Probate Litigation Report

By David L. J .M. Skidmore

2022 Caselaw Update

This is my annual caselaw update on published Michigan appellate decisions involving trust, estate, and fiduciary issues. The time period covered by this report is April 2021 to April 2022.

In re Estate of Terry L Seybert, No 355647, ___ Mich App ___, ___ NW2d ___ (Jan 20, 2022)

In re Estate of Terry L Seybert dealt with proving the existence of a parent-child relationship for purposes of intestacy. In 2019, Terry L. Seybert ("Terry") died and his body was cremated. Terry's daughter Shannon Parker ("Shannon") was appointed as personal representative of his probate estate.

Aaron Wise ("Aaron") petitioned the probate court for a determination that Terry was his biological father and that Aaron was thus an heir of Terry's. In support of his petition, Aaron offered the results of genetic testing from Aaron and Terry's mother and brother. However, such test results were inconclusive as to whether Aaron was Terry's child.

To bolster his case, Aaron moved that the probate court order Shannon, over her objection, to submit to genetic testing. Aaron argued that he had no other choice because none of Terry's genetic material remained in existence. The probate court granted Aaron's motion and ordered Shannon to submit to genetic testing. Shannon appealed.

The Michigan Court of Appeals started its analysis with MCL 700.2114(1), which identifies several means by which the parent-child relationship may be proven for purposes of intestacy. One of those methods, set forth at MCL 700.2114(1)(b)(v), provides for the determination of paternity "using the standards and procedures established under the [P]aternity [A]ct[.]" In turn, the Paternity Act, at MCL 722.717(1), permits paternity to be shown via "[g]enetic testing under [MCL 722.716]."

However, the statute referenced by the Paternity Act, MCL 722.716, only provides that a court "shall order that the *mother*, *child*, and *alleged father*" submit to genetic testing for purposes of determining paternity. (Emphasis added.) The appellate court therefore concluded that the probate court lacked authority under MCL 700.2114(1) to order Shannon to undergo genetic testing because MCL 722.716 did not mention genetic testing of decedent's other children.

Aaron argued that he could compel Shannon to undergo genetic testing under one of the Michigan Court Rules governing discovery, MCR 2.311 ("Physical and Mental Examination of Persons"). The Michigan Court of Appeals rejected this argument for two reasons. First, MCR 2.311 was inapplicable because it was superseded by a more specific statute, MCL 722.716. Second, even if MCR 2.311 were applicable, it only permits physical examination of a person "[w]hen the mental or physical condition ... of a party ... is in controversy... ." Here, there was no controversy regarding Shannon's mental or physical condition, so she was not subject to MCR 2.311(A). The probate court's ruling was therefore affirmed.

Query: If Shannon had chosen to cooperate with Aaron's request, would the results of her DNA testing have been admissible in evidence under MCL 700.2114(1)(b)(v)? Apparently not, because genetic testing under the Paternity Act may only involve the putative child, mother, and putative father.

In re Estate of Carlsen, No 352026, ___ Mich App ___, ___ NW2d ___ (Dec 16, 2021)

In re Estate of Carlsen considered whether a contingent claim against a probate estate, arising after the decedent's death, had been presented timely.

Here, the co-personal representatives of the probate estate (the "Estate") of Kinzie Renee

Carlsen (who died as an infant) sued Southwest Michigan Emergency Services, PC (the "Hospital"), for medical malpractice in circuit court. At the trial of the medical malpractice action before the circuit court, the jury returned a verdict of no cause of action against the Estate. Two weeks later, the Hospital as the prevailing party moved to tax costs and fees against the Estate in circuit court. Simultaneously, the Hospital filed a contingent notice of creditor claim against the Estate with the probate court; the contingency was the circuit court granting the motion to tax costs and fees.

The circuit court then granted the Hospital's motion to tax costs and fees against the Estate in an amount in excess of $166,000. At that point, the Hospital filed a non-contingent notice of creditor claim against the Estate with the probate court.

