

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of STEFAN GRANITZ.

PAVOL TKAC, Personal Representative of the
Estate of STEFAN GRANITZ,

Appellant,

v

HELENA MIHALCIKOVA, LYNN M.
MAISION, Successor Personal Representative of
the Estate of STEFAN GRANITZ, JOZEF
SEKAC, PAVOL SEKAC, ANNA SEKACOVA,
RUZENA RUDLAJOVA, and MARTA
POLLAKOVA,

Appellees.

UNPUBLISHED
April 9, 2013

No. 309192
Macomb Probate Court
LC No. 2010-201035-DE

Before: BORRELLO, P.J., and K. F. KELLY and GLEICHER, JJ.

PER CURIAM.

Appellant Pavol Tkac appeals as of right from an order disallowing payment for expenses incurred while he was conservator. He also appeals from the disallowance of payment to Helena Mihalcikova for costs related to decedent's care and funeral expenses. We affirm.

I. BASIC FACTS

The decedent, Stefan Granitz, was declared a legally incapacitated individual on May 10, 2010, and appellant was appointed guardian and special conservator. The decedent had a history of dementia, had suffered a traumatic brain injury, and was very weak when the appointment was made. On May 26, 2010, appellant and the decedent travelled to Slovakia, where the decedent died on June 6 or 7, 2010. On August 6, 2010, appellant submitted a first and final account in the conservator case, claiming \$18,471.55 in caregiver fees for the period between May 10, 2010 and June 6 or 7, 2010. Appellees Jozef Sekac, Pavol Sekac, Anna Sekacova, Ruzena Rudlajova, and Marta Pollakova are some of the decedent's heirs-at-law who reside in Slovakia. The proof of service of appellant's first and final account indicates that notice was sent by first-class mail

with no return receipts to Slovakia on September 21, 2010. On October 6, 2010, the probate court entered an order allowing the first and final account.

Also on October 6, 2010 – the same day that the probate court entered the order allowing the first and final account in the conservator case – appellant was appointed personal representative of decedent’s estate. On October 21, 2010, using his power as personal representative, appellant paid himself the \$18,471.55 from decedent’s estate. Appellant also wired \$11,970.42 for costs of care and funeral expenses to Helena Mihalcikova, a niece of the decedent and one of his heirs-at-law.

On August 15, 2011, appellant was removed as personal representative of the estate upon appellees’ petition. At a hearing on December 6, 2011, the probate court disallowed the \$18,471.55 payment to appellant because it did not comply with MCR 5.307(D), which provides that “[a] claim by a personal representative against the estate for an obligation that arose before the death of the decedent shall only be allowed in a formal proceeding by order of the court.” At a hearing on February 29, 2012, the probate court disallowed \$6,902 of the \$11,970.42 paid to Helena because that amount could not be substantiated with receipts. Appellant now appeals as of right.

II. STANDARDS OF REVIEW

This appeal concerns the construction and applicability of MCL 700.71104(h) and MCR 5.307(D). Questions of statutory interpretation are reviewed de novo. *Hoffman v Boonsiri*, 290 Mich App 34, 39; 801 NW2d 385 (2010). In *McCormick v Carrier*, 487 Mich 180, 191-192; 795 NW2d 517 (2010), our Supreme Court recited the governing principles regarding the interpretation of a statute:

The primary goal of statutory construction is to give effect to the Legislature’s intent. This Court begins by reviewing the language of the statute, and, if the language is clear and unambiguous, it is presumed that the Legislature intended the meaning expressed in the statute. Judicial construction of an unambiguous statute is neither required nor permitted. When reviewing a statute, all non-technical words and phrases shall be construed and understood according to the common and approved usage of the language, MCL 8.3a, and, if a term is not defined in the statute, a court may consult a dictionary to aid it in this goal. A court should consider the plain meaning of a statute’s words and their placement and purpose in the statutory scheme. Where the language used has been subject to judicial interpretation, the legislature is presumed to have used particular words in the sense in which they have been interpreted. [Citations and quotation marks omitted.]

While issues of statutory construction present questions of law that this Court reviews de novo, “appeals from a probate court decision are on the record, not de novo.” *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). Instead, a “trial court’s factual findings are reviewed for clear error, while the court’s dispositional rulings are reviewed for an abuse of discretion.” *Id.*

III. ANALYSIS

A. APPELLANT'S EXPENSES

Appellant first argues that the probate court erred when it disallowed conservator expenses previously approved by court order. We disagree.

