YOUR LEGAL ADVISORS

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 2007-2018 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: July 18, 2018

RE: ***In re Conservatorship of Bittner*** **and**
In re Menhennick Family 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**

KEMPKLEIN LAW FIRM

201 West Big Beaver, Suite 600, Troy, Michigan 48084 | Phone: 248.528.1111 | Fax: 248.528.5129 | www.kempklein.com

BASEBALL MEMORIES

It's time for the All-Star game.

The Tigers have hosted three All-Star games; 1951, 1971 and 2005.

With inter-league play, the All-Star game has lost a lot of its meaning. In 1951 and 1971, it was a chance to see players that you could only see on television and then only on a limited basis.

My greatest memories are about the 1951 All-Star game; the only one I missed. Although I really have fond memories of my parents, if I were to pick one thing that they did wrong it was to send me to camp in 1951 and make me miss what I really thought was an important event. I remember my mother and I being downtown in front of J.L. Hudson. There was a news stand that had rolls of paper and you signed your name to the paper and these constituted votes for your favorite All-Stars. I voted for George Kell and Vic Wertz two of my favorites. They made the All-Star team and I wasn't there to see them. I would have missed Dom DiMaggio, Nellie Fox, George Kell, Ted Williams, Yogi Berra, Vic Wertz, Ferris Fain, Chico Carrasquel and starting pitcher, Ned Garver who came to the Tigers in 1952. Joe DiMaggio, Bobby Doerr, Eddie Robinson, Larry Doby, Minnie Minoso, Phil Rizzuto and Jim Hegan were reserves. The National League was equally represented with Richie Ashburn, Alvin Dark, Stan Musial, Jackie Robinson, Gil Hodges, Bob Elliott, Del Ennis and Roy Campanella with Michigan State's own Robin Roberts as the pitcher. Wertz and Kell both hit homeruns while I was stuck away in the Adirondack Mountains. I have a picture of Kell crossing the plate and shaking hands with Ted Williams.

The 1971 game I was lucky enough to attend. I've also mentioned going to baseball games with my friend Dale Rands. He and I went with our wives and my most vivid memory is our wives asking for ketchup on their hotdogs. There were lots of Hall of Famers in this lineup and unlike 1951, the American League won. Watching Al Kaline, Norm Cash and Bill Freehan together with Mickey Lolich was also great. Reggie Jackson's drive into the right center field bleachers was the longest homerun I have ever seen in person. This was also the first and only time I got to see Willie Mays play in person. Who can forget the high kick of Juan Marichal. I also remember a drive hit by Roberto Clemente that drove in a run.

2005 I went to the game and had a great box near the first base dugout. I was pleased to attend with Dick Burstein. There were good players here but not too many Hall of Famers. I did get to see Albert Pujols and Miguel Cabrerra while they were still playing in the National League. The Tigers made a big deal out of Pudge Rodriquez making the team but all he did was walk and strike out. The only thing really memorable about the game was sitting four feet away from Kid Rock and watching everybody come down for his autograph.

Where have you gone Joe DiMaggio?

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 Conservatorship Bittner
Issues:

- Implied Special Fiduciaryship
- Responsibility for Fees

A contest took place in the lower court which was appealed many times. A petition was brought for conservatorship of Appellant's deceased during her lifetime. This was defended by Appellant. There was a request for a medical examination. Appellant's attorney in the lower court said, as a suggestion to the Court, that the Appellant's tax attorney prepare an accounting in lieu of a medical examination. Same was done and a fee was requested by the account preparer.

It appears that there was no formal appointment of special fiduciary. The lower court found that the party doing the accounting was a special fiduciary and should be paid. Reference was made to Orders where he was referred to a special fiduciary.

If the accounting was prepared for the benefit of Appellant, whether or not there was a special fiduciaryship, since the proffer was clearly made by the attorney for the Appellant, the Appellant should bear responsibility for those costs. I think this would be a better rationale than to declare that the party preparing the accountings was a special fiduciary.