In the probate court, the Estate moved to strike the Hospital's creditor claim notice on the ground that it was untimely under MCL 700.3803(2)(b), which provides, "A claim against a decedent's estate that arises [a]fter the decedent's death[,] whether absolute or contingent[,] is barred unless presented (b) within 4 months after the claim arises." So the key question was when the claim arose.

The Estate argued that the Hospital's claim arose when the Hospital answered the Estate's medical malpractice complaint; in its answer, the Hospital had payed for costs and fees, so it was aware at that point that it might be entitled to costs and fees if it prevailed. The Hospital argued that the claim did not arise until the jury returned a verdict of no cause of action. The probate court ruled for the Hospital, finding that its claim was timely, and the Estate appealed.

The Michigan Court of Appeals agreed that the claim arose when the jury returned its verdict against the Estate and for the Hospital. "Whatever confidence [Hospital] had [when it answered complaint] that it might prevail and that [Estate's] claims were frivolous, these are not facts of the sort that support a contingent claim. It is the jury that provided the factual basis for [Hospital's] claim for prevailing party costs."[1] The appellate court therefore affirmed the probate court's ruling.

In re Estate of Huntington, No 354006, ___ Mich App ___, ___ NW2d ___ (Sept 16, 2021)

In re Estate of Huntington addressed how a Michigan probate estate should be administered when the decedent was domiciled elsewhere, and there was no probate estate being administered in the state of domicile.

Eldridge Huntington, Sr. ("Eldridge"), died intestate, domiciled in California but also owning a condominium unit and perhaps other assets in Michigan. Eldridge was survived by his wife, LaTonia McDaniel-Huntington ("LaTonia"), and by his children from a prior marriage, Eldridge Huntington, Jr. ("Junior"), and Steven Huntington.

In contested proceedings before the Michigan probate court, there was never any evidence that a probate estate had been opened for Eldridge in California, although Junior at one point promised that he would do so. In the Michigan proceedings, the identity and value of Eldridge's California assets was unclear.

LaTonia petitioned the Michigan probate court to distribute the Michigan condominium to her as her surviving spouse's intestate share. The Michigan probate court ruled that because Eldridge was domiciled in California, LaTonia as surviving spouse was not entitled to any elections, allowances, or intestate share under Michigan law. Instead, the probate court ruled that the Michigan personal representative (Junior) could only marshal the Michigan assets and send them to the personal representative of the California domiciliary estate. LaTonia appealed.

The Michigan Court of Appeals framed the issue on appeal as whether the Michigan probate court had authority to administer portions of Eldridge's estate located in Michigan. Under MCL 700.3919(1), the Michigan non-domiciliary personal representative was required to forward the Michigan assets to the California domiciliary

personal representative, *if* a California estate had been opened. However, there was no evidence in the record that a California estate had ever been opened. The appellate court therefore ruled that the Michigan probate court had erred in ruling that the Michigan assets had to be transferred to the personal representative of the (as yet nonexistent) California probate estate.

Because MCL 700.3919(1) did not apply, MCL 700.3919(2) governed, "If subsection (1) is not applicable to an estate, distribution of the decedent's estate shall be made in accordance with the other provisions of [Article III of EPIC]." The probate court had found that LaTonia was not entitled to a surviving spouse's intestate share because intestacy is governed by Article II of EPIC, not Article III. The probate court also found it significant that MCL 700.2202(6) provides that the surviving spouse of a decedent domiciled in a state other than Michigan can only elect against the estate/will under the law of the domiciliary estate. LaTonia argued on appeal that the probate court's analysis had been erroneous.

