



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).

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DT: November 14, 2012

RE: In re Marian T. Leach
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL:

Manager Jim Leyland

By: Barbara Andruccioli

Jim Leyland began his baseball career with the Detroit Tigers when he signed with the team as a catcher in 1963. He spent seven seasons as a minor leaguer in the Tigers organization, but mainly served as a coach with the Montgomery Rebels while playing in just two games for the team.

In 1985 he was named Manager of the Pittsburgh Pirates. During his tenure with the Pirates, (1986 to 1996), he won two Manager of the Year trophies (1990 and 1992) and helped to develop such All-Stars as Barry Bonds and Bobby Bonilla before a fire sale in the mid-1990s



soured him with new ownership. Under Leyland, the Pirates went to the National League Championship Series in three straight seasons.

In 1997, Leyland was hired to manage the Florida Marlins and promptly led them to the franchise's first championship. The Marlins, in only their fifth year of existence, became at that time, the fastest expansion franchise to win a World Series. After a dispute with management, he walked away from the final two years of his contract.

When he left managing, he became a Pittsburgh-based scout for the St. Louis Cardinals. He was often seen sitting in the stands at PNC Park with fellow ex-Pirates manager Chuck Tanner.

In the 2006, Leyland returned to Detroit managing in the American League for the first time. That year, Leyland guided the Tigers to their best season since 1987. In leading the team to the AL pennant, he became the seventh manager to win pennants in both major leagues, joining Joe McCarthy, Yogi Berra, Alvin Dark, Sparky Anderson, Dick Williams, and Tony La Russa.

After the 2006 season ended, Leyland was recognized with the Manager of the Year award for the third time in his career. He became the third person to win the award in both leagues, joining Tony La Russa and Bobby Cox. Leyland also won The Sporting News Manager of the Year Award for the American League in 2006.

It is interesting to note, at least to this Pittsburgh native, that three of the Tigers current assist coaches have a Pittsburgh connection. Lloyd McClendon, the current batting coach for the Tigers, was also a former manger and outfielder for the Pittsburgh Pirates. Gene Lamont, who was chosen as a first round draft pick for the Detroit Tigers in 1965, is the current third base coach of the Tigers. He was also a former manager and assistant coach of the Pittsburgh Pirates. Finally, Rafael Belliard, the current infield coach of the Tigers was a former infielder of the Pirates.

On May 1, 2012, Leyland gained his 1,600th victory as a major league manager, passing Tommy Lasorda on the all-time wins list. In 2012, the Tigers won the American League Central Division. On that team, Tiger third baseman Miguel Cabrera was the American League Triple Crown winner. This was the first Triple Crown winner in Major League Baseball since Carl Yastrzemski in 1967.

Unfortunately, as all Detroit fans know, the Tigers were swept in the 2012 World Series against the San Francisco Giants. On October 30, 2012, Leyland signed another one year contract with the Tigers to manage for the 2013 season.

In a nutshell, Jim Leyland led the Florida Marlins to a World Series, won three straight division titles (1990, 1991, and 1992) with the Pittsburgh Pirates and with the Tigers has become the seventh manager in history to win pennants in both the National and American Leagues. He is a three-time Manager of the Year Award winner, twice in the National League and once in the American League in 2006. Although he currently coaches here in Detroit, he still keeps his home in Pittsburgh.

REVIEW OF CASE:

Reference Files: Mental Capacity
 Document Intended As a Will
 Testamentary Intent v Mental Capacity

This unpublished case shows unique reasoning and, if followed as precedent could have an impact on the trial of not only documents intended as a Will, but in resolving issues of testamentary intent generally.

All parties agreed that Decedent did not leave a Last Will and Testament.

Petitioner tried to admit to probate two (2) documents, under MCL 700.2503, as documents intended as a Will.

The Probate Court found there was testamentary intent and, therefore, as a matter of law the document was intended as a Will.

Although the Court of Appeals did not reverse this theory of the Decision, it is clear that they said the Lower Court should have conducted an evidentiary hearing as Petitioner failed to show, by clear and convincing evidence, that there was testamentary intent. There was a reversal on that basis.

The Court of Appeals went further and decided that mental capacity was an issue separate and apart from testamentary intent. In other words, you could have testamentary intent and mental capacity could still be part of a challenge. Then, the Court of Appeals said that one might look at mental capacity, not only separately from testamentary intent, but as part of testamentary intent, because if you did not have capacity you could not have intent. This would be unique because it would be shifting the burden of mental incapacity from the Respondent over to the Petitioner as part of his burden of clear and convincing evidence. If this is valid, it would not only apply to documents intended as a Will but to Wills also.

