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 2007-2013 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*® 2014 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2013 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: May 17, 2014

RE: In re FILIBECK Estate
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL STATS:

Situational Statistics

All statistics are not equal. When Andy Pafko was traded, from the cellar dwelling Cubs to the pennant chasing Dodgers, he remarked that "he faced pitchers he never saw and pitches he was never thrown as a Cub". This is because the Cubbies faced the third, fourth and fifth pitchers in the other team's rotation. A hit for the Dodgers was worth more than a hit for the Cubs. A .300 average for the Dodgers was likewise worth more than .300 for the Cubs.

It is said that a heavy hitter in the National League does worse when traded to the American League. Witness Albert Pujols' decline.

An opposite calculus applies to pitchers. A 20 game winner for a cellar dweller should do better on a run producing team.

Within a game statistics can be relative. A homerun, with the bases empty, and an eight nothing lead, is worthless except to the bonus threshold of the slugger.

A walk off homerun with two outs, in the bottom of the ninth with one on, is of value.

A hitter that gets a hit on, or coming out of a 0–2 count is more indicative of ability than a hit on a 2–1 or 3–1 count.

A double, down the line, is more meaningful with men on base and the first and third basemen hug the line to prevent a double.

Just my opinion.

REVIEW OF CASE:

Reference Files: Crowd Source Fundraising
Constructive Trust
Rights of an Estate

The above three topics are covered succinctly in the above referenced, published Opinion. Each position cited by the Court of Appeals is correct, but with respect, it is the opinion of this reviewer, that the conclusion is wrong.

Plaintiff/Appellee is an estate of a Decedent who became ill without insurance. Defendant/ Appellant was the leader of a crowd fundraiser to pay for his medical bills.

Plaintiff's deceased obtained insurance which covered all medical expenses; then died.

Plaintiff complained that Defendant took the money because she deserved it for raising the money for Decedent, and because he gave it to her before he died.

The Lower Court ruled and the Court of Appeals affirmed:

1. That it was not Decedent's money to give;
2. That Defendant didn't raise the funds alone;
3. That the funds were for the benefit of Plaintiff's deceased;
4. A constructive Trust is an equitable remedy imposed by operation of law when equity determines that legal title is held for benefit of another. She became a fiduciary and could not pay the funds to herself.

If all this is correct, why do I believe the Opinion wrong? The case relies on the intent of the donor. If that is true, and the only delineation of purpose is the crowd fundraiser was "medical expense", and if there were none, then the monies should be returned pro rata to the donors, as there were no further medical expenses.

AAM:jv:771163
Attachment

STATE OF MICHIGAN

COURT OF APPEALS

In re FILIBECK Estate.

HEIDI J. FILIBECK, Personal Representative of the ESTATE OF STEPHEN J. FILIBECK,

Plaintiff-Appellee,

v

LAURA J. BEAL,

Defendant-Appellant.

FOR PUBLICATION
June 5, 2014
9:00 a.m.

No. 315107
Menominee Probate Court
LC No. 2011-000065-CZ

Before: BECKERING, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Laura J. Beal appeals by right the probate court's order that imposed a constructive trust on funds kept in her name that had been raised to pay the medical bills of decedent Stephen R. Filibeck and requiring her to pay those funds to the Estate of Stephen J. Filibeck. We affirm.

For the most part, the facts in the instant matter are undisputed. Stephen J. Filibeck (Stephen) had been employed by the State of Michigan, but was laid off due to budget cuts and lost, inter alia, his health insurance as a result. Several months later, he was diagnosed with cancer, which would require extensive and expensive medical treatment. Laura J. Beal (Laura), one of Stephen's daughters from a prior marriage, spearheaded a fundraising campaign for the purpose of defraying Stephen's medical expenses. The campaign largely consisted of a benefit dinner that, through the efforts of Laura and numerous other individuals, raised approximately $45,000, which was deposited in an account in Laura's name. Prior to his death several months later, however, Stephen regained his health benefits when he was reclassified as a retiree. Stephen directed that a sum of money from the fund be used to pay off his mortgage, and some other funds were withdrawn on an as-needed basis for various unchallenged purposes. Upon Stephen's death, approximately $30,000 remained in the account.

