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 2007-2012 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*® 2013 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2012 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, click on the link below. http://www.kempklein.com/probate-summaries.php

DT: December 4, 2012

RE: In re Estate of JAMES D. GOODIN
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL:

"**Men Who Have Greatly Influenced Baseball**"

This article is written to the memory of Marvin Miller who recently passed away. I believe he had a greater impact on Major League Baseball than any other single individual because, through effective representation of the Baseball Players' Union, he was the leader of a movement that changed the financial structure of baseball geometrically. Though not the mediator who broke the Reserve Clause (Peter Seitz ruled in 1975 that Andy Messersmith and Dave McNally played for a year without a contract; that they were free to sign with any team) he organized the first player strike of any significance and negotiated a formal end to the Reserve Clause and implemented a structure free agency.

Others who I feel fall into the influential individual category include:

- Lou Brock, who in 1972, challenged the Reserve Clause on his own to his great personal detriment. This created, in my opinion, a climate for what was to follow.
- Babe Ruth, of course, who with his dominance made the long ball respectable; which led to a new Yankee Stadium 'the house that Ruth built' and changed the face of baseball from intimate viewing to mega crowds. Ruth also began the meteoric portion of his ascendancy after the Black Sox Scandal, giving folks a reason to come back to baseball.
- Kenesaw Mountain Landis deserves mention both positively and negatively – positively for restoring faith in baseball's integrity after the Black Sox Scandal (we must mention Arnold Rothstein who fixed the Series, allowing Landis to have something to restore); negatively because he kept baseball white.
- Branch Rickey who had the integrity to challenge his colleagues to break the color barrier and force a change off the field.
- Jackie Robinson for having the fortitude and rectitude to tolerate bias and bigotry and force a change on the field.

REVIEW OF CASE:

Reference Files: Joint Bank Accounts
Intent of Depositor

Decedent had a joint bank account with Sammie. Decedent added Lori's individual name to the joint account at a later date. The signature card said "adding a beneficiary". The bank employee said this did not comply with bank protocol of adding another joint owner. The Probate Court found that the Decedent's intent to create a joint account and divided the proceeds between Sammie and Lori.

The Court of Appeals sustained the Lower Court; determining that the Probate Court did not err in dividing the proceeds, based on their finding of interests.

The Court of Appeals cited *Pitre*, 202 Mich App 241 which said 'you determine property rights by looking at the intent of the depositor and the intent was a joint account'.

The first joint tenant had a Power of Attorney. When the Appellee's name was added as a joint tenant, she had a Power of Attorney. QUERY: Why didn't Appellant raise the presumption of undue influence in the Lower Court?

QUERY: If the Courts divided the money equally among the "survivors", why on earth is the Petitioner/Appellee an estate rather than an individual?

AAM:jv:726917
Attachment

STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of JAMES D. GOODIN.

LORI BIALKOWSKI, Personal Representative of the Estate of JAMES D. GOODIN,

Petitioner-Appellee/Cross-Appellant,

v

SAMMIE DALTON,

Respondent-Appellant/Cross-Appellee,

and

JP MORGAN CHASE BANK, N.A.,

Interested Party.

UNPUBLISHED
October 2, 2012

No. 305673
Genesee Probate Court
LC No. 10-189634-DE

Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Respondent Sammie Dalton, sister of the decedent James D. Goodin, appeals[1] as of right from a probate court order, following a contested hearing, equally dividing the proceeds of a bank account between Dalton and petitioner Lori Bialkowski.[2] For the reasons set forth in this opinion, we affirm.

[1] Although petitioner Bialkowski filed a claim of cross-appeal, she has not raised any issue on cross-appeal. Thus, the cross-appeal has been abandoned.

[2] Bialkowski testified that she met Goodin in 1997 and began a more personal relationship with him in 2003. When Goodin's health began to deteriorate in 2007, Bialkowski moved into

This dispute arises from the distribution of proceeds from a checking account opened by Goodin in 1996. In February 2008, Goodin gave Dalton rights to the account as power of attorney. Three months later, Goodin added Dalton as a joint owner of the account. On August 26, 2010, Goodin, Lori Bialkowski, and a bank employee signed forms relating to Goodin's accounts, including two forms granting Bialkowski power of attorney over Goodin's accounts and a signature card relating to the disputed account. The signature card contains the handwritten notation "Adding Beneficiary" above Bialkowski's signature. The bank employee who made the notation testified that it was a mistake and did not comport with the bank's protocol for adding another joint owner. Based on the card, the testimony of the bank employee, and Bialkowski's account of the conversations, the probate court found that Goodin intended to add Bialkowski as a joint owner.

On appeal,[3] Dalton challenges both the probate court's findings of fact and its legal analysis. This Court reviews a probate court's factual findings for clear error. *In re Estate of Raymond*, 483 Mich 48, 53; 764 NW2d 1 (2009). "A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2d 772 (2003). "[R]egard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). "The determination whether a statutory provision applies to a given action is purely a legal question that this Court reviews de novo." *Stark v Ozomaro*, 238 Mich App 549, 567; 606 NW2d 411 (1999).

