

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of DAVID J. TRUITT, Deceased.

BETH KIENITZ, Personal Representative of the
Estate of DAVID J. TRUITT,

UNPUBLISHED
October 4, 2007

Petitioner-Appellee,

v

CAROL J. EISENZOPH,

No. 269807
Menominee Probate Court
LC No. 05-000153-CZ

Respondent-Appellant.

Before: Jansen, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

This case involves a family dispute over the estate of David J. Truitt, who died intestate on July 30, 2002. Plaintiff and defendant are two of Truitt's four surviving children. Defendant appeals as of right from an order enforcing a settlement agreement she entered with plaintiff. We affirm.

After Truitt's death, an estate proceeding was commenced in the probate court.¹ Plaintiff subsequently brought several district court actions seeking to set aside transfers of property made by Truitt before his death. Apparently, following a consolidated bench trial, the district court indicated that the district court actions would be dismissed with prejudice.

The present action, in which plaintiff alleged that defendant took unfair advantage of a fiduciary relationship with Truitt for the purpose of obtaining title to certain real estate, personal property, cash, and certificates of deposit, was originally filed in circuit court.² Plaintiff eventually brought a motion to have the case transferred to the concurrent jurisdiction of the probate court. Following a hearing on the motion, the circuit court indicated that it was leaning

¹ LC No. 2002-122-DA.

² LC No. 04-011121-CZ.

toward the transfer, but held its decision in abeyance. Defendant thereafter agreed to accept a settlement proposal offered by plaintiff. After the circuit court transferred the matter to probate court, plaintiff sought to enforce the settlement agreement. Defendant objected to the probate court's jurisdiction, as well as the failure of the circuit court to make a finding on jurisdiction before transferring the case to probate court. The probate court concluded that the circuit court had made such a finding, and that the probate court had concurrent jurisdiction.

Defendant first argues that the probate court did not have jurisdiction over this case. We disagree. This Court reviews de novo questions regarding subject matter jurisdiction. *In re Wayne Co Treasurer*, 265 Mich App 285, 290; 698 NW2d 879 (2005). This issue also presents a question of statutory interpretation that is also reviewed de novo on appeal. *Konynenbelt v Flagstar Bank*, 242 Mich App 21, 27; 617 NW2d 706 (2000).

“In general, subject matter jurisdiction has been defined as a court’s power to hear and determine a cause or matter.” *In re Wayne Co Treasurer, supra* at 291. “The jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law.” Const 1963, art 6, § 15. Under MCL 600.841(1)(a), probate courts have jurisdiction over the matters conferred on them by the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.* Under MCL 700.1302, probate courts have exclusive jurisdiction over matters concerning the settlement of a deceased individual’s estate including estate administration, settlement, and distribution. MCL 700.1303 provides, in relevant part, as follows:

(1) In addition to the jurisdiction conferred by section 1302 and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:

(a) Determine a property right or interest.

* * *

(g) Impose a constructive trust.

(h) Hear and decide a claim by or against a fiduciary or trustee for the return of property.

* * *

(2) If the probate court has concurrent jurisdiction of an action or proceeding that is pending in another court, on the motion of a party to the action or proceeding and after a finding and order on the jurisdictional issue, the other court may order removal of the action or proceeding to the probate court. If the action or proceeding is removed to the probate court, the other court shall forward to the probate court the original of all papers in the action or proceeding. After that transfer, the other court shall not hear the action or proceeding, except by appeal or review as provided by law or supreme court rule, and the action or proceeding shall be prosecuted in the probate court as a probate court proceeding.

(3) The underlying purpose and policy of this section is to simplify the disposition of an action or proceeding involving a decedent's, a protected individual's, a ward's, or a trust estate by consolidating the probate and other related actions or proceedings in the probate court.

Defendant contends that this action was for rescission and that the probate court does not have jurisdiction over this equitable claim under the provisions set forth above. Notably, “[t]his Court will not be bound by a party’s choice of labels for its action where to do so would put form over substance.” *In re Mahoney Trust*, 153 Mich App 670, 678; 396 NW2d 494 (1986).

