



*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



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He was selected for inclusion in the 2007-2016 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*® 2017 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2016 by

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He is the published author of “Article XII: A Political Thriller.”

**DT:** March 16, 2017

**RE:** **In re Abe Bansali Living Trust**  
STATE OF MICHIGAN COURT OF APPEALS

**“Alan, you cannot write about baseball all your life”**

- **Mrs. Pollinger**
- **12<sup>th</sup> Grade English Comp**
- **Mumford High - 1959**

**BASEBALL STATS: “But for . . .”**

We in the law apply the doctrine of “but for” to answer the legal question, “Did this cause that?” I have always applied this to baseball every time I watch or hear about an event which should not have occurred but did, and changed the course of a game, or a season.

I have expanded the concept to apply to players’ careers. Most of us are familiar with what follows but perhaps not in this form. I have created two teams; one of good players who could have been great “but for” some event, and great players who could have been greater.

### **A Good Team That Could Have Been Great, But For . . .**

Let’s go around the horn.

Third Baseman. This honor goes to Buck Weaver. He had 8 good White Sox years before he was tossed in the black sox scandal. Buck had over 200 hits in his eighth and last season; batting .333. He also batted .333 in the 1917 World Series and .324 in the 1919 World Series. Another measure is that he struck out less than 30 times in each of his last 4 years while at bat over 2000 times. I admit that he did play short more than third, but it is my team. <sup>i</sup>

My shortstop is Ray Chapman. He is best known as he died because of Carl Mays’ pitch in 1920. Now let’s play a little “what if” or “but for”. Chapman’s death allowed Joe Sewell to break in at short. He did quite well, batting .318 in 1921. But keep in mind Chapman, Sewell, and Larry Gardner all played different infield positions. Had Chapman lived, the 3 might have played instead of second bagger Bill Wambsganss who batted 20 points lower. In 1921 Cleveland finished 4 ½ games behind the Yanks. Pure speculation I know, but this could have effected the pennant. <sup>ii</sup>

Second Baseman. Kenny Hubbs. Air crash. Ken only played 3 years, but was a Golden Glove player, Rookie of the Year, had 78 consecutive games without an error (and played in over 300 consecutive games). <sup>iii</sup> Ken broke-in when he was under 20 and probably had a great number of years ahead of him given his durability. In his first year, he also set a National League record with 661 at bats. <sup>iv</sup> He batted second behind Ernie Banks. <sup>v</sup> Since Ken was touted for his fielding we can use the number of his errors for our “but for”. In 1963 Ken had 22 and in 1964 Joey Amalfitano and Jimmy Stewart had 30 between them. <sup>vi</sup> The duo was so bad that the cubbies drafted a youngster out of Seattle, Triple A and added him to their 40 man roster. “But for” Hubbs’ death, Glenn Beckert might never have been brought up so quick and become a mainstay. <sup>vii</sup>

First Baseman. Eddie Waitkus. Eddie was shot in the chest by a woman who said, “If I can’t have you no one will.” She might have succeeded if she had aimed lower, but as was, he recovered and went on to play, though never like before. He became the model for Roy Hobbs In “The Natural” and “but for” Eddie being shot we could never have enjoyed Roy’s greatest fictional season. Eddie had a lifetime batting average of .300. <sup>viii</sup> After he was shot he never reached that again. Who knows, the Phillies might have won one in the 1950 World Series if Eddie didn’t have to play with a hole in him.

Catcher. Thurman Munson, plane crash. A good summary of Thurman’s abilities is found in Who’s Who in Baseball History. In the midst of a tremendous career, Munson hit .529 during the 1976 World Series, in a losing effort. Munson was the AL, MVP that year. He led AL catchers twice in assists and twice in double plays during his career. Under his leadership the Yankees went from a mediocre team to a win their own back-to-back championship in 1977 and 1978. Thurman was rookie of the year in 1970.<sup>ix</sup> Munson died at 32 just a tad past mid-passage.

