



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 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. 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.”

DT: January 22, 2018

RE: *In re Ina J. Craven Revocable Trust*

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: HISTORY – ALL PROFESSIONAL TEAM

With a lull in baseball news, I thought I would propose the following All Star Team for the Hot Stove league.

This is a difficult article to write. I wanted to make an All Star Team of professional baseball players who played professional football. This was difficult because there were so few of them. There are many professional baseball players who played football in college not the least of which would have been Jackie Robinson who would have certainly been on the All Star Baseball Team I would name.

Of the thousands and thousands and thousands of professional baseball players only 67 played in the National Football League. Different skill sets are necessary and that's why so few of them played both sports. If you went into Minor League Baseball, you would find such stars as Charlie Trippi who was a very very good Minor League Baseball player and a great professional football player, but I tried to limit myself to dual professionalism.

Let's start with the outfield: Bo Jackson, Deion Saunders and Jim Thorpe. To the sports fan, no description of their baseball abilities is necessary. Jackson was probably the best of the three baseball players. The other two, in my opinion, were better football players but it didn't take much to make my baseball team.

I have two pitchers, Ernie Nevers for a right-handed pitcher and Garland Buckeye as a left-handed pitcher. Garland makes it only because of his name.

Ernie Nevers played for the St. Louis Browns. He had a 6 and 12 win/loss record and E.R.A. of 4.64. He played 27 games with the St. Louis Browns and is known for one thing; in only 18 games, he was 8th in the majors with wild pitches with five. Nevers was a much better football player. He played fullback for the Chicago Cardinals and once scored 40 points in one game. He also played for the Duluth Eskimos. He played sixty minutes a game on offense and defense. He went to Stanford, but I don't believe he ever graduated.

Garland Buckeye is known for serving up two pitches to Babe Ruth which he hit out of the park in 1927 to set his record at 60 homeruns. He had a 30 and 39 win/loss record and E.R.A. of 3.91. He played for both the Senators and the Indians and then the

Giants. He played center and guard in his football career for the Chicago Tigers and later the Chicago Cardinals. He then played for the Chicago Bulls of the American Football League. After his baseball career he was indicted for keeping slot machines. He was the great grandfather of baseball player, Drew Pomeranz.

At catcher, I have chosen Ernie Vic. I could have chosen Vic Janawicz but I decided to choose Ernie Vic because he was a University of Michigan graduate and Janawicz went to Ohio State. He played for the Champion St. Louis Cardinals in 1926 and for the Chicago Bears in football. He was also the catcher to the famous baseball pitcher, Grover Cleveland Alexander. Also probably a better football player than baseball player.

At shortstop, I have a chosen Ace Parker. If you have the record of Greatest Moments in Sports, you will hear Ace Parker's name called on December 7, 1941 when the broadcast of the game was interrupted to say that Pearl Harbor was bombed. He had a very limited baseball career and played short, second and third. He had a career batting average of .179 all for the Philadelphia Athletics. Once again, a much better football player.

My third baseman is Jolly Charlie Dressen. Charlie was perhaps the best baseball player of this group and had a lifetime batting average of .272. He played quarterback for the Decatur Staleys who later became the Chicago Bears.

He had a much better career as a manager and managed the Tigers from 1963 to 1966 dying in Detroit.

My second baseman is Paddy Driscoll. Paddy played for the Cubbies. He also played football for the Chicago Cardinals when football was in its infancy.

My first baseman was a man by the name of Tom Brown. He had a very limited career and played for the Senators in 1963. In addition to playing First Base, he played all three outfield positions. He played football for the Green Bay Packers and one game for the Washington Redskins. He was a defensive back and in his career he had 13 interceptions.

A total paucity.

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

REVIEW OF CASE:

In re Ina J. Craven Revocable Trust

- Substantial Compliance with Court Rule.
- Substantial Compliance with Accounting Court Rule.
- Fees

The Wayne County Probate Court ruled that Appellee did not have to give further accountings which were more complete in nature. The Appellee had given accounting statements. I am pleased with this ruling as for many years courts have refused my efforts to file accountings on my own forms even though in my opinion they were more thorough than the SCAO form.

This Opinion helps the lay person who may not wish to retain counsel and sends brokerage and bank statements to the interested parties. In the instant case, showing starting balance and disbursements was ruled to be substantial compliance.

The Court of Appeals went on to say that there's no need to account for assets outside the trust when the only matter before the Court is the trust.

Consenting to fees bars the Appellant's right to object to fees.

Without saying so, the Court invoked *Hammond* and awarded fees out of the Appellant's share in the future. This was based on the waiver.

