

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of LILLIAN D. SCHMITT, Decedent.

CONSTANCE L. JONES, Personal Representative,

Petitioner-Appellee,

UNPUBLISHED
October 26, 1999

v

ALTON R. SCHMITT,

Respondent-Appellant.

No. 208880
Washtenaw Probate Court
LC No. 96-110328 SE

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

PER CURIAM.

Lillian D. Schmitt died intestate on October 27, 1996, leaving two adult children, respondent Alton R. Schmitt and Kay Bausman. Kay Bausman's husband, John Bausman, was appointed personal representative of the estate.¹ Bausman filed a "report of sale or mortgage of real estate and petition for confirmation" regarding a twenty-six acre parcel of vacant land contained in the estate. On December 18, 1997, the trial court issued an "order confirming sale or mortgage of real estate." Respondent appeals as of right pursuant to MCR 5.801(B)(3)(g), arguing that the trial court erred by granting Bausman's petition confirming the sale of the land. We reverse.

This case arises from a dispute between the decedent's two children who stand to inherit through intestate succession from her estate. The real property of the estate consisted of a twenty-six acre parcel of vacant land and a one-and-one-half acre parcel of land containing a house.² Kay Bausman's husband, John Bausman, was appointed temporary personal representative of the estate on January 3, 1997.³

On May 3, 1997, respondent filed a petition requesting that he be appointed personal representative, that he be allowed access to bank records, and that there be no sale or disposition of the estate property. At a July 18, 1997, evidentiary hearing regarding the petition, Bausman testified that it was decedent's wish for him to act as personal representative. He indicated that a lot of animosity existed between his family and respondent's family, and that if appointed permanent personal

representative he would ask for permission for the real property of decedent's estate to be sold and the proceeds divided between the heirs. Patricia Schmitt, respondent's wife, testified that respondent had no objection to the sale of the twenty-six acre parcel of land if he was awarded the parcel of land containing the house as his share of the estate. In the alternative, respondent wanted a "couple acres" of the vacant land. The probate court, concluding that the parties would "be much better off if the assets of the estate were sold and the profits divided so that the parties could get on with their lives," appointed Bausman personal representative of the estate and indicated that it would consider further arguments upon a formal motion to sell the real property.

A "report of sale or mortgage of real estate and petition for confirmation" with respect to the twenty-six acre parcel of vacant land was filed by Bausman on November 14, 1997. Respondent objected to the proposed sale because it did not reserve one acre of the vacant land for him. Respondent also filed a petition to remove Bausman as the personal representative on the ground that respondent had filed an action against Bausman in circuit court regarding Bausman's influence over the decedent and, therefore, a conflict of interest existed between Bausman and the estate.

A second hearing was held on December 18, 1997. Following the hearing, the court granted Bausman's petition and confirmed the sale of the twenty-six acre parcel of vacant land.

Respondent argues that the probate court made an error of law in concluding that MCL 700.635(1)(a); MSA 27.5635(1)(a), authorizes the personal representative of an estate to sell the real property of the estate based solely upon a finding that a sale is in the best interests of all persons interested in the estate. We agree.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Stanaway*, 446 Mich 643, 658; 521 NW2d 557 (1994). The rules governing statutory interpretation require that every word or phrase of a statute be given its commonly accepted meaning. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). The interpretation and application of statutes is a question of law that is reviewed de novo. *Id.*

The sale of real estate by a personal representative is currently governed by MCL 700.635; MSA 27.5635.⁴ Of relevance to this matter is § 635(1)(a), which provides in pertinent part:

(1) Subject to confirmation by the court, real estate, an interest therein, or easement may be sold by a personal representative in any of the following instances:

(a) When it appears that the personal estate of a deceased person in the hands of his personal representative is insufficient to pay the debts of the deceased and the charges of administering his estate, or when it appears that it is for the best interests of all persons interested in the estate that his real estate or some part thereof be sold for that purpose in lieu of disposing of the personal estate.

Section 635(1)(a), by its plain terms, authorizes a personal representative to sell real estate when (1) the personal estate of a deceased person is insufficient to pay the debts of the deceased and

the charges of administering his estate, or (2) it appears that it is for the best interests of all persons interested in the estate that his real estate or some part thereof be sold *for that purpose* in lieu of disposing of the personal estate. The phrase “for that purpose” refers to the first sentence of section (a) -- the purpose being the payment of the debts of the decedent or the charges of administering the estate. Nothing in the language of § 635(1)(a) suggests that the personal representative may sell the real estate solely because a sale is in the best interests of those interested in the estate. Rather, in lieu of selling personal property, the real estate may be sold to pay debts of the deceased if it is in the best interests of those interested in the estate. Here, there is no dispute that the decedent did not have any debts. Consequently, the probate court erred by granting the petition and confirming the sale of the twenty-six acre parcel of vacant land under § 635(1)(a).⁵

In light of our disposition of this issue, we need not consider the remaining issue raised by respondent.

Reversed.

/s/ Michael J. Talbot

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

¹ Constance L. Jones replaced John Bausman as personal representative of the estate after the order was entered in the present matter.

² The one-and-one-half acre parcel of land containing a house is not at issue in this appeal.

³ At the time of decedent’s death, respondent was unable to serve as the personal representative of the estate due to his incarceration for an alcohol-related driving offense.

⁴ The revised probate code, 1978 PA 642, MCL 700.1 to 700.993; MSA 27.5001 to 27.5993, is repealed, effective April 1, 2000. MCL 700.8102; MSA 27.8102.

⁵ Respondent suggests that the probate court granted the petition for sale of the land and confirmed the sale under MCL 700.635(1)(d); MSA 27.5635(1)(d), which permits a personal representative to sell real estate, subject to confirmation by the court, when:

a testator gave real estate to 2 or more persons, or when a person died intestate, and it appears that it is necessary or will be necessary or will be in the best interests of the persons interested in the real estate as devisees or heirs to sell the real estate for the purpose of distribution, if that application under this subdivision is approved in writing by the persons owning a majority interest of the real estate proposed to be sold.

Respondent fails to support this contention, and there is no indication in the record that the sale was confirmed under this subsection. Indeed, this subsection would not authorize the sale of the real estate because respondent clearly did not consent to the sale of the real estate.