The Standard of Review used on appeal was the abuse of discretion "principled outcome standard" and the granting of fees was determined to be within the discretion of the trial court and one of a group of principled outcomes.

In re Menhennick Family Trust

Issues:

- Construction of Trust
- Intent of Settlor – Words Given Specific Meaning

This is a pure construction case where the Court of Appeals said that the lower court got it wrong.

This is a case where Appellant sought to exercise an option granted to him under his father's trust. The trust appeared to be somewhat contradictory in that it said that the option could only be exercised six months after the filing of the 706 Return. None was necessary. The clause said that the option could be exercised only after distribution. Distribution could not be made until after the decedent's wife passed away.

The lower court ignored the phrase "If it is necessary to file said Return." The lower court imposed a six month limitation as if a 706 Return was filed.

The Court of Appeals said that the option could be exercised only after distribution was made and that distribution could not be made until after the death of the spouse. The Court of Appeals also pointed out that the decedent took into consideration that a 706 might not be necessary, which was the case, by saying if said Return was filed.

This is a lesson in strict construction and giving every word meaning.

914550

STATE OF MICHIGAN

COURT OF APPEALS

In re Conservatorship of SHIRLEY BITTNER.

STACEY BITTNER, Personal Representative of the ESTATE OF SHIRLEY BITTNER,

Appellant,

v

SUZANNE BITTNER-KORBUS, KEVIN ADAMS, and THE LAW OFFICES OF KEVIN ADAMS PLLC,

Appellees,

and

STACEY BITTNER, Individually,

Respondent.

UNPUBLISHED
June 28, 2018

No. 338226
Macomb Probate Court
LC No. 2016-221230-CA

Before: MURPHY, P.J., and JANSEN and RONAYNE KRAUSE, JJ.

PER CURIAM.

Appellant Stacey Bittner,[1] as personal representative of the Estate of Shirley Bittner (the Estate), appeals by right the trial court's order directing Shirley to pay outstanding fees and costs owed to a special fiduciary, and the trial court's earlier decision denying a motion to change venue. We affirm.

This is the fifth time this matter, in one form or another, has been before this Court. Most of the details were set forth in greater detail than we need recount here in *In re Bittner*

[1] For ease of reference, Shirley Bittner and her daughters, Stacey, Suzanne, and Shirleen, will be referred to as necessary by their first names.

Conservatorship, 312 Mich App 227, 230-235; 879 NW2d 269 (2015). Broadly, the underlying dispute, whether carried on in probate or circuit court, concerns the aftermath of health problems Shirley developed after her husband of more than fifty years passed away in 2011. Initially, Shirley entrusted her finances to Suzanne, granting her a durable power of attorney and trusteeship. Shirley later petitioned the probate court for an accounting, asserting that Suzanne had misappropriated a considerable amount of Shirley's funds. Suzanne petitioned for appointment of a conservator for Shirley, alleging that Shirley could not manage her affairs, and despite Shirley's denial, Stacey was appointed that conservatorship. Stacey, in her role as conservator, appealed to this Court, which reversed the order and remanded for further proceedings, holding that clear and convincing evidence failed to show that Shirley could not manage her affairs. *Id*. at 243. Shirley died on June 26, 2017, during the pendency of both the above and the instant appeals. Stacey, in her capacity as the personal representative of Shirley's estate, has been permitted to substitute as appellant.

A few days prior to this Court's decision above, Shirley, through Stacey, initiated a conversion claim against Suzanne in circuit court, which, after this Court's decision reversing the conservatorship, the circuit court dismissed without prejudice for lack of jurisdiction. On appeal, this Court found that dismissal improperly premature and reversed it. *In re Conservatorship of Bittner*, unpublished opinion per curiam of the Court of Appeals, decided October 26, 2017 (Docket No. 333137). Meanwhile, Stacey had filed an accounting in the probate proceeding, which Suzanne contended failed to account for roughly $93,000.00 of Shirley's funds. The probate court found Stacey's accounting unsatisfactory and, *inter alia*, ordered Shirley to undergo a "supplemental independent medical exam." Shirley attempted to appeal that order, which this Court dismissed on jurisdictional grounds. *In re Bittner Conservatorship*, unpublished order of the Court of Appeals, entered April 21, 2016 (Docket No. 331174).

