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 2007-2017, 2019 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*® 2020 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2018 by Woodward/White, Inc., of SC). He has been included in the Best Lawyers listing since 2011. Additionally, Mr. May was selected by a vote of his peers to be included in *DBusiness* magazine's list of 2017 Top Lawyers in the practice area of Trusts and Estates. Kemp Klein is a member of LEGUS a global network of prominent law firms.

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" and
"Sons of Adam," an International Terror Mystery.

DT: May 11, 2020
RE: ***In re Conservatorship of Bittner***
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 AND PHYSICS

Dr. Alan Nathan
Professor of Emeritus of Physics
University of Illinois – Urbana -Champaign
1110 W. Green Street
Urbana, IL 61801
a-nathan@illinois.ed

Re: Willie Mays

Dear Dr. Nathan:

I am a Probate lawyer, a member of SABR and a baseball devotee. I publish a newsletter for my firm reviewing all Probate and Trust Appellate decisions rendered in Michigan. I receive some comments from my efforts, but woefully few.

I hit upon the idea of combining these articles with baseball statistical analysis, musings, and personal observations. They go to a massive email list and are posted on LinkedIn. My responses quadrupled.

Recently, I have been reporting on extraordinary innings that I have seen. I have exhausted all my personal observations and have proceed to what I saw on television.

I had occasion to review the Eighth Inning of the first game of the 1954 World Series and came upon your writings.

The Tigers were going no where in 1954 and the Indians were great. They were great pitchers and great hitters and had beaten the Yankee team which won 103 games.

Then there was the former Tiger, Vic Wertz. The Tigers finished in last place in 1952 and traded away most of the team, including George Kell and Vic Wertz. Missing them, I followed their careers, hence my interest.

Now to the point. As I share a political ideology with you; raving moderate, I hope you will respectfully consider my criticism of your conclusion, i.e., if the temperature would have been 77 degrees rather than 76 degrees, the ball would have traveled two more inches and “the catch would not have been made.” As to your premise about the extra degree of heat producing two extra inches, I do not quarrel, but I do not agree with your conclusion. Mays would have still made the catch for two observable reasons.

First, Willie caught the ball in the bottom portion of the pocket of his glove. Had the ball travelled two more inches, the ball would have been caught in the webbing of his glove.

Second, Willie's arms were not fully extended.

I've watched films of this catch and have stills in my collection from numerous angles, and I invite you to make the same observations. You err not in your analysis of physics, but in the observable phenomena.

When you examine the films, you might also notice Willie's change of direction. He either mis-judged the trajectory of the ball or it may have been drift, a phenomenon of which I know you are familiar.

Thank you for taking the time to read this analysis. If you would like to be added to our email list of recipients of my musings, feel free to contact me by email.

Yours truly,

Alan A. May

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

REVIEW OF CASE:

RE: *In re Conservatorship of Bittner*

- Conservatorship - Post Mortem Jurisdiction
  - (A) Enforcement of Orders
  - (B) Fees
- Jurisdiction Over Fiduciary of an Estate in another County
  - (A) Contempt
  - (B) Personal Liability
- Amount of Contempt Order - Penalty

This is the fifth time this litigious family has entered into litigation that has ended up in the Court of Appeals.

A Special Fiduciary was allowed fees by the Macomb County Probate Court. This was pursuant to a Settlement Agreement codified by an Order. A decedent's estate had already been opened in Genesee County. The fiduciary of the decedent's estate signed only in her fiduciary capacity. She didn't make the payment and upon motion in the Macomb County Probate Court, the fiduciary was held in civil Contempt in her individual and fiduciary capacity. She would be able to purge herself of Contempt by paying the fees in two parts, and if she didn't, she would subject herself to a $100.00-day penalty. She appealed.

Inter alia the Court of Appeals said:

1. The Court has a right to enforce its own orders. This makes sense because it is the Personal Representative was the subject of a Macomb County Order. Just because she was subject to the jurisdiction of another Court, by stipulating to the Order, it could be enforced against her.

2. The fact that the Conservatorship estate was closed did not matter.

3. The Court has subject matter jurisdiction to enter an Order for Contempt.

4. Any previous law preventing Contempt to be used for the enforcement of the debt was not applicable and MCL 600.1701(e) says "parties to actions, attorneys, counselors and all other persons for nonpayment of monies which the Court has ordered paid…are subject to contempt orders."