The Michigan Court of Appeals found that Article III of EPIC clearly invokes definitions and substantive provisions of law outside of Article III's terms. MCL 700.3101 (found in Article III) provides, "Upon an individual's death, the decedent's property devolves ... in the absence of testamentary disposition, to the decedent's heirs ... ." The appellate court found it necessary to look outside of Article III to apply MCL 700.3101. Initially, "heir" is defined in Article I. Moreover, the statutes "affecting devolution of an intestate estate" are contained solely in Article II.

The Michigan Court of Appeals agreed that MCL 700.2202(6) prohibited a certain type of relief under Article III for non-domiciliary Michigan estates—namely, the right of a surviving spouse of a non-Michigan domiciliary to invoke the right of election. The appellate court found some conflict between MCL 700.3101 and MCL 700.2202, but noted that LaTonia was not seeking her *elective* share but rather her *intestate* share, and that MCL 700.2202 does not bar the surviving spouse of a non-domiciliary estate from taking her intestate share.

Therefore, the Michigan Court of Appeals concluded that LaTonia was entitled to receive her intestate share from the Michigan estate. Such intestate share was to be calculated by reference to the "entire intestate estate," including both Michigan and California assets. Consequently, Junior as personal representative of the Michigan estate had a duty to determine the type and value of the California assets in order to calculate LaTonia's spousal intestate share. The probate court's ruling was reversed, and the case was remanded for further proceedings.

In re Joseph & Sally Grablick Trust, Nos 353951, 353955, ___ Mich App ___, ___ NW2d ___ (Dec 16, 2021)

In *In re Joseph & Sally Grablick Trust*, the Michigan Court of Appeals considered the effect of a divorce on the identity of the trust beneficiaries. Joseph Grablick ("Joseph") and Sally Grablick ("Sally") were married. During the marriage, Sally's daughter from a prior marriage, Katelyn Banaszak ("Katelyn"), was Joseph's stepdaughter.

Joseph and Sally executed a joint trust agreement. Under the trust, at the death of the first spouse to die, the surviving spouse was entitled to all principal and income. At the death of the second spouse to die, Katelyn, if living, was entitled to all principal and income. If Katelyn failed to survive, then Joseph's mother and sister and certain of Sally's relatives were the alternate beneficiaries. Joseph also executed a pourover will with the joint trust as the residual beneficiary.

In April 2019, Joseph and Sally's marriage was terminated by judgment of divorce. Shortly thereafter, in July 2019, Joseph died.

Before the probate court, there was a contested proceeding between Katelyn, on the one hand, and Joseph's mother and sister, on the other hand, as to who was the proper beneficiary of the assets flowing from Joseph's probate estate into the joint trust. Joseph's mother and sis-

ter moved for summary disposition that Katelyn had no interest in Joseph's probate estate or the joint trust (to the extent funded with assets from Joseph's probate estate), arguing that the gift to Katelyn was revoked by MCL 700.2807(1)(a)(i). Such statute provides that "the divorce ... of a marriage ... [r]evokes ... a disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's spouse."

The probate court granted summary disposition to Joseph's mother and sister, finding that MCL 700.2807(1)(a)(i) revoked not only the gift to Katelyn but also the gift to those alternate beneficiaries who were Sally's relatives. The probate court ruled that the sole beneficiaries of the joint trust were Joseph's mother and sister. Katelyn appealed.

On appeal, Katelyn argued that she did not fall within the definition of "relative of the divorced individual's former spouse" for purposes of MCL 700.2807(1)(a)(i). That phrase is defined by MCL 700.2806(e) as "[a]n individual who is related to the divorced individual's former spouse [here, Sally] by blood, adoption, or affinity and *who, after the divorce or annulment, is not related to the divorced individual [here, Joseph] by blood, adoption, or affinity*." (Emphasis added.) Katelyn claimed that after the divorce, she was still related to Joseph "by affinity," suggesting that the term signified a parent-child-like relationship. The Michigan Court of Appeals rejected that argument, holding that "affinity" means a family relationship to the relatives of one's spouse arising from the fact of the marriage. Therefore, the probate court's ruling was affirmed.