Outfielder. Pete Reiser. Pete Reiser ran into too many walls. Roger Kahn’s “The Era” has the best description of Reiser’s tenacity producing injury.<sup>x</sup> Kahn details incidents starting in Reiser’s great 41 season. The warning track for Pete was the sound of his head hitting the wall. Quoting Dixie Walker, Kahn reports, “Pete was the damndest, [SOB], best ball player in the world. Or would have been, if only he hadn’t played so [SOB] hard.”<sup>xi</sup> The 41 season saw Pete in his first full season lead the league with 117 runs, 39 doubles, 17 triples, a .343 batting average, and a .558 slugging percentage.<sup>xii</sup> He joined Joe Medwick and Dixie Walker in a .300 hitting outfield.<sup>xiii</sup>

Outfielder. Bo Jackson. Hip Injury. Bo Jackson won the Heisman Trophy and was the only athlete to become an All Star in two major league sports.<sup>xiv</sup> In a 1990 playoff game he suffered a football career ending injury<sup>xv</sup> and was never the same in baseball though he attempted to continue. Through the 1990 baseball season, Jackson had 109 home runs and 313 rbi in 4 full seasons.<sup>xvi</sup> Although the only thing he ever led the league with was strikeouts,<sup>xvii</sup> I would have wanted him on my team. I saw some of his throws – they were monsters.

Outfielder. Tony Conligiaro. David Cataneo’s baseball legend and lore have a section on “hurts” and tells vividly the incident that brought Tony down.<sup>xviii</sup> Cataneo reports the August 1976 incident when Tony was hit in the eye by a Jack Hamilton fastball. “His cheekbone was fractured, his jaw dislocated and his retina was damaged . . . he suffered vision problems which forced him out of baseball.”<sup>xix</sup> Manager Bill Rigney stated the “but for” bluntly. “What if he had never been hit he had everything ahead of him.”<sup>xx</sup> Although Tony never hit 300 he hit 160 home runs in the 6 full seasons before his injury, leading the league in 1965.<sup>xxi</sup> He never had more than 7 errors in a season and in the 65<sup>th</sup> season he had 11 assists from the outfield.<sup>xxii</sup>

Pitcher. Herb Score. Speaking of injured eyes. The simplest rendition of this famous story is found in a baseball card site. On May 7, 1957 a few weeks after the picture for his 1957 baseball card was taken, Score would be hit in the face by a line drive off the bat of Yankee, Gil McDougald. He suffered numerous fractures to his face and eye socket, and there was much concern that he would lose his vision in one eye.<sup>xxiii</sup> Score had 508 strikeouts in his first 2 years, with ERAs under 3 in both years. He never came close to this.<sup>xxiv</sup> Mickey Mantle would say that Score was the toughest pitcher he ever faced.<sup>xxv</sup> With these achievements and accolades, “but for” this serious injury I feel Herb Score was destined for greatness.

Pitcher. Monty Stratton. Monty shot himself in the leg with a pistol while hunting. His leg was amputated. For those who want to shed a tear I certainly recommend the 1949 movie “The Stratton Story” with June Allyson and Jimmy Stewart. My recollection was in the movie a rifle was involved, but the truth seems to be a holstered pistol.<sup>xxvi</sup> I admit being swayed by the movie, but,

I still list him on my “but for” team because back-to-back 15-5 and 15-9 years aren’t too shabby especially being on White Sox teams finished third and sixth respectively. In 1937 Stratton finished second in opponents’ batting average .234 and fourth in 1938 with a .255.<sup>xxvii</sup> Remember those days were the days of Gehringer, DiMaggio, Foxx, and Travis, etc. He also hit a grand slam on June 10, 1938.<sup>xxviii</sup>

### **A Great Team Would Have Been Greater, But For . . .**

Third Baseman. Freddie Lindstrom. Broken leg and bad back in 1931.<sup>xxix</sup> This Hall of Fame player wanted only to replace John McGraw as a manager. Whether it was his 1931 injuries or his disappointment in having Bill Terry named Giant manager instead of him is speculation, but it wasn’t old age which caused his decline as Freddie was only 25 in the 1931 season. In 1930 Freddie hit .379 in 148 games and played only 78 in the 1931 season. He had good fielding numbers up until that time.<sup>xxx</sup> After the 1931 season he was never the same. A veterans committee nominee, I think he would have made it on an earlier go round, “but for” his leg, his back and Horace Stoneham.