5. There's no denial of due process about finding the Personal Representative liable in her individual capacity, as she had submitted personally to the Court's jurisdiction by accepting her appointment. Here I think the Court of Appeals in error for two reasons. It is the decedent's estate to which the Personal Representative submitted personally, and MCL 700.1308 prevents personal liability. Any breach of her duty, in my opinion, would have been enforceable only by Genesee County.

6. Failure to give notice of the Contempt hearing is of no merit if the person appeared and thereby waived the objection.

7. If you want an Evidentiary hearing, you have to ask for one.

STATE OF MICHIGAN

COURT OF APPEALS

In re Conservatorship of SHIRLEY BITTNER.

STACEY BITTNER, Personal Representative of the ESTATE OF SHIRLEY BITTNER, and SUZANNE BITTNER KORBUS,

Other Parties,

and

STACEY BITTNER, Individually,

Appellant,

v

KEVIN ADAMS, ESQ., and THE LAW OFFICES OF KEVIN ADAMS, PLLC,

Appellees.

UNPUBLISHED
April 23, 2020

No. 347750
Macomb Probate Court
LC No. 2016-221230-CA

Before: RIORDAN, P.J., and FORT HOOD and SWARTZLE, JJ.

PER CURIAM.

In her individual capacity, appellant, Stacey Bittner,[1] appeals as of right a February 15, 2019 order holding her, individually and in her fiduciary capacity, in civil contempt of court, and

[1] For ease of reference, Shirley Bittner, the decedent whose estate is at the center of this dispute, had three daughters: Stacey, Suzanne Bittner-Korbus, and Shirleen Vencleave. *In re Bittner Conservatorship*, 312 Mich App 227, 230; 879 NW2d 269 (2015) (*Bittner Conservatorship I*). Each daughter will be referred to by her first name except when referring to Stacey in her official capacity as personal representative of the Estate of Shirley Bittner (the Estate), in which case she will be referred to as the Estate.

granting the motion to show cause of the special fiduciary and appellees, Kevin Adams, Esq., and the Law Offices of Kevin Adams, PLLC, (collectively Adams). We affirm.

This matter has a long, litigious history, which began with a conservatorship case in Macomb Probate Court (the conservatorship case). In *In re Bittner Conservatorship*, unpublished per curiam opinion of the Court of Appeals, issued June 28, 2018 (Docket No. 338226) (*Bittner Conservatorship III*), pp 1-3, this Court summarized the facts of this case as follows:

> This is the fifth time this matter, in one form or another, has been before this Court. Most of the details were set forth in greater detail than we need recount here in *In re Bittner Conservatorship*, 312 Mich App 227, 230-235; 879 NW2d 269 (2015) [(*Bittner Conservatorship I*)]. Broadly, the underlying dispute, whether carried on in probate or circuit court, concerns the aftermath of health problems Shirley developed after her husband of more than fifty years passed away in 2011. Initially, Shirley entrusted her finances to Suzanne, granting her a durable power of attorney and trusteeship. Shirley later petitioned the probate court for an accounting, asserting that Suzanne had misappropriated a considerable amount of Shirley's funds. Suzanne petitioned for appointment of a conservator for Shirley, alleging that Shirley could not manage her affairs, and despite Shirley's denial, Stacey was appointed that conservatorship. Stacey, in her role as conservator, appealed to this Court, which reversed the order and remanded for further proceedings, holding that clear and convincing evidence failed to show that Shirley could not manage her affairs. *Id*. at 243. Shirley died on June 26, 2017, during the pendency of both the above and the instant appeals. Stacey, in her capacity as the personal representative of [the E]state, has been permitted to substitute as appellant.
>
> A few days prior to this Court's decision above, Shirley, through Stacey [as conservator], initiated a conversion claim against Suzanne in circuit court, which, after this Court's decision reversing the conservatorship, the circuit court dismissed without prejudice for lack of jurisdiction. On appeal, this Court found that dismissal improperly premature and reversed it. *In re [Bittner] Conservatorship* . . . , unpublished opinion per curiam of the Court of Appeals, entered October 26, 2017 (Docket No. 333137) [(*Bittner Conservatorship II*)]. Meanwhile, Stacey had filed an accounting in the probate proceeding, which Suzanne contended failed to account for roughly $93,000.00 of Shirley's funds. The probate court found Stacey's accounting unsatisfactory and, inter alia, ordered Shirley to undergo a "supplemental independent medical exam." Shirley attempted to appeal that order, which this Court dismissed on jurisdictional grounds. *In re Bittner Conservatorship*, unpublished order of the Court of Appeals, entered April 21, 2016 (Docket No. 331174).
>
> Thereafter, the probate court dismissed Suzanne's petition to appoint a conservator without prejudice; consequently, the medical exam was, apparently, never conducted. Suzanne promptly filed a second such petition, in response to which Shirley, in relevant part, contended that she had moved from Macomb County to Genesee County on the day that the initial petition was dismissed, and that venue was therefore no longer proper in Macomb County. Suzanne contended