Dalton now argues that the probate court improperly relied on the statutory joint account act, MCL 487.711 *et seq.*, to determine that Bialkowski had an interest in the disputed account. A statutory joint account is defined by the act as "a joint account as to which a statutory joint account contract, as provided in this act, has been signed by a person having a right of withdrawal on the account." MCL 487.713(c). Bialkowski acknowledged in the probate court that no statutory joint account contract was created and from the record we find no evidence of a

Goodin's home. Bialkowski was the primary beneficiary under Goodin's will and she lived with Goodin until his death on October 18, 2010.

[3] At the conclusion of testimony, Bialkowski's counsel asked the court to consider the statutory joint account act and MCL 487.716. The probate court interrupted counsel's argument and invited the parties to submit case law or "[w]hatever you wanna give me" in six days. Dalton's counsel agreed, however never submitted anything to the probate court. Hence, the arguments raised by Dalton on appeal were not raised in the probate court. An issue not raised before and considered by the trial court is generally not preserved for appellate review. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). However, the general issue whether Bialkowski had an interest in the account may be considered preserved because that issue was presented to and decided by the probate court. Further, Dalton was not required to take exception to the trial court's decision. MCR 2.517(A)(7). Based on our finding that the questions presented on appeal are of law and all the facts necessary for their resolution have been presented, we find review appropriate, See, *Duffy v Mich Dep't of Natural Resources*, 490 Mich 198, 209 n 3; 805 NW2d 399 (2011).

statutory joint account contract. However, the probate court made only a fleeting reference to MCL 487.716 in its decision, and that reference was not significant to the probate court's analysis. The probate court's only reference to the statutory joint account act appears in the following statement: "As to any unanswered questions or ambiguities contained in a statutory joint account contract, such issues shall be resolved 'pursuant to the common law . . . with the purpose of effectuating the intent of the parties.' MCL 487.716." The probate court instead relied on legal principles from several cases, none of which address the statutory joint account act. Because no statutory joint account contract was presented, the probate court's statement only serves as evidence that the probate court would examine the common law to effectuate the intent of the parties. Hence, the probate court's isolated reference to the statutory joint account act does not establish that its analysis was legally flawed for the reasons now argued by Dalton.

Dalton also argues that the probate court erred by failing to analyze whether the statutory presumption that funds in a joint account are intended to vest in the survivor was rebutted, and instead focused on whether Goodin intended to add Bialkowski as a joint owner. The statutory presumption to which Dalton refers is derived from MCL 487.703, which states in part:

> When a deposit shall be made, in any bank by any person in the name of such depositor or any other person, and in form to be paid to either or the survivor of them, such deposits . . . upon the making thereof, shall become the property of such persons as joint tenants . . . and may be paid to either during the lifetime of both, or to the survivor after the death of 1 of them . . . .
>
> * * *
>
> The making of the deposit in such form shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceeding, to which either such banking institution or surviving depositor or depositors is a party, of the intention of such depositors to vest title to such deposit and the additions thereto in such survivor or survivors.

Contrary to Dalton's argument on appeal, the opening of a joint account does not necessarily establish the funding depositor's intent to make a gift of the accounts to the joint owner; the depositor may intend to retain control of the joint bank account and to have the funds vest in the joint owner only after the depositor's death. See *In re Cullmann Estate*, 169 Mich App 778, 785; 426 NW2d 811 (1988). Property rights to funds in the account are determined by the intent of the depositor at the time of the deposit. *In re Pitre*, 202 Mich App 241, 244; 508 NW2d 140 (1993).

Although Dalton now contends that the probate court failed to analyze whether Bialkowski successfully rebutted the statutory presumption that funds in a joint bank account shall vest in the survivor, the probate court did not analyze whether that statutory presumption was overcome because that argument was not advanced by the parties. During trial on this matter, the parties' dispute did not concern Goodin's intention with respect to whether the funds would vest in the surviving joint owner(s) upon his death, but rather whether Goodin intended to make Bialkowski a joint owner. Dalton's failure to submit legal arguments on this issue left the probate court to resolve the sole factual issue that was presented by the parties—Goodin's intent

with respect to adding Bialkowski to the account. Having determined that Goodin intended to make Bialkowski a joint owner, the probate court's decision to equally divide the proceeds of the account between the survivors is consistent with the statutory presumption.

Dalton also argues that the probate court clearly erred in finding that Goodin intended to make Bialkowski a joint owner and beneficiary of the account.

Bialkowski testified that Goodin intended to make her a beneficiary of the account. The insertion of the words "Adding Beneficiary" on the signature card above Bialkowski's name is consistent with Bialkowski's testimony. The bank employee's testimony indicates that the bank's protocol for adding Bialkowski as a joint owner was not followed. The employee's only explanation for the words was that she made a mistake. But her departure from the bank's protocol does not address or alter the probate court's finding of Goodin's intent. Dalton contends that the court's finding is erroneous because the notation does not identify the subject of the phrase "Adding Beneficiary." However, based on the testimony of Bialkowski concerning Goodin's conversation with the bank employee, coupled with the fact that the only other person that it could conceivably refer to, Dalton, was already a joint owner, the probate court reasonably concluded that the phrase "Adding Beneficiary" referred to Bialkowski. Accordingly, the probate court's findings of fact concerning Goodin's intent are not clearly erroneous.

Affirmed. Petitioner-Appellee being the prevailing party may access costs. MCR 7.219.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Jane M. Beckering