

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

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In re Estate of KEITH JOSEPH GRANT.

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MARK A. SATAWA,

Petitioner-Appellant,

v

MARGUERITE D. STRAIN,

Respondent-Appellee,

and

JOSEPH H. GRANT,

Respondent.

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UNPUBLISHED

September 19, 2006

No. 261612

Oakland Probate Court

LC No. 04-293995-PE

Before: Davis, P.J., and Murphy and Schuette, JJ.

PER CURIAM.

Petitioner appeals as of right the probate court order reducing and refunding attorney fees paid by the decedent to petitioner pursuant to an attorney engagement agreement. We reverse and remand.

Petitioner argues that the probate court made various jurisdictional, procedural, and substantive errors in handling this case.

The Michigan Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, grants probate courts both exclusive and concurrent jurisdiction. Pursuant to MCL 700.1302(a), the probate court has exclusive legal and equitable jurisdiction over "[a] matter that relates to the settlement of a deceased individual's estate," including "[t]he internal affairs of the estate," the "administration, settlement, and distribution" of the estate, and the "[d]eclaration of rights that involve an estate, devisee, heir, or fiduciary." MCL 700.1303(1) provides the probate court with concurrent legal and equitable jurisdiction "in regard to an estate of a decedent" to "[d]etermine a property right or interest," to "[a]uthorize partition of property," and to "[h]ear and decide a contract proceeding or action by or against an estate, trust, or ward." A decedent's "estate" is

defined, under MCL 700.1104(b), as including "the property of the decedent." "Property" is defined as "anything that may be the subject of ownership[.]" MCL 700.1106(s).

Clearly, the probate court had jurisdiction under the above-referenced statutory provisions to address matters involving any unused or unearned portion of the \$10,000 retainer, which would constitute property of the decedent, and the probate court could also certainly entertain any dispute regarding the used or earned portion of the \$10,000 retainer in the context of a contract action by the estate against petitioner or simply as a matter of determining a property right or interest. Respondent Strain initiated proceedings in the probate court by filing a petition and order for assignment relative to the \$10,000 retainer fee. MCL 700.3982 allows for summary administrative proceedings for small estates valued at \$15,000 or less. MCL 700.3982 does not contain any specific language precluding the court from resolving a dispute over ownership of property valued under \$15,000 within the confines of summary proceedings. If this matter is viewed as requiring a formal breach of contract action by the decedent's estate, it would appear that a personal representative would need to be appointed to pursue an action<sup>1</sup> consistent with MCR 5.101(C), which addresses pleading and practice in the probate court:

The following actions, must be titled civil actions, commenced by filing a complaint and governed by the rules which are applicable to civil actions in circuit court:

- (1) Any action against another filed by a fiduciary, and
- (2) Any action filed by a claimant after notice that the claim has been disallowed.

Regardless of whether the probate court could handle this dispute through summary proceedings for small estates or whether an appointed personal representative had to file a formal contract complaint and abide by the rules of civil procedure, resolution of the case must hinge on contract principles in light of the controlling attorney engagement agreement. Assuming that the probate court addressed the case correctly from a procedural standpoint, reversal is mandated because contract principles support petitioner's position. Remand to allow respondent to pursue a formal contract action as a personal representative or for further review in the context of summary administrative proceedings is unwarranted and unnecessary, where there is simply no legal basis to order petitioner to refund any of the earned fees under the contract. As a matter of judicial expediency, and under our authority granted by MCR 7.216(A)(7), we reverse the probate court's order and remand for entry of an order denying respondent's request for any fees earned by petitioner as billed under the attorney engagement agreement. Of course, any

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<sup>1</sup> MCL 700.3703(3) provides, "Except as to a proceeding that does not survive the decedent's death, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of another jurisdiction as the decedent had immediately prior to death." MCL 700.3709 provides, in part, that "[t]he personal representative may maintain an action to recover possession of, or to determine the title to, property."

unearned monies remaining in the retainer or trust account go to respondent for appropriate disbursement.

Neither the probate court nor respondent cited any legal authority for the proposition that a client, in the context of a contractual dispute regarding a retainer agreement, is entitled to pay only those attorney fees deemed “reasonable” despite specific contract language calling for the payment of a sum certain or a particular hourly rate, and without any language requiring “reasonable” billing. This is not a case addressing the payment of attorney fees as a sanction under the court rules or statutes.

“In resolving disputes between attorney and client regarding the amount of compensation due under a written fee agreement, courts apply general rules of contract construction.” *Wistrand v Bese*, 23 Mich App 423, 427; 178 NW2d 826 (1970). Courts must enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). The general rule of contract law is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforceable in the courts. *Id.* The Michigan Supreme Court in *Rory* indicated, “When a court abrogates unambiguous contractual provisions based on its own independent assessment of ‘reasonableness,’ the court undermines the parties’ freedom of contract.” *Id.* at 468-469. The *Rory* Court further determined:

A mere judicial assessment of “reasonableness” is an invalid basis upon which to refuse to enforce contractual provisions. Only recognized traditional contract defenses [such as duress, waiver, estoppel, fraud, or unconscionability] may be used to avoid the enforcement of the contract provision. [*Id.* at 470.]

The attorney engagement agreement here provided hourly rates for billing. The engagement agreement emphasized that the payment of the fees provided “no guarantee of any result.” Petitioner noted that decedent concurred with the fees being charged as evidenced by decedent’s letter of November 2, 2003, acknowledging the depleted condition of the \$10,000 retainer and the decedent’s agreement to remit payment for future fees incurred through “installments.” The probate court itself acknowledged that petitioner and his firm “did do the work it claims to have performed,” but found that the amount of research conducted exceeded “the reasonable maximum.” Under a plain reading of the attorney engagement agreement, the probate court was not authorized to alter the unambiguous language of the agreement by adding a “reasonableness” requirement. Moreover, in the context of traditional contract defenses, there is no basis whatsoever to find the existence of procedural or substantive unconscionability. See *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 143-144; 706 NW2d 471 (2005).

The probate court’s order is reversed, and we remand for entry of an order denying respondent’s request for any fees earned by petitioner as billed under the attorney engagement agreement; any unearned fees are to be returned to respondent for appropriate disbursement. We do not retain jurisdiction.

/s/ Alton T. Davis  
/s/ William B. Murphy  
/s/ Bill Schuette