Thereafter, the probate court dismissed Suzanne's petition to appoint a conservator without prejudice; consequently, the medical exam was, apparently, never conducted. Suzanne promptly filed a second such petition, in response to which Shirley, in relevant part, contended that she had moved from Macomb County to Genesee County on the day that the initial petition was dismissed, and that venue was therefore no longer proper in Macomb County. Suzanne contended that this change was a sham. The probate court found that the evidence did not establish that Shirley had moved or that venue was improper in Macomb County even if she had. At the same hearing, the probate court was about to order Shirley to submit to the medical evaluation, when Shirley's attorney interjected and offered the alternative of having Shirley's tax attorney, Kevin Adams, prepare a detailed accounting, asserting that the real issue was the missing money. Shirley's counsel suggested that the accounting could mitigate the need for further proceedings. Over Suzanne's objection, the trial court agreed to adjourn the matter pending Adams's accounting.

Adams subsequently filed a petition for instruction with the probate court regarding the fees and costs incurred during the preparation of his accounting. Adams requested the trial court approve fees and costs in the amount of $27,624.38, and determine which party or parties were responsible for the fees. Stacey, Shirley, and Suzanne each filed individual responses to the petition. Stacey contended that she should not be responsible for the fees because she was only an interested party, Shirley contended that she should not be responsible for the fees because they were solely necessitated by litigation caused by Suzanne, and Suzanne contended that

Adams had been bought into the case by Shirley as her tax attorney and expert witness, and thus no one other than Shirley could be held responsible for his fees. The trial court recognized that Adams had acted as a special fiduciary and not an expert witness, but nevertheless found that Shirley should be responsible for Adams's bill.

Shirley then filed the claim of appeal currently before the Court, challenging the probate court's denial of her petition to change venue and its decision to hold her solely responsible for Adams's fees. As noted, Shirley herself passed away after the claim of appeal was filed, and Stacey is proceeding in her place as the personal representative of her estate.

The Estate's first argument is that the trial court clearly erred in denying Shirley's petition to change venue. We disagree.

There is no dispute that this issue is reviewed for clear error, meaning even if there is some evidence to support the trial court's conclusion, we are definitely and firmly convinced it was a mistake. *Brightwell v Fifth Third Bank of Mich*, 487 Mich 151, 156; 790 NW2d 591 (2010); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Under this standard, there may be more than one permissible outcome, much like the abuse of discretion standard. *Hill v City of Warren*, 276 Mich App 299, 308-309; 740 NW2d 706 (2007). We give great deference to the trial court's findings of fact unless they appear to be the product of an incorrect conclusion of law. *Yachcik v Yachcik*, 319 Mich App 24, 31-32; 900 NW2d 113 (2017).

"Statutory interpretation involves questions of law that are reviewed de novo." *Brightwell*, 487 Mich at 156. "Venue is controlled by statute in Michigan." *Dimmitt & Owens Fin*, *Inc*, *v Deloitte & Touche LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008) (citations omitted). "Venue is determined at the time the suit is filed and is not normally defeated by subsequent events." *Shiroka v Farm Bureau Gen Ins Co of Mich*, 276 Mich App 98, 104; 740 NW2d 316 (2007). Relevant to this matter, venue would be proper "[i]n the court at the place in this state where the individual to be protected resides whether or not a guardian has been appointed in another place." MCL 700.5403(a). Consequently, the issue is whether the trial court properly found that Shirley "resided" in Macomb County at the time the petition was filed.

A residence is "any place of abode or dwelling place, however temporary." *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 494; 835 NW2d 363 (2013) (quotation marks and citation omitted). Although there need not be an intent to remain permanently or indefinitely, the person must have some kind of intent to remain. *Kar v Nanda*, 291 Mich App 284, 288; 805 NW2d 609 (2011). Significantly, unlike a "domicile," which is essentially a residence *and* an intent to remain permanently, a person is not limited to having only one "residence." *Grange*, 494 Mich at 494-495. Consequently, by definition venue may well be proper in multiple counties; put another way, even if Shirley established that venue was proper in Genesee County, that does not *necessarily* establish that venue was improper in Macomb County.

