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## PROBATE LAW CASE SUMMARY

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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.

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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:** May 18, 2020

**RE:** *In re Estate of McLaurin*

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 – IN THE BIG INNING**

In 1950, my favorite team in the National League was the Brooklyn Dodgers. This was primarily because of Jackie Robinson. I also had a great collection of 1950 Bowman's. For those of you who remember, they were the same as 1951, but smaller. The color was great. I learned about the Dodgers by reading the back of the cards.

I did not like the Phillies. Two reasons; first they were pretenders to the throne. They were usually a doormat, and I was a front runner. Second, their star was Robin Roberts who attended Michigan State.

The Yanks had defeated the Dodgers in the 49 World Series and I wanted a repeat.

The Dodgers battled the Phillies all season. On the day of the last game, the Dodgers were one game out, and if they won, there would be a three-game playoff. I was sure they would win in a playoff.

Confession. Unlike previous reportage, I neither saw nor heard the game. I could not get WMGM 1050 on your dial to hear Red Barber. I did hear a local commentator give the result, and I read about it in the October 2<sup>nd</sup> *Detroit Times*.

With that confession, I will recreate for you the big inning, that for me, was a heart breaker.

It was a home game for the Dodgers. Both Don Newcombe of the Dodgers and Robin Roberts had pitched a lot in the previous week; Roberts 3 games in the last seven days. They would face each other, each going for their 20<sup>th</sup> win.

At the end of 9 innings, it was a pitcher's battle. The score tied one to one. The first batter to face Big Newcombe in the 10<sup>th</sup> was the Pitcher, Robin Roberts. The first pitch, ball one. Then Roberts, a .118 hitter, singles to center.

Next up Eddie Waitkus. Know why he was famous? In 1949, a baseball groupie named, Ruth Ann Steinhagen stalked him. She entered his room at the Edgewater Beach Hotel in Chicago and shot him, narrowly missing his heart. This incident was used by Bernard Malamud when he wrote *The Natural*, Robert Redford playing the part of Eddie Waitkus. Waitkus singles to center.

Next up, Hall of Famer, Richie Ashburn. Richie, a 300 hitter, bunts. Newcombe fields it and tosses out Roberts at third.

Up comes Dick Sisler. Sisler bats lefty. Why didn't Manager, Burt Shotten pull the right-handed pitcher, Newcome? He didn't . The count goes to one and two, and Sisler fouls off the next pitch. Then the left-handed hitting Sisler hits one to deep left field. It's a three-run homer, and the Phillies win the pennant.

If you have read this long you deserve a treat. Press control and click below and you can see the homerun. Once on, move your cursor to 5 minutes and 15 seconds. YouTube says it is a two-run homer. YouTube is wrong. <https://www.youtube.com/watch?v=B13wRV5qGA8>

**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 McLaurin, Sr*

- Denial Right to Oral Argument – Due Process
- Supplementing General Objections

For a second time, Appellants disliked the way Appellee handled an estate. Having been sustained by the lower Court once before on his proper actions in administration and having the Court of Appeals sustain that ruling, Appellants sought to hector the personal representative and the Court by restating the same objections when the personal representative sought a complete estate settlement. This hectoring took the form of a letter merely charging mismanagement.

The Appellants sought to supplement their vague obstinance by oral argument. The lower Court would have none this instead of noe of it saying; you're not raising anything new and to the extent that you may be, you had your chance to do it in your written objections.

Final Settlement allowed.

The Court of Appeals affirmed the lower Court, and inter alia said:

1 MCR 5.119(D) allows the Probate Court to limit oral argument.

2. Due process requires a meaningful opportunity to be heard, and the opportunity to file objections is such a meaningful opportunity.

3. By inference, this does not violate the statute that objections may be oral or in writing. The Court has the power to limit the latter.

Lessons learned.

1. Don't think you will always be allowed to supplement what you said in writing when you appear before the Court.

2. Many Courts will require a party who objects only orally to file written objections for a multitude of reasons.
3. It's not good to see your name in print as a losing party. It's worse to see it twice.

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

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*In re* ESTATE OF JACK MCLAURIN, SR.

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GEORGE RIZIK II, Personal Representative of the  
ESTATE OF JACK MCLAURIN, SR.,

UNPUBLISHED  
April 30, 2020

Appellee,

v

PATRICE MCLAURIN,

Appellant.

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No. 348610  
Genesee Probate Court  
LC No. 17-206740-DE

Before: BORRELLO, P.J., and O’BRIEN and CAMERON, JJ.

PER CURIAM.

Appellant, Patrice McLaurin (Patrice), appeals as of right the probate court’s order for Complete Estate Settlement that approved the personal representative’s petition for complete estate settlement of the estate of Patrice’s father. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

This matter involving the decedent’s estate was before this Court when Patrice’s brother Fred McLaurin (Fred)<sup>1</sup> appealed a previous order entered by the probate court that had granted “George F. Rizik, II (Rizik), the personal representative of the estate, the authority to allow Fred to retain the decedent’s 1987 Chevrolet Monte Carlo (vehicle); to pay \$2,000 to Continental Auto Sales, LLC (buyer); and to deduct that \$2,000 from Fred’s distributive share of the estate’s residue, along with \$1,000 in attorney fees and costs.” *In re McLaurin Estate*, unpublished per curiam opinion of the Court of Appeals, issued February 14, 2019 (Docket No. 341596), p 1. Because it

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1 Patrice is the decedent’s daughter and Fred’s sister.

is also helpful for providing necessary context to the instant appeal by Patrice, we quote our previous summary of the pertinent background facts:

The decedent died intestate on February 10, 2017, leaving eight children as his descendants. The probate court appointed Rizik as the personal representative of the estate. Rizik had Fred and two of his siblings bid on the subject automobile after they had expressed an interest in it. Rizik testified that despite an array of competing bids, none of the family members ever provided any money to him. Consequently, Rizik sold the vehicle to the buyer. When the buyer attempted to claim possession of the vehicle, he was precluded from doing so by Fred. After a hearing, the probate court approved of Rizik's sale of the vehicle, noting Fred's failure to pay the purchase price in a reasonable time and Rizik's discovery of a willing buyer. The probate court ordered Fred to turn the vehicle over to Rizik, but when Fred refused to do so, he was found in contempt of court and sentenced to time in jail.