In support of her assertion that the probate court lacked jurisdiction to hear this case, defendant relies on cases interpreting the predecessor to EPIC, the Revised Probate Code, former MCL 700.1 to 700.993. See 1978 PA 642.³ We reject defendant’s reliance on case law interpreting the Revised Probate Code. The concurrent jurisdiction of the probate court has been expanded since the original version of the Revised Probate Code was adopted. Notably, there is no longer a statutory requirement that the matter to be removed to the probate court must be “ancillary” to the settlement of the estate.⁴

³ In *Van Etten v Manufacturers Nat’l Bank of Detroit*, 119 Mich App 277, 287; 326 NW2d 479 (1982), this Court stated as follows:

In enacting the Revised Probate Code, the Legislature did not expressly provide probate courts with general equity jurisdiction whenever a matter involving an equitable issue is ancillary to the settlement of a trust or estate. Rather, MCL 700.22; MSA 27.5022 sets forth particular instances in which the probate court may grant equitable relief, such as authorizing partition of property, authorizing specific performance of a contract contained in a joint or mutual will and requiring an accounting of a fiduciary. Inasmuch as the Revised Probate Code does not furnish the probate court with general equitable powers, it appears that the Legislature did not intend to lodge total equitable jurisdiction in the probate court.

⁴ Prior to amendment and at the time *Van Etten* was decided, the Revised Probate Code provided in pertinent part as follows:

(1) Except where exclusive jurisdiction is given in the state constitution of 1963 or by statute to some other court, or where the probate court is denied jurisdiction by the constitution or statutes of this state, in addition to the jurisdiction conferred by section 21 and other laws, the probate court has concurrent jurisdiction of any of the following when ancillary to the settlement of an estate of a decedent, ward, or trust:

(a) To determine the validity of and resolve claims involving title to real and personal property. [Former MCL 700.22; 1978 PA 642.]

(continued...)

Under EPIC, the purpose of providing concurrent jurisdiction is to simplify estate proceedings “by consolidating the probate and other related actions or proceedings in the probate court.” MCL 700.1303(3). This action, even if classified as one for rescission, involves the determination of property rights and interests. This action also involves claims by a fiduciary for the return of property. Accordingly, the probate court had concurrent jurisdiction over these matters under the plain language of MCL 700.1303(1)(a) and (1)(h). This interpretation comports with the identified purpose of the concurrent jurisdiction statute because it simplifies the disposition of the estate to have all of the actions concerning what is actually in the estate heard in the probate court. Put differently, the circuit court case could properly be removed to the probate court because the circuit court case “related” to the probate of the estate, and the matters to be litigated fell within the general list of subject matters over which the probate court has concurrent jurisdiction under EPIC. MCL 700.1303.

Defendant next asserts that the circuit court order transferring the matter to the probate court was not effective because the circuit court did not first find that jurisdiction in the probate court was proper. MCL 700.1303(2). However, following plaintiff’s motion to dismiss, this Court dismissed defendant’s attempted appeal of right from the circuit court’s order of removal, concluding that the circuit court’s order was not a final order as defined by MCR 7.202(6)(a)(i) and that an appeal from that order was not timely filed in accord with MCR 7.204(A)(1)(a). *Kienitz v Eisenzoph*, unpublished order of the Court of Appeals, entered June 23, 2006 (Docket Nos. 269807 and 270473). This Court ordered that any appeal of the circuit court order had to be by delayed application for leave to appeal. *Id.* Defendant has not filed a delayed application for leave to appeal. Instead, defendant continues to attempt to have the circuit court’s order of removal reversed through the present appeal. Because this Court has ruled that defendant may not appeal the circuit court’s ruling in this manner, we reject defendant’s arguments concerning whether the circuit court improperly removed this action to the probate court, including her argument concerning the circuit court’s failure to strictly comply with the statute before removing this case to the probate court.

Defendant filed in the probate court a motion for reconsideration of the circuit court’s order removing this matter to the probate court. Defendant asserts that while her goal was to get the circuit court to decide the motion, she had to file it with the probate court because the case had already been transferred there. Defendant argues that pursuant to MCR 2.119(f), the probate court could not decide the jurisdictional issue presented in the motion for reconsideration, and

(...continued)

The Revised Probate Code was subsequently amended to provide in relevant part as follows:

(1) In addition to the jurisdiction conferred by section 21 [concerning matters in the exclusive jurisdiction of the probate court] and other laws, the probate court has concurrent legal and equitable jurisdiction of the following matters involving an estate of a decedent, ward, or trust:

(a) To determine property rights and interests. [Former MCL 700.22; 1989 PA 69.]

impliedly suggests the probate court had to transfer the case back to the circuit court for that court to decide the matter.