Indeed, we think it would be hard to dispute that there was some evidence in the record supporting the contention that Shirley had moved to Genesee County between the dismissal of the first petition and the filing of the second. During that time, Shirley changed the address on her driver's license and registered to vote in Genesee County. The parties all agreed, however, that Shirley also continued to own her home in Macomb County. Furthermore, we do not

believe it would have been unwarranted for the trial court to hold a certain degree of skepticism, especially in light of its vastly superior ability to evaluate the credibility of those appearing before it and its extensive history with this matter. See *McGonegal v McGonegal*, 46 Mich 66, 67; 8 NW 724 (1881). We do not believe it was clear error for the trial court to conclude that the evidence showed Shirley retained some intent to continue to reside in Macomb County at the time the petition was filed.

Consequently, the trial court was not required by MCR 2.223 to transfer venue, but rather had the discretion under MCR 5.128 to do so for the convenience of the parties, witnesses, and attorneys. The trial court found that transfer of venue to Genesee County would be inconvenient, and, considering the extensive experience the trial judge already had with the matter and the presence of the witnesses and "relevant banks" in Macomb County, we find no abuse of that discretion. The trial court's decision not to transfer venue is affirmed.

The Estate next contends that the trial court abused its discretion when it ordered that Shirley was solely responsible for Adams's fees and costs. Again, we disagree.

As an initial matter, the applicable standard of review is not readily discernable from any published case, although both parties, for differing reasons, agree that it is the abuse of discretion standard, under which the lower court may have a range of "principled outcomes" available from which to choose freely. See *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). We disagree with Suzanne's contention that Adams was not a special fiduciary: Shirley's counsel explicitly "offer[ed] an accounting by a special fiduciary (inaudible) of doing an accounting of these funds and that a special fiduciary for doing so be Mr. Kevin Adams." Even if the trial court did not use the words "special fiduciary" at the time, it is apparent from the record that it accepted the offer, and it *did* refer to Adams as a special fiduciary in a subsequent order. "[A] court speaks through its written orders." *In re Leete Estate*, 290 Mich App 647, 658; 803 NW2d 889 (2010). Suzanne did not object particularly to Adams's proposed role so much as his necessity at all. Propriety aside, we find the record establishes that Adams was appointed as a special fiduciary.

That being the situation, MCL 700.1309 and MCR 5.204 each provide the probate court discretion to appoint a special fiduciary for any number of purposes, but neither provide guidance regarding compensation. Nonetheless, we think it a necessary logical inference that any such fiduciary would have to be compensated, and in the absence of any discernable expressed intent to the contrary, it would be absurd to conclude that such compensation was anything other than also at the trial court's discretion. See *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999). It follows that we review the trial court's order directing Shirley to bear the cost of Adams's compensation to determine whether it is outside the range of principled outcomes. *Babcock*, 469 Mich at 269.

As noted, Shirley's counsel *offered* to have Adams do an accounting in order to dispel the need for further discovery or a future medical examination. Noting that Adams was already Shirley's tax attorney, Shirley's counsel argued that allowing Adams to do the accounting would avoid further expense. Her counsel argued: "If *we* can account for it, why not? Let's do it. *We* will account for it. Why spend the expense for experts and [independent medical evaluations] and all of that when *we* can have Mr. Adams, who has been Shirley's tax attorney for years, do a

full accounting for you and for them[?]" (Emphasis added.) The trial court clearly, and reasonably under the circumstances, expected Shirley to pay for Adams's services. Furthermore, Suzanne did not merely object on principle or for an unstated reason, but in fact made the reasonable argument that she disagreed with Shirley regarding the true issue in the case and an accounting could not replace a medical examination for the purpose of evaluating whether Shirley was vulnerable and in need of a conservator. On these facts, we do not find the trial court's imposition of Adams's fees solely on Shirley to be an unprincipled outcome.