Shortstop. Cecil Travis. Cecil Travis is called the greatest player not in the Hall of Fame. We’ve all done projections estimating the missing war years. This is a tad different. On January 15, 1945, toward the end of the Battle of the Bulge, Sgt. Cecil Travis of the 76<sup>th</sup> Infantry suffered frost bite resulting in toe amputation. As we will see later with Dizzy Dean, toes are important. Though he won a bronze star with 4 battle stars, he just could not come back.<sup>xxxi</sup> Cecil would have started the 46<sup>th</sup> season at 32. By no means was he old so I believe his inability to come back due more to the injuries than the layoff. Cecil had one season out of 8 where he batted less than .300 and nothing over. 252, after he returned. If the reason that Cecil did not make the Hall of Fame was his 9 seasons then I believe at the least he would have had 12 seasons “but for” his injury and he would have made in into the Hall of Fame.

Second Baseman. Jackie Robinson. Segregation/Integration. I believe both played a part of my “but for” for Jackie Robinson. But for segregation Jackie would have played some of 1939 to 1942 in organized baseball. At the very worst he would have played part of 1945 in the majors rather than the Monarchs. This would have made his post war return with a solid footing. As far as integration, being the first and in the 1940’s forced him to do the following all of which had to affect him: 1) eating and sleeping without his teammates; 2) having the weight of the black nation rest on his shoulders; 3) playing under a microscope; 4) being taunted, spiked, booed, ignored, threatened and thrown at more than the usual; and 5) being restrained by Branch Rickey. I am sure the reader could add many more.

First Baseman. Lou Gehrig. Lou Gehrig Disease. How could the great Gehrig become greater? Let’s make certain assumptions. We know he was born in 1903. We know he was 35 in 1938. He played 157 games in 1938. Therefore, his disease was probably not affecting him. If it was, then his 38 season could have been better. If you look at three groups of statistics you can make certain conclusions. The 1937 and 1939 Yankees had better pitching and batting records. Also in 1937 and 1939 the Yanks topped 100 wins. Add to this the addition of Keller in 1939 and healthy

Lou would have been better than Babe Dahlgren. I think Lou would have seen more pitches and would have had a pretty good year. His legs must have been ok, he stole 6 bases in 1938. How good is either guess work or a reasonable statistical progression of lefties playing with short fences in their last 4 years. If 1939 was to have been his last full healthy year, one can estimate he would have passed the "521" homerun barrier and remained in the top twenty in that category for a long time. Given his years up to 1938, his lifetime batting average would have stayed near his .340. As for his fielding, he had a lifetime .991. <sup>xxxii</sup>

Catcher. Roy Campanella. Paralyzed in a car accident. Campy owned a liquor store. He locked it up for the night on January 28, 1958. He hit a patch of ice and then hit a telephone pole, ending his career. <sup>xxxiii</sup> I admit he was 37 at the time but he had a .993 fielding average in 1957. His best batting average was 23 points higher in 1957 than in 1956. <sup>xxxiv</sup> The Dodgers went from third to seventh without him. John Roseboro succeeded him, but imagine what more he might have learned from him, "but for" a patch of ice.

