

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of EUGENE T. CAPUZZI, M.D.,
Deceased.

MICHAEL CAPUZZI and EUGENE T.
CAPUZZI, JR,

UNPUBLISHED
February 15, 2002

Plaintiffs-Appellees/Cross-
Appellants,

v

CHRISTINA FISHER,

No. 227750
Cheboygan Probate Court
LC No. 99-011693-SE

Defendant-Appellant/Cross-
Appellee.

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Defendant appeals by right the probate judge's denial of her petition for return of assets and grant of summary disposition to plaintiffs. The probate court held that under MCR 2.116(C)(10) there was no genuine issue of fact concerning whether plaintiff Michael T. Capuzzi, as power of attorney for the decedent, was authorized to complete a sale of stock he began before the decedent's death, but that was incomplete on the decedent's death. Plaintiffs also filed a cross appeal of the probate court's minimal award of costs to plaintiffs. We reverse and remand.

The first issue on appeal is whether a transfer of stocks made under a power of attorney (POA) should be completed when the principal dies after the request for transfer is made but before the transfer is actually accomplished. 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). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim and is reviewed to determine whether the affidavits, pleadings, depositions, or any other documentary evidence establish a genuine issue of material fact to warrant a trial. *Spiek, supra* at 337. This Court will give the nonmoving party the benefit of all reasonable inferences when determining whether summary disposition is appropriate. *Betrand v Alan Ford, Inc.*, 449 Mich 606, 615; 537 NW2d 185 (1995). However, review of estate petitions requires the abuse of discretion standard. *In re Rice Estate*, 138 Mich App 261, 269-270; 360 NW2d 587 (1984).

The first step in the analysis of the case at bar is to examine and give effect to the language of the POA at issue. *Crane v Kangas*, 53 Mich App 653, 655; 220 NW2d 172 (1974). Although the document in the present case is general, even under a strict construction, it did authorize Michael to “transfer . . . any . . . stock,” indicating the decedent’s intent. *Id.*; *Muller v Bank of America*, 28 Kan App 2d 136, 139; 12 P3d 899 (2000) (citing the Uniform Durable Power of Attorney Act). Nevertheless, the POA itself stated that it was only effective simply “until revoked,” also indicating that intent. *Crane, supra* at 655; *Muller, supra* at 139. It is virtually undisputed that death of the principal terminates the agency relationship and the powers it vests immediately. Restatement Agency, 2d, § 120(1), see also comment (a), and illustration (1). POA issues may be resolved using agency law, and death of a principal automatically terminates the POA. *Vanderwall v Midkiff*, 166 Mich App 668, 677-678; 421 NW2d 263 (1988), appeal after remand on other grounds 186 Mich App 191; 463 NW2d 219 (1990).

Michael sent the facsimile requesting the transfer at issue on August 10, clearly before the decedent (the principal) died on August 14. Therefore, because it is undisputed that Michael initiated the transfer before the principal’s death, whether Michael knew of the decedent’s death on August 14 is of no consequence. See, generally, *Persinger v Holst*, ___ Mich App ___, ___ NW2d ___ (Docket No. 224635, issued December 4, 2001), slip op 3-4; see also *Vanderwall, supra* at 678, MCL 700.5504(1), 700.5505, and ULA § 4(a)-504, § 5-505; see, generally, *Persinger, supra* at slip op 3-4.

If the proposed stock transfer had been completed before the decedent died, it would have been valid. *Henritzy v General Electric Co*, 182 Mich App 1, 11; 451 NW2d 558 (1990). However, if the transaction was actually being conducted precisely when the decedent died, the authority to conduct the transfer under the POA was revoked. 2A CJS, § 137, pp 757-758, and n 78-80, 82.

Subject to exceptions, the general rule is that revocation of authority is effective immediately upon the principal’s death,[] and the fact that the agent has performed, as authorized, one or several acts of that which was contemplated as a single transaction *does not operate to preserve or keep alive the power until the completion of the transaction*. [*Crow v Day*, 96 SW2d 100 (Tex, 1936); *Brown v Skotland*, 12 ND 445; 97 NW 543 (1903); see also *In re Gibbons’ Will*, 234 App Div 153; 254 NYS 566 (1931).]. . . .

Those cases where the death of the principal occurs intermediate the commencement and the completion of the particular transactions must be distinguished from those situations where the transaction has been substantially completed during the lifetime of the principal [2A CJS, § 137, pp 757-758, and n 78-80, 82, citing *Young v W E Hutton & Co*, 31 NE2d 728 (1936) (emphasis added).]

Plaintiffs are not entitled to the stocks simply because Michael had fully performed to accomplish the transfer. Several acts were required for this one transaction, and the transferor still needed to perform. *Brown, supra*, 97 NW at 544-545. In *Young, supra* at 729-730, the transferee actually received the stocks (the transfer) on the day of the principal’s death, and no evidence could show that the transfer actually occurred after the death, so the transaction was

deemed valid. In contrast, the transferor-partnership in the present case specifically stated that it had not made the transfer requested, and because the principal had since died, the transaction could not then be completed. *Young, supra* at 729-730; see also *Brown, supra*, 97 NW at 544-545, and *In re Gibbons' Will, supra* at 154. If the principal had been alive, in the present case, he could have cancelled the transaction, because it was not completed, according to the transferor-partnership. The partnership had to complete its part of the transaction during the decedent's lifetime to make it valid under the law. 2A CJS, § 137, pp 757-758, and n 78-80, 82; *Brown, supra*, 97 NW at 544-545; *Young, supra* at 729-730; *In re Gibbons' Will, supra* at 154.

Therefore, we hold that the better view of agency law as applied to the POA in the present case is that the decedent's POA was revoked on his death, before the transfer was completed, and consequently prohibiting completion. *Vanderwall, supra* at 678. Thus, under de novo review, defendant did show a genuine issue of fact concerning the authorization of the transfer. MCR 2.116(C)(10); *Spiek, supra* at 337. The transferor's statement that the stock transfer was incomplete and consequently unauthorized on the decedent's death is dispositive. 2A CJS, § 137, pp 757-758, and n 78-80, 82; *Young, supra* at 729-730. The partnership was correct in refusing to make the stock transfer and the stock should pass according to the will. As a result, the probate court abused its discretion in ordering the stock transfer to plaintiffs. *In re Rice Estate, supra* at 269-270.

Because of our decision in favor of defendant, we also reverse the trial court's award of costs to plaintiffs. Defendant's action was neither frivolous nor poorly grounded in fact. MCR 2.114(D)-(F); MCL 600.2591. Resolution of the remaining issue raised by plaintiffs' cross appeal is thus unnecessary.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Harold Hood
/s/ David H. Sawyer