



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 through 2011 issues of *Michigan Super Lawyers* magazine featuring the top 5% of attorneys in Michigan and is listed in the 2011 and 2012 compilations of *The Best Lawyers in America*. He 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. He is listed by Martindale-Hubbell in the area of Probate Law among its Preeminent Lawyers.

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DT: March 22, 2013

RE: ROY TRANSIT, Personal Representative for the Estate of THOMAS E. SCHULTZ v.
CHARLES NEELY, IRENE ROBERSON, JAMES BROWN and JASON REESE, Et Al
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL LORE:

“Rites of Spring”

I am now in Florida and look forward to attending the Grapefruit League. Another rite of spring for me, which I observe religiously, is the purchase of “Who’s Who in Baseball”. I have done this since it cost .50¢ in the early ‘50’s. As a collector, I have obtained a copy of each year going back to 1912. I buy two, one for reading and one for my collection.

For the uninitiated, “Who’s Who in Baseball”; now in its 98th year, is a 4” x 6”, 300 plus page volume of the statistics of each player, signed to a current Major League Roster showing who played at least somewhere in the year before. For the baseball devotee who is after Bill James’



type statistics, don't buy "Who's Who in Baseball". There is nothing there but old time statistics, i.e., club, league, position, games, at bats, runs, hits, doubles, triples, homeruns, RBIs, stolen bases and average; similar basic statistics for pitchers. The book lists the players in alphabetical order.

I speak of doing this religiously. I have just come from the Bat Mitzvah of a friend's daughter and there is a ceremony of passing the Torah from generation to generation. In the ceremony I observed there was a great mother, a grandfather, parents and the youngster receiving the Torah from generation to generation. I remember my father introducing me to "Who's Who in Baseball" as he had read it. I suspect my grandfather didn't but it makes a good story.

Also on a religious note, the "Who's Who in Baseball" used to be 4" x 5" and fit neatly into my prayer book so, while others were in Temple praying, I had inserted this volume and was brushing up on who was better than whom.

Coincidentally, (or perhaps not), when the "Who's Who in Baseball" was enlarged to its present size, the size of the prayer book was made larger.

The volume is divided between pitchers and hitters, and each section is alphabetized.

I do not remember when it started, but sometime ago pictures were added to the statistics.

There is no commentary, no summaries, just pure statistics. It is a good way, however, to see the ebbing and flowing of the players throughout the year. Also, when a player is sent down to the Minors during a season, for a lack of ability or injury, those statistics are listed also. There is additional data as to when the players were on a disabled list, who they were traded for, if there was trade and awards won. Post season records are also included.

Unlike other sports, the rules of baseball have not changed that much and I believe the statistics are more meaningful than in other sports. This volume has stood the test of time because I do believe that each generation has been interested in statistics in making judgments about players.

There is a lot that you can learn from these statistics, other than a player's ability. For instance Prince Fielder, after he started playing full major league seasons, never played less than a 157 games, and in three of the last four years played 162 games or a full season and in one of those years 161 games. That's durability.

If you were to like comparative statistics you could pick up an older volume, compare it to the new one and see how players have grown physically by looking at the player's personal statistics randomly. You also get some demographic perspective. Years ago almost everyone was born American; now you can see true international membership.

This is my spring training.

REVIEW OF CASE:

Reference Files: Sosnick Rule
 Subject Matter Jurisdiction – Probate Court
 Forum Non Conveniens

In the Circuit Court, Plaintiff/Appellant said Defendants/Appellees converted assets. Defendants/Appellees said Plaintiff/Appellant breached his fiduciary duty and committed undue influence

upon the Decedent. The Circuit Court after denying one motion, based on change of venue, entertained another motion and remanded the matter to the Probate Court; saying that the Circuit Court had no subject matter jurisdiction. It mentioned forum non conveniens, as a basis for the Order Granting Dismissal based on lack of Subject Matter Jurisdiction; which of course is a venue term. The Court of Appeals affirmed.

Judge Sosnick said to me twice, in matters I had before him in the Oakland County Circuit Court, involving Trusts, “When I see the word trusts I remand the matter to Probate Court”.