Outfielder. Joe Jackson. The Black Sox scandal. Say it ain't so Joe. Joe was 33 his last year in organized ball. (The baseballpage.com says he was 2 years younger). Five more years would have been reasonable for him as he is reputed to have spent 20 years in semi-pro ball. <sup>xxxv</sup> He did play a partial season in 1918 (I know he worked in a ship yard when he was declared ineligible for the draft so I attribute the partiality to this and not durability. A .356 lifetime batting average and .962 fa (only 1911, 1912 and 19133 were bad fielding years) with a .813 lifetime assists certainly are HOF numbers. <sup>xxxvi</sup>

Outfielder. Joe DiMaggio. Injuries and war. Similar to Travis, Joe had "but for" the war and injuries. Joe's were not related to war. Joe missed 198 games between 1939 and 1949, his vintage years, plus 3 years of war. That is 660 games. This would have most affected his rbi total of 1537. <sup>xxxvii</sup> Baseballreference.com pegs Joe at 143 per game on a 162 game a year. I make the addition of the average 582 RBI raising Joe to 2019 or third on the all-time list. Although the Yankees won the series in 1949, Joe hit .111, which probably would have been better. He missed 25 games in 41 and finished 19<sup>th</sup> in MVP voting. He missed 78 games in 49 and finished 12<sup>th</sup>. I believe those would have been better. And "but for" his legs he would have gotten closer to the ball between him and Mantle - - Mantle wouldn't have hit the sprinkler.

Outfielder. Ted Williams. More than a war calculation. Two war calculations. If Joe's bogy was 198 - Ted's was 265 as he missed 3 years in World War II and played in 1943, in 1952 and 1953 while serving in Korea. <sup>xxxviii</sup> Baseballreference.com has Ted's 162 game average for homers at 37. That comports to 166 plus his actual 521 for 687. His RBIs are off the chart. He gets 582 more for a total of 2421 making him number 1. Ted's double average was the same as hr, 37 per 162. He had 525 which projects to 691 which rank him 5<sup>th</sup>.

Pitcher. Grover Cleveland Alexander. War related post traumatic shock-epilepsy-alcoholism. <sup>xxxix</sup> He had all of those the story is told by Frank, many books and "Winning Game", a movie with Ronald Reagan and Doris Day. Despite this multitude of problems which constantly interfered with his playing he still won 20 games with 3 different teams. His career spanned 20 years - - 11

after World War I.<sup>xi</sup> Six years with an ERA under 2, it went steadily up and he still had a 373-208 W.L. record inning pitched, wins and strike outs and games started all went down after the war, while ERA went up. “But for” demon rum and a multitude of functional overlay would have made Grover not only greater, but the greatest.

Pitcher. Dizzy Dean-broken toe. The best summation of the fall of Dizzy Dean is found in the section on players’ lives in *Total Baseball*, written by John Holway and Bob Carrol. At page 32, they report, “He was in the midst of another fine year in 1937 when a line drive off Earl Averill’s bat in the 1937 All Star game broke his toe. He tried to come back too soon, altered his motion to favor the toe and ruined his arm.”<sup>xli</sup> Clearly “but for” this incident Dizzy would have become greater. Twenty-nine wins after 1937, 121 before, and 120 of them in 5 years. He head the league 4 times in strikeouts, 3 times in complete games and 2 times in wins. Despite his downfall he actually pitched in the 1938 World Series as cubby.

I have excluded Roberto Clemente – air crash, and Christy Mathewson – gassed in World War I, as the events were too close to the end of their careers. Great “but for” inferences dealing with segregation can be gleaned from Larry Tye’s “Satchel”, but you will have to compare apples to oranges. Reverse “but fors” can be done with all the performance enhancement users. I have used eclectic resources because it is fun and shows the depth of the genre we share.

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<sup>i</sup> Joseph Raichler, *The Baseball Encyclopedia*, Macmillan 1992.

<sup>ii</sup> Ibid.

<sup>iii</sup> Ken Hobbs. Wikipedia.

<sup>iv</sup> Baseballlibrary.com.

<sup>v</sup> Opp cit 1.

<sup>vi</sup> Baseball-reference.com.

<sup>vii</sup> Thatbaseball1.tripod.com.

<sup>viii</sup> Loc cit 1.

