



*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:** April 6, 2020

**RE:** *In re Estate of Comer*

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 LORE**

The 1947 College World Series was played on the Campus of Western Michigan University in Kalamazoo, Michigan. The Championship Game was played between The University of California and Yale University.

To get to the Championship Game, Cal had to get by the University of Texas, a conference champion in its' own right.

That day saw a pitcher's duel between two great all Americans; Bobby Layne for the Texas Longhorns and Jackie Jensen for the Cal Golden Bears. Both were great pitchers, and even more, two of the best college football players in the nation. Layne would go on to lead the Detroit Lions to three NFL Championship games and two Championships. The King of Detroit was near the end of his career and rudely traded to the Pittsburg Steelers. Jensen would forsake his Senior year at Cal and go into a New York Yankee farm system, not as a pitcher, but as an outfielder, groomed to replace the great Joe DiMaggio. Because the Yankees had Mickey Mantle coming up, they rudely traded Jensen to their "farm club," the last place Washington Senators, for Irv Noren. Manager, Casey Stengel called it the worst trade in Yankee history. Jensen had a fear of flying which affected his career.

Another Major Leaguer on the 47' Longhorn team was Randy Jackson who played with the Cubs and Dodgers. Cal had another Major Leaguer in John Fiscalini who went on to have a cup of coffee with the Pirates.

After defeating Texas, the Golden Bears went on to beat the Yale Bulldogs and their renowned first baseman, George Herbert Walker Bush.

**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 Comer*

- Quantum Meruit
- Unjust Enrichment
- Plain Error – Substantial Right

This is a neat little three-page decision dealing with a topic which affects many fiduciaries. Plaintiff-Appellee paid the bills of decedent and sought reimbursement despite the absence of a written contract. She paid some out of her own account and some out an account jointly held with decedent.

Appellant argued that those paid from her own account were not reimbursable.

Appellant argued intrinsic fraud not argued in the lower Court. The Court of Appeals, nevertheless, reviewed the issue saying that if a substantial right is affected, it will be reviewed for plain error. They defined a “substantial right” by saying it is error if it caused prejudice and affected the outcome.

What is interesting is not that they found no plain error, but that they opened a door to decide and issue not raised below.

The Court never mentioned a Constitutional issue which is a reason for deciding an issue not raised in a lower Court. Query: Is deciding an issue affecting a substantial right being affected the same as a due process argument or a separate category?

The Court ruled that since the money was spent on the decedent, the estate would be responsible under the doctrine of quantum meruit. They define the requirements of the doctrine on the bottom of page two with relevant citation. They also found liability under the doctrine of unjust enrichment.

Unlike services rendered, there was no presumption of gratuity because the parties were related. That in itself is important. Goods are not subject to the presumption, services are.

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

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BEVERLY COMER HARGROW,

Plaintiff-Appellee,

v

ESTATE OF CHARLES D. COMER, by  
CHERYL D. COMER and CRISTINA D.  
COMER, Co-Personal Representatives,

Defendant-Appellant.

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UNPUBLISHED

March 17, 2020

No. 347615

Kalamazoo Probate Court  
LC No. 2017-001512-CZ

Before: MURRAY, C.J., and METER and K. F. KELLY, JJ.

PER CURIAM.

In this allowance of disallowed claim action, the Estate of Charles D. Comer, by Cheryl D. Comer (Cheryl) and Cristina D. Comer (Cristina), as copersonal representatives of the estate, appeals as of right the trial court order granting a default judgment in favor of plaintiff, Beverly Comer Hargrow. We affirm.

This case arises from decedent’s sister—Hargrow—paying bills on his behalf before his death, and requesting reimbursement from his estate on the basis of either a contractual or unjust enrichment basis. Hargrow testified at trial, and provided account statements, receipts, and other documented proof of expenses that she paid on behalf of decedent from her own funds. The trial court granted judgment in favor of Hargrow “consistent with the proofs.” This appeal followed.