This Opinion, although less truncated than that of Judge Sosnick, reaches the same result. It is the proper result, BUT:

1. Forum Non Conveniens is, in the opinion of this reviewer, something which has nothing to do with subject matter only venue and the mention of it should not have been mixed with subject matter jurisdiction. There is an interesting innuendo by Appellee that since there were more than 30 beneficiaries in the estate who might be affected by the litigation, the forum was inconvenient to them. This is really a non sequitur because that would apply to any matter in which the fiduciary was a Plaintiff or Defendant and there were multiple beneficiaries.
2. The Court of Appeals correctly cites the statute (EPIC) on subject matter jurisdiction; ‘that being a matter which arises out of the administration of the estate or related to the administration of a Trust’, but:
 - A. Again there is a mixed metaphor. Although the EPIC quote is correct, there is no distinction between “related to” the language regarding estates, and “arises out of”, the language of the Trust section. I believe the Court of Appeals should have made the distinction. The latter refers to Trusts and there was no Trust in this litigation.
 - B. The Court of Appeals correctly cites the tests for subject matter jurisdiction as “Could the court grant the relief sought”? Regarding the Plaintiff/Appellant’s claims, I believe the Circuit Court clearly could have clearly granted relief, but as to the Defendants/Appellees’ counterclaim(s) of undue influence and fiduciary duty, those were not matters for a Circuit Court. (QUERY: The effect of the Anna Nicole Smith case)
3. The Court correctly cites cases concerning what I call “a rose by any other name” in judging what pleadings are – you look past the title and to, in reality, what they say.
4. There is an implication that the Probate Court can entertain claims of malpractice and infliction of emotional distress against trustees.

STATE OF MICHIGAN
COURT OF APPEALS

ROY TRANSIT, Personal Representative for the
ESTATE OF THOMAS E. SCHULTZ,

UNPUBLISHED
February 19, 2013

Plaintiff/Third-Party-Defendant-Appellant,

v

No. 307852
Macomb Circuit Court
LC No. 2011-002272-CZ

CHARLES NEELY, IRENE ROBERSON,
JAMES BROWN, and JASON REESE,

Defendants-Appellees,

and

SEAN MCINTYRE and SCOTT MCINTYRE,

Defendants-Third-Party-Plaintiffs-
Appellees,

and

WILLIAM TRANSIT and BLAINE TRANSIT,

Third-Party-Defendants.

Before: RIORDAN, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Plaintiff, Roy Transit, appeals as of right the trial court's order transferring the case to Macomb Probate Court on the basis of subject-matter jurisdiction and the doctrine of *forum non conveniens*. We affirm.

I. FACTUAL BACKGROUND

Plaintiff is the personal representative for the estate of Thomas Schultz. He initiated the instant litigation against defendants, alleging that they improperly converted decedent's assets. Plaintiff claimed that defendants received and cashed unauthorized checks during decedent's lifetime. Defendants Sean and Scott McIntyre, however, filed a third-party complaint against plaintiff and his two sons, alleging that plaintiff breached his fiduciary duty as personal representative and exerted undue influence over decedent.

While defendants filed a motion to change venue to Macomb Probate Court, the trial court denied the motion. The trial court held that defendants failed to make a strong and persuasive showing of inconvenience or prejudice. However, the trial court noted that a more appropriate action would be a challenge based on subject-matter jurisdiction or the doctrine of *forum non conveniens*. Consequently, defendants filed a motion to dismiss pursuant to MCR 2.116(C)(4) and (8), arguing that the case should be dismissed based on lack of subject-matter jurisdiction and based on the doctrine of *forum non conveniens*. They argued that Macomb Probate Court had exclusive jurisdiction over this action, especially considering there had been previous litigation in Macomb Probate Court regarding the estate and the estate was still pending. They also contended that the doctrine of *forum non conveniens* should be applied because as a matter of public interest, the litigation included the interests of 30 beneficiaries who would be entitled to notice in the probate court.

Despite plaintiff's arguments in opposition, the trial court granted defendants' motion to dismiss. The trial court found that the probate court had exclusive jurisdiction over the case because the claims in the complaint and the third-party complaint arose from or were related to the administration of the estate and trust. Alternatively, the court found that transferring the case to Macomb Probate Court was appropriate based on the doctrine of *forum non conveniens* because the estate remained open in probate court, the issues raised were within the exclusive jurisdiction of the probate court, and there had been previous litigation in the probate court. Plaintiff now appeals.

II. SUBJECT-MATTER JURISDICTION

A. Standard of Review

Defendants' motion to dismiss was brought pursuant to MCR 2.116(C)(4) and (8). We review a grant or denial of a motion to dismiss for lack of subject-matter jurisdiction de novo. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001); *Cork v Applebee's of Michigan, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000).

B. Analysis

"In general, subject-matter jurisdiction has been defined as a court's power to hear and determine a cause or matter." *In re Lager Estate*, 286 Mich App 158, 162; 779 NW2d 310 (2009) (quotation marks and citation omitted). In other words, "[a] court has subject-matter jurisdiction to hear a case if the law has given the court the power to grant the rights requested by the parties." *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 39; 539 NW2d 526 (1995). "If a court lacks subject-matter jurisdiction, its acts and proceedings are invalid." *City of Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006). A party may attack the court's subject-matter jurisdiction at any time. *Usitalo v Landon*, __Mich App__; __NW2d__ (Docket No. 308240, issued December 11, 2012) (slip op at 3).