> that this change was a sham. The probate court found that the evidence did not establish that Shirley had moved or that venue was improper in Macomb County even if she had. At the same hearing, the probate court was about to order Shirley to submit to the medical evaluation, when Shirley's attorney interjected and offered the alternative of having Shirley's tax attorney, Kevin Adams, prepare a detailed accounting, asserting that the real issue was the missing money. Shirley's counsel suggested that the accounting could mitigate the need for further proceedings. Over Suzanne's objection, the trial court agreed to adjourn the matter pending Adams's accounting.
>
> Adams subsequently filed a petition for instruction with the probate court regarding the fees and costs incurred during the preparation of his accounting. Adams requested the trial court approve fees and costs in the amount of $27,624.38, and determine which party or parties were responsible for the fees. Stacey, Shirley, and Suzanne each filed individual responses to the petition. Stacey contended that she should not be responsible for the fees because she was only an interested party, Shirley contended that she should not be responsible for the fees because they were solely necessitated by litigation caused by Suzanne, and Suzanne contended that Adams had been bought [sic] into the case by Shirley as her tax attorney and expert witness, and thus no one other than Shirley could be held responsible for his fees. The trial court recognized that Adams had acted as a special fiduciary and not an expert witness, but nevertheless found that Shirley should be responsible for Adams's bill.
>
> Shirley then filed the claim of appeal before the Court in [*Bittner Conservatorship III*], challenging the probate court's denial of her petition to change venue and its decision to hold her solely responsible for Adams's fees. [*Bittner Conservatorship III*, unpub op at 1-3.]

On appeal, the Estate argued that the Macomb Probate Court clearly erred when it denied Shirley's petition to change venue and that the court abused its discretion when it ordered that Shirley was solely responsible for Adams's fees and costs. *Id*. at 3-4. This Court upheld the Macomb Probate Court's order denying Shirley's petition to change venue from Macomb County to Genesee County. *Id*. at 4. This Court also upheld the Macomb Probate Court's order that the Estate be solely responsible for Adams's costs and fees. *Id*. at 4-5.

During the pendency of *Bittner Conservatorship III*, Shirley died and Stacey initiated a probate case in Genesee County (the estate case). On June 29, 2017, which was three days after Shirley's passing, Stacey filed letters of authority to be the personal representative of the Estate in Genesee County. On August 22, 2018, Adams filed a renewed motion in Macomb County related to his unpaid special fiduciary fees of $27,634.38. After the Macomb Probate Court held a conference regarding Adams's special fiduciary fees, the parties reached a settlement and agreed that the Estate would pay Adams $23,000 in special fiduciary fees by December 31, 2018. On September 20, 2018, the Macomb Probate Court entered an order reflecting the terms agreed to by the parties and closed the conservatorship case.

When the Estate failed to pay Adams by December 31, 2018, Adams filed a motion to show cause in the Macomb Probate Court, naming the Estate as defendant, but seeking to hold Stacey, as personal representative of the Estate, in civil contempt for her failure to comply with the Macomb Probate Court's September 20, 2018 order. At the time, the Estate encompassed a property in Eastpointe, Michigan, a property in St. Clair Shores, Michigan, and a property in Grand Blanc, Michigan. Although the plan was for the properties to be sold to cover expenses, including Adams's fees, Stacey had not yet listed any of the houses for sale.

