Major League Baseball, Baseball Red Box, Spaulding Baseball Guide and other imitations.

It's all on line now, but it is rough trying to work a laptop on the throne.

Again, memories are the only refuge from which man cannot be driven.

Ah-Lahv hashalom.

**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: Standing – Creditor
Standard on Appeal
Statutory Interpretation and Standing

This short opinion is relevant if for no other reason that it shows that someone can get run over by a probate court.

Appellant sued the estate in federal court and could not get service of process without a formal opening of an estate. The probate court said that the Appellant could not prove he was a creditor and would not review the complaint Appellant had filed in the United States District Court, and refused to look at it. The probate court said that you had to be a “valid creditor”.

The Court of Appeals reviewed *de novo* and not as on the record, because the issue concerned standing and statutory interpretation. The Court of Appeals reversed and remanded saying that the Appellant had the right to show that they were a creditor or otherwise entitled to formal testacy proceedings. The Court of Appeals cited a statute that said that you were an interested person if you had a right that needed protecting.

Had I been on the Court of Appeals I would have chastised the lower court. If you have to prove that you are a valid creditor would you also not have to prove that you are a valid heir, a valid devisee, a valid child, a valid spouse, a valid beneficiary to file a petition? All you have to do is allege that you are that person as a segue to get into court. You do not have to prove your claim in advance. I think the probate judge abused his or her discretion in refusing to look at the federal pleadings. You cannot assert your claim until you have someone against whom to assert your claim. Therefore, you would be adversely affected as described in the law cited by the Court of Appeals.

If the probate court in Kalkaska County is correct, you can have a valid lawsuit against an estate that can never be litigated because you cannot make service of process.

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STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of DONNELLY.

JAMIE L. PETERSON,

Appellant,

UNPUBLISHED
April 13, 2017

v

RUTHANN DONNELLY,

Appellee.

No. 331420
Kalkaska Probate Court
LC No. 15-009656-DA

Before: RONAYANE KRAUSE, P.J., and K. F. KELLY and GADOLA, JJ.

PER CURIAM.

Appellant appeals from an order of the probate court denying a petition for formal proceedings. Appellant argues that the probate court erred when it concluded he did not have standing to file a petition under the Estates and Protected Individuals Code, MCL 700.1101 *et seq.* We vacate the trial court’s ruling and remand for further proceedings.

This action was initiated before the probate court by a petition for formal proceedings with regard to the estate of Brian Donnelly. The petition identifies the petitioner as “Gretchen Helfrich as attorney for Jamie Lee Peterson.” The petition further identifies the petitioner as a “creditor” of the estate and states that “Litigation against the Estate is pending.” Appellee is the widow of Brian Donnelly and was designated in the petition as the heir of the estate.

At the hearing on the petition before the probate court, counsel for petitioner explained that petitioner had filed an action against the estate in federal court and petitioner was seeking to establish the estate so that petitioner could serve notice of the federal action on the estate, and presumably thereafter proceed against the estate. At the conclusion of the hearing, the probate court denied the petition for formal proceedings for the reason that petitioner had failed to present evidence of being a creditor of the estate, and therefore lacked standing to petition the probate court as a creditor. The probate court reasoned:

[U]ntil you’re able to establish that you’re a valid creditor that can petition to open up an estate, you really don’t have standing to be here today You have to have a valid basis to do that and a legitimate interest in the estate. And if you

don't have a case that's been decided . . . and there's some kind of a judgment there that needs to be paid, you have no standing here.

Generally, we review appeals from a probate court decision on the record, not de novo. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). Nonetheless, we review de novo questions of statutory interpretation and standing. *In re Casey Estate*, 306 Mich App 252, 256; 856 NW2d 556 (2014). In general, “to have standing, a party must have a legally protected interest that is in jeopardy of being adversely affected.” *In re Foster*, 226 Mich App 348, 358; 573 NW2d 324 (1998). The party bringing the claim must have “some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.” *Bowie v Arder*, 441 Mich 23, 42; 490 NW2d 568 (1992) (citation omitted).

MCL 700.3401(1) provides that “[a]n interested person or a person that has a right or cause of action that cannot be enforced without administration may commence a formal testacy proceeding” by filing a petition in accordance with that section. An “interested person” is defined by MCL 700.1105(c) as follows:

“Interested person” or “person interested in an estate” includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and by the supreme court rules.

In the petition before the probate court, the petitioner sought a formal testacy proceeding as a “creditor.” As the probate court found, the record is devoid of evidence that would support that claim. However, it is unclear from the record whether appellant could have demonstrated that he was nonetheless an “interested person” or a “person that has a right or cause of action” within the meaning of MCL 700.3401(1) and MCL 700.1105(c). Petitioner contended before the probate court that he had filed an action against the estate in federal court. The record of the hearing reflects that petitioner offered to give the probate court a copy of the complaint filed in the alleged federal action, but the probate court declined to accept it. Had petitioner been permitted to pursue this argument, petitioner may have been successful in demonstrating a “claim against . . . the estate of a decedent” or that he was “a person that has a right or cause of action that cannot be enforced without administration” We therefore vacate the trial court’s ruling and remand this matter to the probate court for further proceedings to determine whether

appellant, though not a creditor, is otherwise entitled to a formal testacy proceeding against the estate of Brian Donnelly.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause

/s/ Kirsten Frank Kelly

/s/ Michael F. Gadola