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://kkue.com/resources/probate-law-case-summaries/.

DT: August 1, 2016

RE: In re Estate of Larry E. Hutchinson Living Trust
STATE OF MICHIGAN COURT OF APPEALS

"Alan, you cannot write about baseball all your life"
- **Mrs. Pollinger**
- **12th Grade English Comp**
- **Mumford High - 1959**

BASEBALL STATS:

FANS LIVES MATTER

With the media being attentive to what could be construed as a large amount of physicality in the arrests of various people, the case of *Swiecicki v. Delgado*, 463 F. 3d 489 (6th Cir. 2006) may be

of interest. In pertinent part, Mr. Swiecicki was leading a group of hecklers in left field at Jacobs Field and was perhaps being profane.

The Cleveland Indians had a rule that you couldn't use obscene or abusive language or you would be asked to cease and desist and then ejected. A police officer, Mr. Delgado, who was acting as a security guard, but in full police uniform, heard Mr. Swiecicki yell at the left fielder that he sucked and had a fat ass. Swiecicki denied any profane language. Mr. Delgado decided that he was the judge and jury of the situation and manhandled Mr. Swiecicki out of the stadium, charging him with everything but mopery on the high seas for which he was found guilty, but reversed on appeal. Swiecicki decided to sue Delgado and was summaried out on many grounds in the United States District Court.

The 6th Circuit reversed saying that there was no qualified immunity (I won't analyze the opinion because it doesn't have a lot to do with baseball), that there was no probable cause for the arrest, that heckling is permitted and Jacobs Field encourages noise. It also found based on a case called *City of Houston v. Hill* that individuals have the freedom to verbally oppose police action without risking arrest, which is one characteristic distinguishing a free state from a police state. Citing the same case, it is proper to say to a policeman "what the fuck do you want?"

The opinion says nothing as to whether the left fielder did have a fat ass and does not address the issue whether sucking should be construed in the pejorative.

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: Proceeds of Sale
Termination of Trust - Prohibition
Disposition of Assets

This is a children from first marriage vs. widow in second marriage case.

The children believes that widow was mismanaging a trust, which guaranteed her a life estate with remainder over to them.

A settlement agreement was entered into whereby property would be sold and $30,000 would be paid to the remainder people and the trust terminated. Any additional "proceeds of sale" would pass to the widow.

A sale was consummated, but mineral rights were retained and not conveyed.

The widow called the mineral rights proceeds of the sale. The Lower Court disagreed, as did the majority of the Court of Appeals. Judge Gleicher dissented calling the retention proceeds and asking for an opposite result or an evidentiary hearing as to the issue of intent of the settlement agreement.

Even though this is primarily a question of interpretation, it does concern trusts in the following ways:

1. An agreement regarding the trust can supersede the terms of the trust.
2. The trust can be terminated by consent of the beneficiaries unless a material portion of the trust has to be carried out.
3. A material provision of the trust remains because the non-conveyed asset remained an asset of the trust.
4. The majority interpreted the word "proceeds" narrowly, the dissent broadly, and the dissent believed that the remaining mineral rights were proceeds, which should pass to the widow. In other words, the remainder beneficiaries were limiting themselves to $30,000 and anything left over would go to the widow.

I would have gone along with the majority for the following reason.

Although I agree that a settlement agreement would supersede the terms of the trust, if the settlement agreement did not specifically contradict the trust then the terms of the trust would prevail. I believe that ipso facto, the terms of the settlement agreement did not contradict the terms of the trust because both the dissent and the majority opinion found that the property not conveyed to the buyer remained in the trust. If the agreement was not totally dispositive, therefore the terms of the trust language must be operative. As such, the mineral interests would be conveyed to the remainder people. It wasn't a proceed because whether proceed is defined broadly or narrowly, a proceed is something received not something retained.

Also think of this in terms of ademption. I give "x" Blackacre, "y" Residue. I sell Blackacre "y" takes not "x" unless I say otherwise in operative document.

Just one lawyers opinion.

AAM:kjd
Attachment
846056

STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF LARRY E. HUTCHINSON LIVING TRUST.

THOMAS AMOR, Personal Representative of the ESTATE OF JOY HUTCHINSON,

Appellant,

v

KAREN SCHMOKE, KARLA FRENCHI, KAROL KROUPA, KRISTEN WILHELM and KELLY GILMAN,

Appellees.