There was no discussion in the decision of whether Sally had contributed any assets to the joint trust. Presumably she did not because Katelyn's beneficial interest in trust assets contributed by Sally would not have been terminated by the divorce.

Schaaf v Forbes, No 343630, ___ Mich App ___, ___ NW2d ___ (July 1, 2021)

In *Schaaf v Forbes*, No 343630 (Mich Ct App Aug 6, 2019) (unpublished) ("*Schaaf I*"), the Michigan Court of Appeals ruled that a trust *may* hold land as a joint tenant with right of survivorship. In *Schaaf v Forbes,* 506 Mich 948, 949 NW2d 726 (2020) *("Schaaf II"),* the Michigan Supreme Court vacated the Court of Appeals' ruling and remanded the case for reconsideration of both a jurisdictional issue and the joint tenancy with right of survivorship issue. In the current case under consideration ("*Schaaf III*"), the Court of Appeals revisited these issues.

At the trial court level, the action had been brought before the *circuit court* to determine ownership interests in real property. The deed in question was executed by a trustee, conveying the parcel in question to both the trustee and the co-owner as joint tenants with rights of survivorship. The circuit court invalidated that deed, on the ground that a trust could *not* own property as a joint tenant with right of survivorship.

The jurisdictional question considered in *Schaaf III* was whether the *circuit court* properly took jurisdiction over the case, or whether the matter fell within the exclusive jurisdiction of the *probate court*. On remand, the Michigan Court of Appeals ruled that the circuit court possessed subject matter jurisdiction over this matter, based on its status as a court of general jurisdiction, as well as its specific statutory authority to hear quiet title and partition actions.

The Probate and Estate Planning Section filed an amicus brief asking the Michigan Supreme Court to reverse *Schaaf I*, and the Michigan Court of Appeals' ruling on the right of survivorship issue in *Schaaf III* looks a lot like the Section's amicus brief. "It has long been recognized that parties holding property as joint tenants with full rights of survivorship hold joint life estates with contingent remainders."[2] "'Life estate' is defined as 'an estate held only for the duration of a specified person's life."[3] "A trust, how-

ever, does not and cannot die. Rather, it terminates only through specifically required actions of a non-biological character." Id. "[L]iteral, physical death of a joint tenant is the key to the law's purpose in having created a joint tenancy with right of survivorship."[4] "The trial court properly concluded that, as a matter of law, a trust may not hold real property as joint tenants with rights of survivorship."[5] Therefore, on remand, the appellate court affirmed the circuit court's ruling.

While the substance of *Schaaf III* is generally to be applauded, footnote 2 gives cause for concern:

> The dissent points out that at common law, a trustee may hold title as a joint tenant. While that may be true, a trustee is different than a trust itself. The powers of a trustee are thus irrelevant for our purposes today.

This footnote expressly draws a distinction between a trust holding title to real property and the trustee of a trust holding title to real property. In reality, of course, there is no factual or legal distinction whatsoever between these two situations, which are substantively identical. If footnote 2 means to suggest that a *trust cannot* hold title to real property as a joint tenant with right of survivorship, but that the *trustee* of a trust *can* hold such title, then footnote 2 is blatantly erroneous and brings us back to the fundamental flaw of *Schaaf I*.

What's next in this case? The non-prevailing party has filed an application for leave to appeal to the Michigan Supreme Court, which has invited an amicus brief from the Probate Section. I expect that the Probate Council will vote to file an amicus brief generally supporting the holding in *Schaaf III* but asking that footnote 2 be corrected or deleted.

In re Guardianship of Orta, 508 Mich 913, 962 NW2d 844 (2021)

MCL 700.5204(2)(b) provides that a probate court may appoint a guardian for a minor child where "[t]he parent or parents permit the minor to *reside* with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent when the petition is filed." (Emphasis added.) The use of the word "reside" makes clear that this statute applies only when the minor child's parent lets the child stay with another person and such stay is intended to be *permanent*. A minor child who is staying with another person *temporarily* cannot be said to be "residing" with such person. Hence, a temporary stay with another person does not support guardianship under this statute.