Defendant asserts that Hargrow committed intrinsic fraud on the trial court by misrepresenting the costs that she incurred on behalf of decedent. Defendant did not make this argument in the trial court, so we review the issue for plain error affecting substantial rights. *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 442; 906 NW2d 482 (2017). “[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceeding.” *Id.* at 443 (quotation marks and citation omitted).

Defendant argues that Hargrow’s testimony and documentation amounted to intrinsic fraud on the trial court. However, defendant presented no factual proof to support this contention. See *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 405; 651 NW2d 756 (2002). And, the

record reflects that the trial court used Hargrow's testimony and documents, after questioning her thoroughly on the subject, to conclude that her payments were substantiated. The trial court found no fraud after engaging in a thorough examination of the evidence presented at the hearing. Nothing argued by defendant causes us to alter the trial court's ruling.

Moreover, the factual questions that defendant presents were clarified at trial. Hargrow explained that she was unable to pay expenses out of decedent's account because Cheryl was concerned that Cristina was inappropriately spending decedent's funds, and cleared out his account in order to prevent Cristina from spending any more of his money. Hargrow testified that Cheryl took approximately \$30,000 from decedent's bank account in October 2015, and put it in an account in South Carolina, in Hargrow's and decedent's names. Although Hargrow had access to the joint account, she testified that the reimbursement was for bills she paid out of her own funds before she had access to that money. Additionally, Hargrow testified that, even after she had access to decedent's funds, she continued to pay some of his expenses out of her own account. Hargrow noted that some of decedent's bills were auto-paid from her account, and that she had not yet received paper checks from decedent's account, causing her to have to pay from her own account, even after she had access to his funds. Moreover, Hargrow presented receipts and account statements to the trial court demonstrating her costs incurred, which the court relied on in making its findings.

Although defendant argues that Hargrow committed fraud by asking for reimbursement for expenses from her own account, the trial court questioned Hargrow extensively regarding her use of her own account after she had access to decedent's funds. The trial court also questioned Hargrow regarding her travel costs. Hargrow admitted that she was not clear on the total of the travel costs between a vacation that she took and her expenses to travel to decedent's home. However, Hargrow only requested reimbursement for one of the flights, and produced a receipt of her travel cost for trial. The trial court then found Hargrow's payments were appropriate for reimbursement.

Defendant has failed to establish that fraud occurred, and that the trial court plainly erred in its judgment. The trial court considered all the testimony and evidence presented to it, and defendant has not provided specific, significant factual proof of fraud to overcome the trial court's findings. See *Yee*, 251 Mich App at 405. The trial court did not plainly err. See *Lawrence*, 320 Mich App at 442.

Defendant also argues that Hargrow did not prove the existence of an oral contract between her and decedent regarding the payment of his bills. We hold that oral contract principles did not apply, but that the trial court properly found that Hargrow was entitled to reimbursement.

Even though no contract exists between the parties, under the equitable doctrine of unjust enrichment, a person who has been unjustly enriched at the expense of another is required to make restitution to the other. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006). "The theory underlying quantum meruit recovery is that the law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Id.* at 194. A claim of unjust enrichment requires the complaining party to establish (1) the receipt of a benefit by the other party from the complaining party and (2) an

inequity resulting to the complaining party because of the retention of the benefit by the other party. *Id.* at 195.

Preliminarily, defendant misconstrues this issue by solely arguing that Hargrow was not entitled to relief if no oral contract existed. Hargrow requested relief under a contract or unjust enrichment theory. Even if we agree that no oral contract existed, as defendant argues, Hargrow was not foreclosed from reimbursement for her expenses on an unjust-enrichment claim. Hargrow's testimony and proofs, and the trial court's findings, squarely fit under a theory of unjust enrichment. Hargrow successfully proved that decedent received a benefit from her and that inequity resulted to her because his estate was retaining the benefit. See *id.* at 193-195.

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Kirsten Frank Kelly