

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

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In re Estate of JOSEPH M. SILVER, Deceased.

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DEBRA SILVER,

Petitioner-Appellee,

V

KATHLEEN WILSON and MARK S. CONTI,

Respondents-Appellants,

and

THE JOSEPH M. SILVER TRUST,

Respondent-Appellees.

UNPUBLISHED

June 12, 2003

No. 237134

Oakland Probate Court

LC No. 00-275672-DE

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Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Respondents Kathleen Wilson and Mark S. Conti appeal as of right from the probate court's order awarding four paintings to respondent The Joseph M. Silver Trust ("Silver Trust") in partial satisfaction of Mark S. Conti's indebtedness to the Silver Trust. We reverse.

On September 10, 1996, Kathleen Wilson filed a financing statement with the Secretary of State in connection with a security agreement entered into with Conti that covered certain items, including equipment. Subsequently, Conti entered into a series of security agreements with the Silver Trust from May 26, 1998, through January 20, 1999. In these security agreements, Conti granted the Silver Trust a security interest in eleven pieces of artwork. Subsequently, the Silver Trust perfected its security interest by taking possession of the paintings. The probate court, finding that some of the artwork fell under the category of "equipment" in Wilson's security agreement and financing statement, determined that Wilson's filing with the Secretary of State had properly perfected her security interest with respect to seven of the eleven pieces of artwork and that, therefore, her claim for seven of the pieces of

artwork had priority over the claim of the Silver Trust. This finding is not in dispute on appeal. The probate court also determined that the remaining four paintings<sup>1</sup> were consumer goods under the Uniform Commercial Code (UCC), MCL 444.9109, and not equipment, rendering Wilson's security interest unperfected as to these particular works because neither the security agreement nor financing statement, nor any other evidence of Wilson's security interest, had been filed with the register of deeds. Accordingly, the probate court awarded these paintings to the Silver Trust.

Respondents Wilson and Conti first argue that the probate court erred in determining that the four paintings at issue in this case were consumer goods, requiring that Wilson file the security agreement and financing statement with the appropriate register of deeds in accordance with MCL 444.9109. We agree.

"[F]indings of the probate court sitting without a jury will be reversed only where clearly erroneous." *In re Woodworth Trust*, 196 Mich App 326, 328; 492 NW2d 818 (1992); see also *In re Norwood Estate*, 178 Mich App 345, 347; 443 NW2d 798 (1989). "A trial court's findings are considered clearly erroneous where this Court is left with a definite and firm conviction that a mistake has been made." *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997).

"Statutory interpretation is a question of law that is also reviewed de novo." *Liberty Mutual Ins Co v Michigan Catastrophic Claims Ass'n*, 248 Mich App 35, 40; 638 NW2d 155 (2001). Michigan courts must give effect to the intent of the Legislature. *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 631; 563 NW2d 683 (1997). "Where the language of a statute is clear and unambiguous, the courts must apply the statute as written." *Id.*

"Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *Phillips v Jordan*, 241 Mich App 17, 22 n 1; 614 NW2d 183 (2000), citing *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 539; 565 NW2d 828 (1997). If a term is not expressly defined in the statute, it is permissible for this Court to consult dictionary definitions as an aid to construing the term "in accordance with [its] ordinary and generally accepted meaning[]." *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999), citing *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 604; 575 NW2d 751 (1998). Further, "nothing [should] be read into a statute that is not within the manifest intent of the Legislature as [indicated by] the act itself." *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

During the time relevant to these proceedings,<sup>2</sup> MCL 440.9109 provided in pertinent part that goods are:

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<sup>1</sup> The four paintings at issue in this case include: LT 25 by Daniel Maffia, Long Nook Cape Cod by Daniel Maffia, The Barn by Edward Levine, and Cityscape by Edward Levine.

<sup>2</sup> Article 9 of the Uniform Commercial Code has been substantially amended by 2000 PA 348, effective July 1, 2001. See *Ford Credit Canada Leasing, Ltd v DePaul*, 247 Mich App 723, 727 n 3; 637 NW2d 831 (2001). However, "the amendments do not affect an action . . . commenced before the effective date of the amendatory act." *Id.* We note that this case was commenced (continued...)

(1) “consumer goods” if they are used or bought for use primarily for personal, family or household purposes;

(2) “equipment” if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods . . . . [MCL 440.9109.]

Consistent with the statutory language, the determination whether goods are defined as “consumer goods” or “equipment” is dependent upon the primary use of the goods. Because the term “primarily” is not defined in the act, we consult the dictionary to aid in our construction of this term as used in the statute.

*Random House Webster’s College Dictionary* (2001) defines “primarily” as “essentially; chiefly.”<sup>3</sup> Applying this definition to the facts herein, we conclude the trial court erred by finding that Conti maintained the artwork at issue for his own “personal use.” First, Conti testified that the paintings were initially purchased for use in his business. Second, the testimony established that the paintings had been displayed in model homes, condominiums, and in various offices of Conti’s company, but never in Conti’s home. Third, the testimony did not reflect that Conti ever displayed the paintings in his own personal office or that there was any personal, familial, or household use of the four paintings. Accordingly, we are compelled to conclude that the trial court clearly erred in finding that the four paintings at issue were used by Conti “primarily” for personal, family, or household purposes, and hold that the four paintings at issue in this case are appropriately classified, instead, as equipment.

Because we find that the paintings in dispute are equipment rather than consumer goods, we further conclude that Wilson’s security interest was perfected in these four paintings by the filing of her financing statement with the Secretary of State. As such, her claim for these paintings also has priority over the claim of the Silver Trust.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald  
/s/ Kurtis T. Wilder  
/s/ Jessica R. Cooper

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(...continued)

prior to the effective date of the amendatory act and, therefore, this case is controlled by former Article 9 of the Uniform Commercial Code. Accordingly, all statutes listed throughout this opinion are based on former Article 9 and do not relate to revised Article 9.

<sup>3</sup> See also *Zine v Chrysler Corp*, 236 Mich App 261, 272-273 n 6; 600 NW2d 384 (1999), quoting *Business Modeling Techniques, Inc v General Motors Corp*, 123 Misc 2d 605, 607-608; 474 NYS2d 258 (1984).