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: July 10, 2017

RE: In re Estate of Loretta Pellegrini
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:

What would have happened if Ted Williams had played his home games in the old Yankee Stadium? The topic has been discussed for years. Would his homerun total have been greater than

the Babe's? Most say no and point to Lou Gehrig who did play all his home games in the old Yankee Stadium and finished his career more than 200 dingers behind the Babe.

I would like to present my own case in favor of Williams. First take a look at the attached schematic. You can see that starting at the foul pole how much deeper Fenway is, not catching up to Yankee Stadium until far right center field.

Now consider the following. Yankee Stadium at the right field foul pole was 280 from 23' to 27',301' from 28' to 76'. Fenway was 302' and angled out and then in its deepest being 380' just 90 feet toward center.

Stopping here for a moment this means that any fly ball Williams would have hit in Yankee Stadium falling 30 to 90 feet from the wall would have been a dinger.

Add to this that the splendid splinter was a notorious pull hitter. Hence the Williams' shift.

Add to this the wind currents in the old Yankee Stadium that usually blew out that way from left to right.

Now let's add some meat to the bones.

Williams hit 521 lifetime homeruns. He batted 7706 times had 2654 hits and 2021 bases on balls.

But how many times did Williams hit a fly ball which was caught between 30 and 90 feet from the wall. I have never seen such a statistic, but I have a theory. We know that a strikeout is not a fly out. Williams struck out 709 times. If we add the strikeouts to the hits and walks we get 5,385. If he batted 7706 times then the most fly-outs he would have had was 2322 total outs exclusive of strikeouts.

With me so far? Good.

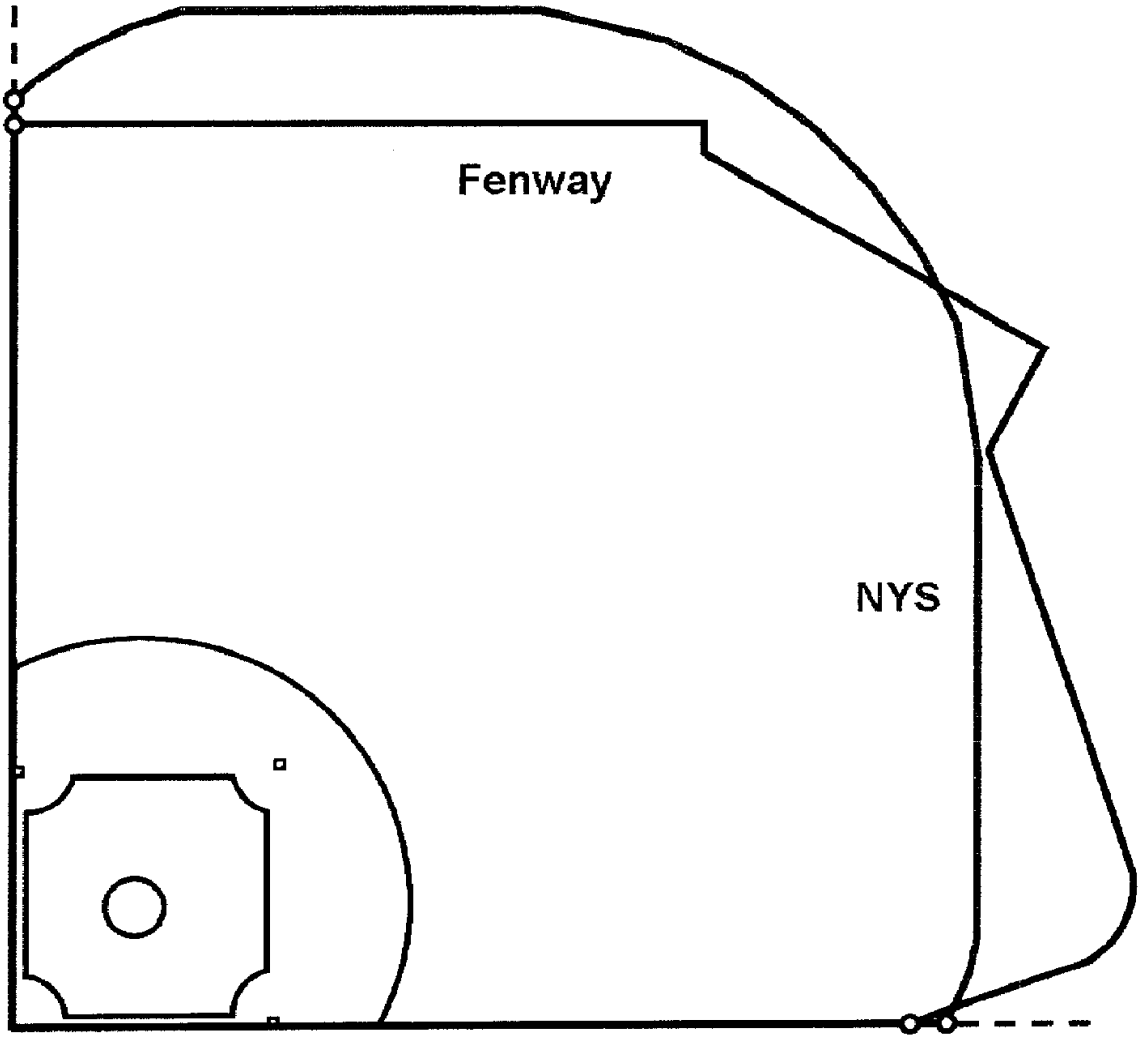
Now half those outs were on the road. Subtract this and we are down to 1161 potential fly-outs at home. Now let's be liberal and say one half are ground outs. We are now down to 580.

