

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

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In re FIEDLER Estate.

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SANDRA TERRASI, Personal Representative for  
the Estate of GERALDINE C. FIEDLER,

UNPUBLISHED  
March 26, 2013

Appellee,

v

LYNWOOD A. FIEDLER,

No. 310345  
Montmorency Probate Court  
LC No. 11-067861-CZ

Appellant.

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Before: MURRAY, P.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

Appellant, Lynwood A. Fiedler, appeals by right the probate court order that granted summary disposition in favor of appellee, Sandra Terrasi, personal representative for the estate of Geraldine C. Fiedler, and dismissed Fielder's claim with prejudice. We affirm.

Geraldine C. Fiedler died January 25, 2003. Her will identified appellant as the personal representative of her estate; however, he never commenced a probate proceeding to administer the estate. On June 9, 2011, the trial court granted Terrasi's request to be named personal representative of the estate and admitted the will to probate.

In July 2011, appellant filed a claim against the estate requesting reimbursement of \$31,564.28 in insurance, property taxes, electrical services, safe deposit box rentals, dues and assessments he allegedly paid to preserve the assets of the estate. Appellant claimed that he was to be reimbursed for these expenditures pursuant to a verbal contract with Terrasi. On September 2, 2011, Terrasi disallowed the claim in her capacity as personal representative. After a pretrial conference, the trial court sua sponte granted summary disposition in favor of Terrasi, finding that appellant had failed to commence proceedings challenging the disallowance within 63 days, as required by MCL 700.3806. Appellant appeals by right.

A trial court's grant of summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo. *Waltz v Wyse*, 469 Mich 642, 647; 677 NW2d 813 (2004). "In determining whether summary disposition was properly granted under MCR 2.116(C)(7), this Court 'consider[s] all

documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them.” *Id.* at 647-648, quoting *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001); MCR 2.116(G)(5). We review de novo questions of statutory interpretation. *Eastbrook Homes, Inc v Dep’t of Treasury*, 296 Mich App 336, 343; 820 NW2d 242 (2012).

The trial court granted summary disposition in favor of Terrasi pursuant the limitations period contained in MCL 700.3806(1), which provides:

If a claim is presented in the manner described in section 3804 and within the time limit prescribed in section 3803, the personal representative may deliver or mail a notice to a claimant stating that the claim has been disallowed in whole or in part. If, after allowing or disallowing a claim, the personal representative changes a decision concerning the claim, the personal representative shall notify the claimant. The personal representative shall not change a decision disallowing a claim if the time for the claimant to commence a proceeding for allowance expires or if the time to commence a proceeding on the claim expires and the claim is barred. A claim that the personal representative disallows in whole or in part is barred to the extent disallowed unless the claimant commences a proceeding against the personal representative not later than 63 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

Appellant first argues that Terrasi’s notice of affirmative defenses did not assert the 63-day limit of MCL 700.3806(1), despite the fact that Terrasi’s list of affirmative defenses expressly includes any statutes of limitation. We have also stated:

Under MCR 2.401(C)(1)(l), during a pretrial conference, the court may consider any matters that may aid in the disposition of the action. Further, at any time after an action has commenced, if the pleadings show that a party is entitled to judgment as a matter of law, the court must render judgment without delay. MCR 2.116(I)(1). In that regard, if no factual dispute exists, a trial court is required to dismiss an action when a party is entitled to judgment as a matter of law, and a motion for summary disposition is unnecessary. [*In re Baldwin Trust*, 274 Mich App 387, 398-399; 733 NW2d 419 (2007).]

Thus, the trial court had the authority to dismiss appellant’s case, even if Terrasi failed to raise the 63-day limit of MCL 700.3806(1) as an affirmative defense and did not move for summary disposition. Not only did the trial court possess the requisite authority, it was required to dismiss the case if defendant was entitled to judgment as a matter of law. *Id.* at 399.

Appellant next argues that his claim is protected by two provisions of MCL 700.3803(3), which provide in relevant part:

This section does not affect or prevent any of the following:

(a) A proceeding to enforce a mortgage, pledge, or other lien against estate property.

