

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ROY EUGENE FOSTER, Deceased.

PATRICK FOSTER, Personal Representative of
the Estate of ROY EUGENE FOSTER, Deceased,

UNPUBLISHED
June 22, 2001

Petitioner-Appellant,

v

DAVID J. FOSTER,

No. 220381
Wexford Probate Court
LC No. 96-003265-IE

Respondent-Appellee.

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

PER CURIAM.

Petitioner appeals as of right from the probate court's order dismissing his petition to determine ownership of assets. On April 20, 2001, we issued an unpublished opinion per curiam affirming the trial court's decision. Thereafter, on May 3, 2001, on our own motion, we entered an order vacating the April 20 opinion. Upon further consideration, we believe that the trial court erred and we now reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Decedent was a partner in Olson Construction, a company located in Grand Cayman, British West Indies. Pursuant to an agreement executed on January 17, 1996, decedent loaned Olson \$50,000. The money was to be repaid in monthly installments of \$2,000. In a separate document executed on January 17, 1996, Olson and decedent agreed that in the event of decedent's death the loan payments would be made to respondent, decedent's son.

In August 1996, decedent died in Michigan. A dispute arose concerning ownership of assets consisting of the loan payments due from Olson. Petitioner contended that the payments were part of decedent's estate, and filed a petition to determine ownership of the assets. Petitioner sought a determination that the assets belonged to the estate, and an order requiring respondent to repay any sums received from Olson.

* Circuit judge, sitting on the Court of Appeals by assignment.

In a written opinion and order entered after a hearing, the probate court dismissed the petition. Initially, the probate court determined that Michigan's conflict of laws rules required that Grand Cayman law be applied to determine the validity of the assignment agreement and the ownership of the disputed assets. *Chrysler Corp v Skyline Industrial Services, Inc*, 448 Mich 113; 528 NW2d 698 (1995). The court determined that it lacked jurisdiction to resolve the issue of the validity of the assignment agreement.

This case presents a question of law, which we review de novo on appeal. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

Petitioner emphasizes that the probate court has jurisdiction to "determine property rights and interests" related to an estate, MCL 700.22(a); MSA 27.5022(a),¹ and contends that the probate court erred by dismissing the petition to determine ownership of assets. We agree.

The probate court has limited jurisdiction to determine probate matters, and derives its jurisdiction and power from statutory authority. *In re Haque Estate*, 237 Mich App 295, 302; 602 NW2d 622 (1999). As noted above, the probate court is given statutory authority to determine interests in property when ancillary to the settlement of an estate. See also *Noble v McNerney*, 165 Mich App 586, 593; 419 NW2d 424 (1988).

Respondent endeavors to argue that this is a contract action controlled by our decision in *In re Kus Estate*, 136 Mich App 343; 356 NW2d 23 (1984). We disagree. In *Kus*, the estate brought a breach of contract action against the defendant in probate court. This Court held that an estate may not sue for breach of contract in the probate court. Rather, it must bring the action in the court of appropriate jurisdiction as if it were any other plaintiff. *Id.* at 348.

The case at bar, however, does not involve the enforcement of a contract.² Rather, it is an action to determine the ownership of the debt. Over this question, the probate court has jurisdiction. This case would be analogous to *Kus* if there were no assignment of the debt payments to respondent and the estate had sued the Olsons in probate court to seek enforcement of the debt. That, however, is not the case.

Rather, this case is more analogous to *Noble, supra*, wherein this Court concluded that the probate court had jurisdiction to determine the proper recipient of life insurance benefits. The *Noble* Court specifically considered and rejected the applicability of *Kus*, noting the resolution of the appropriate recipient was resolution of an issue of title to personal property. *Noble, supra* at 596-597. Similarly, the case at bar involves resolution of the issue of who has title to the debt (i.e., the Loan Agreement).

For these reasons, the probate court had jurisdiction to resolve the issue of title as between the estate and respondent, as distinguished from the issue of jurisdiction to enforce the contract itself against the Olsons.

¹ MCL 700.22; MSA 27.5022 was repealed effective April 1, 2000, by 1998 PA 386, and replaced by MCL 700.1303; MSA 27.11303, which is substantially similar in content.

² Indeed, petitioner's brief acknowledges that "the owner of the assets will have to seek recovery against the Olsons in the Cayman Islands."

Reversed and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction. Petitioner may tax costs.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Fred L. Borchard