The Estate argues that Suzanne should be responsible for the fees because the accounting was only made necessary by Suzanne's underlying petition, and Shirley had already been forced to expend money defending herself throughout this case. Once again, however, that merely establishes that it might also have been reasonable for the trial court to do so. As noted, Adams was Shirley's idea, at her insistence, over the objection of Suzanne, who *would* have had to bear much of the expense of discovery had Shirley not insisted on Adams's accounting. Shirley's counsel offered an accounting by Adams as a direct alternative to undergoing a medical examination and thus presumably expected to be the primary beneficiary of that accounting. The fact that the trial court could have done something different does not prove that it should have done so.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Amy Ronayne Krause

STATE OF MICHIGAN

COURT OF APPEALS

In re MENHENNICK FAMILY TRUST.

TIMOTHY J. MENHENNICK,

Appellant,

v

PAUL MENHENNICK, DENNIS MENHENNICK, and PATRICK MENHENNICK,

Appellees.

UNPUBLISHED
June 19, 2018

No. 336689
Marquette Probate Court
LC No. 14-032797-TV

Before: MURRAY, C.J., and HOEKSTRA and GADOLA, JJ.

PER CURIAM.

In this contest regarding the proper interpretation of a trust document, appellant appeals as of right the Marquette Probate Court's order denying his petition seeking enforcement of an option to purchase stock as conferred by the trust. We reverse and remand for further proceedings.

The facts of this case are not in dispute. Appellant is one of four surviving sons of Alva J. Menhennick, Jr. ("Alva").[1] Appellant's three brothers, Paul Menhennick, Dennis Menhennick, and Patrick Menhennick, are appellees. On October 18, 1989, Alva executed and funded a revocable living trust (the "trust"), under which he served as both trustee and beneficiary during his lifetime. Upon Alva's death, provided that his wife Ilean Menhennick ("Ilean") survived him, the trust assets would be divided into two separate trusts: the Ilean M. Menhennick Trust (the "marital trust") and the Menhennick Family Trust (the "family trust"). In accordance with Section III of the trust, the marital trust assets were to be used for the support and maintenance of Ilean during her lifetime and, upon her death, would be distributed to those persons appointed in Ilean's will. Section IV of the trust provided that the family trust would serve as a credit shelter trust, with Ilean as the income beneficiary during her lifetime and the residue to be distributed

[1] A fifth son, Alva J. Menhennick III, is deceased and left no surviving spouse or descendants.

among Alva's children upon Ilean's death. Additionally, Section IV(F) contained the following provision, which is the subject of the present appeal:

> F. If at the time of distributing Grantor's trust assets, one or more of Grantor's children are actively involved in the affairs of the Harvey Oil Company, the Trustee shall, in distributing the trust residue, distribute stock in the Company to said child or children as a part of his one-fifth share. As of the date of execution of this agreement, Grantor considers Alva J. Menhennick III and Dennis J. Menhennick as actively involved in the affairs of the Harvey Oil Company. The stock shall be valued for purposes of distribution at the value as finally determined in settling the estate and trust of Grantor and as finally determined for federal estate tax purposes if it is necessary to file said return in Grantor's estate.
>
> In addition, the Trustee shall give Grantor's child or children who are actively involved in the Harvey Oil Company the right to acquire the additional shares of stock not distributed to them as a part of the trust residue at the value per share as finally determined in the settling of Grantor's estate, it being the intent of Grantor that the children actively involved in the Company be given the option to acquire all of the stock in the Company held in the trust, with the proceeds from the sale of the stock and other non-corporate assets being distributed as a part of the residue to Grantor's other children who are not involved in the business. The right to acquire the shares in Harvey Oil Company shall expire six months from the date of the approval of Grantor's 706 return by the Internal Revenue Service.

Alva passed away in 1993 and was survived by Ilean. Because his gross estate fell within the $600,000 tax exemption applicable at the time of Alva's death, there was no federal estate tax liability, and a Form 706 return was never filed with the Internal Revenue Service. As a result, the marital trust was left unfunded, and all the assets were transferred to the family trust. These assets included 65 shares of Harvey Oil Company stock, which were then valued at $1,778.38 per share.

