



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

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He was selected for inclusion in the 2007-2017, 2020 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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He is the published author of “Article XII: A Political Thriller” and “Sons of Adam,” an International Terror Mystery.

DT: December 16, 2020

RE: *In re Asplund Conservatorship*

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: EXPECT MORE TIGER PATHOS IN 2021

With the lowly Bengals search for a manager while electing to keep Sēnor Avila, I recall instances that the Tigers should look toward.

The last time we had a winning General Manager was Dave Dombrowski. He just joined the Phillies. Why not offer the Phillies el perdedor (loser) to them for Dombrowski and throw in our diaper dandy Rule 5 choice and Chris Ilyich?

In the 1960 season, having already traded batting champion, Harvey Kuenn for H.R. champ, Rocky Colavito, the Bengals and Indians went even further. The Indians sent Jose “Flash” Gordon, their manager, to the Tigers for their manager, Jimmie Dykes. It didn’t help either team, but it probably sold tickets.

The point of all the above garbage is that our team stinks on top. With luxury taxes and some revenue sharing, there is no reason why we can’t succeed. We have traded away two Hall of Fame pitchers and have replaced them with Toledo turds. We developed hitters only to loose them to Free Agency. All we have left is an aging first baseman with two families.

Maybe, just maybe, we might catch fire if MLB adopted the English Premier Rule of dropping you down a class if you loose too much. My bet, we wouldn’t win a Triple A World Series with our “Major League” club.

**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 Conservatorship of Asplund*

- Restraining Order
- Grounds
- Necessity of Hearing
- Gift

Guardian sought to take care of ward, conservator sought to sell personal property. Appellant interfered with each desiderata. Conservator gave all interested parties a chance to claim property for themselves. A time limit was placed on choice. Appellant claimed the remaining property was his. Appellee sought a Restraining Order preventing Appellant from interfering with sale. Pending the sale, Appellant threatened to go to the police. The lower Court granted the Restraining Order. Appellant sought reversal.

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

1. Irreparable injury does not normally include injury for which monetary damages could compensate the victim, but:
2. An Injunction may be appropriate where the failure to intervene may render the Court unable to provide an effective remedy or where the party seeking relief may have to return to Court constantly to protect his or her interests. (cases cited).
3. The instant fact situation fit both exceptions.
4. Granting of Injunctive relief is discretionary.
5. No hearing is necessary to grant Injunctive relief.
6. If a gift has unfulfilled conditions by the donee, there is no delivery.

It occurs to me that the threat of criminal prosecution to achieve civil ends is extortion, a felony. Hence, in my opinion, unclean hands.

STATE OF MICHIGAN
COURT OF APPEALS

In re Conservatorship of ROBERTA MORE ASPLUND.

KATHLEEN M. CARTER, Conservator of ROBERTA MORE ASPLUND, a legally protected person,

Petitioner-Appellee,

v

RANDALL ASPLUND,

Respondent-Appellant.

In re Guardianship of ROBERTA MORE ASPLUND.

GEORGETTE E. DAVID, Guardian of ROBERTA MORE ASPLUND,

Petitioner-Appellee,

v

RANDALL ASPLUND,

Respondent-Appellant.

Before: SAWYER, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

UNPUBLISHED
November 24, 2020

No. 349388
Washtenaw Probate Court
LC No. 17-001138-CA

No. 349401
Washtenaw Probate Court
LC No. 17-001137-GA

In these consolidated appeals involving disputes over the guardianship and conservatorship of Roberta More Asplund, Roberta's son Randall Asplund, appeals by right the probate court's order of May 31, 2019, which restrained him from interfering with the sale of Roberta's personal property at an estate sale. For the reasons explained, we affirm.

I. BASIC FACTS

On August 21, 2017, Roberta suffered a brain aneurysm, which impaired her cognitive functions. She was 91 years of age at the time. Roberta's daughter, Karin Asplund, petitioned the probate court for the appointment of a conservator and a guardian with the agreement of her siblings, Randall and Richard Asplund. In December 2017, the probate court appointed Georgette David to be Roberta's guardian and appointed another person to be her conservator. The record showed that Roberta improved considerably after her surgeries to correct the aneurysm but that she was still cognitively impaired.

