

# PROBATE LAW CASE SUMMARY

BY ALAN A. MAY



*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.*

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 2007-2020 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© 2021 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2020 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. Additionally, he has been designated a “Leading Lawyer” in Trust, Will & Estate Planning Law for the years 2013 to the present (a distinction granted to the top 1% of attorneys in Michigan). 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).

He is the published author of Article XII: A Political Thriller and Sons of Adam, an International Terror Mystery.

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**DT:** July 6, 2021

**RE:** *In re LLB*

STATE OF MICHIGAN COURT OF APPEALS

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Kemp Klein Law Firm represents Elder Law of Michigan, a charitable organization and Trustee of the Elder Law of Michigan Pooled Account Trust. Through this relationship, our attorneys administer the Pooled Account Trust for Elder Law of Michigan on a long-term contract. If interested, please contact Cindy Fedewa at 248-528-1111 or [cindy.fedewa@kkue.com](mailto:cindy.fedewa@kkue.com).

**KEMP KLEIN**  
LAW FIRM

201 West Big Beaver Road, Suite 600, Troy, MI 48084 | Phone: 248.528.1111 | [kkue.com](http://kkue.com)

*Alan, you cannot write about baseball all your life.*

Mrs. Pollinger

12th Grade English Comp

Mumford High —1959

## BASEBALL MUSINGS:

I predicted that when the MLB ordered Umps to look more closely for banned substances, that batting averages would rise. I was correct. There were about 7,000 plate appearances the first and second week of May. Averages rose from .237 to .245.

The average this May, league wise, was .236 and a better June, the league through June was pulled up to .239.

What about my favorable player, Trea Turner. Hit for the cycle 3 times in a year. He ranks 4<sup>th</sup> in batting average with a .318 and ranks 3<sup>rd</sup> in total bases. He leads the league with 18 stolen bases.

Miggy – No matter how he seems, he's still a Hall of Famer trying to set some records. He too is on a rise. He batted .274 in his last 30 games, .351 in his last 15 games and .407 in his last 7 games. He's only 6 dingers away from 500 homers and leads the league among active players with a lifetime batting average of .311. If your kids haven't seen this Hall of Famer, make sure they do.

**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 LLB*

- Commitment (involuntary admission)
- Abuse of Discretion
- Standard of Proof

Petitioner-Appellee sought an involuntary admission for Respondent-Appellant. Proofs in the lower Court showed seven suicide attempts within a 17-month period of time. Respondent didn't wish to lose her apartment, or her property. She admitted the need for treatment but voiced objection to an AFC home. The lower Court issued a liberal Order without total commitment which was a Step Program with ultimately an AFC home.

The Court of Appeals looked at the decision of the lower Court and found no abuse of discretion judging that based upon the preponderance of evidence, the result was a reasonable alternative.

All the above was a correct reading of the law and correctly applied to the facts.

But Query – When restraint is involved, shouldn't the legislature demand a greater burden of proof such as clear and convincing evidence?

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

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*In re* LLB.

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OFFICER JAMES BRITTON,

Petitioner-Appellee,

v

LLB,

Respondent-Appellant.

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UNPUBLISHED

June 17, 2021

No. 355068

Marquette Probate Court

LC No. 20-034732-MI

Before: JANSEN, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals by right the probate court's order for mental health treatment. Because the probate court did not abuse its discretion by ordering that respondent could be placed into adult foster care, we affirm.

**I. BASIC FACTS**

Petitioner sought court-ordered mental health treatment for respondent after respondent was hospitalized following a suicide attempt. Respondent had been involved in Pathways counseling for approximately 17 months and during that time had seven hospitalizations for suicidal ideations and attempts. Respondent's Pathways therapist authored a report regarding alternative mental health treatment for respondent, and she concluded that respondent posed a very high risk of danger to herself. The therapist opined that independent living was no longer appropriate for respondent and recommended that she be placed in adult foster care. A board-certified psychiatrist diagnosed respondent with depression and agreed that she needed additional support to keep her stable. Respondent acknowledged that she needed inpatient treatment, but objected to being placed in adult foster care because she would lose her apartment, belongings, and nearness to her place of worship. Respondent testified that she would comply with alternative treatment plans.

The therapist identified two available alternative treatment programs at Pathways: one that offered daily check-ins and another that would encourage respondent to make healthy eating and exercise choices. However, respondent did not qualify for the first program and the therapist concluded that the second program would not be enough to clinically help respondent. The probate court ordered respondent to combined hospitalization and assisted outpatient treatment for no longer than 180 days, including no more than 60 days' hospitalization. The court also ordered that respondent would live in "Pathways approved housing." The court noted that it hoped Pathways could keep respondent in her home with services or direct case management because there was no adult foster care placement available at the time of the hearing. However, respondent was eventually placed in adult foster care.

## II. INVOLUNTARY MENTAL HEALTH TREATMENT

### A. STANDARD OF REVIEW

Respondent argues that the probate court abused its discretion by entering an order that allowed respondent to be involuntarily placed in adult foster care because the decision was not supported by a preponderance of the evidence. "This Court reviews for an abuse of discretion a probate court's dispositional rulings and reviews for clear error the factual findings underlying a probate court's decision." *In re Portus*, 325 Mich App 374, 381; 926 NW2d 33 (2018) (quotation marks and citation omitted). "An abuse of discretion occurs when the probate court chooses an outcome outside the range of reasonable and principled outcomes." *Id.* (quotation marks and citation omitted). "A probate court's finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id.* (quotation marks and citation omitted). A probate court's determinations regarding an individual's treatment and placement must be supported by a preponderance of the evidence. *Id.* at 393.

### B. ANALYSIS

The Mental Health Code, MCL 330.1001 *et seq.*, provides for a probate court to order involuntary mental health treatment for a person that requires treatment. MCL 330.1469a provides that before ordering hospitalization, a court must review a statutorily-required report regarding alternatives to hospitalization to

(a) Determine whether a treatment program that is an alternative to hospitalization or that follows an initial period of hospitalization is adequate to meet the individual's treatment needs and is sufficient to prevent harm that the individual may inflict upon himself or herself or upon others within the near future.

(b) Determine whether there is an agency or mental health professional available to supervise the individual's treatment program.

(c) Inquire as to the individual's desires regarding alternatives to hospitalization.

If the court determines that there is an alternative treatment program that satisfies these requirements, the court must issue an order for assisted outpatient treatment, with or without combined hospitalization. MCL 330.1469a(2).

In this case, respondent agrees that she required mental health treatment, and it is undisputed that the therapist authored an alternative mental health treatment for respondent that concluded that adult foster care placement would be appropriate. Nevertheless, respondent argues that the probate court's decision to allow her to be placed in adult foster care was not supported by a preponderance of the evidence. We disagree.

The record reflects that respondent had been hospitalized at least seven times for suicidal ideations over the course of 17 months despite ongoing treatment at Pathways. Respondent's therapist concluded that because of respondent's history and behavior, independent living was not appropriate for her, but adult foster care placement would provide respondent with support. The therapist made it clear that alternative programs were either unavailable or not enough to protect respondent. Respondent's treating psychiatrist shared similar concerns about respondent's outpatient compliance and agreed that respondent needed additional community support. Although the probate court expressed hope that Pathways could keep respondent in her home with services, it did not suggest that adult foster care placement was unsupported by the evidence. Further, although respondent did not want to be placed in adult foster care and indicated that she would participate in available programs, respondent repeatedly demonstrated that she posed a danger to herself. Therefore, the probate court's determination that respondent should live in Pathways-approved housing, including placement in adult foster care, was supported by a preponderance of the evidence and the probate court did not abuse its discretion.

Affirmed.

/s/ Kathleen Jansen  
/s/ Michael J. Kelly  
/s/ Amy Ronayne Krause