<sup>ix</sup> Lloyd Johnson & Brenda Ward, *Who’s Who in Baseball History*, Barnes & Noble 1994.

<sup>x</sup> Roger Kahn, *The Era 1947-1957*, 1993, pp. 107-109.

<sup>xi</sup> Ibid. 108.

<sup>xii</sup> John Thorn, *Total Baseball (Second Edition)*, Warner Books, April 1991.

<sup>xiii</sup> John Raicher, *The Greatest All-Time Baseball Record Book*, Macmillan 1993, p. 418.

<sup>xiv</sup> Bo Jackson. Wikipedia.

<sup>xv</sup> Ibid.

<sup>xvi</sup> Opp cit 12.

<sup>xvii</sup> Opp cit 6.

<sup>xviii</sup> David Cataneo, *Baseball Legends and Lore*, Galahad Books, New York 1995, pp. 232-233.

<sup>xix</sup> Ibid. p. 233.

<sup>xx</sup> Ibid.

<sup>xxi</sup> Opp cit 12.

<sup>xxii</sup> Opp cit 6.

<sup>xxiii</sup> Goldenagebaseballcards.com.

<sup>xxiv</sup> Loc cit 12.

<sup>xxv</sup> Opp cit 23.

<sup>xxvi</sup> Monty Stratton. Wikipedia.

<sup>xxvii</sup> Loc cit 12.  
<sup>xxviii</sup> Opp cit 13 pp. 6, 274.  
<sup>xxix</sup> Wikipedia and baseballlibrary.com  
<sup>xxx</sup> Loc cit 6.  
<sup>xxxi</sup> Baseballinwartime.com.  
<sup>xxxii</sup> Opp cit 6.  
<sup>xxxiii</sup> Wikipedia.  
<sup>xxxiv</sup> Loc cit 6.  
<sup>xxxv</sup> Baseballpage.com.  
<sup>xxxvi</sup> Baseball-reference.com.  
<sup>xxxvii</sup> Ibid.  
<sup>xxxviii</sup> Opp cit 36.  
<sup>xxxix</sup> Sportsrank.com.  
<sup>xl</sup> Loc cit 36.  
<sup>xli</sup> Loc cit 12.

**Caveat: MCR 2.119, MCR 7.212 and  
7.215 take effect May 1, 2016 on propriety  
of citing unpublished cases**

**REVIEW OF CASE:**

Referenced Files: Court Established Trust  
Protective Order

The lower court entered a protective order on behalf of a ward as well as effectuating a settlement agreement establishing an *inter vivos* trust which was the product of mediation.

Appellant claimed that as she did not have knowledge of the revocation of the Fifth Amendment of the trust which was substantially the same as what was included in the settlement agreement. There was, she claims a mistake of fact allowing the agreement to be set aside.

The court denied her contention and the Court of Appeals affirmed.

*Inter alia* the Court said that a protective order does not have to be within the wishes and wants of the ward; 2) the Court has power to make a trust; 3) the fact that the statute allowing a protective order for the benefit of the “individual and members of the individual’s immediate family” does not mean that the protective order has to protect both - - it just means that the court has power with respect to those individuals to make such a protective order.

The only thing about this opinion that worries me is that it relies heavily upon the things that happened in mediation, including mediation summaries which are supposed to be non-disclosable to a court. See MCR 2.412(c).

866790

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* ABE BANSALI LIVING TRUST.

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LISA BHANSALI,

Appellant,

v

HASTINGS CITY BANK, Successor Trustee of  
the ABE BANSALI LIVING TRUST, ABE  
BANSALI, protected person, PANNA  
BHANSALI, and SANJAY BHANSALI,

Appellees,

and

ANJALY BHANSALI,

Other Party.

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UNPUBLISHED  
February 21, 2017

No. 330515  
Calhoun Probate Court  
LC No. 2015-000787-PO

Before: MURPHY, P.J., and SAWYER and SWARTZLE, JJ.

PER CURIAM.