UNPUBLISHED
July 7, 2016

No. 326411
Manistee Probate Court
LC No. 13-000089-TV

Before: GLEICHER, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

In this dispute involving distribution of certain trust assets, Thomas Amor, personal representative of the Estate of Joy Hutchinson, appeals by right the probate court order granting summary disposition for Karen Schmoke, Karla Frenchi, Karol Kroupa, Kristen Wilhelm, and Kelly Gilman. We affirm.

I. BACKGROUND

In August 1998, Larry E. Hutchinson and his wife, Joy Hutchinson, established a revocable living trust, the Larry E. Hutchinson Living Trust (hereinafter, "Trust"). The Trust named Larry as settlor and Joy and Larry as trustees. In the event that Larry predeceased Joy, the Trust created the Joy E. Hutchinson Trust for the benefit of Joy during the remainder of her life. The Trust named Appellees—Larry's adult daughters from a prior relationship—as retaining a remainder interest in the Trust after Joy's death.

Larry died in June 2004. Pursuant to the terms of the Trust, Joy became the successor trustee and the "Joy E. Hutchinson Trust" became responsible for administering and distributing the Trust's real estate, which consisted of the Family Farm and the Woodland Property. Appellees discovered the Trust and Joy's mismanagement of the Trust's assets nearly 10 years

later. Litigation ensued, which ultimately resulted in entry of a Stipulated Settlement Order pertaining to the Trust's real estate (hereinafter, "Settlement Agreement").

Under the Settlement Agreement, the parties agreed that Joy, as trustee of the Trust, had to sell the Family Farm "pursuant to the terms of a Purchase Agreement" and convey to Appellees the Woodland Property. With respect to the sale of the Family Farm, the Settlement Agreement provides:

> 4. Contemporaneously with the closing of the sale of the Family Farm, the Trustee shall pay to [Appellees'] counsel . . . the sum of $30,000.00. All remaining proceeds of the Family Farm sale, less the expenses of transferring the Woodland Property as set forth in Paragraph 6 herein, shall be distributed to Joy Hutchinson in her individual capacity and thus shall no longer be held in Trust.

The parties further agreed, upon the closing of the sale of the Family Farm, to execute a mutual release of all claims and, upon the distributions required under the Settlement Agreement, to terminate the Trust.

After Joy as trustee executed the agreed upon distributions, the probate court entered an order administratively closing the case. Almost a year later, at which point Joy had died, Appellant filed the instant petition to reopen the litigation in order to transfer the Family Farm's mineral rights, which had not been sold under the Purchase Agreement, from the Trust to Joy's estate.

Appellant moved for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that, under Paragraph 4 of the Settlement Agreement, Joy's estate was entitled to the mineral rights of the Family Farm. Appellees answered the petition, agreeing that the matter should be reopened for the limited purpose of distributing the mineral rights to Appellees. Appellees also sought summary disposition in their favor under MCR 2.116(I).

At the motion hearing, the probate court rejected Appellant's argument that the mineral rights were a "proceed" of the sale under Paragraph 4 of the Settlement Agreement such that those rights had been distributed to Joy individually. Instead, the court found that the Settlement Agreement was silent regarding the ownership of the mineral rights, that the Trust retained the mineral rights, and that the Trust controlled resolution of the dispute. Consequently, the probate court granted summary disposition in favor of Appellees and entered an order to that effect.

II. STANDARD OF REVIEW

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The probate court did not specify under what rule it was granting summary disposition. The court, however, did not consider evidence outside the pleadings, i.e., it considered the complaint, the Settlement Agreement, and the Trust document, which was attached to Appellees' petition. See *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003) (in a contract action, contracts attached to the pleadings are considered part of the pleadings); MCR 2.113(F)(1) and (2) (written instruments of public

record are part of the pleadings). Therefore, we may consider the motion under MCR 2.116(C)(8). We accept all well-pleaded factual allegations as true in a light most favorable to the nonmoving party. *Maiden*, 461 Mich at 119. If, as a matter of law, no factual development could possibly justify recovery, then the motion should be granted. *Id*. Further, if after careful review of the pleadings, it is clear that the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2). To the extent we interpret the meaning of the Settlement Agreement, review is also de novo. *MacInnes v MacInnes*, 260 Mich App 280, 283; 677 NW2d 889 (2004).