In *In re Guardianship of Orta*, the probate court erroneously appointed a guardian for minor children, who were temporarily staying with their grandparent. It took five years for the children's indigent mother, who frequently could not afford legal counsel, to regain custody of her children. Eventually the mother found an attorney to represent her, the Michigan Court of Appeals vacated the guardianship in 2020, and the Michigan Supreme Court declined the grandparent's application for leave to appeal in 2021.

Kudos to the attorney who represented the mother in this appeal. All of us should consider taking at least one pro bono case per year to help an indigent party with a meritorious claim.

In re BMGZ, Minor, No 355922, ___ Mich App ___, ___ NW2d ___ (Sept 16, 2021)

Under federal law, Special Immigrant Juvenile ("SIJ") status is a path for resident immigrant children to achieve permanent residency in the U.S. Under 8 USC 1101, there are three requirements for a juvenile immigrant to qualify for SIJ status: (1) The juvenile immigrant has been declared dependent on a juvenile court in U.S. or is in the custody of a state agency; (2) reunification with one or both parents is not viable due to abuse, neglect, or abandonment; and (3) it would not be in best interests of the juvenile immigrant to return to his or her country of origin.

In *BMGZ*, the probate court was asked to determine that the minor qualified for SIJ status, in the context of a stepparent adoption proceed-

ing, brought by the child's mother and stepfather. The adoption petition required identifying, and terminating parental rights of, BMGZ's unknown father in Honduras. As to the SIJ question, the probate court found that the juvenile did not qualify for SIJ status because none of the three elements were established.

On appeal, the Michigan Court of Appeals ruled that the probate court should have deferred ruling on elements 2 and 3 until the child's biological father was identified. However, it was undisputed that the minor was not dependent on any juvenile court or in the custody of any state agency, so the petitioners could not establish element 1, which made it impossible for the minor to qualify for SIJ status. The Michigan Supreme Court subsequently vacated the Court of Appeals' opinion because the minor turned 18, and the underlying proceeding was dismissed.

***In re Guardianship of Gordon*, No 354646, ___ Mich App ___, ___ NW2d ___ (May 13 2021)**

In *In re Guardianship of Gordon*, the Michigan Court of Appeals considered the appropriate legal standard to decide whether to terminate an adult guardianship.

Rodrick Gordon ("Rodrick") was a deaf and blind man who was found wandering the streets and malnourished. A guardianship petition for Rodrick was filed and granted. One year later, Rodrick petitioned to terminate his guardianship, alleging that he was lucid and that he could not progress in the group home where he had been placed. Applying the "ward's welfare" test, the probate court denied the petition and left the guardianship in place. Rodrick appealed.

The Michigan Court of Appeals ruled that the probate court had applied the wrong legal standard. The "ward's welfare" standard comes from the statute governing minor guardianships (MCL 700.5219(1)) and does not apply to adult guardianships.

MCL 700.5310(2), providing that the ward may petition for an order terminating the guardianship, does not expressly define the standard for termination. However, 700.5310(4) provides that the probate court, in response to a petition to terminate the guardianship, should "follow the same procedures to safeguard the ward's rights as apply to a petition for a guardian's appointment." Furthermore, MCL 700.5306a(q) provides that the ward has the right to require that "proof of incapacity and the need for a guardian be proven by clear and convincing evidence." Therefore, the appellate court concluded that when the ward petitions to terminate the guardianship because it is allegedly no longer necessary, then in order to deny the termination petition, the probate court *must* find by clear and convincing evidence both (1) proof of continued incapacity and (2) proof of continued need for a guardian.

