

STATE OF MICHIGAN  
COURT OF APPEALS

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LARRY P. MCCOLLUM,

Plaintiff-Appellee,

v

MICHAEL E. TINDALL and TROMBLY  
TINDALL P.C.,

Defendants-Appellants.

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UNPUBLISHED

November 12, 2002

No. 236100

Mecosta Circuit Court

LC No. 00-013881-CK

Before: Owens, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Defendants appeal as of right a default judgment for \$32,500 plus interest and costs entered against them in circuit court pursuant to MCR 2.603 in this action alleging legal malpractice and breach of contract. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

According to the complaint, plaintiff is an heir to the estate of his deceased father, but was not appointed as the personal representative for the estate. He entered into two fee agreements with defendants for services concerning financial restructuring of plaintiff's assets and for legal services relating to the estate, which was probated in Mecosta County Probate Court. For the two matters, plaintiff paid defendants a \$32,500 retainer against which their services were to be billed. Defendants filed a complaint on plaintiff's behalf in Mecosta County Probate Court against the attorneys ("Hosler and Bossenbrook") who had been retained by the personal representative to represent the estate. Plaintiff later instructed defendants to withdraw the complaint and terminated defendants' services. Eventually, the complaint was withdrawn, and defendants withdrew their appearances as counsel. Defendants sent a bill to plaintiff for \$46,599.59 and filed an attorney lien and a petition for order to enforce the lien with the Mecosta Probate Court.<sup>1</sup> Defendants refused plaintiff's request for an accounting of the retainer. Plaintiff then filed this action for breach of contract and legal malpractice in St. Clair Circuit Court. The complaint alleged that defendants breached the terms of the fee agreements by failing to provide monthly statements, by sending a bill with a false summary of hours of services, by charging fees

<sup>1</sup> The probate court terminated defendants' claim of lien. Defendant Trombly Tindall's appeal of the probate court order was dismissed on a jurisdictional basis. *In re McCollum*, unpublished order of the Court of Appeals, entered September 29, 1999 (Docket No. 220680).

for services after the fee agreements had been terminated and by “not providing any services of value to Plaintiff.” The complaint further alleged that defendants’ filing of the complaint against Hosler and Bossenbrook was malpractice because plaintiff lacked standing to bring an action against the attorneys for the estate.

Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(4) or in the alternative, to change venue. Defendants argued that the circuit court lacked subject-matter jurisdiction because plaintiff’s claims fell exclusively within the jurisdiction of the probate court. Defendants relied on *Manning v Amerman*, 229 Mich App 608; 582 NW2d 539 (1998). The circuit court rejected defendants’ position, denied defendants’ motion for summary disposition and denied defendants’ motion for reconsideration. The court granted defendants’ motion to change venue to Mecosta Circuit Court. Defendant Michael Tindall applied for leave to appeal the court’s order denying defendants’ motion. This Court denied the application for failure to persuade the Court of the need for immediate appellate review. *McCollum v Tindall*, unpublished order of the Court of Appeals, entered June 26, 2000 (Docket No. 227133.) Following the denial of the application for leave to appeal, plaintiff was granted a default judgment. Defendant Michael Tindall filed a petition for bankruptcy, resulting in an automatic stay of the proceedings against him pursuant to 11 USC 362. The stay continued until January 25, 2002, when Michael Tindall was granted a discharge. 11 USC 362(c)(2)(C).<sup>2</sup>

In this appeal of the default judgment, defendants again challenge the subject-matter jurisdiction of the circuit court. Defendants argue that the breach of contract and malpractice claims raised are inextricably intertwined with and arise out of the administration of the probate estate. Therefore, according to defendants, the claims fall within the exclusive jurisdiction of the probate court pursuant to MCL 700.21(a)(i) and (ii).

