

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of C. GEORGE WIDDIFIELD,
Deceased.

MARGARET WIDDIFIELD, Personal
Representative of the Estate of C. GEORGE
WIDDIFIELD, a/k/a CHARLES G.
WIDDIFIELD, Deceased,

UNPUBLISHED
June 28, 2005

Petitioner/Counterdefendant-
Appellee,

v

MARGARET IZUTSU,

Respondent/Counterplaintiff-
Appellant.

No. 252678
Oakland Probate Court
LC No. 02-285798-CZ

Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

Margaret Izutsu appeals the probate court's order that compelled her to deliver copies of sermons to Margaret Widdifield. Izutsu also appeals the probate court's order that dismissed her countercomplaint and denied her request for sanctions and costs. We affirm.

I. Subject Matter Jurisdiction

Izutsu maintains that the probate court lacked subject matter jurisdiction over Widdifield's claim. We disagree.¹ A probate court's jurisdiction is defined under MCL 700.1302, which provides, in relevant part:

The court has exclusive legal and equitable jurisdiction of all of the following:

¹ We review claims regarding subject matter jurisdiction de novo. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995); *Haque v Oakland Probate Judge (In re Haque)*, 237 Mich App 295, 299; 602 NW2d 622 (1999).

(a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

(i) The internal affairs of the estate.

(ii) Estate administration, settlement, and distribution.

(iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.

(iv) Construction of a will.

(v) Determination of heirs.

(vi) Determination of death of an accident or disaster victim under section 1208.

MCL 700.1104(b) broadly defines "Estate" as "the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout administration." The statute defines "property" as "anything that might be the subject of ownership, and includes both real and personal property or an interest in real or personal property." MCL 700.1106(q). Moreover, MCL 700.1205 states, in part:

If a person embezzles or wrongfully converts a decedent's property before letters of authority are granted, or refuses, without colorable claim of right, to transfer possession of the decedent's property to the personal representative upon demand, that person is liable in an action brought by the personal representative for the benefit of the estate for double the value of the property embezzled, converted, or withheld.

Subject matter jurisdiction is initially established in the pleadings. *In re Hatcher, supra*, at 437-438. Upon review of the pleadings, we conclude that Widdifield set forth sufficient factual allegations in the complaint to invoke the jurisdiction of the probate court. A dispute involving the correct recipient of the decedent's sermons is a dispute involving title to personal property. See *Nobel v McNerney*, 165 Mich App 586, 596-597; 419 NW2d 424 (1988). Here, the complaint clearly alleges a dispute concerning title to personal property of the estate and, therefore, falls within a permissible area of probate court jurisdiction. Accordingly, we hold that the probate court properly exercised subject matter jurisdiction over this cause of action.

II. Copies

Izutsu complains that the probate court abused its discretion when it ordered her to deliver copies of the sermons to Widdifield after Widdifield voluntarily dismissed the estate's complaint. We disagree.

We review the interpretation and application of court rules de novo as a question of law. *Peters v Gunnell, Inc*, 253 Mich App 211, 225; 655 NW2d 582 (2002). Further, we review a

probate court's substantive rulings for an abuse of discretion. *Thomason v Estate of Weber (In re Estate of Weber)*, 257 Mich App 558, 560; 669 NW2d 288 (2003).²

Contrary to respondent's argument on appeal, the probate court did not grant a motion for summary disposition. Rather, the court entered an order for equitable relief. A probate court has the same authority as a circuit court to determine a matter and enter any appropriate orders to effectuate the court's jurisdiction. See *In re Estate of Humphrey*, 141 Mich App 412, 427; 367 NW2d 873 (1985). Moreover, a probate court has broad discretion to grant the appropriate relief in a case, even absent the demand for such relief in the pleadings. MCR 2.601(A). Here, though the probate court dismissed the original complaint, the court retained jurisdiction over the related countercomplaint, filed by Izutsu. In her countercomplaint, Izutsu made claims regarding the factual allegations and legal position in Widdifield's complaint. The countercomplaint further alleged that Widdifield abused the legal process by filing the complaint. Because Izutsu invoked the court's jurisdiction by filing the countercomplaint and because the same facts and legal theories remained in dispute before the court, we conclude that the probate court's order for Izutsu to deliver copies of the sermons to Widdifield was within the court's jurisdiction and equitable powers.

