



*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, 2019 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*®2020 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2019 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:** September 27, 2019

**RE:** *In re Seville Estate*

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 – STATS**

On July 31, 2019, I made two predictions.

1. That the Tigers would not fall below their 2003 – worst record. They bested their 2003 performance, and as of his writing, have 46 victories and 110 losses. They still will get the first draft choice as the worst team of 2019.

2. Separately, I predicted that there would be less than 10 batters listed as league leaders over .300 in each league. The American League has 10. The lowest, Martinez at .302. The National League has 9, the lowest of the top 10, Ozzie Albies at .299.

Not bad from a guy John Chase accused of picking the Japanese in World War II.

To keep up with Miggy, despite his physical decline, he still boasts a .315 life-time batting average, 62nd best in the history of baseball and first among current players! Miggy has 475 dingers ranking him 31<sup>st</sup> all time and second among current players. I predict he never reaches 500 4 baggers.

**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 Seville Estate*

- Appointment of Co-Fiduciaries - Requirements

A former Oakland County Probate Judge used to take some glee in appointing co-fiduciaries who hated each other. This unpublished case rebukes such action as an abuse of discretion.

Appellant and Appellee were the divorced parents of decedent. Each parent made substantial allegations against the other in their mutual request to administer their daughter's estate, which was possessed with a cause of action.

The trial Court used this overt antipathy as a rationale for appointing them both as Co-Personal Representatives, as neither alone would protect the interests of the other.

The Court of Appeals simply pointed to MCL 700.3203(3) which says that you can't appoint co's unless each consents when they each share a priority.

The Court of Appeals didn't say the lower Court abused its discretion, but since they said that such a standard relates to the discretion of the Court to make appointments of fiduciaries, and they reversed in favor of an independent party that is surely an inference.

I would have avoided such an inference by not citing the abuse of discretion standard and looked at this as a matter of law and merely rely upon MCL 700.3203(3).

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* ESTATE OF TIANA SEVILLE.

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TONYA PHILLIPS, Co-personal Representative  
of the ESTATE OF TIANA SEVILLE,

Appellant,

v

ANDREW SEVILLE, Co-personal Representative  
of the ESTATE OF TIANA SEVILLE,

Appellee.

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UNPUBLISHED  
September 10, 2019

No. 348819  
Eaton Probate Court  
LC No. 19-054869-DE

Before: METER, P.J., and FORT HOOD and BOONSTRA, JJ.

PER CURIAM.

Appellant, Tonya Phillips, appeals by right the trial court’s order appointing both herself and appellee, Andrew Seville, as co-personal representatives of their daughter’s estate. We reverse and remand for the appointment of a suitable third party as personal representative of the decedent’s estate.

I. BACKGROUND

Phillips and Seville divorced in 2000. Their daughter, Tiana Seville, died in January 2019 after her moped was struck by a snowplow. Both parents sought individual appointment as personal representative of the estate. Phillips filed an initial petition to be appointed personal representative, but Seville filed an objection to this petition and requested that he be appointed personal representative or, alternatively, that the two parents be appointed co-personal representatives or a neutral third party be appointed.

The trial court held a hearing on Phillip’s petition and Seville’s objection. The parties agreed with the trial court that they held equal priority to the appointment and the arguments—made primarily through the parties’ briefs and offers of proof—focused on whether either party

was suitable to serve as personal representative. The record demonstrates that the parties' relationship was wrought with contention and that the parties were subject to a no-contact order. Phillips argued that Seville was previously violent toward her and his children and that Seville was only interested in Tiana's estate to profit from a wrongful-death lawsuit. For his part, Seville argued that Phillips had engaged in criminal conduct, had mismanaged her own finances, and had poisoned his relationship with his daughter.

A portion of the hearing focused on Tiana's funeral. Seville alleged that Tiana's funeral had been "handled through a GoFundMe account" and that he had contributed \$500 to the \$11,688 raised. Phillips' counsel stated that the account had not been used to pay for the funeral, but that Phillips had paid for the funeral with her own funds. Seville accused Phillips of falsely informing the funeral director that he lived outside the state to prevent him from participating in the funeral arrangements, appears to suggest that Seville improperly retained funds from the GoFundMe account, and suggested that Phillips lacked the financial savvy to administer the estate.