III. ANALYSIS

Appellant first claims that the probate court erred by finding that the Settlement Agreement is "silent" with respect to the distribution of the Family Farm's mineral rights. According to Appellant, the Settlement Agreement awards the mineral rights to Joy's estate. Appellant's argument relies primarily on Paragraph 4 of the Settlement Agreement. Specifically, Appellant contends that the language of Paragraph 4—"proceeds of the Family Farm sale"—grants Joy the mineral rights in her individual capacity.

Under Michigan law, principles of contract interpretation apply to our interpretation of a settlement agreement. *Id*. at 283. The primary purpose in construing a settlement agreement is discerning the parties' intent. *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). The language used, giving it its plain and ordinary meaning, is the best indicator of that intent. *Id.* If the terms of the settlement agreement are unambiguous, then it must be applied as written and judicial construction is not permitted. *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008).

The pertinent language of the Settlement Agreement states:

> 2. As soon as practically possible, the Trustee shall sell the real property legally described as follows pursuant to the terms of a Purchase Agreement attached hereto as EXHIBIT A: [the Family Farm.]
>
> * * *
>
> 4. Contemporaneously with the closing of the sale of the Family Farm, the Trustee shall pay to [Appellees'] counsel . . . the sum of $30,000.00. *All remaining proceeds of the Family Farm sale*, less the expenses of transferring the Woodland Property as set forth in Paragraph 6 herein, *shall be distributed to Joy Hutchinson in her individual capacity* and thus shall no longer be held in Trust.
>
> 5. Contemporaneously with the closing of the sale of the Family Farm, the Trustee shall convey to [Appellees] as tenants in common, free of the Trust and free and clear of any liens or encumbrances, the real property legally described as follows: [the Woodland Property.] [Emphasis added.]

The relevant language of the Purchase Agreement states:

> Seller [Joy Hutchinson, not individually, but as Trustee of the Joy E. Hutchinson Trust under the Larry E. Hutchinson Living Trust] agrees to sell to Buyer, and Buyer agrees to purchase from Seller . . . that parcel of real estate, *excluding all oil, gas, and mineral interests*, commonly known as [the Family Farm] . . . . [Emphasis added.]

The Purchase Agreement clearly provides that the buyer will compensate the Trust for the buyer's purchase of the Family Farm's *surface rights*. In turn, the Settlement Agreement, under Paragraph 4, grants Joy, in her individual capacity, "all remaining proceeds of the Family Farm sale," which pursuant to Paragraph 2 of the Settlement Agreement, is the sale of the Family Farm pursuant to the terms of the Purchase Agreement. Reading the Settlement Agreement and Purchase Agreement together, Joy, then, was entitled to the proceeds from the sale of the Family Farm's surface rights. Neither Paragraph 4 nor any other provision of the Settlement Agreement, by its plain terms, distributes the mineral rights to Joy individually. Nor does any provision of the Settlement Agreement award Appellees those rights. Rather, our review of the Settlement Agreement as a whole confirms the probate court's finding that the Settlement Agreement is "silent" with respect to the distribution of the Family Farm's mineral rights.

Appellant, however, contends that the term "proceeds," as used in Paragraph 4 of the Settlement Agreement, should be construed broadly to include the *severance* of mineral rights from the Family Farm because, in Appellant's view, this severance is a "thing of value arising" from the sale. "Proceeds," as Appellant points out, is defined as "Issues; income; yield, receipts; produce; money or articles or other thing of value arising or obtained by the sale of property . . . ." *Black's Law Dictionary* (6th ed). Significantly, "proceeds," by definition, are derived from a "sale," which connotes the exchange of one thing of value for another. It follows that "proceeds," when read in context of the Settlement Agreement as a whole, are the buyer's consideration—here, money—for the Family Farm's surface rights. It is these proceeds, minus Appellees' attorney fee and expenses related to the conveyance of the Woodland Property, to which Joy's estate is entitled under the Settlement Agreement, and nothing more. Indeed, Appellant has not explained how the mineral rights are a "thing of value arising" from the sale. The mineral rights existed before the sale; the severance of those rights from the Family Farm's surface rights cannot reasonably be characterized as consideration for the property purchased, i.e., a "proceed." The severance of the mineral rights was incidental to the sale.

