STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of the Estate of MICHAEL J. BONKOWSKI, Deceased.

EDITH LECHOWICZ and MARLENE O'DONNELL,

Petitioners-Appellants,

v

RALPH R. BONKOWSKI,

Respondent-Appellee.

UNPUBLISHED
July 11, 2000

No. 211100
Wayne Probate Court
LC No. 96-569881-IE

Before: Bandstra, C.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Petitioners appeal as of right from the probate court's order granting summary disposition under MCR 2.116(C)(10) to respondent on petitioners' objections to the probate of the will of Michael J. Bonkowski, and petitioners' petition to set aside the Michael J. Bonkowski Trust (hereinafter the Trust). We affirm.

It appears that petitioners and their brother, Michael J. Bonkowski, each inherited equal one-third shares of the estate left by Edmund P. Bronkowski, brother of all three.[1] According to petitioners, they relinquished control of their portions of the estate to Michael, with the promise that they would be

[1] Respondent's deceased brother, Edmond J. Bonkowski, was the father of four children, Edmond P. Bonkowski, Michael J. Bonkowski and petitioners. According to petitioners, when Edmond J. Bonkowski died in 1974, his widow, Sophia Bonkowski, placed Edmond P. Bonkowski in charge of the family's finances. Sophia Bonkowski died in 1990. On February 10, 1994, Edmond P. Bonkowski committed suicide.

made beneficiaries on all of Michael's accounts. Petitioners claim that they transferred the assets to Michael because they were concerned about his mental state after Edmond P. Bonkowski's death.[2]

It is undisputed that Michael suffered from severe depression following his brother's suicide. In May 1996, Michael was committed to the Caro State Mental Hospital after he was arrested for smashing windows. He remained in the Caro facility for four weeks and was diagnosed as having Bipolar Disorder.[3] On May 15, 1996, petitioner Lechowicz filed a petition in Wayne County Probate Court for appointment of a guardian and conservator for Michael. Respondent supported that petition. Michael retained an attorney and opposed the petition. The probate court appointed a temporary conservator of Michael's financial affairs.

On July 9, 1996, Michael filed a petition to terminate the temporary conservatorship. Thereafter, the parties agreed to settle the matter by placing Michael's property in a trust. On August 1, 1996, the settlement was placed on the lower court record. Under the settlement, Michael's attorney was to draft a trust, naming Michael and respondent co-trustees and requiring that any withdrawal from the Trust be endorsed by both trustees. The probate court agreed to review the Trust and the temporary conservator's final account on a subsequent hearing date and indicated that, if both were appropriate, the conservatorship would be terminated.

On August 16, 1996, Michael executed a will and trust, leaving all of his property to respondent and naming respondent co-trustee of the Trust. In the event that respondent predeceased Michael, all property was left to petitioners in equal shares. It is undisputed that while both petitioners received copies of the Trust soon after its execution, neither reviewed the document. On September 3, 1996, the temporary conservator filed a final account and no party filed any objection. Thereafter, the probate court entered an order transferring the balance of the funds in the conservatorship estate to the Trust. No party filed any objection to that order.

On November 25, 1996, Michael committed suicide. On December 2, 1996, respondent filed a petition for commencement of proceedings in Wayne County Probate Court. Respondent was named personal representative of Michael's estate. Thereafter, petitioners filed objections to the admission of Michael's will to probate and argued to set aside the Trust. Respondent then filed a motion for summary disposition pursuant to MCR 2.116(C)(10), which the probate court granted on the basis that petitioners' claims were barred by equitable estoppel and the doctrine of election.

On appeal, petitioners first argue that the probate court erred in granting summary disposition because respondent failed to establish the elements of equitable estoppel. We disagree. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

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[2] It appears that petitioners felt it would be good for Michael's self esteem if he were allowed to control the family's assets as other male family members had.

[3] Michael was also seen by Lawrence J. Harzenbeler, M.D., on September 25, 1996. Michael was referred to Dr. Harzenbeler for psychiatric evaluation by Michael's internist. Dr. Harzenbeler diagnosed Michael as having Major Depression with Psychotic Disorders.

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

Additionally, we review equitable determinations de novo. *Macomb Co Prosecutor v Murphy*, 233 Mich App 372, 379; 592 NW2d 745 (1999); *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). Factual findings in equity actions will only be reversed if clearly erroneous. *Forest City Enterprises, Inc, supra* at 67. Clear error is found when an appellate court is left with a definite and firm conviction that a mistake has been made. *Buchanan v City Council of Flint*, 231 Mich App 536, 546; 586 NW2d 573 (1998).