On February 15, 2019, the Macomb Probate Court held a hearing on Adams's motion to show cause. There was no dispute that the Estate failed to pay Adams $23,000 by December 31, 2018, and with no evidence that Adams would be paid in the near future, the Macomb Probate Court found Stacey, individually and in her fiduciary capacity, in civil contempt of court. The Macomb Probate Court ordered Stacey to pay Adams $10,000 within seven days and imposed a penalty upon Stacey of $100 per day for each day the Estate failed to pay Adams thereafter. The Macomb Probate Court further ordered Stacey to pay Adams the remaining $13,000 balance by June 30, 2019, lest Stacey be subject to another $100 per day penalty. Stacey, in her individual capacity, now appeals the Macomb Probate Court's order holding her in civil contempt of court.

I. JURISDICTION

Stacey argues that the Macomb Probate Court lacked subject-matter jurisdiction to hold her in civil contempt of court because its September 20, 2018 order closed the conservatorship case, and because thereafter, Adams could only enforce the order through the estate case in the Genesee Probate Court. We disagree.

"Whether a court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *In re Vansach Estate*, 324 Mich App 371, 384; 922 NW2d 136 (2018). This Court also reviews questions of statutory interpretation de novo. *Id*. at 385. " 'Subject-matter jurisdiction concerns a court's abstract power to try a case of the kind or character of the one pending and is not dependent on the particular facts of a case.' " *Id*., quoting *Harris v Vernier*, 242 Mich App 306, 319; 617 NW2d 764 (2000).

Probate courts have limited subject-matter jurisdiction that is defined by statute. Const 1963, art 6, § 15; *In re Geror*, 286 Mich App 132, 133; 779 NW2d 316 (2009), citing *In re Wirsing*, 456 Mich 467, 472; 573 NW2d 51 (1998). Under the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*., probate courts have exclusive and equitable jurisdiction over "[a] proceeding to require, hear, or settle the accounts of a fiduciary and to order, upon request of an interested person, instructions or directions to a fiduciary that concern an estate within the court's jurisdiction." MCL 700.1302(d). MCL 700.1303 also provides for concurrent legal and equitable jurisdiction over claims by or against a fiduciary or trustee. MCL 700.1303(h).

There is no dispute that the Macomb Probate Court had subject-matter jurisdiction to appoint Adams as special fiduciary or enter the September 20, 2018 order obligating the Estate to pay Adams $23,000 in special fiduciary fees. The dispute here is over whether the Macomb Probate Court has jurisdiction to enforce that order. According to Stacey, the Macomb Probate Court was divested of jurisdiction when the estate case was opened in Genesee County. We disagree, and conclude that the Macomb Probate Court had subject-matter jurisdiction to enforce

the September 20, 2018 order holding Stacey, individually and in her fiduciary capacity, in civil contempt of court.

First, Stacey's argument that the Macomb Probate Court was deprived of jurisdiction by closing the conservatorship file is without merit. The court had subject-matter jurisdiction to hold Stacey in civil contempt through its contempt power. And, although the September 20, 2018 order—which reflected the parties' settlement agreement—would have resolved the case, it did not do so because the Estate failed to comply with that order. It is well-established that a probate court has the authority to enforce its own orders. *In re Moroun*, 295 Mich App 312, 331; 814 NW2d 319 (2012). MCL 600.847 states: "In the exercise of jurisdiction vested in the probate court by law, the probate court shall have the same powers as the circuit court to hear and determine any matter and make any proper orders to fully effectuate the probate court's jurisdiction and decisions." That is, like circuit courts, probate courts "have jurisdiction and power to make any order proper to fully effectuate the . . . courts' jurisdiction and judgments." MCL 600.611. "Through its civil contempt power, a probate court can coerce compliance with a prior order or "reimburse the complainant for costs incurred as a result of contemptuous behavior, or both." *In re Moroun*, 295 Mich App at 331.

Next, we note Stacey's jurisdiction-related argument that, under Michigan law, contempt proceedings may not be instituted on civil debts where those debts may be obtained through execution of an estate. We disagree. Stacey has overlooked that this argument is premised on statutory language that no longer exists. The most recent form of the statutory language was codified at MCL 600.1701(5)—until it was removed from the statute in 1987—and provided:

> (5) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid, in cases where by law execution cannot be awarded for the collection of the sum, or the disobedience of or refusal to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance, or any other disobedience to any lawful order, decree, or process of the court. [citing MCL 600.1701(5), as amended by 1961 PA 236.]

