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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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DT: August 6, 2014

RE: **In re Estate of RICHARD EDWARD SPERLIK**
STATE OF MICHIGAN COURT OF APPEALS

REVIEW OF CASE:

Reference Files: Heirs
Corporate v Individual Rights
Succession

Appellant had a summary disposition entered against him by the Kent County Probate Court. Appellant sought to have a corporation which had contractual rights against another corporation enforce those rights. The rights between the two corporations were set forth in a contract. The contract said that the rights of the contract would not be binding on, or benefit, heirs and assigns. The Probate Court ruled in summary disposition that, because as Appellant was an heir to the estate

which owned the stock of the creditor corporation, he was bound by the exclusionary successor provision of the contract. The Court of Appeals reversed, saying that the corporation was not an heir, but continued to hold its rights against another corporation. The Court of Appeals said that the result reached by the Lower Court would have been unreasonable and observed the Lower Court's ruling would have forced the estate to give up monies already received, and prevented the corporation from prosecuting an account receivable. Therefore, the Court of Appeals reversed.

It is interesting to note that the issue of contention was first raised before the Probate Court by way of objection to Inventory. The Court of Appeals also notes that there is no definition of the terms "heirs" in the contract. The court correctly states the law on ambiguity, but doesn't find the term "heirs" to be ambiguous, but in essence gratuitously raises the issue, and then just doesn't deal with it. I think the Court of Appeals was deciding that you couldn't hold the corporation, that had a right of action, to be an "heir"; not that there was any ambiguity in the definition of heir.

QUERY:

What would have happened if the Court of Appeals had the *Butterfield Trust* case pleaded before it which interwove corporate rights with individual rights in a solely held corporation which was now the property of an estate?

AAM:jv:775690

Attachment

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of RICHARD EDWARD SPERLIK.

PATRICK SPERLIK, Personal Representative of
the Estate of RICHARD EDWARD SPERLIK,

UNPUBLISHED
June 24, 2014

Appellee,

v

DEAN SPERLIK,

Appellant.

No. 314352
Kent Probate Court
LC No. 10-188626-DE

Before: MURPHY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Dean Sperlik appeals by leave granted the trial court order granting summary disposition in favor of Patrick Sperlik, as personal representative, in this action regarding the estate of decedent Richard Sperlik. We reverse.

I. FACTUAL BACKGROUND

Before his death, decedent gifted all of his stock in his company—Terminix—to Patrick, his son and personal representative in this case.¹ Through decedent's other company—R.E.S. Consulting—decedent then entered into a consulting agreement with Terminix. The contract detailed that R.E.S. Consulting would provide pest control consulting services to Terminix.

Upon his death, decedent left his R.E.S. stock to the estate, which was to be distributed to Dean and his siblings, but not Patrick. Patrick, as personal representative, filed an amended inventory listing the value of R.E.S. stock at \$0. Dean filed an objection to the inventory, arguing that payments owed from Terminix to R.E.S. for services provided by decedent could increase the value of the R.E.S. stock. Dean asked that Patrick investigate this issue. Dean

¹ Appellant concedes for purposes of appeal that decedent granted his ownership in Terminix to Patrick.

intimated that Patrick's motivation for listing R.E.S. stock at \$0 was suspect, because as owner of Terminix, Patrick's self-interest was best served if Terminix avoided payment to R.E.S.

Patrick ultimately sought summary disposition under MCR 2.116(C)(8), arguing that an "heirs" clause in the consulting contract prevented recovery for any sum, as it stated: "This agreement shall not be binding and [inure] to the benefit of the parties['] heirs, assigns, executors, and successors." The trial court agreed and granted summary disposition in favor of Patrick pursuant to MCR 2.116(C)(8). The court found that the "heirs" clause prevented recovery for any unpaid sums owed to R.E.S. for services performed by decedent prior to his death because it precluded the contract from binding or inuring to the parties' "heirs." Dean now appeals.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

"A trial court's decision on a motion for summary disposition is reviewed de novo." *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). "A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and permits dismissal of a claim if the opposing party has failed to state a claim on which relief can be granted." *Rorke v Savoy Energy, LP*, 260 Mich App 251, 253; 677 NW2d 45 (2003). "When deciding a motion under (C)(8), this Court accepts all well-pleaded factual allegations as true and construes them in the light most favorable to the nonmoving party." *Dalley v Dykema Gossett*, 287 Mich App 296, 304-305; 788 NW2d 679 (2010). A court examines only the pleadings, and "[s]ummary disposition on the basis of subrule (C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Id.* at 305 (quotation marks and citation omitted). Further, "[t]he proper interpretation of a contract is a question of law that this Court reviews de novo." *In re Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

B. ANALYSIS

The disputed "heirs" clause states: "This agreement shall not be binding and [inure] to the benefit of the parties['] heirs, assigns, executors, and successors." The trial court interpreted this to mean that the estate could not recover any sums owed to decedent for services performed prior to his death because that money would ultimately go to decedent's heirs.

"The fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement." *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). Thus, when examining the language of a contract, we give the terms their plain and ordinary meaning. *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). "If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law. However, if the contractual language is ambiguous, extrinsic evidence can be presented to determine the intent of the parties." *Id.*

Of initial significance is that the "heirs" clause refers to "heirs" but does not provide a

definition of that term. The consulting contract is between two companies, R.E.S. and Terminix. It is not clear from the face of the agreement what or who are the companies' "heirs." Nevertheless, even assuming Dean and his siblings are "heirs" such that decedent's death would trigger this clause, we still find the trial court in error.

The issue before the trial court was whether decedent's company should be paid, even after decedent's death, for work already performed or for sums already due. This is not an issue of the contract benefiting the heirs. Rather, the issue is whether decedent's company itself was entitled to past-owed payment for which decedent had a cause of action on behalf of R.E.S. As this Court has recognized, "[t]he personal representative . . . who asserts a cause of action on behalf of a deceased stands in the deceased's place for all purposes incident to the enforcement of that claim, including rights and privileges personal to the deceased in his lifetime." *Allstate Ins Co v Muszynski*, 253 Mich App 138, 142; 655 NW2d 260 (2002) (quotation marks, citation, and brackets omitted). Thus, any cause of action to collect unpaid fees belonged to decedent's company, not his heirs, which the personal representative could pursue on decedent's behalf.²

As we have recognized, "contract terms should not be considered in isolation and contracts are to be interpreted to avoid absurd or unreasonable conditions and results." *Hastings Mut Ins Co v Safety King, Inc.*, 286 Mich App 287, 297; 778 NW2d 275 (2009). The interpretation the trial court imposed leads to an illogical result, as it would require the estate to divest itself of funds already paid to decedent for work performed on behalf of the corporation even before his death, as permitting those sums to remain in the estate could also benefit "heirs" for services performed pursuant to the contract. Because we interpret contracts in avoidance of unreasonable results, we find the trial court erred in its holding.

III. CONCLUSION

The trial court erred in granting Patrick summary disposition pursuant to MCR 2116(C)(8). We reverse. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan

² While Patrick argues he lacked standing to enforce any contractual obligations due to the "heirs" clause, when he was acting in his capacity as personal representative, he represented decedent and the estate, not himself as an heir.