We can probably say that Williams would have flied out at home 580 times. But how many were within the 30 to 90 feet from the wall which is the differential of old Yankee Stadium vs. Fenway Park.

Purely a guess; one half or 290 potential homeruns more that he had. As he had 521 he would have hit 811 dingers. This leaves me with a margin of error of near 100 to put him over the Babe and the greatest homerun hitter of all time. (Sorry Hank).

And his batting average for a lifetime? Remember he had 2654 hits and a lifetime batting average of .344. Add in 290 more hits and Ted rises to .371 four points above the immortal Ty Cobb.

What do you think?



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

REVIEW OF CASE:

Topics: Standard of Appeal
Contract Construction – *de novo*
Substantial Compliance
- Trumps failure to process of request
- Requirements attempted beyond contract

A contract for insurance required a written request to change a beneficiary. The company did not process the written request because it lacked certain documents it said were required.

The lower court granted summary disposition to the party who claimed that the change of beneficiary should be effective.

The court of appeals affirmed first finding that a review of contractual provision is *de novo*.

The contract said that a written form must be received requesting the change of beneficiary. None of the other missing forms were required under the contract. At this point I believe the court of appeals should have found that there was strict compliance and not just substantial compliance, but they ruled this was substantial compliance.

The court of appeals went on to say that the other forms were trivial.

I like the fact that the estate took the bull by the horns and sued. I hate it when a rich insurance company impleads to protect its own rear end and then tries to get attorney fees off the top.

A good decision.

877104

STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of LORETTA PELLEGRINI.

LORETTA TRAWINSKI, as the PERSONAL REPRESENTATIVE of the Estate of LORETTA PELLEGRINI,

Plaintiff-Appellee,

v

DELPHINE SZPORKA,

Defendant-Appellant,

and

ATHENE ANNUITY AND LIFE COMPANY, formerly known as AMERICAN INVESTORS LIFE INSURANCE COMPANY INC,

Defendants.

UNPUBLISHED
June 15, 2017

No. 332285
Macomb Probate Court
LC No. 2015-217232-CZP

Before: O'BRIEN, P.J., and HOEKSTRA and BOONSTRA, JJ.

PER CURIAM.

Delphine Szporka appeals as of right the probate court's March 14, 2016 order granting summary disposition in favor of the Estate of Loretta Pellegrini. We affirm.

The issue before this Court is whether the probate court erred in concluding that the decedent, Loretta Pellegrini, substantially complied with the change-of-beneficiary provision in the contract at issue. "It is well settled in Michigan that substantial compliance with change-of-beneficiary requirements is sufficient to effect a substitution." *Aetna Life Ins Co v Brooks*, 96 Mich App 310, 315; 292 NW2d 532 (1980). Stated differently,

> where the contract of insurance outlines the manner or method by which beneficiaries may be designated or changed, the steps or formalities so stipulated must be at least substantially complied with, it being generally conceded that in such a case a designation can be effective only by following the policy provisions

> and by conforming to the manner or mode specified in the contract. [*Dogariu v Dogariu*, 306 Mich 392, 398; 11 NW2d 1 (1943) (internal citation and quotation marks omitted).]