The jurisdiction of probate courts and circuit courts are distinguishable. "In Michigan, the circuit courts are courts of general jurisdiction and are vested with original jurisdiction to hear and determine all civil claims unless the constitution or statutes provide otherwise." *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 587; 644 NW2d 54 (2002) (quotation marks and

citation omitted). Probate courts, on the other hand, are courts of limited jurisdiction determined by statute. *In re Lager Estate*, 286 Mich App at 162.

In the instant matter, the trial court found that “the probate court has exclusive jurisdiction in this matter because the claims arise from or are related to the administration of the estate and trust.” The relevant statutory provision is MCL 700.1302, which states that the probate “court has exclusive legal and equitable jurisdiction of all of the following:”

(a) A matter that relates to the settlement of a deceased individual’s estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

- (i) The internal affairs of the estate.
- (ii) Estate administration, settlement, and distribution.
- (iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.
- (iv) Construction of a will.
- (v) Determination of heirs.
- (vi) Determination of death of an accident or disaster victim under section 1208.

(b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:

- (i) Appoint or remove a trustee.
- (ii) Review the fees of a trustee.
- (iii) Require, hear, and settle interim or final accounts.
- (iv) Ascertain beneficiaries.
- (v) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.
- (vi) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.
- (vii) Release registration of a trust.
- (viii) Determine an action or proceeding that involves settlement of an irrevocable trust.

Consistent with the trial court’s interpretation of MCL 700.1302, this case falls within the exclusive jurisdiction of the probate court. As this Court has repeatedly recognized, “[i]n determining jurisdiction, this Court will look beyond a plaintiff’s choice of labels to the true nature of the plaintiff’s claim.” *Michigan’s Adventure, Inc v Dalton Tp*, 287 Mich App 151, 155; 782 NW2d 806, 808 (2010), quoting *Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539 (1998). “[W]e determine the gravamen of a party’s claim by reviewing the entire claim, and a party cannot avoid dismissal of a cause of action by artful pleading.” *Attorney Gen v Merck Sharp & Dohme Corp*, 292 Mich App 1, 9-10; 807 NW2d 343 (2011).

The thrust of plaintiff's complaint is that defendants defrauded decedent and improperly received money that should have gone to the estate. Plaintiff attempts to frame his complaint as alleging a simple negligence action for conversion, which decedent could have pursued in his lifetime. However, plaintiff is not merely accusing defendants of converting decedent's assets. Rather, plaintiff is claiming that defendants converted assets that rightfully should have gone to the estate. Moreover, plaintiff's interest in this case is based entirely on his role as personal representative. He makes no claim or argument that he would have the right to enforce the conversion claim absent his role as personal representative for the estate.

Thus, the trial court properly found that the claims at issue related to the settlement and administration of decedent's estate or arose in the administration or distribution of the trust. MCL 700.1302(a) and (b). This interpretation is consistent with one of the few cases on point, *Manning, supra*. In *Manning*, 229 Mich App at 610-614, the plaintiffs were beneficiaries of the trust and they filed suit against the defendants, the trustee and his law firm. The plaintiffs' complaint included a claim for emotional distress due to the defendants' willful breach of duty in the administration of the trust and negligence with respect to the same conduct. *Id.* at 613. The plaintiffs also alleged legal malpractice. *Id.* In deciding whether the probate court had exclusive jurisdiction in this manner, this Court held that it was "clear from the face of the complaint that plaintiffs' emotional distress and malpractice claims arose in the administration of a trust" and the claims were therefore "within the exclusive jurisdiction of the probate court." *Id.* at 613, 614. Hence, while plaintiff attempts to argue that a matter involving a negligence claim must fall within the circuit court's jurisdiction, we have specifically held that negligence claims such as emotional distress may be within the exclusive jurisdiction of probate courts. Accordingly, the trial court did not err in transferring this case to the probate court.

III. CONCLUSION

The case was properly transferred to the Macomb Probate Court, which had exclusive jurisdiction over this matter pursuant to MCL 700.1302. While plaintiff also raises a challenge based on the doctrine of *forum non conveniens*, we decline to address this argument as we have already found the case was properly transferred on jurisdictional grounds.¹ We affirm.

/s/ Michael J. Riordan

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

¹ Furthermore, a review of the factors presented in *Cray v Gen Motors Corp*, 389 Mich 382, 395; 207 NW2d 393 (1973), supports the trial court's finding.