



*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*® 2019 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2018 by Woodward/White, Inc., of SC). He has been included in the Best Lawyers listing since 2011. Additionally, Mr. May was selected by a vote of his peers to be included in *DBusiness* magazine’s list of 2017 Top Lawyers in the practice area of Trusts and Estates. 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:** October 10, 2018

**RE:** *In re Basso Revocable Living Trust*

STATE OF MICHIGAN COURT OF APPEALS

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

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

### **BASEBALL – MEMORIES**

Happy Birthday Ed Nahhat. Ed will celebrate his birthday on October 10, 2018.

This was always a momentous day in baseball history, because October was the month of the World Series.

1905 – Doc White threw a one-hitter in a World Series game. There wasn't another one thrown until 1945.

1908 – Although the Tigers lost the series and the game played on October 10<sup>th</sup>, they sent up a batter by the name of Ira Thomas. Even though the World Series had begun in 1903, Thomas got the first pinch hit on behalf of the Tigers in a World Series.

1912 – We're all familiar with the 1954 Willie Mays catch at the 484 marker in the Polo Grounds off the bat of Vick Wertz. A similar catch was made in deep left field in 1912 on October 10<sup>th</sup> by Josh Devore with two men on to save the victory for the New York Yankees.

1916 – As Ed Nahhat raises his fees, it's worth notice that in 1916 on October 10<sup>th</sup> Charlie Ebbets raised the price of a Grand Stand seat in the World Series from \$3.00 to \$5.00.

1918 – Do you collect World Series rings? You won't find one for the year 1918 because the ballplayers threatened to strike unless they got a bigger share of the profits. As punishment, no rings were given out to the winners.

1920 – On October 10<sup>th</sup> for the first time in World Series history a pitcher, Jim Bagby, hit a homerun.

1923 – On October 10<sup>th</sup> the first World Series was broadcast by radio.

1926 – On October 10<sup>th</sup> the St. Louis Cardinals won their first World Series.

1937 – The Yankees won their 5<sup>th</sup> World Series with pitcher Lefty Gomez knocking in the winning run.

1945 – October 10<sup>th</sup>, the Tigers win the Pennant and will not do so again until 1968.

Happy Birthday Ed.

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

**REVIEW OF CASE:**

**RE:** *In re Basso Revocable Living Trust*

- Inherent Power to Sanction - Affirm.
- *Bill and Dena Brown Trust v Garcia*, 317 Mich App 384 (2015)
- Mandatory Services as Trustee
- Sanctions/Dismissal

Ron Barron was Trustee of the Trust at issue and because of difficulty with the beneficiaries, wished to resign. The Trust created a succession within the document of other people within Barron's law firm. Beneficiary, Appellant and Respondent objected to Accountings without being specific, did not want to allow the resignation of Barron, wanted to force Barron's law firm to continue to act as Trustee and did not obey Scheduling Orders and, thus, had her Petition dismissed.

Inter alia the Court of Appeals said:

1. The absence of specific objections to an Accounting lead to the dismissal of objections.
2. The Court has inherent power to sanction. *Maldonado v Ford Motor Co*, 476 Mich 372 (2006) [(Anybody who researches this will find that it's broader than the grounds under the MCR.)].
3. Dred Scott is no longer a slave. You can't make somebody be a Trustee.
4. In many of the recent Appellate Court decisions, I'm seeing the case name *Bill and Dena Brown v Garcia*. This is cited to the effect that a Court must enforce the plain and unambiguous terms of a Trust as they are written. This keeps coming up again and again as justification.

Congratulations to Mr. Barron and to Tom Fraser on his new position.

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* LOUIS G. BASSO, JR., REVOCABLE  
LIVING TRUST.

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MARY ANGELA BASSO,

Appellant,

v

RONALD M. BARRON, Trustee, and THOMAS  
BRENNAN FRASER, Successor Trustee,

Appellees.

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UNPUBLISHED

September 20, 2018

No. 337321

Oakland Probate Court

LC No. 2015-363780-TV

Before: M. J. KELLY, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Appellant, Mary Basso, a beneficiary of the Louis G. Basso, Jr., Revocable Living Trust, appeals as of right from the probate court's order permitting the resignation of the initial trustee, Ronald M. Barron, approving Barron's final accounting as trustee, and appointing Thomas Fraser as the successor trustee. Basso also appeals the court's imposition of sanctions for her refusal to abide by the deadlines set forth in the scheduling order or even to sign the order. Because there are no errors warranting reversal, we affirm.

I. BASIC FACTS

This case arises from the administration of the Louis G. Basso, Jr. Revocable Living Trust. The trust was created in March 2006, and was restated in its entirety in November 2014. The settlor died in December 2014, making the trust irrevocable. It is undisputed that Barron was the initial trustee and that Basso and her three siblings are trust beneficiaries. Because of disagreements between Barron and Basso and between Basso and her siblings, Barron found the trust difficult to administer, so he sent Basso and her siblings a 30-day-notice of his intent to resign as trustee. Although the trust provided a mechanism for appointment of a successor trustee, each of the named potential successor trustees declined appointment. Accordingly, Barron petitioned the probate court seeking limited supervision of the trust for the purpose of allowing him to resign, approving his final accounting, and appointing a successor trustee under the Michigan Trust Code, specifically MCL 700.7704(3). Representing herself, Basso objected

to Barron's resignation and asserted that a successor trustee was required to be appointed from among the principals of Barron's law firm. Basso also listed several expenses to which she objected, but she offered no explanation as to why she felt they were improper. In contrast, Basso's siblings filed a response concurring with Barron's petition.

