



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 2007-2014 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*® 2015 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2014 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, go online to: <http://www.kempklein.com/probate-summaries.php>

DT: December 9, 2014

RE: Dennis Soltys, Sr. and Marlene Harris v David A. Schmidlin, Personal Representative of the Estate of Kathleen Schmidlin
STATE OF MICHIGAN COURT OF APPEALS

BASEBALL STATS:

LOU BRISSIE

All baseball fans of Peter Gray, who played outfield with one arm for the St. Louis Browns during the war years, and Jim Abbott, who pitched with one arm in the early 1980’s.

In many respects, Lou Brissie had to overcome greater disabilities.

One of the reasons for amputating a limb, is that a greatly damaged limb that remains can be more inhibiting than the absence of a limb.

Lou Brissie was a Veteran, he fought in World War II. Lou was hit by an explosion of an artillery shell, which almost completely destroyed one of his legs. He had more than 20 operations and could only walk with a leg brace, but he ultimately made it to the major leagues. Jim Abbott had a record of 87 wins and 108 losses. Lou Brissie didn't pitch in as many games, but had a 44-48 record. Lou played for 4 years with the Philadelphia Athletics and then 2 more with the Cleveland Indians. In 1948 he had a 14-10 record and that would have paid him millions today. Let's all remember this Veteran who won the Purple Heart and the Bronze Star.

REVIEW OF CASE:

Reference Files: Joint Bank Accounts
 Presumption of Survivorship

This one page Opinion Order by the Michigan Supreme Court is very important. The issue always arises as to whether the statutory presumption that the depositor intended to vest title in the survivor is often at issue. The Supreme Court here states two standards. First, it upholds what the Court of Appeals said that it is the burden on the non-survivor, estate, to show that there was a contrary intention of vesting the survivor.

The Supreme Court however, goes farther and claims that the Court of Appeals did not apply a second standard as to the burden of proof. The Supreme Court sites itself (*Lau v Lau*, 304 Mich 218 (1943)) for the standard that you must provide “reasonably clear and persuasive proof of a contrary intention.” Thus, it is not merely enough to preponderate that is necessary in overcoming the presumption. It is “clear and persuasive proof.”

Query, should this apply to the overcoming of all presumptions?

AAM:kjd
Attachment
785697

Order

Michigan Supreme Court
Lansing, Michigan

November 26, 2014

Robert P. Young, Jr.,
Chief Justice

148740

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

In re Estate of DOLORES C. SOLTYS

DENNIS SOLTYS, SR., and MARLENE
HARRIS,

Plaintiffs-Appellees,

v

SC: 148740
COA: 311143
St. Clair PC: 2009-000587-CZ

DAVID A. SCHMIDLIN, Personal Representative
of the Estate of KATHLEEN SCHMIDLIN,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the January 7, 2014 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE that part of the Court of Appeals opinion affirming the ruling of the St. Clair Probate Court that the plaintiffs had sufficiently rebutted the statutory presumption of a depositor's intention to vest title to jointly held accounts in the surviving joint owner, MCL 487.703. In this case, the statutory presumption that the decedent intended the joint accounts to become the property of the survivor arose based on evidence that the decedent created and maintained the accounts until her death. *Jacques v Jacques*, 352 Mich 127 (1958). The Court of Appeals stated that "the statutory presumption . . . can be rebutted by competent evidence." However, although a party challenging the statutory presumption certainly must proffer competent evidence, the relevant question is whether the party has met its burden of proof to overcome the statutory presumption by providing reasonably clear and persuasive proof of a contrary intention. *Id.*; *Lau v Lau*, 304 Mich 218 (1943); see also *Kirilloff v Glinisty*, 375 Mich 586 (1965). We REMAND this case to the Court of Appeals for application of the proper standard. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 26, 2014

Clerk