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(c) Collection of compensation for services rendered and reimbursement of expenses advanced by the personal representative or by an attorney, auditor, investment advisor, or other specialized agent or assistant for the personal representative of the estate.

Appellant's argument that his claim is one to enforce an equitable mortgage and is thus protected by MCL 700.3803(3)(a) is without merit. "[E]quitable mortgages are generally found when what appears to be an absolute conveyance on its face was actually intended as a mortgage." *Burkhardt v Bailey*, 260 Mich App 636, 659; 680 NW2d 453 (2004).

Further, equity will create a lien only in those cases where the party entitled thereto has been prevented by fraud, accident, or mistake from securing that to which he was equitable entitled. Thus, merely advancing money to improve real property with an understanding a lien would be given will not create an equitable lien. Moreover, a party that has an adequate remedy at law is not entitled to an equitable lien. [*Eastbrook Homes*, 296 Mich App at 352-353 (citations, brackets, & quotation marks omitted).]

Here, appellant has alleged no agreement, fraud, accident, or mistake that would give rise to an equitable mortgage. He requested the trial court grant him damages in the amount of \$31,564.28 and "further grant an equitable mortgage or equitable mortgages [to] be placed on the real estate of secure payment" of the judgment. Appellant did not seek to enforce a mortgage, pledge, or other lien, as contemplated by MCL 700.3803(3)(a); rather, he merely sought a lien on real property to secure the payment of his requested damages. Also, appellant had an adequate remedy at law. He could have brought suit against the estate within the 63-day limitation period. Appellant's failure to comply with the limitations period does not entitle him to equitable relief.

Appellant's argument that his claim is protected by MCL 700.3803(3)(c) is similarly without merit. Appellant asserts that his claim against the estate is for "expenses advanced by the personal representative," *id.*, but the statute does not apply because appellant was never the personal representative of decedent's estate. To legally become the personal representative of decedent's estate, appellant must (1) have been appointed by the register or by court order, (2) qualify, and (3) be issued letters of administration. MCL 700.3103. While appellant was named personal representative of decedent's estate in her will, he acknowledges that he never commenced probate proceedings, nor was he appointed the personal representative by the court. Terrasi is the personal representative of the estate. Appellant has presented no argument or evidence to the contrary. He similarly makes no argument that he is "an attorney, auditor, investment advisor, or other specialized agent or assistant for the personal representative." MCL 700.3803(3)(c). Thus, this statute does not protect appellant from summary disposition.

Lastly, appellant advances an incoherent and conclusory argument that appears to assert that the trial court erred by relying on the substantive basis for Terrasi's disallowance of appellant's claim. Assuming, *arguendo*, that such reliance would constitute error, the assertion is without basis in fact. The trial court did not "rely" on the reason appellant's claim was disallowed. The operative issues are whether (1) Terrasi disallowed the claim, and (2) the date

of the disallowance. Appellant did not contest that Terrasi disallowed the claim on September 2, 2011, which triggered the 63-day limitations period of MCL 700.3806(1). Because appellant failed to meet the 63-day deadline, the trial court was not required to inquire into the merits of the disallowance. The trial court made no comment on the merits of appellant's case, other than to indicate that it was not timely under MCL 700.3806(1).

In sum, the pertinent facts in this case are undisputed. Terrasi, as personal representative of decedent's estate, disallowed appellant's claim against the estate on September 2, 2011. The same day she mailed appellant notice of the disallowance and notice that the claim would be forever barred unless an action was commenced against the estate not later than 63 days after the mailing or delivery of the notice. Appellant filed a civil action contesting the disallowance on January 6, 2012, 125 days after the disallowance. Appellant's claim was filed in excess of the 63-day limitations period contained in MCL 700.3806(1). Thus, the trial court properly granted summary disposition in favor of Terrasi.

We affirm.

/s/ Christopher M. Murray  
/s/ Jane E. Markey  
/s/ William C. Whitbeck