I do not think this last part of the Decision should stand as precedent, because it has always been the case that charges of incapacity are part of the burden of proof of Respondent. The court protected itself by resolving the issue in the alternative.

AAM:jv:726437
Attachment

STATE OF MICHIGAN
COURT OF APPEALS

In re MARIAN T. LEACH.

KEITH M. STORM,

Petitioner-Appellee,

v

JEREMY STORM, and DEREK STORM,

Respondents-Appellants.

UNPUBLISHED
October 16, 2012

No. 304688
Ingham Probate Court
LC No. 10-001615-DE

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

Respondents appeal by leave granted the probate court's order granting in part petitioner's motion for summary disposition and denying respondents' motion for summary disposition. For the reasons set forth in this opinion, we affirm the probate court's order to the extent it denied the parties' motions for summary disposition, vacate the order in all other respects, and remand for further proceedings.

This case involves a dispute over whether certain documents can be admitted to probate as a will under MCL 700.2503. Petitioner seeks to probate two documents that decedent Marian Leach executed on her death bed that purported to convey real property in Illinois from Leach to petitioner effective upon Leach's death. Respondents oppose probate of the documents.

In order to be effective to transfer property, a will must comply with certain formal requirements set forth in MCL 700.2502. In this case, there is no dispute that the proffered documents did not comply with those requirements. However, MCL 700.2503 provides an exception for writings that do not meet all of the requirements of MCL 700.2502 where the proponent of the document "establishes by clear and convincing evidence that the decedent intended the document . . . to constitute . . . the decedent's will."

In this case, the probate court granted petitioner's motion for summary disposition, in part, pursuant to MCR 2.116(C)(9) and (C)(10) because it found that the documents had "testamentary intent." The probate court denied respondent's motion, reasoning that there were

questions of fact “regarding the circumstances of the execution of the deeds and how that affects Decedent’s intent.” Respondents contend that the probate court erred.

We review de novo a probate court’s ruling on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition is proper under MCR 2.116(C)(10) where there is no genuine issue of material fact, and a motion is proper under MCR 2.116(C)(9) where the opposing party has failed to state a valid defense.

In this case, petitioner sought to probate certain documents under MCL 700.2503 as a will. Therefore, petitioner had the burden to show by clear and convincing evidence that the decedent intended the documents to constitute her will. Here, the probate court erred when it granted petitioner’s motion for summary disposition in part based on its conclusion that the deeds were “writings that have testamentary intent.” Specifically, the probate court did not apply the clear and convincing evidence standard to determine whether Leach had testamentary intent. Instead, as the court aptly noted, there remained questions of fact regarding the circumstances surrounding the execution of the documents. The resolution of those questions is necessary before the court can arrive at a conclusion regarding Leach’s intent. In particular, there were no witnesses, decedent was suffering from chronic congestive heart failure and mitral valve disease; the documents were executed on the eve of decedent’s death while she was in hospice care and they were drafted by petitioner, the beneficiary. Further, petitioner had the decedent sign the documents without securing any witnesses to the signing. The only evidence offered in support of the documents was petitioner’s affidavit wherein he asserted that Leach intended to leave the property to him.

Moreover, while the language of the documents themselves was pertinent to Leach’s intent, the effect of such language necessarily depends on Leach’s capacity at the time the documents were executed. The probate court appears to have distinguished between decedent’s intent to create a will and her capacity to do the same. However, regardless of whether a finding as to capacity is distinct from a finding of intent, the questions raised by the probate court concerning decedent’s capacity were similarly relevant to whether decedent had testamentary intent. For example, decedent may have been heavily medicated and in poor health. The affect of the drugs and decedent’s health would have necessarily impacted both her capacity *and* her intent. Similarly, the fact that petitioner prepared the documents and had Leach sign them on the eve of her death may have affected her intent to create a will. Further, even assuming that the resolution of intent and capacity involves separate findings, as discussed above, the probate court did not find by clear and convincing evidence that decedent intended the documents to be testamentary in nature, nor did petitioner offer such evidence.

In sum, the probate court should have held an evidentiary hearing to address the unresolved questions of fact surrounding the execution of the documents, which in turn would have allowed the court to determine whether there was clear and convincing evidence that Leach intended the documents to be her will. Therefore, remand for further proceedings is appropriate.

Respondents contend that the nature of the documents shows they were deeds; however, resolution of that issue is contingent on the probate court’s finding of whether there is clear and

convincing evidence that Leach intended the documents to be her will. Without a record resolving this question, we cannot reach a conclusion as to the nature of the documents.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Neither party having prevailed in full, neither may tax costs. MCR 7.219(A).

/s/ Amy Ronayne Krause

/s/ Stephen L. Borrello

/s/ Michael J. Riordan