



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” and “Sons of Adam,” an International Terror Mystery.

DT: October 29, 2018

RE: *In re Doll 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

Ruth v Educational Films, Inc and George H. Ruth Candy Co v Curtiss Candy Co.

Jane Leavay has a new book out called “The Big Fellow.” If you’ve read her book on Sandy Koufax, you know that she knows the game and knows her players and does a great deal of research.

One of the things that’s not well known in the Babe’s career is his foray into litigation.

There’s no question that the Babe was the biggest thing in baseball during his 21 year career and his image was worth a great deal to the public.

In the case of *Ruth v Educational Films, Inc*, the Defendant had produced some short movies of an instructional nature, showing the Babe without compensating him. He didn’t do well in the lower court or in the Court of Appeals 184 NYS 948, (App Div). The Court of Appeals ruled that the Babe was a public figure and his homeruns were news. This leads one to ask the question: Can a .230 hitter sue for invasion of privacy when .340 can’t?

The Babe also sought a trademark on his candy bar known as “Ruth’s Homerun”. The Court denied him his trademark. The matter went to the US Court of Appeals [49 F2d 1033 (1931)]. The lower court was upheld because the proposed trademark clearly resembled the registered trademark already on record.

**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 Doll Trust*

- Trust verses Trust Code – Superiority of Trust Provision
- Transfer of Situs means Lack of Jurisdiction

Facts

Successor Trustee, with notice to beneficiary, transferred the situs from Michigan to Florida. The Appellant claimed notice was not received. Appellee claimed notice was not necessary because the Trust document provided for discretionary transfer of situs. The Probate Court found it had no jurisdiction and inter alia the Court of Appeals said:

1. Since there is a specific provision that says that the Trust overrules the Trust Code when interpreting, MCL 700.7108, and since the Trust allowed discretionary changing of situs, the notice requirements and right to object found in 700.7108(3)(5) did not apply. The Court of Appeals cited the power of the Trust instrument over the Court via the Trust Code by referencing MCL 700.7101.

2. The Court of Appeals pointed out that the Trust was continuously administered in Florida. I suspect this means unsupervised administration since the Trust provided it was going to be unsupervised.

3. Principal place of business is of importance.

4. The exceptions to the Trust over the Trust Code do not include this type of action by the Trustee.

Query. Would this also apply to venue between county Probate Courts?

STATE OF MICHIGAN
COURT OF APPEALS

In re ELIZABETH DOLL TRUST.

TERESA DOLL-BODINE,

Appellant,

v

PATRICIA D. HARRIS and CONNIE HARRIS,

Appellees.

UNPUBLISHED

October 16, 2018

No. 341788

Chippewa Probate Court

LC No. 17-027484-TV

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

PER CURIAM.

Appellant, a beneficiary of the subject trust, appeals by right the probate court's order dismissing her petition for instruction. The probate court determined that it lacked jurisdiction to hear the petition because the situs of the trust had been transferred to Florida; accordingly, the court granted summary disposition in favor of appellees, co-trustees of the trust, under MCR 2.116(C)(4) (lack of subject-matter jurisdiction). We affirm.

I. FACTS

In 2001, Elizabeth Doll created the Elizabeth Doll Trust. Doll named her daughters, appellees Patricia Harris and Connie Harris, co-successors. In 2004, Doll executed a durable power of attorney for finances and named Patricia as her agent. In 2013, Patricia, as agent for Doll, resigned Doll as trustee of the Elizabeth Doll Trust and assumed duties as co-successor trustee of the trust with Connie. Later that year, Doll attempted to revoke the resignation and reinstate herself as trustee; however, her resignation from the Trust had already been effectuated through her power of attorney with Patricia, and she was unable to change the Trust agreement. Doll died in 2014.

In January 2015, Patricia gave written notice to beneficiaries of the Trust that she was changing the situs of the Trust from Michigan to Florida. Appellant apparently received the notice, and sent an objection to the situs change, but sent it to the wrong address. Patricia represents that she did not receive appellant's objection. The record indicates that no other

beneficiary objected to the transfer. The Trust has been continuously administered in Florida by Patricia since 2015.

In 2017, appellant filed a petition to remove Patricia as trustee of the Elizabeth Doll Trust. Appellees moved for summary disposition, arguing that the probate court did not have subject-matter jurisdiction to hear appellant's petition because the Trust's situs was in Florida. After reviewing the Trust agreement and Patricia's 2015 notice of the situs change, the court ruled that it indeed lacked jurisdiction to hear appellant's petition because Patricia had the authority to transfer the situs of the Trust at her discretion.

II. ANALYSIS

The probate court properly determined that it was without jurisdiction to hear appellant's petition for instruction challenging the administration of the Elizabeth Doll Trust.