We further note that the relationship between an attorney and his client is one of agency, and an attorney's assertions and arguments are imputed to the client he represents. *Uniprop, Inc, v Morganroth*, 260 Mich App 442, 446-447; 678 NW2d 638 (2004). Here, the trial court entered the order after Izutsu's attorney assured the court that Izutsu would deliver the copies to Widdifield. Pursuant to that representation, the probate judge orally ordered Izutsu to deliver the copies within ten days. Izutsu did not comply with the instruction and her counsel later retracted his promise to deliver the copies. Thereafter, the probate court entered a written order to compel Izutsu to deliver the copies. Simply put, Izutsu is precluded from now arguing that she is no longer required to send copies because her counsel lacked the authority to make such an assertion. In sum, we conclude that the probate court did not abuse its discretion by entering the order because the court retained jurisdiction over the related counterclaim and because Izutsu's counsel agreed to send the copies.

III. Dismissal of Countercomplaint

We also reject Izutsu's claim that the probate court erred when it dismissed her countercomplaint for sanctions and costs.³ Again, contrary to Izutsu's assertion, the probate

² An abuse of discretion occurs when the ruling "is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Id.*, pp 560-561, quoting *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

³ As noted, we review the interpretation and application of our court rules de novo. *Peters, supra* at 225. We also review a trial court's findings of fact under the clearly erroneous standard. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). A finding is clearly erroneous if, after reviewing the entire record, this Court is left with a "definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations omitted).

court did not enter summary disposition in favor of Widdifield. Rather, the court entered an order that dismissed Izutsu's countercomplaint after Widdifield filed a motion to dismiss. Therefore, at issue is whether the probate court properly entered the order of dismissal. MCR 2.504 provides, in relevant part:

(B) Involuntary Dismissal; Effect.

(2) In an action tried without a jury, after the presentation of the plaintiff's evidence the defendant, without waiving the right to offer evidence if the motion is not granted, may move for dismissal on the ground that on the facts and the law the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in MCR 2.517.

(C) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. This rule applies to the dismissal of a counterclaim, cross-claim, or third-party claim.

Pursuant to MCR 2.517(A)(1) and (3), a trial court, in an action tried without a jury, must make findings of fact and conclusions of law that must be stated on the record or in a written opinion. "Findings of fact regarding matters contested at a bench trial are sufficient if they are 'brief, definite, and pertinent,' and it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation." *Triple E Produce Corp v Mastronardi Produce*, 209 Mich App 165, 176-177; 530 NW2d 772 (1995), citing MCR 2.517(A)(2). Moreover, "[b]revity alone is not fatal to a trial court's opinion." *Birkenshaw v Detroit*, 110 Mich App 500, 509; 313 NW2d 334 (1981).

Here, Widdifield filed a motion to dismiss Izutsu's countercomplaint, and argued that the countercomplaint amounted to a mere objection to the court's dismissal of the original action. Widdifield further claimed that the probate court resolved the issues of (1) whether the filing of Widdifield's complaint was an abuse of process and (2) whether sanctions should be ordered when the complaint was dismissed without prejudice and without costs. However, the probate court denied Widdifield's motion to dismiss. At a subsequent hearing, the trial court heard arguments on Izutsu's counterclaim and Widdifield again requested that the probate court enter an order of dismissal. At the conclusion of the hearing, the court denied Izutsu's request for additional discovery and for sanctions and costs against Widdifield and dismissed the countercomplaint. The probate court stated that "there's no further litigation that was about the Sermons. The issue has been resolved and I will dismiss the counter complaint." The court also stated that, based on the arguments it "heard from both lawyers," it did not believe the original lawsuit was frivolous.

We hold that the probate court acted within its broad discretion to grant or deny relief by dismissing respondent's countercomplaint. Under MCR 2.504(B)(2), the court determined the facts and rendered judgment against respondent. Though brief, the court's findings established that (1) the litigation over the possession of the sermons was complete and (2) Widdifield's lawsuit was not frivolous. These findings more than adequately established the basis for the

court's ultimate decision to dismiss the countercomplaint. See *Triple E Produce Corp, supra*, pp 176-177; *Birkenshaw, supra*, p 509. Accordingly, we conclude that the court did not err by dismissing respondent's countercomplaint or by denying Izutsu's request for sanctions and costs.

Affirmed.

/s/ Henry William Saad
/s/ Brian K. Zahra
/s/ Bill Schuette