

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of JOHN COLLINS,
Deceased.

BARBARA RAMAZETTI,

Petitioner-Appellee,

and

JOHN B. PAYNE, Personal Representative,
RICHARD JOHN RAMAZETTI, DANIEL LUKE
RAMAZETTI, DAVID EUGENE RAMAZETTI,
KAY LYNN BAKER, WALTER KARTH,
NANCY BALK, CAROLYN SCHMITT, JOSEPH
P. BUTTIGLIERI, Successor Personal
Representative, BILL COLOVOS, Successor
Personal Representative,

Appellees,

v

ROMANIAN ORPHANS and ROMANIAN
OLYMPIC TEAM,

Respondents-Appellants.

UNPUBLISHED

February 16, 1999

No. 204282

Wayne Probate Court

LC No. 93-500315 SE

Before: Talbot, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Respondents, Romanian Orphans and Romanian Olympic Team, appeal as of right from the probate court order granting summary disposition in favor of petitioner, Barbara Ramazetti, holding that the will of decedent, John Collins, was invalid. We affirm.

Respondents allege that petitioner was not a party to this litigation as petitioner represented her mother through durable power of attorney, and petitioner's mother died six months after the commencement of proceedings contesting decedent's will. Respondents further allege that petitioner's filing of amended objections four years after the commencement of this will contest is impermissible without a showing of just cause for the delay. We disagree.

MCR 2.202 provides that the lower court may permit substitution of parties in the event of death. The use of the term "may" instead of "shall" in this court rule indicates discretionary rather than mandatory action. *Murphy v Ameritech*, 221 Mich App 591, 600; 561 NW2d 875 (1998). Furthermore, where there is a change in interest, the action may be continued by the original party in their original capacity. MCR 2.202(B). Therefore, petitioner was entitled to maintain this will contest.

In addition, petitioner filed a petition to indicate that the objections to decedent's will would be brought by petitioner as personal representative of her mother's estate on December 7, 1995. It appears that this petition was never ruled on, as the parties entered into a settlement agreement in March 1996. In any event, respondents have failed to demonstrate prejudice as a result of the litigation's continuation based on petitioner's amended objections. MCR 2.202(A)(1)(b).

Furthermore, petitioner's objection to the validity of decedent's will is proper as she was an interested person as daughter of decedent and objected prior to a hearing on the validity of decedent's will. MCL 700.148; MSA 27.5148. Accordingly, the probate court did not err in permitting petitioner to file her amended objections prior to the hearing on the validity of decedent's will.

II

Respondents also assert that Joseph P. Buttiglieri's dual representation of petitioner and representation as personal representative of decedent's estate created a conflict of interest. We disagree.

The conclusion that a conflict of interest exists is a question of fact which is reviewed under the clearly erroneous standard. See *People v Doyle*, 159 Mich App 632, 640-641; 406 NW2d 893 (1987). The burden of proof in challenging the suitability of the appointed personal representative lies with respondents as the challenging party. *In re Hutton*, 191 Mich App 292, 294; 477 NW2d 144 (1991).

MCL 700.507; MSA 27.5507 provides that a fiduciary must file a bond within fifteen days of the order of appointment as fiduciary. There is no evidence in the lower court record that Buttiglieri complied with the filing requirements for becoming personal representative. Therefore, at the time he filed the motion for summary disposition on behalf of petitioner, there was no conflict of interest. Furthermore, the probate court oversaw the proceeding, and respondents were aware of Buttiglieri's appointment as personal representative, but did not object to the appointment. Therefore, there was no conflict of interest. See *In re Skotzke*, 216 Mich App 247, 253; 548 NW2d 695 (1996).

III

Last, respondents assert that the probate court erred in granting summary disposition by resolving a factual issue which was for the jury. “This Court reviews summary disposition decisions de novo to determine whether the prevailing party was entitled to judgment as a matter of law.” *Hughes v PMG Building, Inc*, 227 Mich App 1, 4; 574 NW2d 691 (1997).

In the instant case, witnesses Antoinette McNamara and Tina Adkins could not testify to the signing of three duplicate original wills. Additionally, the affidavit filed by John Payne, personal representative of decedent’s estate until his resignation, did not meet the requirements of MCR 2.119(B) because it did not set forth specific allegations based upon the affiant’s personal knowledge. *Quinto v Cross and Peters Co*, 451 Mich 358, 371-372; 547 NW2d 314 (1996). Accordingly, it was proper that decedent’s will was not admitted to probate, *In re Aronson’s Estate*, 2 Mich App 478, 486; 140 NW2d 546 (1966), and the probate court did not err in granting petitioner’s motion for summary disposition.

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Michael R. Smolenski