Appellant, Lisa Bhansali, appeals as of right the trial court's November 25, 2015 order granting appellee Abe Bansali's<sup>1</sup> motion for a protective order. We affirm.

Lisa, appellee Sanjay Bhansali, and Anjaly Bhansali were the children of Abe and Abe's wife, appellee Panna Bhansali. On June 18, 1981, Abe executed the Abe Bansali Living Trust providing that upon his death his assets would be used to construct a hospital. Abe amended the trust several times throughout the years. On March 3, 2005, he executed a restatement of the trust deleting the provision regarding the hospital and providing that Lisa and Sanjay would be

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<sup>1</sup> Lisa testified at the October 14, 2015 hearing that Abe's given name was Atmaram Biadas Bhansali. Abe changed his first name from Atmaram and dropped the "h" from his last name so that his name could be more easily pronounced. Abe died after this appeal was filed.

co-trustees. On February 17, 2009, Abe amended the trust to provide that after his death Lisa, Sanjay, and Anjaly would each receive  $\frac{1}{3}$  of the trust's assets. Abe again amended the trust on February 1, 2013, establishing a spendthrift provision for Anjaly. On July 25, 2014, Abe executed what is referred to as the third amendment, which provided that after Abe's and Panna's deaths, Sanjay and Anjaly would each receive 40% of the trust's assets, whereas Lisa would receive 20% of the assets. On August 1, 2014, Abe executed the fourth amendment to the trust, which revoked the third amendment. On February 10, 2015, Abe executed the fifth amendment, which stated that after Abe's and Panna's deaths, Lisa, Sanjay, and Anjaly would each receive  $\frac{1}{3}$  of the trust's assets, and that the distribution would be calculated according to the combined value of the trust's and Panna's assets. On February 23, 2015, Abe executed a revocation of the fifth amendment.

Lisa petitioned for a conservatorship over Abe in January 2015 because of his physical limitations.<sup>2</sup> As a result of her petition, the trial court ordered the parties to engage in mediation, which occurred on April 17 and 18, 2015. This mediation took place at the office of attorney Stephen Denenfeld. Abe and Panna were not present at the mediation, but their attorneys were present, and the parties were able to communicate with Abe and Panna during the mediation by telephone. Because of the mediation, the parties executed a settlement agreement. This agreement provided in relevant part that the trust's assets would be distributed equally among Lisa, Sanjay, and Anjaly, and that the distribution would be calculated according to the combined value of the trust's and Panna's assets. In other words, if either Abe or Panna distributed assets to any of the three children since January 1, 2008, that child's share of the assets of the trust would be reduced by the amount of assets received from the parent. The settlement agreement further provided that the trust would be made irrevocable.

On September 14, 2015, Kent Bieberich, Abe's attorney, moved the trial court on Abe's behalf for a protective order under MCL 700.5407(2)(c)(v). Bieberich argued that Abe lacked capacity to manage his affairs and that the trial court should enter a protective order creating an irrevocable trust consistent with the terms of the settlement agreement. Bieberich asked the trial court to appoint Hastings City Bank as the trust's successor trustee. Sanjay supported Bieberich's motion, but Lisa did not. She argued that she agreed to the settlement agreement without knowing that Abe had revoked the fifth amendment and that this constituted a mistake of material fact sufficient to render the agreement unenforceable. Lisa also argued that because Abe lacked the capacity to execute an irrevocable trust, paragraph seven of the settlement agreement—discussed further below—precluded the agreement from being enforced. Lisa further argued that Bieberich's proposed protective order did not satisfy the requirements of MCL 700.5407(2)(c)(v) because it did not benefit Abe or the members of his immediate family.

At the October 14, 2015 hearing on the motion for a protective order, Lisa testified that during the April 2015 mediation, she considered the fifth amendment—which provided that distribution of the trust's assets would be calculated according to the combined assets of the trust and Panna—to represent Abe's wishes with regard to the trust. She testified, however, that in

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<sup>2</sup> The conservatorship action occurred in lower court case no. 2015-066-CA.