Similarly unavailing is Appellant's claim that the Settlement Agreement, when read as a whole, awards Joy's estate the mineral rights. The fact that the Settlement Agreement does not award Appellees the mineral rights and that it was intended as a global agreement intended to capture all Trust assets, does not lead to an indelible conclusion that Joy's estate was to receive the mineral rights. Further, the Purchase Agreement's reference to "her" is a reference to Joy in her capacity as trustee of the Trust, not a reference to Joy individually as Appellant contends. In

any case, even if the Purchase Agreement were referring to Joy individually, there was no sale of mineral rights and, thus, Joy was not entitled to any such proceeds.[1]

Appellant alternatively asserts that, even if the Settlement Agreement is silent regarding the mineral rights, the probate court erred by relying on the "superseded" Trust rather than holding an evidentiary hearing to discern the parties' settlement intentions. It is certainly true, as a matter of black letter law, that when a contract is ambiguous a court may look to extrinsic evidence of the parties' intent. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 470; 663 NW2d 447 (2003). Appellant, however, overlooks pertinent law pertaining to the termination of trusts. Mainly, Michigan common law recognizes that the beneficiaries of a trust may consent to the termination of the trust, so long as continuance of the trust is *not necessary* to carry out a material purpose of the Trust. See *Rose v Southern Michigan Nat'l Bank*, 255 Mich 275, 282; 238 NW 284 (1931), overruled in part on other grounds *In re Edgar Estate*, 425 Mich 364, 366; 389 NW2d 696 (1986); *Hein v Hein*, 214 Mich App 356, 359-360; 543 NW2d 19 (1995). It follows that if a material purpose of the Trust remains, Appellees and Joy could not, as a matter of law, terminate the Trust and its provisions may be enforced.

Under Paragraph 8 of the Settlement Agreement, the parties agreed to terminate the Trust "[u]pon the distributions set forth herein[,]" meaning the distributions provided for in the Settlement Agreement. As explained, the Settlement Agreement did not distribute the Family Farm's mineral rights. Therefore, because a portion of the Trust's real property—the mineral rights—remained in the Trust subject to Appellees' remaindermen interest, a material purpose of the Trust remains to be fulfilled. Under these circumstances, Paragraph 8 of the Settlement Agreement terminating the Trust was ineffective. See *Rose*, 255 Mich at 282; *Hein*, 214 Mich App at 359-360. Consequently, because the parties' Settlement Agreement did not terminate the Trust, the probate court did not err by looking to the Trust for the limited purpose of distributing the Family Farm's mineral rights—the sole remaining material purpose of the Trust.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Kelly

[1] Appellant also asserts that *Whelan v Whelan*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 311743), is instructive, wherein this Court construed the language, "Should either party hereafter discover the existence of any property interest not provided in this Judgment of Divorce, said property should be divided equally . . . ." The panel ruled that the provision was a "catch-all provision designed to govern potential oversights or omissions from the property division." Slip op at 4. The instant language of the Settlement Agreement is substantially different from that in *Whelan* and cannot reasonably be described as a "catch-all" provision. *Whelan*, therefore, does not guide our decision.

STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF LARRY E. HUTCHINSON LIVING TRUST.

THOMAS AMOR, Personal Representative of the ESTATE OF JOY HUTCHINSON,

Appellant,

v

KAREN SCHMOKE, KARLA FRENCHI, KAROL KROUPA, KRISTEN WILHELM and KELLY GILMAN,

Appellees.

UNPUBLISHED
July 7, 2016

No. 326411
Manistee Probate Court
LC No. 13-000089-TV

Before: GLEICHER, P.J., and SAWYER and M. J. KELLY, JJ.

GLEICHER, P.J. (*dissenting*).

This probate dispute concerns the ownership of overlooked oil, gas and mineral rights. The rights initially resided in the Joy E. Hutchinson Trust. The trust terminated according to a settlement agreement signed by Joy E. Hutchinson and the five daughters of Joy's late husband, Larry E. Hutchinson. The parties intended this agreement to distribute all trust assets. But the oil, gas and mineral rights escaped the attorneys' attention when they wrapped up paperwork. The question of their ownership bubbled to the surface years later, after Joy died.

The majority affirms the probate court's decision to award the contested rights to the daughters rather than to Joy's estate. Because this distribution conflicts with the terms of the settlement agreement, I respectfully dissent.

I

Larry E. Hutchinson created a revocable living trust and funded it with real and personal property. The trust's real property consisted of a family farm with a homestead and surrounding acreage. Larry's personal property included farm equipment and personal things, such as cars and insurance policies. Larry named Joy as his trust's primary beneficiary and its successor trustee.