Whether a trial court has subject-matter jurisdiction over a claim is a question of law that this Court reviews de novo. *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000). In this case, whether the circuit court has jurisdiction of plaintiff’s claims requires statutory interpretation, which is also a question of law reviewed de novo on appeal. *Oakland Co Rd Comm’rs v Michigan Property & Casualty Guaranty Ass’n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

Circuit courts are courts of general jurisdiction and have original jurisdiction over all civil claims “except where exclusive jurisdiction is given by the constitution or statute to some other court or where circuit courts are denied jurisdiction by the constitution or statutes of this state.” MCL 600.605; *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999). Under the Revised Probate Code (RPC), MCL 700.1 *et seq.*, which was in effect at the time this action was filed, and the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, which replaced the RPC on April 1, 2000,<sup>3</sup> the probate court had exclusive legal and equitable jurisdiction of matters “relating to the settlement of the estate of a deceased person,” including “[t]he internal affairs of the estate,” and “[e]state

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<sup>2</sup> We express no opinion on the effect of this discharge on the judgment against Michael Tindall at issue in this case.

<sup>3</sup> See MCL 700.8101(2)(b) concerning the applicability of the EPIC to this action.

administration, settlement, and distribution.” Former MCL 700.21(a)(i), (ii); MCL 700.1302(a)(i), (ii). Defendants contend that because plaintiff’s claims fall within these provisions, they were within the exclusive jurisdiction of the probate court, and the default judgment entered in circuit court is void for want of subject-matter jurisdiction.

Defendants analogize the present case to *Manning, supra*, in which this Court held that the plaintiffs’ legal malpractice and intentional infliction of emotional distress claims against the trustee and his attorney were within the exclusive jurisdiction of the probate court. In that case, the plaintiffs were beneficiaries of a trust. They filed an action in circuit court alleging that they suffered emotional distress as a result of the defendants’ negligent acts and omissions and willful breaches of duty in the administration of the trust. The complaint also alleged legal malpractice and claimed that defendant Amerman owed fiduciary duties to the plaintiffs because of a statement he made in probate court purporting to represent them concerning the trust. The complaint alleged that the defendants breached these duties by failing to disclose the detrimental actions of another defendant concerning the administration of the trust. Under the RPC, the probate court had exclusive jurisdiction over “[p]roceedings concerning the . . . administration” of trusts, including, but not limited to proceedings to “[d]etermine any question arising in the administration or distribution of any trust . . . .” Former MCL 700.21(b)(v). This Court concluded that the claims “arose in the administration of a trust,” and were therefore within the exclusive jurisdiction of the probate court. *Id.* 613-614.

We conclude that *Manning, supra*, is distinguishable for two reasons. First, the statutory language concerning the probate court’s jurisdiction with respect to trusts that was at issue in *Manning* is broader than the language concerning estates at issue here. In circumscribing the jurisdiction of the probate court with respect to estates in the RPC and the EPIC, the Legislature did not use the “arising out of” language that was critical to the outcome in *Manning*. Rather, in both the RPC and the EPIC, the Legislature limited the probate court’s jurisdiction with respect to estates to matters “relating to the settlement” of an estate. Former MCL 700.21(a); MCL 700.1302(a). Second, the legal malpractice claim at issue in this case is not analogous to the legal malpractice claim in *Manning*. This legal malpractice action is not based on breaches of duty that occurred in the administration of the estate, which could be analogized to the breaches of fiduciary duties owed by the trustee in *Manning*. Rather, the action here alleges malpractice in the initiation of a legal malpractice action against attorneys involved in administering the estate. Regardless whether the underlying legal malpractice claim against Hosler and Bossenbrook was within the exclusive jurisdiction of the probate court, we agree with the circuit court that this second layer of malpractice is not a matter “relating to the settlement of the estate of a deceased person.” Former MCL 700.21(a); MCL 700.1302(a). See *York v Isabella Bank & Trust*, 146 Mich App 1; 379 NW2d 448 (1985) interpreting an earlier version of MCL 700.21(a).

In summary, we conclude that the present action was properly initiated in circuit court and reject defendants’ contention that the default judgment entered there is void for want of subject-matter jurisdiction.

Affirmed.

/s/ Donald S. Owens  
/s/ Michael J. Talbot  
/s/ Patrick M. Meter