Stephen died intestate, survived by his then-current wife, Heidi J. Filibeck, who is now the personal representative of his estate, Laura, and his other child from the former marriage, Lisa Filibeck (Lisa). According to Laura, shortly before his death, Stephen directed that the approximately $30,000 remaining in the account be divided equally between Laura and Lisa.

Laura's theory was that she raised the funds, so they should belong to her, and in any event, Stephen had gifted the money to his daughters during his lifetime. Heidi contends that the money remaining in the account properly belonged in Stephen's estate, and further notes that some medical expenses remained outstanding and unpaid by Stephen's insurance. Heidi's theory was that the donations were meant to help with decedent's medical and other bills, and were not for the daughters' personal use. Some testimonial evidence supported the factual underpinnings for both parties' positions. The trial court concluded that Stephen had in fact actually instructed Laura to divide the funds between herself and Lisa, however that Stephen had no power to do so because he was not the owner of the funds at the time, and it imposed a constructive trust on the funds because they were donated for the purpose of Stephen's medical treatment.

A constructive trust is an equitable remedy created, not by intent or by agreement, but by the operation of law. *In re Swantek Estate*, 172 Mich App 509, 517; 432 NW2d 307 (1988). The imposition of a constructive trust makes the holder of legal title the trustee for the benefit of another whom in good conscience is entitled to the beneficial interest. *Id.*, citing *Arndt v Vos*, 83 Mich App 484, 487; 268 NW2d 693 (1978). A constructive trust may be imposed when "necessary to do equity or to prevent unjust enrichment." *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 188, 504 NW2d 635 (1993) (internal quotation omitted). This Court reviews equitable decisions of the probate court de novo, but overturns any underlying factual findings only upon a finding of clear error. *In re Temple Marital Trust*, 278 Mich App 122, 141-142; 748 NW2d 265 (2008). The Court is also mindful that equity is a matter of grace and discretion applied to the particular circumstances of each particular case. *Youngs v West*, 317 Mich 538, 545; 27 NW2d 88 (1947).

We find no clear error in the trial court's finding that the funds at issue were raised for the purpose of covering Stephen's medical treatments, rather than more generally for whatsoever Stephen might wish. Furthermore, there is no clear error in finding that the funds were in fact donated, rather than, as Laura contends on appeal, essentially profit derived from payments for goods or services. Although the form of the fundraising campaign did indeed involve some of the participants receiving some kind of consideration in exchange for their monies, the testimony unambiguously shows that the "consideration" was itself donated and that the form was merely an entertaining pretext. The Court takes notice that such fundraising campaigns—raffling off donated goods or services, paying to partake of donated food and drink, and the like—are common, and it is well established that courts look to the substance of things rather than superficialities. There is no doubt in the record that the money that ended up in the fund came to be there because the people who parted with the money intended to make donations for the purpose of defraying Stephen's medical costs. Furthermore, although it is undisputed that Laura spearheaded the effort and expended considerable personal resources in doing so, the record does not show her to have done so singlehandedly.

The instant case is in many ways similar to *Babcock v Fisk*, 327 Mich 72; 41 NW2d 479 (1950). In that case, a four-year-old girl lost both arms in a terrible accident, whereupon "a number of sympathetic people" undertook to raise funds for her needs, an effort that ultimately raised significantly more than the girl needed. *Id.* at 75. The fundraisers formed a committee to determine how to administer the funds, and the girl's father disagreed with the committee's proposal and sought possession of the money as her guardian. *Id.* at 75-76. Although in that case an explicit trust was formed, our Supreme Court nevertheless considered the intent of the

donors to be dispositive; if they intended the moneys to be an outright gift, the girl would be the owner thereof, but if they had intended the moneys to be used on her behalf, the trust would be the owner thereof. *Id.* at 77-78. "Determination of this issue, under the circumstances and conditions attending the instant case, should be made primarily in the light of that which motivated the contributors, rather than what might have been the concept, desire or thought of some of the solicitors, or of those indirectly beneficially interested in the contributions." *Id.* at 79. The Court found it "quite inconceivable that the donors designed a direct and absolute gift of so large a sum of money to a five year old girl, without contemplating that some plan for the preservation, control and use of the fund would be adopted; and that the perfecting of such a plan would be accomplished by those who solicited the contributions." *Id.* at 82.