The record reflects that at an initial hearing, the probate court entered a scheduling order setting deadlines and dates for discovery, witness lists, exhibit lists, trial briefs, and a contested hearing date. It is undisputed that Basso refused to sign the scheduling order, and she failed to comply with nearly all of the deadlines. As a sanction for Basso's failure to comply with the scheduling order, the probate court dismissed her objections to the petition.

In February 2017, at the contested hearing, Barron testified that the accounting submitted accurately reflected all income, expenses, and disbursements of the Trust. He confirmed that he served all interested parties with an accounting and only Basso objected. In response to Basso's question about whether she was provided with receipts or other documentation, he testified that he provided whatever information Basso requested whenever she requested it. Upon conclusion of the testimony, the probate court noted the vacancy in the trustee position created by Barron's resignation and the fact that all possible successor trustees named in the trust declined to act. Acknowledging that "the Court can't compel someone to serve, and it's not in the interests of the beneficiaries for someone to be forced to serve against their will," the probate court found that it could appoint a successor, and it appointed Fraser as successor trustee. The court also found that the accounting was proper, stating:

Also with respect to the account, I will allow the account. I've heard the testimony. I did not hear specific objections to the account. I've reviewed the account. It certainly appears to be appropriate. Mr. Barron has testified that he served the accounting, as well as receipts, on all of the beneficiaries. No specific objections were received to those, so they are allowable.

## II. SCHEDULING ORDER

### A. STANDARD OF REVIEW

Basso argues that the probate court abused its discretion by entering its scheduling order and by sanctioning her for her refusal to follow it. Decisions related to the entry and enforcement of scheduling orders are reviewed for an abuse of discretion. *People v Grove*, 455 Mich 439, 469-470; 566 NW2d 547 (1997), superseded by court rule on other grounds as recognized in *People v Franklin*, 491 Mich 916; 813 NW2d 285 (2012).

### B. ANALYSIS

MCR 2.401(B)(1) permits a trial court to enter scheduling orders that "shall establish times for events the court deems appropriate . . ." MCR 2.401(B)(2)(a). Additionally, "[t]rial courts possess the inherent authority to sanction litigants and their counsel, including the right to dismiss an action." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Basso contends that the probate court abused its discretion by entering the scheduling order and by not taking into account her perceived difficulties in litigating this matter. But the record shows that Basso failed to participate in discovery or any other aspect of the case aside from the

contested hearing. At the outset, she refused to sign the scheduling order, but she acknowledges the dates in it and her presence and participation at the scheduling conference. Additionally, Basso did not appear for her duly noticed deposition. She did not respond to discovery, provide an exhibit list, or file a trial brief. Moreover, she did not seek relief from the scheduling order, but instead appears to have decided that the dates in the scheduling order were not convenient to her and that she would not abide by them. Thus, the court's decision to impose sanctions was based on the scheduling order, which was entered in compliance with MCR 2.401. Accordingly, there is no abuse of discretion in the court's decision to implement the scheduling order or impose sanctions for Basso's failure to follow it.

### III. ACCOUNTING

Basso next asserts that the probate court erred by approving Barron's final accounting. "The [probate] court's factual findings are reviewed for clear error, while the court's dispositional rulings are reviewed for an abuse of discretion." *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, on the whole record, is left with a definite and firm conviction that a mistake has been made." *Bynum v ESAB Group, Inc*, 467 Mich 280, 285; 651 NW2d 383 (2002). At the contested hearing, Barron presented evidence that the accounting properly documented the income, expenses, and assets of the Trust. Basso, however, offered no evidence or any specific objections to the accounting, which left Barron's testimony uncontroverted. As a result, we conclude that the trial court did not clearly err by finding that the final accounting was acceptable.

### IV. ENFORCEMENT OF THE TRUST TERMS

#### A. STANDARD OF REVIEW

Basso also argues that the probate court erred by permitting the initial trustee to resign, and by appointing the public trustee as successor trustee. She specifically argues that the trust only allows for the appointment of specific successor trustees, and that, under the express language in the trust, the court cannot appoint a successor trustee. Interpretation of a trust document is a question of law that we review de novo. *In re Egbert R Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008).

#### B. ANALYSIS

"[A] court must enforce the plain and unambiguous terms of a trust as they are written." *Bill & Dena Brown Trust v Garcia*, 312 Mich App 684, 694; 880 NW2d 269 (2015). Here, under the plain language of the Trust, a trustee can resign after providing the beneficiaries with 30 days' notice. It is undisputed that Barron resigned by way of the mechanism set forth in the trust. The trust also provides that Don Rosenberg or, if he were unable or unwilling to serve, another principal of Barron's law firm should be appointed successor trustee. But Rosenberg and every other principal of the firm declined appointment as a successor trustee. MCL 700.7704(3) permits the probate court to appoint a successor trustee if one cannot be appointed in accordance with the trust. Thus, the probate court properly permitted initial trustee Barron to resign and properly appointed a successor trustee.

Affirmed. As the prevailing party, Barron may tax costs. MCR 7.219(A).

/s/ Michael J. Kelly

/s/ Jane E. Markey

/s/ Karen M. Fort Hood