Ilean passed away on December 20, 2014. It is undisputed that appellant was the only son actively involved in the business affairs of Harvey Oil Company at that time. On June 12, 2015, appellant sought to exercise the option to purchase shares of stock in Harvey Oil Company pursuant to Section IV(F) of the trust and, on July 23, 2015, he filed a petition in Marquette Probate Court seeking enforcement of the option. The probate court issued an order on January 6, 2017, denying the petition. In the order, the probate court concluded that the trust document limited the time frame during which the stock option could be exercised and that appellant's right to exercise the option had expired.

This Court's review of the decision of a probate court is on the record and not de novo. *In re Lundy Estate*, 291 Mich App 347, 352; 804 NW2d 773 (2011). A probate court's factual findings are reviewed for clear error, and its dispositional rulings are reviewed for an abuse of discretion. *Id*. A court "abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes." *In re Temple Marital Trust*, 278 Mich App 122, 128; 748

NW2d 265 (2008). However, the proper interpretation of a trust document is reviewed de novo. *In re Stan Estate*, 301 Mich App 435, 442; 839 NW2d 498 (2013).

"The rules of construction applicable to wills also apply to the interpretation of trust documents." *In re Reisman Estate*, 266 Mich App 522, 527; 702 NW2d 658 (2005). This Court described the governing principles of trust interpretation in *In re Kostin Estate*, 278 Mich App 47, 53; 748 NW2d 583 (2008):

> In resolving a dispute concerning the meaning of a trust, a court's sole objective is to ascertain and give effect to the intent of the settlor. The intent of the settlor is to be carried out as nearly as possible. This intent is gauged from the trust document itself, unless there is ambiguity. If ambiguity exists, the court must look outside the document in order to carry out the settlor's intent, and may consider the circumstances surrounding the creation of the document and the general rules of construction. The powers and duties of the trustees, and the settlor's intent regarding the purpose of the trust's creation and its operation, are determined by examining the trust instrument. This Court must attempt to construe the instrument so that each word has meaning. [(Citations omitted).]

In carrying out the drafter's intent, courts "must read the [trust] as a whole and harmonize all the provisions, if possible, to that intent." *In re Bem Estate*, 247 Mich App 427, 434; 637 NW2d 506 (2001) (quotation marks and citations omitted).

On appeal, appellant contends that the probate court erred in interpreting the trust and in concluding that his right to exercise the option to purchase stock had expired. According to appellant's interpretation of the trust, the option became available only after Ilean's death, when distribution of the family trust residue was to occur.[2] In contrast, relying on the provision that "[t]he right to acquire the shares in Harvey Oil Company shall expire six months from the date of the approval of Grantor's 706 return," appellees maintain that the option was to extinguish shortly after Alva's death in 1993. Under appellees' interpretation, the proceeds from any stock purchase were to supply an income for Ilean during her lifetime and to be distributed to Alva's children upon her death. We agree with appellant's interpretation.

As a whole, Section IV(F) concerns the distribution of stock in Harvey Oil Company to those of Alva's children who, "*at the time of distributing Grantor's trust assets*[,] . . . are actively involved in the affairs of the Harvey Oil Company." (Emphasis added). The first paragraph provides that those children shall receive their share of the family trust residue in the form of company stock. The second paragraph permits them "the right to acquire the additional shares of stock *not distributed to them as a part of the trust residue*." (Emphasis added). In accordance with the plain terms of the trust, the option is not exercisable until distributions are made. First, the option applies only to those shares "not distributed . . . as a part of the trust residue." Thus, it would be impossible to determine the number of outstanding shares available for purchase before

[2] Due to ongoing litigation involving the trust, none of the family trust assets have been distributed since Ilean's death in December 2014.

distribution. Second, it would be impossible to determine which of Alva's children would be eligible to exercise the option until the time of distribution. By its plain terms, Section IV(F) extends the option only to those children actively involved in Harvey Oil Company's affairs at the time of distribution. In accordance with Section IV(C) of the trust, termination of the family trust and distribution of its assets was to occur upon Ilean's death.