As in *Babcock*, the donors of the funds at issue unambiguously did not intend to make them an outright gift. Rather, they were intended for a particular purpose, and the necessary implication is that those funds would in some way be administered for the effectuation of that purpose. Although no explicit trust was set up here, we conclude that the unavoidable consequence of the circumstances is the same: that "the solicitors of the fund here involved acted as agents of the donors" and as a consequence they "now occupy the position of trustees." *Babcock*, 327 Mich at 83. We agree with the trial court that equity compels the same result here: the money Laura received was not for her benefit. As she points out, the money was kept in her name, apparently with Stephen's approval, but the trial court correctly concluded that she did so in an essentially fiduciary role, and so the trial court correctly imposed a constructive trust on the funds.

Nonetheless, also as in *Babcock*, the funds so raised ultimately turned out to vastly exceed what was necessary to carry out that purpose, and so "the question at once arises as to what, under the circumstances of this case, should be decreed to be the scope of the duties of such trustees." *Babcock*, 327 Mich at 83. Again, we find no clear error in the trial court's finding that Stephen actually directed Laura to divide the funds between herself and Lisa. However, Stephen was not the owner of the funds and could not make a gift thereof. Additionally, Laura argues that the only possible beneficiary of the constructive trust must be Stephen, and it does not appear entirely proper to frustrate his expressed wishes.[1] She notes further that Stephen was an adult, whereas the beneficiary of the trust in *Babcock* was a child.

However, Laura's own testimony shows that even she did not believe the money in the account was Stephen's to use in any way he wished. She withdrew the funds from the account a few days prior to Stephen's death, when it was apparent that he would not live much longer, but she indicated that had Stephen miraculously survived, the money would have remained intended

[1] We recognize Laura's argument that expending a portion of the fund toward Stephen's mortgage may not have been in keeping with the intended purpose of the fund. However, although Heidi may have incidentally benefited because she lived in the residence, paying off Stephen's mortgage was to his benefit and did involve paying a bill, albeit not a medical one. Consequently, we are not persuaded that it falls into the same class of ultra vires acts as a trustee paying out a portion of a trust to him- or herself.

for his benefit. Furthermore, although the testimony is not entirely clear, it appears that Stephen did not direct that Laura immediately consider the money to be hers and her sister's, but rather that they should keep the remainder at some undefined point in the future.

In any event, a gift, whether *inter vivos* or *causa mortis*, requires not only intent to convey something and acceptance by the intended recipient, but also delivery or at least written instructions to make such a delivery. See *Osius v Dingell*, 375 Mich 605, 611; 134 NW2d 657 (1965); *Lumberg v Commonwealth Bank*, 295 Mich 566, 568; 295 NW 266 (1940). Gifts *causa mortis* may even be upheld on a constructive trust theory so long as *some* kind of delivery or written instruction has been made. See *In re Freedland's Estate*, 38 Mich App 592, 607-608; 197 NW2d 143 (1972). The trial court found the requisite intent, and Laura's actions prove acceptance. Unfortunately, Stephen left no written instruction to that effect and there is no evidence that Stephen made any kind of delivery, not even *de minimus* constructive delivery. That being the case, we must conclude that no valid gift occurred. Laura, as constructive trustee of the funds and therefore a fiduciary, could not simply pay the remainder of the trust to herself under the circumstances.

We therefore affirm the trial court. Plaintiff/Appellee being the prevailing party may tax costs. MCR 7.219(A).

/s/ Jane M. Beckering
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra