

TRUSTS AND ESTATES

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I. INTRODUCTION

The Michigan Court of Appeals rendered three published opinions involving trusts and estates during the *Survey* period.¹ The court made determinations regarding proper valuation for the probate inventory,² clarified the standard by which a personal representative and trustee can be removed and surcharged,³ and upheld the constitutionality of a widow's right to her dower interest.⁴ None of these decisions will significantly impact the day-to-day practice of trusts and estates. The summaries that follow are in chronological order based on the date of decision.

II. PROBATE INVENTORY FEES

In *Wolfe-Haddad v. Oakland County*, the court addressed the meaning of a Michigan statute that requires county probate courts to collect an inventory fee based “‘on the value of all assets’ as of the date

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1. The *Survey* period is from June 1, 2006 to May 31, 2007.

2. *Wolfe-Haddad v. Oakland County*, 272 Mich. App. 323, 725 N.W.2d 80 (2006).

3. *In re Duane v. Baldwin Trust*, 274 Mich. App. 387, 733 N.W.2d 419 (2007).

4. *In re Estate of Miltenberger*, 275 Mich. App. 47, 737 N.W.2d 513 (2007).

of the decedent's death."⁵ Because the statute does not specifically define "value," the court had to determine legislative intent in using the term "value."⁶ The plaintiff contended that the term "value" should be the value of the assets to the beneficiaries.⁷ Therefore, the plaintiff argued that the estate should be allowed to report the fair market value of the asset less any liens or encumbrances.⁸ For example, according to the plaintiff, an estate holding a house with a fair market value of \$200,000 subject to an outstanding mortgage balance of \$150,000 should only be required to report and pay an inventory fee on \$50,000.⁹ In contrast, the county argued that the inventory fee should be assessed on the full value of the estate's property without deduction for any security interests encumbering such property.¹⁰

In rejecting the plaintiff's interpretation, the court defined "value" by its plain meaning, which it held is synonymous with "fair market value."¹¹ Therefore, "value" for the purposes of the probate inventory means "the amount of money that a ready, willing, and able buyer would pay for the asset on the open market"¹² The court clarified that the inventory fee is based on the premise that the more valuable an asset, the more work required by the probate court to administer that asset.¹³ To illustrate this principle, the court provided an example of two estates each holding one asset worth \$500,000 and claims of creditors exceeding the asset's value.¹⁴ The first estate has \$475,000 in secured debt on its assets, while the second estate has only unsecured debt.¹⁵ The administrative burden on the probate court would be the same in both cases, but the first estate would pay an inventory fee on \$25,000, while the second estate would pay an inventory fee on \$500,000.¹⁶ The court noted that this "anomalous result" would not occur where "value" is interpreted to mean "fair market value" without regard to security interests encumbering the asset.¹⁷ Consequently, the court held for the

5. *Wolfe-Haddad*, 272 Mich. App. at 325, 725 N.W.2d at 81 (quoting MICH. COMP. LAWS ANN. § 600.871(1) (West 2006)).

6. *Id.*

7. *Id.* at 326, 725 N.W.2d at 82.

8. *Id.*

9. *See id.*

10. *Id.* at 325, 725 N.W.2d at 81.

11. *Wolfe-Haddad*, 272 Mich. App. at 325, 725 N.W.2d at 81.

12. *Id.*

13. *Id.* at 328-29, 725 N.W.2d at 83.

14. *Id.* at 328, 725 N.W.2d at 83.

15. *Id.*

16. *Id.*

17. *Wolfe-Haddad*, 272 Mich. App. at 329, 725 N.W.2d at 83.

county and ruled that “value” for purposes of the inventory fee means value without deduction for secured debts.¹⁸

The court’s holding resolved a conflict between the statute and Michigan Court Rule 5.307(A). Michigan Court Rule 5.307(A) had been recently amended to allow a deduction for security interests when reporting an asset’s value on the probate inventory.¹⁹ The court simply stated that where a court rule and statute conflict, the court rule must yield.²⁰

III. REMOVAL AND SURCHARGE OF PERSONAL REPRESENTATIVE AND TRUSTEE

In *In re Duane v. Baldwin Trust*,²¹ the decedent made fraudulent conveyances adversely affecting the petitioner’s ability to collect on a debt the decedent owed petitioner.²² After petitioner obtained a sizeable judgment against the decedent’s estate in circuit court, the petitioner moved in probate court to remove and surcharge the respondent as personal representative of decedent’s estate and successor trustee of decedent’s trust.²³ The petitioner argued that the respondent breached his fiduciary duty to petitioner by defending against petitioner’s claim in circuit court.²⁴ Rather than defending against petitioner’s suit, petitioner claimed that the respondent should have recovered the assets that the decedent fraudulently conveyed to various business entities owned by decedent’s heirs and beneficiaries of his trust.²⁵ The petitioner appealed the probate court’s *sua sponte* ruling that there was no genuine issue of material fact justifying surcharge or removal of the respondent as personal representative and trustee.²⁶

The Michigan Court of Appeals reviewed the probate court’s refusal to remove and surcharge the respondent as personal representative and trustee for “abuse of discretion.”²⁷ The court addressed the removal and surcharge of the respondent as personal representative and the removal and surcharge of the respondent as trustee separately. With respect to removal of respondent as personal representative, the court noted that the

18. *Id.*

19. *Id.*

20. *Id.* at 329-30, 725 N.W.2d at 83-84.

21. 274 Mich. App. 387, 733 N.W.2d 419.

22. *Id.* at 390-91, 733 N.W.2d at 421-22.

23. *Id.* at 392-93, 733 N.W.2d at 422-23.

24. *Id.* at 393-94, 733 N.W.2d at 423.

25. *Id.* at 394, 733 N.W.2d at 423.

26. *Id.* at 396, 733 N.W.2d at 424.

27. *Baldwin Trust*, 274 Mich. App. at 396-97, 733 N.W.2d at 425.

Estates and Protected Individuals Code ("EPIC") provides that "[a]n interested person may petition for removal of a personal representative" for mismanagement of the estate.²⁸ The court held that the respondent never disregarded a court order and merely defended the estate against petitioner's circuit court claim.²⁹ Because there was no evidence of mismanagement, the court held that the probate court did not abuse its discretion in refusing to remove respondent as personal representative.³⁰

The court next addressed whether the probate court abused its discretion in refusing to surcharge the respondent in his capacity as personal representative. Under EPIC, a "personal representative is liable to interested persons for damage or loss resulting from breach of fiduciary duty"³¹ Furthermore, EPIC provides that a fiduciary, such as a personal representative, owes a fiduciary duty to "to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary."³² Consequently, the court held that a personal representative owes no fiduciary duty to a creditor, such as the petitioner.³³ Additionally, EPIC provides that "[a] personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time."³⁴ Because respondent's only duty was to the decedent's heirs, he had a responsibility "to try to protect the interests of decedent's heirs, who also happened to be the owners of the entities to which decedent made" the fraudulent transfers.³⁵ As such, the petitioner could point to no law showing that the respondent's protection of the interests of the heirs "in their capacity as owners of the nonprobate entities" was unauthorized.³⁶ Because the respondent owed no fiduciary duty to petitioner and respondent engaged in no unauthorized acts, the court found no abuse of discretion in the probate court's refusal to surcharge the respondent as personal representative.³⁷

28. *Id.* at 399-400, 733 N.W.2d at 426 (quoting MICH. COMP. LAWS ANN. § 700.3611 (West 2006)).

29. *Id.* at 400, 733 N.W.2d at 426-27.

30. *Id.* at 402, 733 N.W.2d at 427.

31. *Id.* at 400, 733 N.W.2d at 427 (quoting MICH. COMP. LAWS ANN. § 700.3712 (West 2006)) (emphasis omitted).

32. *Id.* at 401, 733 N.W.2d at 427 (quoting MICH. COMP. LAWS ANN. § 700.1212(1) (West 2006)) (emphasis omitted).

33. *Baldwin Trust*, 274 Mich. App. at 401, 733 N.W.2d at 427.

34. *Id.* (quoting MICH. COMP. LAWS ANN. § 700.3703(2) (West 2006)).

35. *Id.* at 402, 733 N.W.2d at 427.

36. *Id.*

37. *Id.* at 402, 733 N.W.2d at 427-28.

The court similarly held that the probate court did not abuse its discretion to remove and surcharge respondent as trustee for two reasons.³⁸ First, the court noted that under EPIC, a trustee is only personally liable for torts committed in the course of administering the trust if the trustee is personally at fault.³⁹ In this case, the petitioner did not allege that the respondent committed a tort while administering the trust.⁴⁰ Second, the court held that a trustee owes a duty only to the beneficiaries of the trust and not creditors such as the petitioner.⁴¹

IV. CONSTITUTIONALITY OF DOWER

In its final decision during the *Survey* period, the Michigan Court of Appeals in *In Re Estate of Miltenberger*⁴² upheld the constitutionality of a widow's right to dower⁴³ in her deceased husband's estate.⁴⁴ When the decedent's will left nothing to his surviving wife, she elected to take her dower interest in his real property.⁴⁵ The personal representative of decedent's estate filed a motion for summary disposition in probate court claiming that the right of dower is unconstitutional because it favors women over men, and therefore, violates the constitutional guarantee of equal protection.⁴⁶ The probate court rejected the challenge by deferring to the legislature and reasoning that dower serves an important governmental objective of protecting widows.⁴⁷ The probate court judge relied on his anecdotal observations that men are usually the owners of the property in a marriage.⁴⁸ Furthermore, because the Uniform Probate Code, which was used as a model for EPIC, made no provision for dower, the probate court reasoned that the legislature must have carefully considered the disparity between men and women by adding dower to EPIC.⁴⁹ Therefore, the probate court denied the personal representative's motion for summary disposition, holding that dower does not violate the

38. *Id.* at 402-03, 733 N.W.2d at 428.

39. *Baldwin Trust*, 274 Mich. App. at 402, 733 N.W.2d at 428.

40. *Id.* at 402-03, 733 N.W.2d at 428.

41. *Id.* at 403-04, 733 N.W.2d at 428.

42. 275 Mich. App. 47, 737 N.W.2d 513.

43. See MICH. COMP. LAWS ANN. § 700.2202(2)(c) (West 2000); MICH. COMP. LAWS ANN. §§ 558.1-558.29 (West 2006).

44. *Estate of Miltenberger*, 275 Mich. App. at 49, 737 N.W.2d at 515.

45. *Id.* at 48, 737 N.W.2d at 515.

46. *Id.*

47. *Id.* at 49, 737 N.W.2d at 515.

48. *Id.*

49. *Id.* at 49, 737 N.W.2d at 515-16.

equal protection clauses of the United States and Michigan constitutions.⁵⁰

The personal representative appealed and the Michigan Court of Appeals, reviewing the case *de novo*, affirmed the probate court's decision upholding the constitutionality of dower.⁵¹ Because dower makes a legal distinction based on gender, the court applied an intermediate level of scrutiny where a law "will be upheld only if it is substantially related to an important governmental objective."⁵² The court held that dower is substantially related to an important government objective because dower is specifically mentioned in the Michigan Constitution, thereby showing that the drafters "intended to recognize dower as a legitimate property interest."⁵³ Additionally, the court stated that the right of dower is substantially related to the important governmental interest of protecting widows who have traditionally suffered a "disproportionately heavy [financial] burden" upon the death of their husbands.⁵⁴

50. *Estate of Miltenberger*, 275 Mich. App. at 49-50, 737 N.W.2d at 516.

51. *Id.* at 50-57, 737 N.W.2d at 516-19.

52. *Id.* at 52, 737 N.W.2d at 517 (quoting *Phillips v. Mirac*, 470 Mich. 415, 433, 685 N.W.2d 174, 184 (2004)).

53. *Id.* at 56, 737 N.W.2d at 519.

54. *Id.* at 55, 737 N.W.2d at 519 (quoting *In re Baer Estate*, 562 P.2d 614, 616 (Utah 1977)).