"[W]hether a court has subject-matter jurisdiction is a question of law reviewed de novo." *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 931 NW2d 204 (2013). This Court "review[s] de novo the proper interpretation of a trust." *In re Estate of Stan*, 301 Mich App 435, 442; 839 NW2d 498 (2013). Issues of statutory interpretation are also reviewed de novo. *Id.*

MCR 2.116(C)(4) provides that a court should grant summary disposition to a moving party if the court lacks subject-matter jurisdiction to hear a matter. "Subject matter jurisdiction in particular is defined as the court's ability to exercise judicial authority over that class of cases; not the particular case before it but rather the abstract power to try a case of the kind or character of the one pending." *Campbell v St John Hosp*, 434 Mich 608, 613-614; 455 NW2d 695 (1990) (quotation marks and citation omitted). "When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void." *Fox v Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965). The plaintiff bears the burden of establishing subject-matter jurisdiction. *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997).

"Probate courts are courts of limited jurisdiction. Const 1963, art 6, § 15. The jurisdiction of the probate court is defined entirely by statute." *In re Wirsing*, 456 Mich 467, 472; 573 NW2d 51 (1998).

MCL 700.7203(1) grants Michigan probate courts broad and exclusive jurisdiction over "proceedings in this state brought by a trustee or beneficiary that concern the administration of a trust" However, MCL 700.7205(1) provides:

If a party objects, the court shall not entertain a proceeding under section 7203 that involves a trust that is registered *or that has its principal place of administration in another state*, unless either of the following applies:

- (a) All appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration.
- (b) The interests of justice would otherwise be seriously impaired. [Emphasis added.]

The Trust agreement indicates that the Trust is not registered in any state. MCL 700.7209(1) provides:

The trustee of a trust that has its principal place of administration in this state may register the trust in the court at the place designated in the terms of the trust or, if none is designated, then at the principal place of administration. For purposes of this article, the principal place of the trust's administration is the trustee's usual place of business where the records pertaining to the trust are kept or the trustee's residence if the trustee does not have such a place of business. For a corporate trustee, the usual place of business is the business location of the primary trust officer for the trust.

Appellant asserts that because Patricia improperly notified beneficiaries of her transfer of the principal place of administration of the Trust to Florida in 2015, the transfer of situs did not occur, and the probate court therefore improperly concluded that it did not have jurisdiction to hear her petition for instruction. Appellant contends that Patricia was required to comply with the Michigan Trust Code, MCL 700.7101 *et seq.*, and specifically MCL 700.7108(3)-(5), which provide:

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee . . . may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified trust beneficiaries in writing of a proposed transfer of a trust's principal place of administration not less than 63 days before initiating the transfer. The notice of proposed transfer shall include all of the following:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The address and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(e) In a conspicuous manner, the date, not less than 63 days after the giving of the notice, by which a qualified trust beneficiary must notify the trustee in writing of an objection to the proposed transfer.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration without the approval of the court terminates if a qualified trust beneficiary notifies the trustee in writing of an objection to the proposed transfer on or before the date specified in the notice.

Appellees argue that compliance with these requirements was not required, because the Trust agreement explicitly provides that they have the authority, in their sole discretion, to change the principal place of administration of the Trust. Section 8.9 of the Trust agreement provides, in relevant part:

8.9 Situs of Trust, Michigan Law Controls, and Exemption from Registration: This trust shall not be subject to the registration requirement imposed by any State and shall be administered free from the active supervision of any court. Trustee is directed to take any and all action, if any, necessary to exempt the Trust from registration. Michigan law shall be applied to interpret this document and the situs of this Trust shall be in Michigan, *provided however, Trustee may change the situs and governing state law in Trustee's sole discretion.* [Emphasis added.]

As appellees note, the requirements of MCL 700.7108(3) and (5), governing a transfer of the principal place of administration of a trust, apply only if a trust is silent as to how a trustee may change the principal place of administration of the trust. MCL 700.7105(1) provides, “*Except as otherwise provided in the terms of the trust,*” the Michigan Trust Code “governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.” (Emphasis added.) MCL 700.7105(2) further provides that, with certain enumerated exceptions that do not apply in this case, “[t]he *terms of a trust prevail* over any provision of this article” (Emphasis added.) “When interpreting the meaning of a trust, this Court must ascertain and abide by the intent of the settlor. We must look to the words of the trust itself.” *In re Perry Trust*, 299 Mich App 525, 530; 831 NW2d 251 (2013). “The intent of the settler is to be carried out as nearly as possible.” *Stan Estate*, 301 Mich App at 442 (quotation marks and citation omitted).

Because the Trust agreement governs the change of situs, the probate court was correct to conclude that Patricia was not required to provide the Trust’s beneficiaries notice of her intent to move the Trust’s situs in accordance with the Michigan Trust Code. Appellees were empowered by the Trust agreement to change the principal place of administration of the trust to Florida at their sole discretion. Because the proceeding involved a trust “that has its principal place of administration in another state,” the probate court properly concluded that it could “not entertain” the proceeding and dismissed appellant’s petition for instruction. MCL 700.7205(1).

Affirmed.

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