Every case cited by Stacey for the proposition that contempt proceedings may not be initiated for debts that may otherwise be collected through execution relies on some form of the above statutory language. See *Carnahan v Carnahan*, 143 Mich 390, 396; 107 NW 73 (1906), citing 1897 CL 10.891; *Burton v Wayne Circuit Judge*, 325 Mich 159, 165; 37 NW2d 899 (1949), citing *Haines v Haines*, 35 Mich 138, 140-141 (1876), which in turns references the outdated statutory language; *Maljak v Murphy*, 385 Mich 210, 217; 37 NW2d 899 (1971), citing MCL 600.1701(5); *American Oil Co v Suhonen*, 71 Mich App 736, 741; 248 NW2d 702 (1976), citing MCL 600.1701(5).[2] MCL

[2] Stacey also cites a case from 1992 for the proposition, but that case has nothing to do with the execution of an estate, and instead reflects only that "property-settlement provisions of a *divorce* judgment may not be enforced by contempt proceedings." *Guynn v Guynn*, 194 Mich App 1, 3-4;

600.1701(5) no longer exists, and instead, the current version of MCL 600.1701 plainly provides that contempt proceedings may be instituted under these circumstances:

> The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> * * *
>
> (e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid. [MCL 600.1701(e).]

With that language in mind, and in light of the Macomb Probate Court's inherent authority to enforce its own orders, we see no merit in plaintiff's argument that contempt proceedings may not be instituted on unpaid debts in the court where the debt arose simply because an estate file has been opened elsewhere.

II. DUE PROCESS

Stacey also argues that the Macomb Probate Court abused its discretion when it held her, in her individual capacity, in civil contempt of court because doing so deprived Stacey of due process. We disagree.

This Court reviews a trial court's contempt order for an abuse of discretion. *Porter v Porter*, 285 Mich App 450, 454; 776 NW2d 377 (2009). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Id*. at 455. The trial court's factual findings are reviewed for clear error while questions of law are reviewed de novo. *Id*. "Whether a party has been afforded due process is a question of law, subject to review de novo." *In re Contempt of Henry*, 282 Mich App 656, 668; 765 NW2d 44 (2009).

First, Stacey argues that the Macomb Probate Court erred when it held her in civil contempt of court because, in her individual capacity, she was not subject to the September 20, 2018 order, and because Adams's motion to show cause was not filed against her personally. We disagree.

Stacey was subject to the September 20, 2018 order as personal representative of the Estate. "By accepting appointment, a personal representative submits *personally* to the court's jurisdiction in a proceeding relating to the estate that may be instituted by an interested person." MCL 700.3602 (emphasis added). Moreover, Stacey, as personal representative, "is a fiduciary" of the

---

486 NW2d 81 (1992). And, in any event, that case has been abrogated by the current version of MCL 600.1701, which explicitly provides that contempt proceedings may be instituted

> for disobeying or refusing to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance. [MCL 600.1701(f).]

Estate and, therefore, is under a duty to act "as expeditiously and efficiently as is consistent with the best interests of the estate." MCL 700.7303(1). An action of the Estate is an action of the personal representative because a "duly appointed personal representative acts for, or represents, the estate." *Shenkman v Bragman*, 261 Mich App 412, 415-416; 682 NW2d 516 (2004), citing MCL 700.3703(1). Moreover, under MCL 700.3712, "[i]f the exercise or failure to exercise a power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of fiduciary duty to the same extent as a trustee of an express trust."

With all of that in mind, the fact that the September 20, 2018 order did not specifically refer to Stacey in her individual capacity is irrelevant. As personal representative of the Estate, Stacey was under an obligation to comply with the September 20, 2018 order by paying his special fiduciary fees. By accepting her position as personal representative, Stacey became personally liable for failing to do so. Accordingly, it is of no consequence that the September 20, 2018 order did not explicitly order her, individually, to perform a specific act, nor is it relevant that Adams's motion to show cause did not explicitly seek to hold Stacey individually in contempt of court.