MCR 5.307(D) requires that claims “by a personal representative against the estate for an obligation that arose before the death of the decedent shall only be allowed in a formal proceeding by order of the court.” Under the Estates and Protected Individuals Code (EPIC), “formal proceedings” are defined as “proceedings conducted before a judge with notice to interested persons.” MCL 700.1104(h). Appellant speciously attempts to bifurcate the term “formal proceedings” by citing EPIC’s definition of a “proceeding” in MCL 700.1106(r) as including a petition: “‘Proceeding’ includes an application and a petition, and may be an action at law or a suit in equity.” However, EPIC specifically defines “formal proceeding” as a single term having a specific meaning at MCL 700.1104(h), and therefore it is the more specific statute. “When two statutes are *in pari materia* but conflict with one another on a particular issue, the more specific statute must control over the more general statute.” *Donkers v Kovach*, 277 Mich App 366, 371; 745 NW2d 154 (2007).

Appellant was the personal representative at the time he paid himself \$18,471.55 for services rendered before decedent’s death out of the estate’s assets. There was no evidence in the record that a formal proceeding within the meaning of MCR 5.307(D) regarding this payment took place.

Additionally, contrary to appellant’s assertions, the actions taken in the conservator case could not serve as a substitute for complying with MCR 5.307(D). In accordance with MCL 700.1401, appellant served appellees (as well as the Slovak Consulate in Cleveland, Ohio) by first-class mail with notice of the first and final accounting on September 21, 2010. The order allowing accounts was entered on October 6, 2010. The purpose of notice is to give the opposite party an opportunity to be heard. *Kelley v Hanks*, 140 Mich App 816, 823; 366 NW2d 50 (1985). Therefore, notice was not calculated to ensure appellees’ participation. In fact, the Account of Fiduciary Form (SCAO 583) used by appellant specifically provides:

NOTICE TO INTERESTED PERSONS

1. You must bring to the court’s attention any objection you have to this account. The court will not review the account otherwise.
2. You have the right to review proofs of income and disbursements at a time reasonably convenient to the fiduciary and yourself.
3. You may object to all or part of an accounting by filing a written objection with the court before the court allows the account. . . .
4. If an objection is filed and is not otherwise resolved, the court will conduct a hearing on the objection.

5. You must serve the objection on the fiduciary or his/her attorney.

Given that the probate court approved the final account only 19 days after the notices were mailed to appellees in Slovakia by first-class mail and the lack of evidence that a hearing was actually held, we conclude that no “formal hearing” was held, as required by MCR 5.307(D). Accordingly, the probate court did not err when it disallowed appellant’s payment to himself from the estate while he was the personal representative.

B. HELENA’S EXPENSES

Next, appellant argues that the probate court abused its discretion when it disallowed expenses appellant paid to Helena that were unsupported by written receipts. Appellant argues that, as personal representative, he had the discretion to settle claims and that the probate court abused its discretion when it did not conduct an evidentiary hearing to determine the validity of Helena’s expenses that were unsupported by receipts. We disagree.

Appellant’s argument that it was within his discretion to pay Helena is not well received. MCL 700.3813 provides: “If a claim against the estate is presented in the manner provided in section 3804 and it appears to be in the estate’s best interest, the personal representative may settle the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.” The record does not show that Helena ever filed a claim against the estate in any manner allowed by MCL 700.3804. Therefore, it was not within appellant’s discretion as personal representative to wire funds to Helena out of the estate. Despite the lack of any claim by Helena and improper procedure employed by the personal representative, the probate court exercised its discretion and allowed all of the expenses that Helena could substantiate with receipts, which totaled \$5,068. The probate court ordered that the remainder of the amount that was wired to Helena, \$6,902, be offset against her share of the estate as an heir-in-law, and if her share is less than \$6,902, the difference to be surcharged to appellant. The probate court did not abuse its discretion where it disallowed expenses that were not substantiated by written receipts and it declined to hold an evidentiary hearing to hear self-serving testimony by the payees. The probate court’s order was well within the range of reasonable and principled outcomes in this situation.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kirsten Frank Kelly
/s/ Elizabeth L. Gleicher