Defendant could have sought a motion for superintending control or applied for interlocutory leave to appeal the transfer decision to challenge the circuit court's removal of this case to the probate court and the circuit court's refusal to accept defendant's motion for reconsideration. Instead, defendant presented the motion for reconsideration to the probate court. "[E]rror requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence" *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 683-684; 591 NW2d 438 (1998). See also *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998) (citation omitted) ("A defendant should not be allowed to assign error on appeal to something his own counsel deemed proper at trial. To do so would allow a defendant to harbor error as an appellate parachute.").

In any event, defendant's motion for reconsideration centered on her jurisdictional challenge. The probate court could properly determine its own jurisdiction. *Maxwell v Dep't of Environmental Quality*, 264 Mich App 567, 574; 692 NW2d 68 (2004) (stating that all courts should question their jurisdiction sua sponte). Moreover, even if the circuit court should have made a specific finding with regard to the jurisdictional issue, such an error would be harmless because the probate court reached the correct result with regard to the jurisdictional issue. See *Ypsilanti Fire Marshall v Kircher*, 273 Mich App 496, 528-529; 730 NW2d 481 (2007).

Defendant next argues that the probate court was not permitted to resolve issues that had been argued before the circuit court but had not been resolved by that court when this case was removed. This issue was neither raised before nor decided by the trial court. Therefore, it has not been preserved for review. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Moreover, we are unable to identify any issues that were argued before the circuit court that were subsequently resolved by the probate court. Accordingly, we can discern no error in this regard.

Finally, defendant asserts that the probate court erred by enforcing the settlement agreement. "An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts." *Mikoncky v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999), quoting *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). Whether a contract exists and the proper interpretation thereof are questions reviewed de novo on appeal. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003); *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). However, a trial court's ultimate decision on whether to enforce a settlement agreement is reviewed for an abuse of discretion. See *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989).

Defendant's primary argument against enforcement of the settlement agreement relies on her earlier refuted assertion that the probate court lacked jurisdiction to hear this case. Defendant argues that the settlement agreement should not be enforced because of plaintiff's misrepresentation concerning jurisdiction, her own mistake regarding jurisdiction, and the economic duress she faced because of the threatened removal to the probate court. Because defendant's jurisdictional argument fails, defendant's arguments concerning why the settlement agreement should not be enforced that are based on that jurisdictional argument must also fail.

Put differently, plaintiff cannot be said to have misrepresented to defendant that the probate court had concurrent jurisdiction over this matter when the probate court did have concurrent jurisdiction over this matter.

Defendant also asserts that even if the probate court had concurrent jurisdiction, there was no meeting of the minds between the parties, rendering the settlement unenforceable. “In Michigan, the essential elements of a valid contract are (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). “There must be a meeting of the minds on all the material facts in order to form a valid agreement and whether such a meeting of the minds occurred is judged by an objective standard, looking to the express words of the parties and their visible acts. *Groulx, supra* at 491.

A review of the correspondence between the attorneys representing the parties reveals that a meeting of the minds occurred with regard to the essential terms of the agreement. The correspondence states that all litigation was to be terminated with prejudice and without costs in return for a one-time cash payment from defendant to the estate of \$50,000, that the payment was to be divided as indicated in the settlement proposal, and that there would be “mutual releases all around,” including a release by defendant “to release any claim to share in the estate.”

Defendant argues there was no meeting of the minds because a proposed judgment she had submitted in the district court action was not entered, as she believed it would be. Plaintiff contends that entry of a judgment in the district court action was not an essential term of the agreement, and that the district court matters were to be dismissed with prejudice in any event. Considering the scope of this litigation and the wider settlement agreement, whether a judgment was entered in the district court dismissing the actions with prejudice and entitling defendant to \$170 in costs, or whether the district court actions were dismissed with prejudice by settlement and without costs, was not an essential term of the settlement agreement and did not undermine the requisite meeting of the minds.

Defendant also asserts that there was no meeting of the minds concerning whether an appeal could be taken from the district court actions. Defendant argued before the probate court that her understanding of the agreement included such a bar, even though there was no reference to appellate review in the written documents exchanged by the parties. Plaintiff agreed that the settlement proposal contemplated that no appeals would be taken from the district court actions. Because plaintiff agreed with defendant that the settlement contemplated a bar to appellate review, defendant’s assertion that there was no meeting of the minds is without merit.

Thus, looking to the express words of the parties and their visible acts, we conclude there was a meeting of the minds on all the material terms, that a valid agreement was formed, and that the probate court properly enforced the agreement. *Kloian, supra* at 454.

Affirmed.

/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey