

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of LLOYD HOLT, Deceased.

VERONICE A. HOLT, Personal Representative of
the Estate of LLOYD HOLT,

UNPUBLISHED
November 16, 1999

Appellant,

v

ARVIE J. LEE and FIRST OF AMERICA BANK,

No. 200213
Wayne Probate Court
LC No. 91-860921 SE

Appellees.

Before: Cavanagh, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Appellant Veronica Holt appeals as of right from the lower court's order granting conservator First of America's motion to remove her as temporary personal representative of the decedent's Michigan estate. We may reverse the court's decision to remove a personal representative only where that decision constitutes an abuse of discretion. *In re Sumpter Estate*, 166 Mich App 48, 53; 419 NW2d 765 (1988). Because we find no abuse of discretion, we affirm.

Holt argues that she should not have been removed because there were no legally cognizable grounds for her removal. MCL 700.574; MSA 27.5574 governs the removal of a fiduciary and provides, in part, as follows:

If a fiduciary resides out of this state or, after due notice by the court, neglects to render his account and settle the estate according to law or to perform any order of the court or absconds or otherwise becomes unsuitable or incapable to discharge the trust, the court may remove the fiduciary by an order therefor following hearing, notice of which may be given in any manner provided by supreme court rule.¹

Holt argues that mere personal animosity between her and the conservator is not sufficient justification for her removal as personal representative. See *Sumpter, supra* at 56-57; *In re Gerber*

Trust, 117 Mich App 1, 13-14; 323 NW2d 567 (1982). She contends that the basis for her removal was that she challenged the conservator's investment strategies in managing assets from the estate.

However, the probate court's opinion indicates that the court relied on more than mere animosity between Holt and the conservator in deciding to remove Holt as personal representative. The court relied on *Comerica Bank v Adrian*, 179 Mich App 712, 730; 446 NW2d 553 (1989), in which this Court affirmed the probate court's decision to remove a trustee where hostility was combined with other factors that indicated that the hostility would interfere with the administration of the trust. In this case, the court concluded that Holt put her own interests before those of the estate and that this resulted in unwarranted, unauthorized, and excessive discovery requests, as well as needless litigation and excessive administration expenses. The court noted that Holt's challenge to the validity of the decedent's will, which effectively disinherited Holt, had failed. Therefore, the court was concerned that allowing Holt to remain temporary personal representative would foster further unnecessary litigation. The court therefore held that the cumulative effect of these factors warranted Holt's removal.

We conclude that the probate court did not abuse its discretion in removing Holt as temporary personal representative of the decedent's estate. The court's decision does not rest on the mere presence of animosity, hostility, or vexatiousness, but on a combination of factors. The court had a reasonable basis for concluding that failing to remove Holt would interfere with the administration of the estate. In light of the deference we must afford the probate court in this matter, we find no error. In matters involving a court's discretion, we may not substitute our judgment for that of the lower court. *Alken-Ziegler, Inc v Waterbury Headers Corp*, ___ Mich ___; ___ NW2d ___ (Docket No. 111783, issued 10/12/1999), slip op at 8. See also *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959) (An abuse of discretion exists only where the ruling was "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.").

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell

¹ This section is repealed effective April 1, 2000. See 1998 PA 386, § 8102, Eff. April 1, 2000.