September 2015 she discovered that Abe had revoked the fifth amendment, and that if she had known at mediation that the fifth amendment was revoked, she would not have entered into the agreement. During the hearing, however, Sanjay entered into evidence Lisa's premediation brief, wherein she offered to stipulate to the fourth amendment of the trust as the trust's final iteration. Denefeld testified at the hearing that he did not know whether the fifth amendment had any influence on the thinking of the parties at the mediation. The trial court found that the settlement agreement was enforceable. The trial court stated that the protective order would benefit Abe and Panna because Abe was unable to manage his finances, and it would benefit Sanjay and Lisa because they were unable to work together amicably. The trial court granted Bieberich's motion and entered a protective order in accord with the settlement agreement. Lisa appealed.

Appellate review with regard to the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, "is governed by the revised judicature act of 1961 and by supreme court rule[.]" MCL 700.1305, which states in relevant part that an appeal from a probate court "shall not be tried de novo[.]" MCL 600.866(1). When reviewing the decision of a probate court, this Court "must determine whether the probate court's findings of fact were clearly erroneous." *In re Webb H Coe Marital and Residuary Trusts*, 233 Mich App 525, 531; 593 NW2d 190 (1999). This Court reviews a probate court's decisions for an abuse of discretion. See *In re Duane V Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007). We review issues of statutory and contractual interpretation de novo. *Id.* at 396; *Reicher v SET Enterprises, Inc.*, 283 Mich App 657, 664; 770 NW2d 902 (2009).

MCL 700.5407(2) states in relevant part as follows:

The court has the following powers that may be exercised directly or through a conservator in respect to a protected individual's estate and business affairs:

\* \* \*

(c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual for a reason other than minority, the court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not under disability, except the power to make a will. Those powers include, but are not limited to, all of the following:

\* \* \*

(v) To create a revocable or irrevocable trust of estate property that may extend beyond the disability or the life of the protected individual.

There is no dispute on appeal that Abe was a protected individual under the EPIC and that he was an incapacitated individual by reason of mental deficiency under MCL 700.1105(a). There is also no dispute that he was unable to manage his "property and business affairs effectively for reasons such as mental illness[ and] mental deficiency..." MCL

700.5401(3)(a). Therefore, the trial court was permitted under MCL 700.5401(3) to enter a protective order regarding Abe's estate and affairs. Lisa argues that the trial court abused its discretion because the protective order did not benefit Abe or members of his immediate family, as stated under MCL 700.5407(2)(c). First, insofar as Lisa argues that MCL 700.5407(2)(c) required the trial court to enter a protective order for the benefit of Abe and his immediate family, the plain language of the statute does not indicate that. See *Gauntlett v Auto-Owners Ins Co*, 242 Mich App 172, 177; 617 NW2d 735 (2000); *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). Rather, the phrase "for the benefit of the individual and members of the individual's immediate family" modified the phrase regarding the trial court's "powers over the estate . . . ." See *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, 282 Mich App 410, 414; 766 NW2d 874 (2009); *Fluor Enterprises, Inc v Revenue Div, Dep't of Treasury*, 477 Mich 170, 176; 730 NW2d 722 (2007).

Furthermore, Lisa has not shown that the trial court clearly erred in finding that the protective order did benefit Abe and his immediate family. Lisa argues that the protective order did not benefit Abe because the protective order was premised on the settlement agreement, which was premised on the fifth amendment, which Abe revoked. However, we find no evidence except Lisa's testimony indicating that the fifth amendment was a basis for any party entering into the settlement agreement. The trial court found Lisa's testimony in that regard not credible, and "this Court defers to the trial court's determination of credibility." *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006). Furthermore, there is ample evidence to support the trial court's finding that the fifth amendment was not a basis for the settlement agreement. For example, the fact that Lisa offered to stipulate to the fourth amendment before mediation indicates that the fifth amendment was not a material factor in her decision to enter into the settlement agreement. Furthermore, Denenfeld testified that he did not know whether the fifth amendment had any bearing on the parties' decisions to enter into the settlement agreement. And Sanjay testified that he was confident that the settlement agreement embodied Abe's wishes, which was the reason Sanjay entered into the agreement.