Subsequently, Fred moved the probate court to remove Rizik as personal representative of the estate while Rizik moved the probate court to allow Fred to keep the vehicle but to deduct \$2,000 from Fred's share of the estate to pay the buyer along with \$1,000 from his share to pay for attorney fees and costs arising out of Fred's wrongful retention of the vehicle. Fred objected, citing that the vehicle was not worth that amount and that Rizik had breached an array of duties to the estate. The probate court found that such relief was warranted under the circumstances and entered an order adopting Rizik's plan. [*Id.* at 1-2.]

On appeal, this Court affirmed the probate court's order. *Id.* at 5. Specifically, this Court concluded (1) that the probate court did not abuse its discretion in granting Rizik's petition to deduct the value of the vehicle, as well as related attorney fees and costs, from Fred's distributive share of the estate's residue; (2) that the probate court's determination of the amount to deduct, \$3,000, was not clearly erroneous or an abuse of discretion; and (3) that the probate court did not abuse its discretion by denying Fred's petition to remove Rizik as personal representative where Fred had asserted without any apparent support that Rizik had committed various acts constituting misconduct and breaches of his fiduciary duties. *Id.* at 2-5.

On February 26, 2019, following the issuance of this Court's opinion in the prior appeal, Rizik filed a petition for complete estate settlement in the probate court. The petition requested approval of the final account, distributions, and payment of claims.

Patrice objected to the petition, filing an objection letter in the probate court on March 25, 2019. Patrice's written filing stated that she objected to "the petition in its 'ENTIRETY' . . . and to the closing of the estate and discharge [of] the representative without being held responsible to any and all mismanagement of assets, of funds, and property of the estate." However, Patrice did not provide any further explanation regarding her vague, general allegations that Rizik had mismanaged assets, funds, or property of the estate. She also did not provide any specific examples or facts regarding alleged mismanagement by Rizik. Fred filed a similar objection letter, but Fred's objections are not at issue in this appeal.

A hearing was conducted on the matter on April 2, 2019. The probate court approved the petition for complete estate settlement. In doing so, the court declined to hear any oral argument from the parties and specifically told Patrice and Fred that “the Court of Appeals has already ruled on the issues that you have brought up today and/or I have already ruled on them and you have not appealed them so what I am going to do is approve the complete estate settlement as offered by Mr. Rizik.” When Fred and Patrice protested and inquired whether they could argue the matter, the probate court responded, “I’ve read your objections. It’s either issues that you did not appeal to the Court of Appeals yet that I’ve already ruled on or the Court of Appeals has already told me that the orders I entered before were proper.” Patrice and Fred claimed that their objections were new, but the probate court responded, “None of this is new. I’m not going to argue with you.” In accordance with its ruling from the bench, the probate court entered an order for complete estate settlement and approving the final account, distributions, and payment of claims as requested by Rizik.

Patrice now appeals this order.

## II. STANDARD OF REVIEW

This Court reviews due-process issues de novo. *In re Keyes Estate*, 310 Mich App 266, 269; 871 NW2d 388 (2015).

## III. ANALYSIS

The essence of Patrice’s appellate argument is that she was entitled to present her objections and arguments orally at the hearing and that because she was not allowed to do so, she was denied a meaningful opportunity to be heard in violation of her due process rights. “[T]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *In re Adams Estate*, 257 Mich App 230, 234; 667 NW2d 904 (2003), quoting *Mathews v Eldridge*, 424 US 319, 333; 96 S Ct. 893; 47 L Ed 2d 18 (1976) (quotation marks omitted).

However, Patrice’s argument ignores the fact that she actually had a meaningful opportunity to be heard on her objections via her written filing that the probate court indicated had been read and considered. Rules of procedure specifically applicable to the probate court are contained in chapter five of the Michigan Court Rules. MCR 5.001(A). In the context of probate court proceedings, an interested person may object to a pending petition orally or in writing, MCR 5.119(B), and the probate court “may limit oral argument” with respect to such matters, MCR 5.119(D). There was nothing in Patrice’s vague, conclusory assertions that comprised her written objections to suggest that further oral argument was necessary to allow the probate court to understand and resolve the issues. Rather, it was clear from the nature of Patrice’s written objections that her claims were factually unfounded. Patrice does not cite any authority for the proposition that she was absolutely entitled to additionally present further oral argument at the April 2, 2019 hearing regarding her objections. Hence, the probate court did not err by declining to hear oral argument from Patrice at the hearing; Patrice was given a meaningful opportunity to be heard because she filed her written objections in the probate court and the court expressly considered those objections. She was free to raise all of her objections in detail within the context of her written submission, and she was not entitled to rely on oral argument to make explanations



or raise issues that she failed to include in her written filing. The probate court's decision to base its ruling on consideration of the written filings without hearing additional oral argument was not erroneous.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Colleen A. O'Brien  
/s/ Thomas C. Cameron