Equitable estoppel may be invoked when "a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party will be prejudiced if the first party is allowed to deny the existence of those facts." *In re Soltis Estate*, 203 Mich App 435, 444; 513 NW2d 148 (1994). Here, petitioners' silence as to the Trust induced Michael to believe that petitioners did not dispute the validity of the distribution of his estate. The Trust was created as a means of settling the conservatorship proceeding. Given that the probate court clearly indicated that it would terminate the temporary conservatorship upon review of the temporary conservator's final account and the Trust, petitioners had an obligation to speak out against the Trust if they had any objection to its funding. Petitioners did not lodge any objection to the Trust prior to Michael's death. Consequently, Michael was justified in believing that petitioners did not challenge the disposition of his estate and would not require him to prove his capacity to execute the Trust or his intent to dispose of the property as outlined by the Trust. Petitioners' present claims prejudice Michael's disposition of his estate since it is impossible for Michael to now prove his capacity. Accordingly, the trial court did not clearly err in finding that the elements of equitable estoppel were satisfied.[4]

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[4] Petitioners' argument that equitable estoppel is inapplicable because Michael's will and the Trust were revocable until Michael's death is meritless. Petitioner's reliance on *In re Soltis Estate* in support of this argument is misguided. In *In re Soltis Estate*, the settlor had amended her trust in 1985 to provide primarily for her son and then for her husband, the petitioner. Then in 1987, the settlor again amended the trust, this time eliminating the petitioner as a beneficiary. After the settlor died, the petitioner sought to set aside the 1987 trust and to make the trust assets a part of the decedent's estate. *In re Soltis Estate, supra* at 436-438. The petitioner argued, in part, that the respondents were equitably estopped from denying him his rights under the 1985 trust. The Court disagreed:

> In this case, the elements of equitable estoppel have not been shown. Petitioner did not justifiably rely on any alleged representations made by decedent because the language of the 1985 trust expressly reserved decedent's right to alter, amend, revoke,

Furthermore, there is no evidence to support petitioners' claim that respondent improperly sought equity with unclean hands. Equitable relief should be barred when there is "any indication of overreaching or unfairness" on the part of the person seeking equity. *Royce v Duthler*, 209 Mich App 682, 688-689; 531 NW2d 817 (1995). It is undisputed that Michael suffered from depression at times following his brother's death and that respondent was intimately involved in Michael's finances. However, there is no indication that respondent's conduct was overreaching or unfair. Although evidence suggests that Michael lacked testamentary capacity at times prior to his death, the only evidence of his competence on the day he executed his will and the Trust suggest that he was cognizant of his finances and of the manner in which his will and the Trust disposed of his assets. Michael's attorney recalled that Michael was alone when he came to execute the documents and clearly indicated that he intended his estate to go to respondent and to petitioners only if respondent should predecease him. Although petitioners rely upon the opinions of doctors that evaluated and treated Michael on occasions prior to and subsequent to the date Michael executed his will and the Trust, petitioners can only speculate as to Michael's mental state on the date the will and the Trust were executed. Speculation and conjecture are insufficient to show a question of fact. *City of Detroit v General Motors Corp*, 233 Mich App 132, 139; 592 NW2d 732 (1998); *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

Given our resolution of the above issues, we need not address petitioners' argument that the probate court erred in determining that petitioners' claims were barred on the doctrine of election.

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

> or terminate the agreement in whole or in part. Petitioner testified that he was aware of this provision and understood that the provision allowed decedent to amend her trust without his consent. [*Id.* at 444.]

As the trial court observed in the case at hand, *In re Soltis Estate* does not hold that the doctrine of equitable estoppel cannot be raised when the document involved is revocable. Rather, *In re Soltis Estate* stands for the proposition that when a beneficiary of a trust knows that the trust can be revoked, the beneficiary cannot establish that he justifiably relied and acted on the belief that his status as beneficiary would not be changed. *Id.* The context in which equitable estoppel is being raised in the case before us is significantly dissimilar. Here, the reliance at issue is on the part of the settlor, i.e., that the validity of the will and the Trust would not be challenged. Michael's ability to revoke the will and the Trust does not impact on the assertion that he justifiably relied and acted on petitioners' failure to raise timely objections to these estate documents.