The contract at issue in this case, which is an annuity policy, provides, in relevant part, as follows with respect to beneficiaries:

> The Beneficiary is the person or persons who will receive the Death Benefit provided by this Contract. While the Annuitant is alive, the Owner may change a Beneficiary by a signed written request filed with the Company and may name one or more contingent Beneficiaries. No change will take effect unless the Company receives such signed written request. A change will take effect as of the date the written request was signed. Any change is subject to payment or other action taken by the Company before the change was received.

This Court reviews de novo a trial court's interpretation and application of a contractual provision. *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 507; 885 NW2d 861 (2016). "When interpreting a contract, our primary obligation is to give effect to the parties' intention at the time they entered into the contract. To do so, we examine the language of the contract according to its plain and ordinary meaning." *Id*. "Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement." *Id*. That is, when the contractual language used by the parties is unambiguous, this Court *must* interpret and enforce that language as written. *Id*.

Applying those rules to the facts of this case, we ultimately agree with the probate court's decision that the decedent, Pellegrini, substantially complied with the change-of-beneficiary provision in the contract at issue. It appears undisputed that Pellegrini's life-insurance agent mailed a signed request-for-service form to the insurance company in an attempt to change the beneficiary of the policy. Likewise, it also appears undisputed that the insurance company received but did not process that request-for-service form because of two deficiencies. Consequently, the question before this Court is simple: Does the mailed and received, but not processed, request-of-service form signed by Pellegrini constitute substantial compliance with the change-of-beneficiary provision quoted above? We conclude that it does.

The change-of-beneficiary provision at issue in this case unambiguously provides, in pertinent part, the following with respect to change the beneficiary or beneficiaries of the policy: "No change will take effect unless the Company *receives* such signed written request." (Emphasis added.) When a contract term is not defined by the contract itself, this Court turns to the term's dictionary definition to ascertain and apply its plain and ordinary meaning. *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 294; 778 NW2d 275 (2009). The verb "receive" can be defined as "to come into possession of." *Merriam-Webster's Collegiate Dictionary* (11th ed). Thus, an individual or entity "receives" something when that something "come[s] into possession of" that individual or entity. Applying that definition to the facts of this case, it is apparent that the insurance company *received* the request-for-service form. It acknowledged as much when it responded to that form, thanking Pellegrini for sending it. While it is apparent that the insurance company did not "process" that form, the change-of-beneficiary provision quoted above unambiguously provides that a beneficiary changes when the insurance

company "receives," not when it "processes," a request-for-service form that includes such a request. Therefore, because it did, in fact, "receive" the request-for-service form, we conclude that Pellegrini substantially complied with the change-of-beneficiary provision quoted above.

While we appreciate the fact that insurance company apparently never "processed" the change-of-beneficiary request made by Pellegrini before her death, we nevertheless remain of the view that her actions—mailing a signed and notarized request-for-service form that unequivocally expresses her intent to change the beneficiary of the contract at issue—constitute substantial compliance with the provision quoted above. The only alleged deficiencies with respect to the request-for-service form that she submitted related to her failure to include a single page that included no information with respect to her request and her unnecessary but irrelevant inclusion of her estate as both the primary and secondary beneficiary. Stated simply, it is apparent that these deficiencies were trivial at best. Indeed, we find it noteworthy that the provision quoted above does *not* require a correctly completed request-for-service form. Rather, it requires a "signed written request," and the request-for-service form sent on behalf of Ms. Pellegrini, while not completed correctly, is a "signed written request" that unequivocally reflects her desire to change the beneficiary. Michigan courts have consistently held that strict compliance with provisions like this is simply not required. See, e.g., *Aetna Life Ins Co*, 96 Mich App at 316 (holding that an insured's written change-of-beneficiary request was sufficient despite the fact "that he used the wrong form" and the fact "that the form was never received by the insurance company"); see also *Harris v Metropolitan Life Ins Co*, 330 Mich 24, 27-28; 46 NW2d 448 (1950) (holding that an insured's written change-of-beneficiary request was sufficient despite the fact that it was not accompanied by a certificate as required by the contractual provision at issue).

Affirmed. The estate, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Colleen A. O'Brien
/s/ Joel P. Hoekstra
/s/ Mark T. Boonstra