Next, Stacey argues that the Macomb Probate Court should never have considered Adams's motion to show cause because Stacey was never served proper notice. "When proceedings for contempt for disobeying any order of the court are initiated, the notice or order shall be personally delivered to such party, unless otherwise specially ordered by the court." MCL 600.1968(4); MCR 2.107(B)(1)(b).[3] Indeed, the proof of service filed by Adams in the lower court record does not reflect that Stacey was personally served, but instead reflects that Adams's motion to show cause was mailed to Stacey's counsel. Nor is there anything in the lower court record to reflect that the trial court specially ordered that personal service was not necessary. Accordingly, there was a defect in the service in this case. However, MCR 3.920(H) provides:

> (H) Notice Defects. The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on the record. If a party appears or participates without an attorney, the court shall advise the party that the appearance and participation waives notice defects and of the party's right to seek an attorney.

Thus, Stacey waived this issue by appearing at the show cause hearing, choosing to participate in the proceedings, and failing to raise any issue with respect to notice at that time.[4]

---

[3] The language of MCL 600.1968(4) is identical to that of MCR 2.107(B)(1)(b).

[4] To the extent that Stacey is attempting to argue that she should have been given service as personal representative *and* separate service in her individual capacity, the argument is untenable. As discussed above, a personal representative may be personally liable for a breach of fiduciary duties. Thus, when Stacey received notice in her capacity as personal representative—and, it is undisputed that, although the service was not personal service, Stacey did receive notice—Stacey should also have automatically been on notice that she could be personally liable as well. It is not

Stacey next argues that the Macomb Probate Court erred by holding her in contempt without holding an evidentiary hearing. Again, we disagree. Stacey failed to raise this issue below, and accordingly, our review is for plain error affecting substantial rights. *In re Contempt of Henry*, 282 Mich App at 668.

Where a contempt action is civil, an individual's simple violation of a "duty to obey the court" is sufficient for the court to find contempt. *Cassidy v Cassidy*, 318 Mich App 463, 505; 899 NW2d 65 (2017). Here, there is no question that Stacey was aware of the September 20, 2018 order that the Estate pay Adams $23,000 in special fiduciary fees by December 31, 2018, and therefore aware of her obligation, as personal representative of the Estate, to comply with that order. There is also no question that Stacey failed to comply with that order. Accordingly, Stacey's argument that the Macomb Probate Court failed to consider the appropriate evidence or make sufficient findings of fact is without merit, and we discern no plain error on the part of the court.

III. PENALTIES

Stacey lastly argues that the Macomb Probate Court erred by imposing a contempt "fine" that exceeded the statutory maximum. We disagree.

Again, Stacey failed to preserve this issue for appellate review, and therefore, we review this issue for plain error affecting substantial rights. *In re Contempt of Henry*, 282 Mich App at 668. MCL 600.1715, which governs penalties for contempt, provides, in relevant part:

> Except as otherwise provided by law, punishment for contempt may be a fine of not more than $7,500.00, or imprisonment which, except in those cases where the commitment is for the omission to perform an act or duty which is still within the power of the person to perform shall not exceed 93 days, or both, in the discretion of the court.

When the Macomb Probate Court found Stacey in civil contempt of court, it ordered Stacey to pay two installments that totaled the outstanding $23,000 balance for Adams's special fiduciary fees. The civil contempt order stated that Stacey was to pay Adams a first installment of $10,000 and a second installment of $13,000. This was not a penalty; this was an order for the Estate to pay what was already owed to Adams. The only penalty that Stacey could be subject to under the order was a $100 daily fine that only triggered if Stacey failed to pay the installments by their respective deadline. As noted by the court, Stacey could entirely avoid those penalties by listing one of the homes in Eastpointe, St. Clair Shores, or Grand Blanc—or by taking whatever other action necessary—so that the Estate could afford to pay the installments. Accordingly, the Macomb Probate Court did not impose a penalty that exceeded the statutory maximum set by MCL 600.1715.

---

entirely clear from Stacey's brief whether this is a distinction she is attempting to draw, but if so, the distinction is, to say the least, somewhat absurd.

Affirmed. As the prevailing party, Adams may tax costs under MCR 7.219.

/s/ Michael J. Riordan
/s/ Karen M. Fort Hood
/s/ Brock A. Swartzle