



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 2007-2017 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 Woodward/White, Inc., of SC). He has been included in the Best Lawyers listing since 2011. Kemp Klein is a member of LEGUS a global network of prominent law firms.

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/>.

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

DT: December 27, 2017

RE: *In re Estate of Elsie M. Clemence*
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 - LORE

As I sit here mulling over the 2017 trades that the Tigers made totally decimating their lineup, I am reminded of the worst trades in history.

Reputed to be the worst was the owner of the Boston Red Sox selling Babe Ruth to the New York Yankees for \$125,000.00 and a loan of \$300,000.00. The name of the game in 1920 was baseball is a business from which we are supposed to make money. It is entertainment. The Red Sox owner took the \$300,000.00 and didn't put it into his ball club but into his entertainment productions. What came after was the curse of the Bambino delaying Boston's World Series hopes for more than half a century. For those of you who are interested, January 5, 2018 is the 98th Anniversary of that terrible trade.

Another whopper was the acquisition of "Shoeless" Joe Jackson by the Cleveland Indians. A little background here is necessary. The owner of the Cleveland Indians, who were then known as the Cleveland Naps (because of their second baseman, Nap Lajoie and not because they slept on the field) was a bit of a mench. When the American League owners were in trouble, the owner of the Indians loaned money to many of the other owners in the American League one of which was Connie Mack of the Philadelphia Athletics. Joe Jackson, although Mack saw some potential in him, was fighting for a pennant. Mack shipped Jackson off to the New Orleans Pelicans and Jackson had a stellar season. Mack then got the Jackson rights back from New Orleans, and, as a "favor" to Cleveland traded, Joe Jackson for Morey Rath and Harry Bris Lord. Morey Rath was an infielder, primarily a second baseman. He lasted with the Phillies for 49 games. In 7 games he batted .269 and 42 games he batted .183 and then he was shipped off to the White Sox and then the Cincinnati Reds. He was out of baseball by 1920 and didn't play in the Majors from 1914 to 1918. The other part of the deal involved Harry Lord and was even more interesting. Lord had been a member of the Athletics but when they got the rights to him back in the Jackson trade he never made the team. (He had the nickname of the "Human Eyeball"). One wonders where that came from.

So we have two flub-a-dubs traded for one of the best baseball players that ever lived. Jackson led the league three times in triples, once in doubles and was third on the all-time list with a batting average of .356.

He once threw a ball 396 feet in a long-throw contest.

Joe Jackson should be in the Hall of Fame. Supposedly he's not because of the Black Sox scandal, but keep in mind the following:

First, all of the Black Sox were found not guilty in a Jury Trial.

Second, Jackson, though supposedly involved, batted .375 in the 1919 World Series. When there was no allegation of him gambling, he in the 1917 World Series only batted .304. He also had three triples and one homerun. Pretty damn good.

Third, the Iitich family is allowed to own a gambling casino.

Fourth, the man who banned Jackson from baseball had a unique arrangement where he made \$7,500.00 as a Federal Judge, was allowed to keep his judgeship and make \$42,500.00 as baseball's first Commissioner. Many think he was primarily responsible for keeping African Americans out of America's game.

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

REVIEW OF CASE:

In re Estate of Elsie M. Clemence

- Reopening Estates – MCR 5.312

This is a simple two page Opinion that reviews the ground of “Good Cause” as a reason to reopen a decedent's estate.

Decedent died in 1999, and her estate was closed. It was reopened in 2005, closed and reopened and closed in 2011. Appellant sought to reopen to pursue a “Civil Rights” case. It sounded in the nature of legal malpractice.

STATE OF MICHIGAN COURT OF APPEALS Case
-continued-

The lower court examined the underlying alleged case, determined that the statute of limitation had passed and determined that no good cause to reopen was present.

The Court of Appeals affirmed.

Pragmatic lesson learned - A Court can look at what petitioner wants to accomplish and make a determination as to whether it would succeed as part of determining good cause found under MCR 5.312.

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF ELSIE M CLEMENCE.

LESTER CLEMENCE,

Appellant.

UNPUBLISHED
November 28, 2017

No. 336570
Kent Probate Court
LC No. 99-167964-DE

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

PER CURIAM.

Appellant appeals from an order of the Probate Court denying his petition to reopen his deceased mother's estate. We affirm.

Elsie Clemence died in 1999. According to the lower court docket entries, an estate was opened in 1999, thereafter closed, reopened again in 2005 and closed, and reopened yet again in 2011 and closed. In 2017, appellant sought to again reopen the estate. This time, he did so to pursue, as he describes it, "a civil rights case" against an attorney who gave his mother bad advice in 1993 regarding her desire to recover land that had been sold the previous year while she was a ward of the court.¹

The Probate Court denied the petition to reopen the estate. The court concluded that, because the potential underlying action arose in the 1990s, any possible period of limitations had long since expired. Therefore, the court determined that good cause had not been shown to reopen the estate. See MCR 5.312. On appeal, appellant makes no showing that there is any possible claim for which the period of limitations has not expired. Rather, he merely argues that he "should be granted the right to bring a civil rights violation on behalf of his mother's estate

¹ According to appellant in his brief, the property was sold by court order in order to pay the attorney fees of the attorney representing the deceased. Appellant also states that it was eventually determined that his mother was not an incapacitated person and that that case was dismissed. From appellant's statements at the hearing in the Probate Court on his petition to reopen the estate, he is seeking to bring an action against that original attorney.

and whether the law suit is a successful, unsuccessful or even summarily dismissed should be up to the Judge and possible jury assigned to that particular civil rights suit.”

We agree with the probate court that appellant has failed to show good cause to reopen the estate.

Affirmed.

/s/ Brock A. Swartzle

/s/ David H. Sawyer

/s/ Jane E. Markey