In a footnote, the Michigan Court of Appeals provided practical advice regarding the implementation of this ruling. Where the ward testifies that he/she can live independently and does not need a guardian, such testimony may or may not be credible; the probate court is not required to find such testimony credible. The probate court is free to give weight to medical evidence presented by the guardian that supports a finding of continuing incapacity and an ongoing need for guardianship. While the petitioner is not technically required to offer medical evidence in support of a petition for termination, the ward may have an uphill battle if he/she lacks medical evidence to counter the guardian's medical evidence supporting continuation of the guardianship. The probate court has the power to order the ward to submit to an independent medical examination in relationship to a termination petition. Alternately, the probate court can offer the ward the opportunity to voluntarily undergo an IME to rebut the guardian's medical evidence of continued incapacity.

***Forton v St Clair County Public Guardian*, No 354825, ___ Mich App ___, ___ NW2d ___ (Sept 23, 2021)**

The issue in *Forton v St Clair Cty Pub Guardian* was whether potentially defamatory statements made in connection with a contested probate court proceeding are actionable.

The probate court appointed Lynne Forton ("Lynne") as guardian for "NK." NK was totally incapacitated as the result of mental illness and chronic intoxication. NK lived in a trailer on property owned by Lynne and her husband Leonard Forton ("Leonard").

In the course of the guardianship proceeding, the probate court ordered NK to enter a residential treatment facility for substance abuse. Subsequently, an employee of the treatment facility called a county mental health employee with concerns. NK had said that she performed sex for Leonard for money. Moreover, NK went to Leonard's home every day, consumed alcohol there, and brought alcohol back to the treatment facility. In response, the county mental health employee filed an APS report and reported these concerns to an employee of the public guardianship program.

Next, the county mental health employee petitioned the probate court to modify the guardianship by (1) removing Lynne, and (2) replacing her with a public guardian. After a hearing, the probate court removed Lynne, appointed a public guardian, and ordered no contact between Lynne/Leonard and NK unless the guardian was present.

Subsequently, in circuit court, Leonard sued the county mental health agency and its worker, and the public guardian, alleging intentional infliction of emotional distress, malicious prosecution, abuse of process, negligent infliction of emotional distress, concert of action, and conspiracy. The defendants moved for summary disposition under MCR 2.116(C)(7) (immunity granted by law), which the probate court granted. Leonard appealed.

The Michigan Court of Appeals ruled that the case was governed by Michigan law of quasi-judicial immunity. "Witnesses who testify during the course of judicial proceedings enjoy quasi-judicial immunity."[6] "Statements made during the course of judicial proceedings are absolutely privileged, provided they are relevant, material, or pertinent to the issue being tried."[7]

Applying this law to the case at hand, the appellate court affirmed the probate court's ruling. All of Leonard's claims related to either (1) defendants' statements in the guardianship proceeding, or (2) defendants' actions taken to protect NK while acting as arm of the court. "Such actions were an integral part of the guardianship proceedings."[8] "[Defendants] were absolutely immune from suit under doctrine of quasi-judicial immunity."[9]

So the law of quasi-judicial immunity was able to protect the defendants from legal liability, but not from a frivolous lawsuit. The defendants' statements about Leonard could have been actionable, however, if they had not been "relevant, material, or pertinent to the issue being tried."

***In re Londowski*, No 355635, ___ Mich App ___, ___ NW2d ___ (Feb 17, 2022)**

Does an individual who is the subject of a civil commitment petition have the right to effective assistance of counsel? That was the issue addressed by *Londowski*.

Arline Londowski ("Arline") filed an involuntary mental health treatment petition for her grandson, Chadd Londowski ("Chadd"). Chadd opposed the petition with court-appointed counsel. After an evidentiary hearing, the probate court ordered that Chadd undergo involuntary mental health treatment.

Chadd appealed, claiming that he had been denied the effective assistance of counsel. Chadd alleged that his court-appointed attorney had failed to interview Chadd before the hearing, had failed to cross examine the doctor who testified, had failed to call Arline as a witness, had impeached a friendly witness, and generally had

not advocated for Chadd's position. Bottom line, Chadd felt that his attorney did not take his case seriously.