Lisa argues that the trial court erred in entering the protective order because the protective order was contrary to Abe's wishes, as evidenced by his revocation of the fifth amendment. However, we find no law, and Lisa presents none, indicating that a protective order under MCL 700.5407(2)(c) must be in accord with the protected individual's wishes. Moreover, evidence indicates that the settlement agreement did comport with Abe's wishes. Lisa herself testified that she spoke to Abe on the telephone during the mediation and that he told her that he wanted the parties to reach an agreement. Lisa testified that she told him that they were reaching an agreement and that this made him happy. She testified that the terms of the agreement were unimportant to him. Sanjay testified that the protective order was beneficial to Abe.

Lisa additionally argues that the protective order was not beneficial to the parties because it did not end the dispute among them. She cites this appeal in support of her argument. However, she cites no law and has thus abandoned the argument. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Furthermore, we find no law supporting the proposition that the mere fact that a litigant challenges a trial court's findings can undermine the basis for those findings. For the above reasons, we conclude that the trial court did not clearly err in finding that the fifth amendment was not a factor that led to the settlement agreement. *Deschaine v St Germain*, 256 Mich App 665, 668; 671 NW2d 79 (2003).

Lisa argues that the settlement agreement was unenforceable because the trial court determined that Abe lacked capacity and that the settlement agreement was based on the understanding that Abe had the capacity to execute the irrevocable trust. In support of this argument, Lisa cites paragraph seven of the settlement agreement, which states that “[t]he dismissal of the Petition for Conservatorship will be concomitant with acknowledgement of [Abe]’s capacity to execute the irrevocable trust.” Lisa provides no explanation as to how paragraph seven supports her argument. According to the plain and ordinary meaning of its words, *Employers Mut Cas Co v Helicon Assoc, Inc*, 313 Mich App 401, 404; 880 NW2d 839 (2015), we see absolutely no indication that it provides that the settlement agreement was premised on Abe’s capacity to execute an irrevocable trust, or that the settlement agreement would be void if Abe was found to lack capacity. Rather, according to the paragraph’s terms, it merely states that the petition for conservatorship will be dismissed along with a need to address the issue of Abe’s capacity. This interpretation of the meaning of paragraph seven is in accord with Denenfeld’s testimony stating that the intent with regard to paragraph seven was to avoid future questions regarding Abe’s capacity. Lisa has not shown that the settlement agreement was void upon a finding that Abe lacked capacity. See *Stone v Auto-Owners Ins Co*, 307 Mich App 169, 174; 858 NW2d 765 (2014).

In her reply brief on appeal, Lisa argues that Sanjay lacked authority to sign the settlement agreement on Abe’s behalf as Abe’s power of attorney because the trust stated that it could not be amended by Abe’s agents. Lisa also argues that Sanjay violated a restraining order when he took the fifth amendment to Abe while Abe was in the hospital. And she argues that Sanjay had a conflict of interest when he signed the settlement agreement on Abe’s behalf because the settlement agreement benefitted Sanjay. These arguments were not raised before the trial court and, therefore, they are not properly before this Court. *Brown v Loveman*, 260 Mich App 576, 599; 680 NW2d 432 (2004). Further, Lisa has abandoned these arguments for failing to explain how they could render the trial court’s protective order erroneous. In sum, Lisa has not demonstrated that the trial court abused its discretion in entering the protective order, *In re Baldwin Trust*, 274 Mich App at 396-397, and she has not established plain error, *Richard v Schneiderman & Sherman, PC (On Remand)*, 297 Mich App 271, 273; 824 NW2d 573 (2012).

Affirmed.

/s/ William B. Murphy  
/s/ David H. Sawyer  
/s/ Brock A. Swartzle