When Larry died, the corpus of his trust transferred to the Joy E. Hutchinson Trust, which Larry's trust had created for Joy's benefit during her lifetime. The terms of Joy's trust tasked her with distributing the farm equipment to Larry's five daughters by an earlier marriage. All other personal property in Larry's trust went to Joy, as did the "net income" of the trust—presumably, this would include any profits from the sale of gas, oil and mineral rights. And the trust allocated all real estate owned by Larry's trust to Joy's trust.

Larry's trust permitted Joy's trust to sell any of the real estate as needed for her support and maintenance, on condition that Joy (acting as trustee) first offer Larry's children an opportunity to purchase it. "If an offer has been received from a third party," the trust required Joy to afford the daughters 30 days' written notice "to indicate their desire to purchase." If there were no takers and Joy's trust sold the property, Larry's trust dictated that "the proceeds of sale shall be held in a separate account in the name of the trust and shall not be commingled with other funds." Joy was permitted to distribute "part or all of the trust corpus" to herself for any of several reasons, including to "[p]rovide extra funds for the beneficiary's well-being and comfort." On Joy's death, any remaining funds were to be divided equally among Larry's daughters.

After Larry died, Joy sold the farm equipment and pocketed the yield (approximately $27,000), contrary to the terms of Larry's trust. Years later, Larry's daughters discovered this malfeasance and petitioned to remove Joy as trustee of her trust. The daughters further complained that Joy had burdened the real property with loans and made arrangements to sell some of it without properly informing them.

The parties resolved this dispute by entering into a stipulated settlement order divvying up the assets held in the Joy E. Hutchinson Trust. They first divided the real estate into two portions: the "Family Farm" and "Woodland" parcels.[1] The settlement order provided that Joy's trust would sell the 40-acre "Family Farm" parcel according to the terms of a purchase agreement referenced by and attached to the order. The purchase agreement recited that "Joy Hutchinson, not individually, but as Trustee of the Joy E. Hutchinson Trust under the Larry E. Hutchinson Living Trust" agreed to sell the real estate we have referred to as the "Family Farm," "excluding all oil, gas, and mineral interests," for $275,000. When that sale was accomplished, the settlement agreement required Joy as trustee to pay $30,000 to the law firm representing Larry's daughters. Joy received "[a]ll remaining proceeds of the Family Farm sale, less the expenses of transferring the Woodland Property[.]" In other words, Joy got the value of the family farm sale, less $30,000 and some likely minimal incidental costs.

The settlement order further stipulated that when the Family Farm sale consummated, Joy would convey the Woodland property to Larry's five daughters pursuant to a trustee's deed. Her trust purchased a title policy for the property in the amount of $87,500. Paragraphs 7 and 8 of the settlement document stated as follows:

[1] Some documents of record refer to the "Family Farm" parcel as the "Family Cabin" parcel.

> 7. Contemporaneously with the closing of the sale of the Family Farm, the parties shall execute a mutual all claims release . . . and shall cause their respective counsel to execute a dismissal of the petitions filed in this matter.
>
> 8. Upon the distributions set forth herein, the Trust terminate, and consistent with the Release of All Claims at Exhibit C, Joy Hutchinson is released in her individual and trustee capacity from any liability [of] any kind to [Larry's five daughters].

The land transferred hands as agreed. But no one prepared a deed transferring the oil, gas, and mineral interests to Joy (or to anyone else, for that matter). Then the parties and their lawyers terminated Joy's trust, or thought they did. When Joy died, the personal representative of her estate petitioned to reopen the proceedings so that he could transfer the subsurface rights to Joy's estate. The probate court ultimately awarded the rights to Larry's daughters, and the majority affirms.

II

The majority's analysis hinges on its conclusion that "because the parties' Settlement Agreement did not terminate the Trust, the probate court did not err by looking to the Trust for the limited purpose of distributing the Family Farm's mineral rights—the sole remaining material purpose of the Trust." I concur that the trust remained open due to the parties' failure to transfer the mineral rights out of the trust. In my view, however, the settlement agreement controls, not the trust, as the former superseded the latter. The settlement agreement provides that all property once in Larry's trust, but for the Woodland acreage and the $30,000 in legal fees, belonged to Joy.[2]

The terms of the settlement agreement differ markedly from the terms of Larry's trust. Indeed, the parties essentially discarded the terms of Larry's trust when they resolved their differences regarding Joy's management of the trust assets. In so doing, they adopted the property allocation set forth in the settlement agreement rather than in the trust. Given their stipulation to set aside the trust provisions, the probate court erred by relying on the terms of a document that no longer mattered, as the parties had forged a new and alternative agreement. In broad context, that agreement carved the Hutchinson land into two pieces, one for Joy to use or sell as she wished, and one for the daughters. Reading the document in that spirit leads to the conclusion that had the paperwork been timely drafted, Joy would have owned the subsurface rights.