This interpretation is consistent with Alva's stated intent "that the children actively involved in the Company be afforded the option to acquire all of the stock in the Company held in the trust." Had the value of the residual share distributed to a son involved in the business been less than the value of the aggregate amount of stock, Alva presumably intended to provide that son a mechanism by which to acquire the remaining shares. Described in more concrete terms, Alva's gross estate was calculated to be worth $341,583.00. This value included 65 shares of Harvey Oil Company stock, worth $1,778.38 per share, for a total of $115,594.70 in stock. However, a one-fourth share of the gross estate would be equivalent to $85,395.75, which is less than the value of the total amount of stock. Accordingly, the trust incorporates the purchase option to permit a son involved in the business to purchase the remaining $30,198.95 in stock not distributed to him as part of his share of the residue.[3]

This interpretation is not inconsistent with the ultimate sentence in Section IV(F), which states, "The right to acquire the shares in Harvey Oil Company shall expire six months from the date of the approval of Grantor's 706 return by the Internal Revenue Service." As noted above, it was unnecessary to file Form 706 at the time of Alva's death. The probate court nonetheless found the sentence unambiguous and dispositive, holding that the words "shall expire" clearly evidenced an intent that the option would be available only for a limited time. Further, the probate court concluded that "[a]ll possible calculations of that time period" had expired, as Form 706 would have been filed and approved shortly after Alva's death in 1993.

We disagree with the probate court's reasoning. The trust provides that the expiration of the right to exercise the option is measured from the date of the approval of Form 706. Therefore, the language of the trust, taken at face value, dictates that the option has not expired because Form 706 was never filed or approved. Further, Section IV(F) of the trust expressly contemplates the possibility that a Form 706 return may not be filed. The final sentence of the first paragraph in Section IV(F) states that the value of the stock shall be "as finally determined for federal estate tax purposes *if it is necessary to file said return*." (Emphasis added). Accordingly, it is reasonable to assume that the drafter was aware of the possibility that the right to exercise the option may not expire, as the filing and approval of Form 706 might become unnecessary. Further, to conclude that the right to exercise the option had expired would be to

[3] Appellees' position that the proceeds derived from an exercise of the option would benefit Ilean during her lifetime and would be distributed to Alva's children upon her death is lacking in merit. The trust states that "the proceeds from the sale of the stock and other non-corporate assets [are to be] distributed as a part of the residue to Grantor's other children who are not involved in the business." This provision is silent with respect to applying the proceeds to benefit Ilean, further indicating that the right to exercise the option would arise upon her death.

render the option a nullity. As determined above, distribution of the trust assets is a necessary prerequisite to exercise the option. However, because distribution of the family trust residue was not to occur until after Ilean's death, it would be impossible to exercise the option at the time of Alva's death. In the interest of giving meaning to each word of the trust, see *Kostin Estate*, 278 Mich App at 53, we conclude that appellant's right to exercise the option has not expired.

Appellees briefly offer three additional arguments in support of their interpretation. First, appellees contend that Alva intended his children to acquire control of the company shortly after his death. This assertion is unsupported and is contrary to the express language of the trust. Second, they argue that Alva intended his sons "to acquire the shares at a generally favorable price which did not cause a capital gain recognition to his trust." Regardless of the time the option was exercised, the trust states that the price would be fixed at the value determined at the time Alva's estate was settled, and there is nothing in the trust indicating a concern with capital gains. Finally, appellees maintain that if a son "were unable to find the money to acquire the stock within six (6) months after the federal estate tax return was finally approved, he would still be distributed shares at the time of final distribution from the trust." However, there is no language in the trust indicating a concern with respect to a son's financial ability to purchase the shares of stock. Accordingly, we conclude that the probate court erred in its interpretation of the trust and abused its discretion by denying appellant's petition seeking enforcement of the option on the basis of this interpretation.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Michael F. Gadola