Beginning in January 2018, Randall filed the first of numerous petitions and other filings challenging the administration of Roberta's guardianship and conservatorship. There was evidence that Randall harassed Roberta's caregivers, challenged every action taken by Roberta's fiduciaries, and enlisted Roberta as an ally in his disputes with Karin, Richard, Roberta's caregivers, and her fiduciaries. The evidence tended to show that he manipulated Roberta and prevented her from adjusting to her life changes.

The probate court appointed Kathleen Carter to be Roberta's successor conservator in April 2018. Carter immediately took steps to reduce Roberta's financial obligations and to raise funds for her care. Because David moved Roberta into an assisted living facility, Carter took steps to sell the personal property that Roberta no longer needed. The record showed that Randall disagreed that Roberta needed a guardian or conservator, disagreed that she needed to be in an assisted living facility, and opposed Carter's decision to sell Roberta's personal property and real estate.

On May 29, 2019, Carter filed an emergency ex parte petition for a restraining order to prevent Randall from interfering with a pending estate sale. She alleged that she had prepared Roberta's personal property for an estate sale to be conducted by a business after providing Roberta's children with the opportunity to remove personal property from the home. Carter indicated that she gave Randall the opportunity to visit the home and to retrieve personal property, which he did. Carter stated that the estate business nevertheless called her and informed her that it received a threatening e-mail from Randall. Carter alleged that Randall's e-mail interfered with her authority as a conservator. Carter alleged that it was necessary to enter a restraining order to prevent Randall and his agents from interfering with the sale.

Carter attached a copy of the e-mail as an exhibit to her emergency petition. In the e-mail, Randall asserted that all the personal property at Roberta's home, which "formerly belonged to Roberta Asplund" was now his "own personal property since early April." He asserted that the personal property was not "subject to Probate" and "NOT under the authority of Ms. Carter." He claimed that Carter had engaged in a "criminal act" by attempting to sell the property. He warned that the business would become an "accomplice in that criminal act" if it proceeded with the sale on June 2, 2019, and he threatened to "bring in the police." He stated as well that he monitored

the house frequently and ordered the business to cancel the sale. He wrote that he had “photographed” every item in detail and was prepared to sue for damages. He claimed ownership by accepting an offer from Carter for the items.

Randall filed his own motion for a temporary restraining order on the same day. He alleged that he had not been given enough time to retrieve personal property from Roberta’s home and that he wanted “everything” left at the home. He claimed too that Carter had wrongfully discarded some of Roberta’s personal property. He asked the probate court to restrain Carter from destroying, conveying, or transferring Roberta’s property. Randall attached a string of e-mails that showed that Carter allowed Randall to enter the Newcastle home to remove any personal property that he wanted in a two-hour span. She also allowed him to tag larger items. She indicated that he tagged a piano, which she set aside for him.

In response, Carter denied that Randall had any right to any of the property at issue. Rather, Carter stated that she alone had the right to dispose of Roberta’s property. Carter admitted that Randall had stated that he wanted everything in the home, but she also stated that she rejected that request. She maintained that Randall’s motion was frivolous and sanctionable. Carter attached the full chain of emails, which included e-mails that Randall omitted.

The probate court denied Randall’s motion to cease and desist on May 31, 2019. The probate court explained that Randall had no rights in Roberta’s property and, in any event, he had been given a reasonable opportunity to select items from her personal property. The court indicated that Randall had not stated any valid grounds for a restraining order.

On the same day, the probate court granted Carter’s motion for an order restraining Randall from interfering in the estate sale. On June 6, 2019, the probate court entered an order amending the restraining order of May 31, 2019. Specifically, the probate court deleted ¶ E of the order, which compelled Randall to pay costs associated with the need for the restraining order. The court indicated that it was dismissing the request for costs and fees without prejudice.

Randall then appealed the probate court’s order of May 31, 2019, in this Court.¹

II. ANALYSIS

A. STANDARDS OF REVIEW

To the extent that the claims of error implicate this Court’s jurisdiction, this Court reviews de novo whether it has jurisdiction of the appeal. See *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009). This Court also reviews de novo whether the probate court

¹ This Court assigned Docket No. 349388 to the appeal from the case involving the conservator, and assigned Docket No. 349401 to the appeal from the case involving the guardian. This Court consolidated those appeals for the efficient administration of the appellate process. See *In re Conservatorship of Roberta More Asplund*, unpublished order of the Court of Appeals, entered July 1, 2019 (Docket No. 349388); *In re Guardianship of Roberta More Asplund*, unpublished order of the Court of Appeals, entered July 1, 2019 (Docket No. 349401).

properly applied the law to the facts before it. See *In re Gerstler Guardianship*, 324 Mich App 494, 507; 922 NW2d 168 (2018). This Court reviews for clear error the findings of fact underlying the probate court's application of the law. *Id.* A finding is clearly erroneous when, although there might be evidence to support it, this Court's review of the entire record has left the Court with the definite and firm conviction that the probate court erred. See *Reed Estate v Reed*, 293 Mich App 168, 173-174; 810 NW2d 284 (2011). Finally, this Court reviews the probate court's dispositional rulings for an abuse of discretion. See *In re Redd Guardianship*, 321 Mich App 398, 403; 909 NW2d 289 (2017). A probate court has the discretion to enter injunctive relief on a party's motion. See *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 110; 593 NW2d 595 (1999). A probate court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *In re Redd Guardianship*, 321 Mich App at 403.

B. APPELLATE JURISDICTION

On appeal, Randall states numerous claims of error involving orders other than the order of May 31, 2019, which restrained him from interfering in the estate sale of Roberta's personal property. He asserts claims, for example, involving whether the probate court properly appointed a conservator and guardian, and he argues that David and Carter have wrongfully placed Roberta in an assisted living facility. He also asserts that the probate court should have granted his motion for a temporary restraining order compelling Carter to cease and desist from selling Roberta's property. Randall's claims involving these other orders implicates this Court's jurisdiction. See *Chen*, 284 Mich App at 191 (stating that whether this Court has jurisdiction to hear an appeal is always within the scope of this Court's review).

This Court's jurisdiction is generally determined by statute and court rule. *Id.* at 191-192. The Legislature provided this Court with jurisdiction to hear appeals of right from probate orders and judgments defined under the court rules as final orders. See MCL 600.308(1); see also *In re Rottenberg Living Trust*, 300 Mich App 339, 353-354; 833 NW2d 384 (2013). Our Supreme Court defined a series of orders to be final orders when those orders affect the "rights or interests of an interested person in a proceeding involving . . . a conservatorship or other protective proceeding." MCR 5.801(A)(2). An order appointing or denying a petition to appoint or remove a fiduciary is defined to be a final order. See MCR 5.801(A)(2)(a). To the extent that Randall's claims of error involve the probate court's initial appointment of fiduciaries or orders affecting interests in real and personal property, those orders were final orders that had to be separately appealed by right within 21 days of the entry of those orders. See MCR 5.801(A)(2)(a), (j), & (o); MCR 7.204(A)(1)(a); see also *Mossing v Demlow Prod, Inc*, 287 Mich App 87, 91-94; 782 NW2d 780 (2010) (recognizing that multiple final orders in the same litigation must generally be separately appealed).

Likewise, to the extent that Randall's claims involve the probate court's grant or denial of a petition for instructions, such as the orders involving restraints on Randall's visitation with Roberta, or the probate court's order that Roberta undergo mental health treatment, those claims too involved final orders that had to be appealed by right within 21 days of the entry of those orders. See MCR 5.801(A)(2)(cc); MCR 5.801(A)(3); MCR 5.801(A)(4); MCR 7.204(A)(1)(a). Randall cannot claim an appeal from earlier final orders by appealing a later final order. See *Surman v Surman*, 277 Mich App 287, 293-294; 745 NW2d 802 (2007); see also *Nowland v Rice's Estate*, 138 Mich 146, 148; 101 NW 214 (1904) (refusing to consider claims involving earlier

orders because those orders became final and had to be separately appealed). Consequently, for these appeals, we decline to consider any claim of error involving a final order other than the order of May 31, 2019, which Randall identified as the order from which he has appealed in these consolidated appeals.

C. ANALYSIS

We first address Carter’s argument that Randall lacks standing to appeal. Specifically, she maintains that Randall was not aggrieved by the order because the personal property to be sold belonged to the estate. To be an aggrieved party, Randall must demonstrate that he suffered some injury arising from the actions of the probate court. See *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 292; 715 NW2d 846 (2006); see MCR 5.801(A). An order causes injury to a party or interested person if it affects that person’s rights or operates on his or her property; typically, the person affected must show that he or she has a pecuniary interest in the outcome. See *In re Trankla’s Estate*, 321 Mich 478, 482-483; 32 NW2d 715 (1948). The order which Randall has appealed enjoined him by name from undertaking any action that might interfere with the estate sale, which arguably interfered with his rights; the probate court also initially compelled him to pay costs and fees of \$1,020, and subjected him to possible penalties. He was, therefore, aggrieved by that order. See *id.*

In the present case, the probate court’s order of May 31, 2019, authorized Carter to conduct the estate sale on June 2, 2019,² and enjoined Randall and his agents from interfering with the sale, or contacting the business that would be conducting the sale. The order expired by its own force after the completion of the sale, and there is no evidence that Randall was subjected to any sanctions under the order for which this Court could grant relief.³ See *Acorn Bldg Components, Inc v Local Union No 2194 of the Int’l Union, United Auto, Aerospace & Agricultural Implement Workers of America, UAW*, 164 Mich App 358, 363; 416 NW2d 442 (1987). Likewise, although the probate court initially ordered Randall to pay \$1,020 in costs and fees, it later entered an order vacating that provision and dismissing the request for costs and fees without prejudice. For these reasons, even if this Court were to conclude that the probate court erred in some respect when it entered the temporary restraining order, it would be unable to provide Randall with any relief. See *id.* Because “an event has occurred that renders it impossible for the court to grant relief,” we conclude that Randall’s claims of error are moot. See *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 472; 761 NW2d 846 (2008).

Even if the claims were not moot, we would conclude that he has not established grounds for relief. The standard for the entry of a temporary restraining order is quite low: the probate court could enter the order if it “clearly appear[ed]” that Roberta or her estate would suffer “irreparable injury, loss, or damage.” MCR 3.310(B)(1)(a). In support of her motion, Carter submitted a verified complaint and submitted an e-mail that Randall sent to the business that Carter

² Randall mischaracterizes the probate court’s order when he asserts that the probate court ordered Carter to sell Roberta’s personal property. The probate court “permitted” Carter to conduct the sale on June 2, 2019—it did not order her to do so.

³ Randall concedes that the sale occurred.

had engaged to conduct the estate sale. In the e-mail, Randall threatened to involve the police department if the business conducted the sale. He informed the business that Carter was engaging in criminal acts by arranging the sale and that the business would be an accomplice to her crimes if it proceeded with the sale. He also threatened to sue the business.

The e-mail was evidence that Randall had already interfered with the proposed estate sale and that he intended to escalate his interference. The probate court already had significant experience with Randall's past encounters with caregivers and businesses hired to help with Roberta's estate. As such, it knew that Randall had in fact carried out past threats of interference and would likely carry out his threats against the business hired to conduct the estate sale.

Irreparable injury does not normally include injury for which monetary damages could compensate the victim. See *Thermatool Corp v Borzym*, 227 Mich App 366, 377; 575 NW2d 334 (1998). However, an injunction may be appropriate when the failure to intervene may render the court unable to provide an effective remedy. See, e.g., *Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America, UAW, Local 6000 v Michigan*, 194 Mich App 489, 508; 491 NW2d 855 (1992), mod on other grounds 440 Mich 858 (1992). Injunctive relief may also be appropriate when the party requesting relief would have to return to court constantly to protect his or her interests. See *Peninsula Sanitation, Inc v Manistique*, 208 Mich App 34, 43-44; 526 NW2d 607 (1994).

Carter alleged that it took months to prepare the estate sale, that Randall's interference threatened to prevent the proper administration of Roberta's estate, and that his threatened interference would result in delay and dissipation of the estate. The probate court was well aware that Randall had interfered with Carter's efforts to secure financing for Roberta's care throughout the administration of Roberta's estate. The probate court had to intervene on numerous occasions, and Randall made it clear that he would continue to contest Carter's efforts in court, and use extrajudicial means to obstruct her out of court. Under these circumstances, the probate court could conclude that Randall's threatened interference could not be remedied with damages at law and that his interference would require repeated resort to the court for a remedy. See *Peninsula Sanitation*, 208 Mich App at 43-44; *Int'l Union*, 194 Mich App at 508. Randall's claim that the probate court erred when it included his lawyer and others within the scope of the order is also meritless. The probate court's order was consistent with the requirements of MCR 3.310(C)(4) (requiring the court to provide that the order is "binding only on the parties to the action, their officers, agents, servants, employees, and attorneys"). Consequently, the probate court's decision to enter the temporary restraining order did not fall outside the range of reasonable outcomes. See *In re Redd Guardianship*, 321 Mich App at 403.⁴

Randall also complains that the probate court erred by entering the order without a hearing. The probate court was not required to hold a hearing before entering a temporary restraining order;

⁴ Randall also asserts generally that the probate court's order violated his First Amendment rights and due process. Randall failed to properly support his arguments concerning speech and due process by any meaningful discussion of the law and evidence. Accordingly, he abandoned those claims on appeal. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

indeed, it could have entered the order without any notice. See MCR 3.310(B)(1). Nevertheless, it appears that the probate court ensured that every party and interested person had notice of Carter’s motion and an opportunity to respond to it in writing before the probate court made its decision. Additionally, the probate court also had Randall’s motion to cease and desist before it, which detailed Randall’s objections to the proposed estate sale.

In his motion, Randall argued that the probate court should—in relevant part—restrain Carter from conducting the estate sale. Randall wrote that Carter had given him an opportunity to remove any personal property from Roberta’s home that he wished to have before the estate sale. He also admitted that she allowed him to tag larger items for later retrieval. He nevertheless complained that that was inadequate because he wanted to take everything from the home. Randall made it clear in his motion that he opposed the estate sale on the ground that he did not believe that it was in Roberta’s best interests and because Roberta did not want to sell her property. Randall also indicated that the property was Roberta’s property, which he believed might be “awarded” after a jury trial, or belonged to Roberta’s “family.” He did not allege that he had any title to the property beyond his assertion that he informed Carter that he wanted everything in Roberta’s home after Carter offered him the opportunity to remove and tag items. But Carter’s offer did not vest title in Randall. Carter’s offer amounted to an offer to gift items from Roberta’s estate to Randall should he comply with the conditions of the gift: namely, to remove or tag the items on the specified date. Randall’s failure to comply with the requirements prevented the actual or constructive delivery of the proposed gifts. See *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997) (stating that a gift is not complete until actually or constructively delivered to the donee). The probate court was fully informed about the parties’ respective positions and did not need to conduct a hearing to determine whether to restrain the estate sale or to restrain interference with the estate sale.

III. CONCLUSION

Randall’s claims of error involving the order of May 31, 2019, which restrained him from interfering in the estate sale, are moot. In any event, Randall has not demonstrated that the probate court erred when it granted Carter’s motion for a restraining order. For these reasons, we affirm in both dockets.

Affirmed. As the prevailing parties, Carter and David may tax their costs. See MCR 7.219(A).

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Brock A. Swartzle