

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RAYMOND A. BALOUSEK,
Deceased Inter Vivos Trust.

UNPUBLISHED
January 14, 1997

EUGENE DIXON,

Petitioner-Appellant,

v

No. 185431
Oakland Probate Court
LC No. 94-234294

DAN A. DARNELL, RONALD BALOUSEK,
CHRISTINE DIXON, CAROLE CONLEY, and
DAVID GUARD FINDLING, guardian ad litem
for PATRICK DIXON, a minor,

Respondents-Appellees.

Before: Griffin, P.J., and T. G. Kavanagh* and D. B. Leiber**, JJ.

PER CURIAM.

Petitioner Eugene Dixon appeals as of right an order denying his petition for reformation of Raymond A. Balousek's inter vivos trust. We affirm.

Raymond A. Balousek (settlor) died in 1994, leaving a trust for the benefit of his three children, Ronald R. Balousek, Carole Conley, and Christine Dixon. The trust provides for Ronald and Carole to receive their entire portion of the trust principal outright, but for Christine's share to be held in trust, with only the principal's income distributed directly to her. Christine's two children, Emily and Patrick, are contingent beneficiaries to Christine's share.¹

* Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

** Circuit judge, sitting on the Court of Appeals by assignment.

Although Christine could petition for invasion of the principal in the event that she “or any of her issue should suffer any unusual distress, illness, injury or other untoward circumstances,” the trust states that “no benefit shall be provided to any issue who shall be under the custody of EUGENE DIXON, the ex-husband of CHRISTINE DIXON.” Further, the trust provides that, upon Christine’s death, the principal shall be distributed to her then living issue, “except no distribution of income or principal of any kind shall be made to issue who shall be under the custody of EUGENE DIXON, the ex-husband of CHRISTINE DIXON.”

Petitioner, Christine’s ex-husband, was granted legal custody of Emily and Patrick pursuant to a 1985 judgment of divorce. In January, 1995, petitioner filed a petition in the probate court seeking reformation of the trust. Petitioner claims that the provisions that deny Patrick’s benefits so long as he remains in petitioner’s custody violate public policy by conditioning benefits on the disruption of a family unit. At the time petitioner filed his petition, Emily had attained the age of majority, and Patrick, a minor, was living with Christine under a “temporary placement” order. The probate court denied petitioner’s reformation request on the basis that the issue is unripe because Patrick is living with Christine and the “trust terms have not been violated.”

On appeal, petitioner contends that the probate court erred in refusing to reform the trust. We decline to reach the question, however, because we agree with the lower court that the issue is not ripe for judicial review.

Where no actual controversy exists, the probate court should decline to exercise jurisdiction over the claim. *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978); *Flanders Industries v Michigan*, 203 Mich App 15, 20; 512 NW2d 328 (1993); *Fieger v Comm’r of Ins*, 174 Mich App 467, 470-471; 437 NW2d 271 (1988). Even in actions for declaratory relief, an actual controversy exists only “where a declaratory judgment or decree is *necessary* to guide plaintiff’s future conduct in order to preserve his legal rights.” *Shavers, supra* at 588 (emphasis added); see also *Flanders, supra* at 203; *Fieger, supra* at 470; *AFL-CIO v Civil Service Comm*, 191 Mich App 535, 545; 478 NW2d 722 (1991).

In the present case, the disputed trust provisions have not come into effect. Nor is there any certainty that the provisions at issue will *ever* take effect. On the contrary, the provisions will become operative only if, before Patrick turns eighteen, either Christine dies, or an emergency arises while Patrick is in his father’s custody. As of June, 1995, Patrick, age fourteen, was still in Christine’s temporary custody and there were no foreseen circumstance warranting the distribution of any funds to Patrick. In short, petitioner relies on speculative and remote circumstances in anticipation of a future controversy that may never arise. Our courts should decline jurisdiction for such anticipated or academic issues. Cf. *Shavers, supra* at 589; *In re Phillips*, 305 Mich 636, 640; 9 NW2d 872 (1943); *Sullivan v Michigan State Bd of Dentistry*, 268 Mich 427, 429-430; 256 NW 471 (1934); *Up & Out of Poverty Now Coalition v Michigan*, 210 Mich App 162, 170, n 5; 533 NW2d 339

(1995); *People v Hart*, 129 Mich App 669, 674; 341 NW2d 864 (1983); *People v Turner*, 123 Mich App 600, 604; 332 NW2d 626 (1983).

Thus, because Patrick has not yet been, or it is likely that he will ever be harmed by the disputed trust provisions, there is no justiciable controversy at the present time. The probate court correctly ruled that the case is unripe.

Affirmed.

/s/ Richard Allen Griffin
/s/ Thomas Giles Kavanagh
/s/ Dennis B. Leiber

¹ If Christine were to die before her children turned twenty-one, the children would receive income from principal until they reached the age of twenty-one, at which time they would receive their share of the principal outright.