Despite the lawyers' oversight, the settlement signers' intent is clear. Joy got everything related to the family farm property less $30,000, and the daughters got the Woodland property.

[2] Even if the trust still controlled, a good argument could be made that Joy was entitled to the oil, gas and mineral rights, as both Larry's and Joy's trusts specifically allocated to Joy individually any "income" flowing from her trust. Indeed, the purpose of Larry's trust was to provide income to Joy.

Nothing in the settlement agreement hints that Larry's daughters would be entitled to any subsurface or other rights related to the family farm property. The stipulated order specifically referenced the real estate purchase agreement, which in turn specifically called out the reserved mineral rights. If the parties truly intended those rights to go to the daughters, I cannot fathom why the daughters did not insist on title right then and there.

Nor am I persuaded by the majority's dictionary-driven attempt to cabin the term "proceeds" in paragraph four of the settlement agreement to the cash generated by the sale of the family farm. By way of reminder, paragraph four allocated to Joy individually "[a]ll remaining proceeds of the Family Farm sale, less the expenses of transferring the Woodland Property[.]" When Joy sold the farm and the land around it, she made a deal with the buyers. That deal allowed her to sever and retain the oil, gas and mineral rights, most likely in exchange for a reduction in the purchase price. She realized two types of value from the deal: cash and mineral rights. The buyers got the house and the land. Her take seems like "proceeds" to me.

Respectfully, the majority has drilled too deeply in the dictionary. "Proceeds," the majority declares with reference to *Black's Law Dictionary*, means something "derived from a 'sale,' which connotes the exchange of one thing of value for another." "The mineral rights existed before the sale," the majority proclaims, and so "the severance of those rights from the Family Farm's surface rights cannot reasonably be characterized as consideration for the property purchased, i.e., a 'proceed.' " But this is far too narrow an interpretation of both "proceeds" and the family farm transaction.

Outside the pages of *Black's Law Dictionary*, the word "proceeds" has a more flexible and expansive meaning. "It is a 'word of varied significance and employed with different meanings.' " *Riverside Healthcare Ass'n, Inc v Forbes*, 281 Va 522, 530; 709 SE2d 156 (2011) (citation omitted). In the context of the family farm sale, Joy's trust emerged with two things of value: money and gas, oil, and mineral rights. The settlement agreement awarded the money to Joy. Like the money paid for the farm, the oil, gas, and mineral rights were a bargained-for commodity of the sale, as reflected in the purchase agreement. In my view, both the cash and the rights were "proceeds" of the sale when paragraph four is interpreted in conjunction with the surrounding apportionments.

Two examples come to mind. If Joy had sold the family farm property but kept an outbuilding for her own use, would not the outbuilding be a "proceed" of the sale that went to Joy? If she owed the buyer money and obtained debt forgiveness in exchange for the land, would not that forgiveness constitute a "proceed" accruing to Joy? As commonly understood, "proceeds" are things of value obtained through an exchange. The settlement agreement (supplemented by the purchase agreement) provided that the proceeds of the family farm sale included severed mineral rights, an economic benefit to the trust. Along with the rest of the assets in Joy's trust related to the family farm, I believe that the parties intended that this "proceed" belonged to Joy.

I would remand for entry of an order permitting Joy's personal representative to prepare a deed assigning Joy's estate the mineral rights. Alternatively, the probate court could conduct an evidentiary hearing aimed at determining the parties' intentions in this regard at the time they executed the settlement agreement. The latter course of action seems unnecessary to me, as the

settlement agreement explicitly encapsulates the parties' intent that Joy would receive all assets related to the farm. But the benefit of convening a hearing is to place the focus where it belongs: on the settlement agreement rather than Larry's trust. The majority's decision to look to the trust for guidance fundamentally contravenes the settlement agreement and the parties' objectives when they drafted it. Accordingly, I dissent.

/s/ Elizabeth L. Gleicher