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## **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

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He is a member of the Society of American Baseball Research (SABR).

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**DT:** August 6, 2014

**RE:** In the Matter of the Estate of IRENE E. PERUN, Deceased  
STATE OF MICHIGAN COURT OF APPEALS

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### **REVIEW OF CASE:**

Reference Files: Ex Parte Communication  
Backing up a ground asserted on appeal  
Sanctions

Appellee obtained an Order Allowing the Sale of Real Estate. A Reconsideration Motion was denied. Appellant claims that the Probate Court did not follow proper procedures. Appellant also complains about an ex parte communication to the Trial Court. Appellee asks for sanctions because of a vexations appeal.

The Court of Appeals ruled that in deciding any Motion for Consideration abuse of discretion is the standard, and the Appellant failed to show the court why the determination of the Lower Court was outside one of a principled range of outcomes. In particular, the Court of Appeals said that Appellant was merely making an allegation that there was a failure to follow procedures, but did not delineate what those procedures were and the Court of Appeals said they were not going to look for those purported failures.

The ex parte communication was raised by a footnote and the Court of Appeals concluded that the issue was not raised below, but took the time to answer the question as to what ex parte communications are permissible and which ex parte communications are not. The Court of Appeals looks not to Rules of Procedure or the Rules of Professional Responsibility, but Canon 3(A)(b)(a) of the Code of Judicial Conduct.

“A judge may allow ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits”.

Appellee had a scheduling conflict.

Appellee was denied her sanctions because she did not raise the issue by separate motion, but asked for those damages in a Reply Brief.

AAM:jv:775428  
Attachment

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of the Estate of IRENE E. PERUN,  
Deceased.

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ANDREA LYNN RACHWAL, Personal  
Representative of the Estate of IRENE E. PERUN,

Appellee,

v

ANDREW J. PERUN,

Appellant.

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UNPUBLISHED  
June 26, 2014

No. 313869  
Macomb Probate Court  
LC No. 2010-199763-DE

Before: MURRAY, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Appellant appeals as of right an order approving the sale of real estate. However, the issues on appeal relate to the trial court's prior orders denying appellant's re-notice of hearing and his motion for reconsideration. We affirm.

Appellant argues in his brief that the trial court erred in denying his re-notice of hearing. However, at oral argument before this Court he dismissed any appeal related to that order, so we will not address that issue.

We hold that the trial court did not abuse its discretion in denying appellant's motion for reconsideration. "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodward v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

On September 7, 2012, appellee filed a petition for approval of the sale of real estate for the Lyons Circle property. That same day, appellee also filed a petition for partial distribution. At the hearing on appellee's petitions, appellant attempted to raise the issues of rent and property taxes that the trial court noted were not properly before the court. The trial court determined that there was nothing inappropriate about the proration of taxes between the purchaser and the seller, and granted the petitions.

On appeal, as in the trial court, appellant fails to cite any support for his statement that the trial court erred in denying the petition to approve the sale of the Lyons Circle property because “proper procedures” were not followed. In other words, appellant merely concludes that the trial court did not follow proper procedures in approving the sale of the Lyons Circle property, but does not provide any law to support his conclusory statements. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Therefore, appellant has failed to establish that the trial court abused its discretion in concluding that appellant failed to show that it “made a palpable error and that a different disposition would result from correction of the error.” See *Herald Co v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003), citing MCR 2.119(F)(3).

We reject appellee’s request to award her damages under MCR 7.216(C)(1), on the basis that appellant’s appeal is vexatious. Having not followed the procedures of MCR 7.211(C)(8) (requiring a separate motion when seeking damages) and MCR 7.216(C)(1), we deny appellee’s request for sanctions. See *In re Daniels Estate*, 301 Mich App 450, 460; 837 NW2d 1 (2013) (it is insufficient for a party to only request sanctions pursuant to MCR 7.216(C)(1) in its brief on appeal).<sup>1</sup>

Affirmed.

Appellee may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Christopher M. Murray  
/s/ Kathleen Jansen  
/s/ Douglas B. Shapiro

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<sup>1</sup> Appellant argues that appellee’s counsel’s March 14, 2012, letter to the trial court constituted an impermissible ex parte communication. Appellant failed to raise this issue in the trial court, so it is unpreserved for appellate review. See *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005). Although, generally, judges are not to consider ex parte communications, “[a] judge may allow ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits . . . .” Code of Judicial Conduct, Canon 3(A)(4)(a). Here, appellee’s counsel notified the trial court in her letter that she had a scheduling conflict with the hearing date provided in appellant’s notice of hearing.