Since the duty to account is pursuant to MCR, this case might be cited to the effect that substantial compliance with most any MCR is sufficient.

STATE OF MICHIGAN
COURT OF APPEALS

In re INA J. CRAVEN Revocable Trust.

RICHARD Z. CRAVEN, Trustee of the INA J.
CRAVEN REVOCABLE TRUST,

UNPUBLISHED
December 19, 2017

Appellee,

v

SHERRY I. CRAVEN,

No. 334879
Wayne Probate Court
LC No. 2015-811063-TV

Appellant.

Before: METER, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

In this trust contest between half-siblings, petitioner-appellant, Sherry I. Craven (petitioner), appeals as of right the probate court's order denying her petition to remove respondent-appellee, Richard Z. Craven (respondent), from his role as successor trustee of the trust of their mother, Ina J. Craven. We affirm.

Petitioner first argues that the probate court erred by refusing to order respondent to provide a more complete accounting of the trust.

The gist of petitioner's argument is that the accounting statements provided by respondent were inadequate and needed to contain more details.¹ But MCL 700.7814, the statute on which petitioner relies, does not mandate that trust reports be produced in a particular form. Respondent provided an accounting showing the starting balance of the trust and the various payouts. Petitioner contends that, under MCR 5.113(A)(1)(c), respondent should have used

¹ Although the accounting reports are not included in the lower-court record, and generally parties may not expand the record on appeal, see *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002), petitioner attaches the reports to her appellate brief and respondent does not dispute their authenticity. In addition, the reports were referred to in the lower court. Accordingly, we will consider them.

SCAO form 583 in making his accounting. This court rule, however, states only that a report must “be *substantially* in the form approved by the State Court Administrator, if a form has been approved for the use.” (Emphasis added.) The accounting provided, showing the starting balance and disbursements, was substantially compliant with this form. Respondent clearly and unequivocally indicated that the sole asset² of the trust was a parcel of real property and provided a list of where the proceeds were directed. The probate court did not err in declining to order that further documents be produced.

Petitioner also argues that the probate court erred by denying her petition to remove respondent as successor trustee for various acts of malfeasance. She insinuates that certain monies should have been included in the trust accounting, but she provides no evidence that the grantor transferred these assets to the trust in accordance with the “Trust Property” paragraph of the trust. Respondent’s counsel repeatedly noted at the June 21, 2016, hearing that petitioner was mistakenly referring to and seeking information about assets *outside of the trust*, whose sole asset was the parcel of real estate. The trial court was actively engaged in resolving the issues surrounding the trust—it even ordered the appointment of a forensic accountant—and it properly exercised its discretion³ in denying petitioner’s request to remove respondent as trustee, given the lack of evidence of malfeasance.

Next, petitioner argues that the probate court abused its discretion by ordering that the fees for respondent’s attorney and other fees be paid from the remaining trust assets, which, at the time of the ruling, represented only petitioner’s share of the trust. Petitioner waived this claim of error by expressly acquiescing to the payment of costs and attorney fees out of her share of the trust. “A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court.” *Living Alternatives for Developmentally Disabled, Inc v Dep’t of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994). Petitioner made an express representation regarding attorney fees to the probate court at the June 21, 2016, hearing, after respondent’s attorney argued that petitioner’s petitions and requests were misguided because it was not “fair for the trust to continue to incur expenses[.]” Petitioner stated:

Your Honor, the only money that exists supposedly with the trustee is money that’s supposedly my share of the trust. So any money that’s being spent or spent on attorneys or court fees or anything that might be charged to me would be coming out of my share of the trust.

² Petitioner states that respondent’s counsel admitted that there were “other assets,” but counsel’s statement was that there were other assets “not in the trust.”

³ A probate court’s dispositional rulings are reviewed for an abuse of discretion. *In re Bibi Guardianship*, 315 Mich App 323, 328; 890 NW2d 387 (2016). An abuse of discretion occurs when the court chooses an outcome outside the range of principled and reasonable outcomes. *Id.* at 329.

I'm only asking to be shown what existed. I've only ever asked to be shown what existed and what transpired to allow him to come up with that amount of money left in the trust, and all of the other money has been spent, according to him.

By making this statement, petitioner represented to the probate court that the continuing costs at issue would be paid out of her share of the trust estate. Thus, petitioner waived this claim of error. See *Elahham v Al-Jabban*, 319 Mich App 112, 117-118; 899 NW2d 768 (2017).

Given our resolution of this case, we need not address petitioner's argument that the case should be remanded to a different judge.

Affirmed.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Douglas B. Shapiro