The trial court held that the parties would be appointed as co-personal representatives and stated that:

[i]f the parties find that that's not reasonable or that's not doable, for whatever reason they can't agree and the case still needs to proceed forward, then it will be up to the parents either to agree on a neutral or to petition this Court to appoint a neutral if you can't agree on one. So, that's going to be option two.

Phillips then moved for reconsideration of this order. The trial court denied the order, concluding that Phillips had failed to demonstrate a palpable error by which it had been misled. The trial court explained that it had appointed the parties as co-personal representatives because the parties held "strong animosity towards each other" and it "was not convinced that either of them individually could objectively and fairly administer the estate." This appeal followed.

## II. ANALYSIS

On appeal, Phillips argues that the trial court abused its discretion in appointing co-personal representatives. We review for an abuse of discretion the trial court's decision regarding the appointment or suitability of a personal representative. See *In re Kramek Estate*, 268 Mich App 565, 575-576; 710 NW2d 753 (2005); *In re Duane v Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007). An abuse of discretion occurs when the trial court chooses an outcome outside the range of reasonable and principled outcomes. *In re Duane*, 274 Mich App at 397.

The Estates and Protected Individuals Code ("EPIC"), MCL 700.1101 *et seq.*, governs the administration of estates in Michigan. Under the code, interested persons may petition the trial court for a formal determination of the priority or qualification of a prospective personal representative. MCL 700.3414. Generally, personal representatives are appointed in the following order of priority:

(a) The person with priority as determined by a probated will including a person nominated by a power conferred in a will.

(b) The decedent's surviving spouse if the spouse is a devisee of the decedent.

(c) Other devisees of the decedent.

(d) The decedent's surviving spouse.

(e) Other heirs of the decedent. [MCL 700.3203(1).]

An interested person may object to the appointment of a personal representative, MCL 700.3203(2), but carries the burden of establishing the unsuitability of the prospective personal representative, *In re Hutton Estate*, 191 Mich App 292, 294; 477 NW2d 144 (1991). An individual is unsuited to serve as personal representative when, *inter alia*, their appointment is not in the best interests of the estate. See *In re Stan Estate*, 301 Mich App 435, 446-447; 839 NW2d 498 (2013) (concluding that any ground justifying removal of a personal representative qualifies as a ground to object to the initial appointment); MCL 700.3611(2)(a) (permitting removal of a personal representative when removal is in the best interests of the estate).

The parties agree that, as heirs to their daughter's estate, MCL 700.3203(1)(e), neither party held priority to be appointed as the personal representative of the estate. The trial court found, however, that each party was unsuited in their individual capacity to serve as personal representative because neither party could be trusted to reliably represent the interests of the other.<sup>1</sup> The trial court attempted to remedy this problem by appointing the parties as co-personal representatives, meaning that they would have to agree on decisions affecting the estate.

Trial courts may, however, only appoint co-personal representatives if the intended parties agree to the shared status. See MCL 700.3203(3) ("If 2 or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment."). Here, neither party agreed to renounce their priority and at least Phillips did not agree to serve in a shared capacity with Seville. Accordingly, the trial court was precluded from appointing Phillips and Seville as co-personal representatives. Having reviewed the record in this case, we agree with the trial court that neither party was suited to individually administer the estate. Accordingly, because no other person with priority stepped forward to

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<sup>1</sup> We reject Phillips argument that the trial court failed to address the suitability of the potential representatives. The record indicates that the trial court found that the parties' contentious relationship rendered neither party suitable to serve as individual personal representative of the estate. Moreover, because this contention was obvious from the parties' filings and the proceedings before the trial court, we decline to remand this case, as Phillips suggests, for an evidentiary hearing on suitability. See *Kernen v Homestead Development Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002) (noting that, "if the parties created a sufficient record to review the issue, an evidentiary hearing is not required.")

seek appointment, the trial court was obligated to appoint a third person to serve as the personal representative of the estate.<sup>2</sup>

Reversed and remanded for the appointment of a third-party personal representative. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood  
/s/ Mark T. Boonstra

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<sup>2</sup> We note that, even if it were possible under EPIC to appoint co-personal representatives against their wishes, doing so in this case would not be in the best interests of the estate. The parties' inability to agree with each other and the fact that both parties were represented by counsel presents a significant likelihood that co-representation would prolong the administration of the estate and drain any assets of the estate, which appear to be limited to any potential recovery in a wrongful death suit.