The Michigan Court of Appeals initially observed that under the Michigan Mental Health Code, the subject of a mental health treatment petition clearly had the *right to counsel*. Whether the subject of such a petition had *the right to effective assistance of counsel* (like criminal defendants) was a separate question and a matter of first impression. The appellate court ultimately determined that the subject of a mental health treatment petition does have the right to effective assistance of counsel.

In this case, however, the record was inadequate to evaluate counsel's effectiveness. Therefore, the case was remanded to the probate court for an evidentiary hearing as to counsel's effectiveness. The appellate court noted that the benchmark for judging any claim of ineffectiveness is whether counsel's conduct so undermined the proper functioning of the process that it cannot be relied upon to have produced a just result. This standard has two components. First, the client must show that counsel's performance was deficient under an objective standard of reasonableness; this requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by due process. Second, the client must show prejudice by demonstrating that counsel's errors were so serious as to deprive the client of a fair hearing with a reliable result.

This decision represents a new basis for challenging outcome of involuntary commitment hearings.

In the *Matter of Moriconi*, No 356037, ___ Mich App ___, ___ NW2d ___ (June 10, 2021)

The *Moriconi* case considered whether the subject of an involuntary mental health treatment petition may request deferral of the hearing at the hearing.

By way of background, when a petition for involuntary mental health treatment is filed, the subject of the petition is typically hospitalized, pending the hearing on the petition. Before the hearing, the Michigan Mental Health Code requires that a meeting be held between the subject of the petition and certain designated parties (including treating doctor, facility representative, community mental health representative, etc.). This meeting is known as the "deferral meeting." At the deferral meeting, the subject of the petition is required to be formally advised of the proposed course of treatment, as well as the subject's right to defer the hearing on the petition by voluntarily complying with the treatment plan. If the patient elects to defer the hearing, then the patient is supposed to sign a SCAO form (entitled "Request to Defer Hearing on Commitment") and file same with the probate court.

In this case, an involuntary treatment petition was filed for Ann Marie Moriconi ("Ann"). Ann was hospitalized pending the hearing. At the start of the hearing on the petition, Ann clearly indicated that she wanted to defer the hearing and cooperate with the treatment plan. The probate court responded that Ann could not defer the hearing because she had not signed the SCAO form, and it was too late to do so at the start of the hearing. The probate court ran the hearing and ordered Ann to undergo involuntary mental health treatment. Ann appealed.

The Michigan Court of Appeals observed that under the Michigan Mental Health Code, it is mandatory that the deferral meeting be held before the hearing on petition occurs. Here, there was no evidence in record that deferral meeting was held; in fact, Ann said it wasn't held. Ann's comments should have put the probate court on notice that the deferral meeting had not been held.

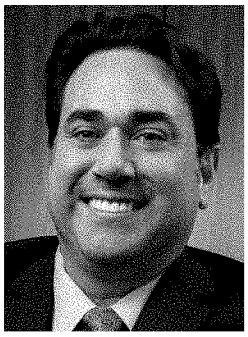
Under the Mental Health Code, there is no deadline for filing the deferral request, so there was no reason why Ann could not file the deferral request do it at the beginning of the hearing. The procedures of the Mental Health Code are designed to guarantee due process, and whenever such procedures are not followed, due

process concerns necessarily arise. Therefore, the appellate court ruled that the probate court abused its discretion by disregarding Ann's request to defer and proceeding with the hearing.

That concludes this year's caselaw update; be careful out there.

Notes

1. No 352026 at *4.
2. No 343630 at *6.
3. *Id*.
4. *Id*.
5. *Id*.
6. No 354646 at *4 (internal quote omitted).
7. *Id*.
8. *Id* at *5.
9. *Id*.



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