



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 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: March 10, 2020

RE: *In re Estate of Patton*

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

With Roger Clemens' son joining the Tigers, (Kobe is also a rule evader. He was busted for DWI on May 22, 2019), I thought I'd reminisce about father/son Major League Baseball combinations.

Believe it or not, *Baseball Almanac* lists 240 members of the good-gene club.

The best combo in my opinion, was Griffey Sr. and Griffey Jr. What is your opinion?

The best fathers, without relationship to their sons, in my opinion, were George Sisler, Pete Rose, Freddy Lindstrom, Tony Gwynn, Eddie Collins, Craig Biggio, Yogi Berra and Earl Averill.

The best sons without relationship to their father, were Griffey, Jr., Robinson Cano, Prince Fielder, Danny Tartabull, Aaron Boone and Roberto Alomar.

The following had two sons in Major League Baseball. Sandy Alomar, Buddy Bell, Bob Boone, Chris Cron, Dave Duncan, Larry Gilbert, Sammy Hairston, Jerry Hairston, Dave LaRoche, Manny Mota, Tony Pena, Kevin Romine, George Sisler, Mel Stottlemyre and Dixie Walker.

**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 Estate of Patton*

- Relation-back Doctrine

This matter arises from an Appeal from a Circuit Court but was based on an interpretation of EPIC, specifically the relation-back doctrine found in MCL 700.3701.

Plaintiff filed a Complaint when he was not the Personal Representative of his mother's estate. He didn't become such, but he became Successor Personal Representative.

The Court of Appeals ruled:

1. Successor Personal Representatives who have acted prior to their appointment have their actions which benefit the estate relate back. MCL 700.3701.
2. Without citation, the Court merely says the “subsequent” appointment relates back.
3. The Court cites the *Tice* Opinion which dealt with the reopening of an estate which a relation-back doctrine was accrued.
4. The Complaint filing tolled the statute of limitations.
5. Appellant must file an amended Complaint citing his successor status.

Unanswered questions for the future - How broad or narrow is the necessity of the premature act being of value to the estate? How about issuing a buy order for a stock which drops thereafter? Are we dealing with theoretical value or actual value?

If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF JOYCE PATTON, by EDWARD
PATTON, Personal Representative,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
February 20, 2020

No. 345637
Wayne Circuit Court
LC No. 17-016986-NF

Before: GLEICHER, P.J., and GADOLA and LETICA, JJ.

PER CURIAM.

Edward Patton filed a complaint against Farmers Insurance Exchange seeking first-party no-fault benefits allegedly owed to Joyce Patton, his deceased mother. The complaint averred that Edward had been appointed the personal representative of Joyce’s estate. He had not. An estate was not opened until about six weeks later, and April Nash was named as its personal representative.

Farmers moved for summary disposition under MCR 2.116(C)(5), contending that Edward lacked standing and the capacity to sue. At the outset of the parties’ oral arguments in the circuit court, Farmer’s counsel advised that Edward had been named as the successor personal representative of Joyce’s estate. Nevertheless, defense counsel insisted, summary disposition was required because Edward lacked standing to sue when the case was brought and any amended pleading would not relate back.

The circuit court contemplated aloud the possibility of permitting an amended complaint, (“I suppose he could amend the complaint to name the proper party at this point, which is the estate”), but ultimately denied without explanation Edward’s request to do so. The court granted summary disposition, ruling that the matter was “just sort of a mess” without specifically elucidating any additional reasoning.

Edward now appeals. Our review is de novo, as the question presented is one of law. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002).

We sympathize with the court’s befuddlement, as the law governing the issue was barely mentioned by Edward’s counsel, and in an inapposite legal context. Nevertheless, a statute his counsel cited is dispositive and directly on point. MCL 700.3701 provides:

A personal representative’s duties and powers commence on appointment. *A personal representative’s powers relate back in time to give acts by the person appointed that are beneficial to the estate occurring before appointment the same effect as those occurring after appointment.* Subject to [MCL 700.3206 to MCL 700.3207], before or after appointment, a person named as personal representative in a will may carry out the decedent’s written instructions relating to the decedent’s body, funeral, and burial arrangements. A personal representative may ratify and accept an act on behalf of the estate done by another if the act would have been proper for a personal representative. [Emphasis added.]

Under the italicized and plain language of MCL 700.3701, Edward’s subsequent appointment as the personal representative of Joyce’s estate relates back to the date Edward filed the complaint, as long as “acts occurring before appointment” benefitted the estate. They did. The complaint tolled the statute of limitations and also preserved the estate’s ability to seek PIP benefits one year back from the date of its filing. See MCL 500.3145(2). Accordingly, Edward’s subsequent appointment as the personal representative of Joyce’s estate relates back to the date he filed the complaint.

This Court considered a similar relation-back issue in *Tice Estate v Tice*, 288 Mich App 665, 669; 795 NW2d 604 (2010). There, the decedent’s estate was opened and closed before a quiet title action was filed in the name of the decedent’s son. *Id.* at 667. In response to a motion for summary disposition, the decedent’s son reopened the estate and filed an amended complaint, but the trial court granted summary disposition in the defendant’s favor. *Id.* We applied MCL 700.3701 and reversed, explaining that “[u]nder this statute, it appears that [the son’s] act of commencing the suit should have been given the same effect as if, [on the date the complaint was first filed], he had been the personal representative of the decedent.” *Id.* at 670.

Because the appointment relates back, Edward had standing to bring the estate’s claim and must be permitted to file an amended complaint identifying himself as the successor personal representative. See also MCL 700.3703(3) (“Except as to a proceeding that does not survive the decedent’s death, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of another jurisdiction as the decedent had immediately prior to death.”).

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Michael F. Gadola
/s/ Anica Letica