

STATE OF MICHIGAN
COURT OF APPEALS

MARY LEE TOLBERT, Conservator for the
Estate of DONTAI SILKE HUNTER,

Plaintiff-Appellee,

v

ESTATE OF GEORGE HUNTER, JR.,

Defendant-Appellant.

UNPUBLISHED
December 20, 2002

No. 233963
Lapeer Circuit Court
LC No. 99-028420-NI

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Defendant, the estate of George Hunter, Jr., appeals as of right the order denying its motion for summary disposition that was brought pursuant to MCR 2.116(C)(8) and the order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff Mary Lee Tolbert, as her son Dontai Silke Hunter's conservator, sued defendant, Dontai's father's estate, for additional survivor benefits beyond the three years of benefits received from the father's automobile insurer.¹ We reverse.

FACTS

Plaintiff was born on March 17, 1986. His father died in an automobile accident on April 16, 1996. Plaintiff received survivor's loss benefits for three years after the date of the accident pursuant to MCL 500.3108(1) of the no-fault act. Thereafter, plaintiff filed this negligence action against defendant that was premised on the allegation that George Hunter, Jr. negligently caused his own death. Plaintiff sought damages under three separate theories: (1) a parent's common-law duty of support for minor children; (2) a duty of support under the family support act, MCL 552.451 *et seq.*; and (3) the general duty to use care and caution in driving automobiles.

Both parties moved for summary disposition. Defendant argued that George Hunter, Jr. inflicted no actionable injury on plaintiff. Defendant also challenged the circuit court's jurisdiction over this case, arguing that under the Estates and Protected Individuals Code (EPIC),

¹ For ease of reference, the use of the term "plaintiff" hereafter refers to Dontai Silke Hunter.

MCL 700.1302, the probate court was granted exclusive subject matter jurisdiction over settlement of a decedent's estate and declaration of rights that involve an estate.

On January 18, 2001, the trial court denied both motions. However, the court ruled that a parent has a common law duty to provide maintenance and support for a minor child that survives death and that breach of this duty creates a cause of action under MCL 500.3135(c)(3) of the no-fault act. The court also ruled that the family support act, MCL 552.451 *et seq.*, creates a basis for a claim that defendant's insurance policy is a "legacy" under which plaintiff could seek continued child support. The trial court recognized that the probate court has exclusive jurisdiction over settlement of an estate, so limited itself to a declaratory judgment under MCR 2.605.

The trial court denied defendant's motion for reconsideration. The court granted plaintiff's motion for reconsideration and ruled on the single material issue the court left unresolved, "the question of interpreting the ambiguous terms of the parties' insurance contract," which on reconsideration, the court held as a matter of law "to include economic losses as a measure of property damage."

Defendant argues that the circuit court lacked subject matter jurisdiction over this matter because plaintiff's action against his father's estate necessarily involves the settlement of the estate and the rights of the heirs and devisees. Indeed, the trial court acknowledged that the probate court has exclusive jurisdiction over claims against a decedent's estate, but, without explanation, indicated that it would treat "this matter as an action for declaratory judgment under MCR 2.605." Whether the circuit court has jurisdiction over plaintiff's claims is a question of statutory interpretation, which this Court considers de novo. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 344; 578 NW2d 274 (1998).

"Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court . . . " MCL 600.605. The probate court, on the other hand, is a court of limited jurisdiction, deriving all its power from statutes. Const 1963, art IV, § 15; MCL 700.1301; *Manning v Amerman*, 229 Mich App 608, 611; 582 NW2d 539 (1998). The probate court's jurisdiction is established in section 1302 of the Estates and Protected Individuals Code (EPIC), MCL 700.1302, which provides in pertinent part:

The court has exclusive legal and equitable jurisdiction of all of the following:

(a) *A matter that relates to the settlement of a deceased individual's estate*, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

- (i) The internal affairs of the estate.
- (ii) Estate administration, settlement, and distribution.

(iii) *Declaration of rights that involve an estate, devisee, heir, or fiduciary.*

...

* * *

(d) A proceeding to require, hear, or settle the accounts of a fiduciary and to order, upon request of an interested person, instructions or directions to a fiduciary that concern an estate within the court's jurisdiction. [*Id.* (Emphasis added).]

The primary goal of judicial interpretation of statutes is to ascertain the intent of the Legislature. *Frankenmuth Mut Ins v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). The first criterion in determining intent is the specific language of the statute. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). Where the language is unambiguous, the Legislature is presumed to have intended the plain meaning expressed. *Pohutski*, *supra* at 683. In determining whether jurisdiction applies, this Court looks beyond a plaintiff's choice of labels and determines the underlying nature of the plaintiff's claim. *Manning*, *supra* at 608. However, jurisdiction is the right of a court to exercise judicial power over a class of cases, not the particular case before it; therefore, jurisdiction depends on the allegations and not the facts. *Altman v Nelson*, 197 Mich App 467; 495 NW2d 826 (1992).

Plaintiff alleged that his father: (1) owed plaintiff a duty of support under the common law that survives into death; (2) owed plaintiff a duty of support under the family support act, MCL 552.451 *et seq.*, that continues after a parent's death; and (3) owed a duty to use care and caution in driving automobiles, and his breach of this duty was the direct and proximate cause of plaintiff's loss of maintenance and support.

Regarding the first two claims, plaintiff alleged that he had a cause of action against his father's estate arising from his father's parental duty to provide maintenance and support to his minor children and that this duty survives beyond a parent's death. Plaintiff's first two claims of negligence are for his father's breach of a duty while dead, *not* the usual breach of duty that occurred while a person was alive that a plaintiff seeks to enforce against the decedent's estate. Under plaintiff's complaint for these two causes, his father's breach of duty did not commence until three years after his death. *Id.* While plaintiff's cause of action is against his father in theory, because his father is deceased, plaintiff's claim falls against his father's estate. Assuming that postmortem support obligations exist, the courts of this state lack personal jurisdiction over the deceased and must settle with the deceased's estate. Therefore, plaintiff's first two claims of negligence by his deceased father for failure to provide maintenance and support distill into settlement claims against the deceased's estate.

Section 1302 of EPIC, MCL 700.1302, vests the probate court with exclusive legal and equitable jurisdiction of a "matter that relates to the settlement of a deceased individual's estate . . ." EPIC provides straightforward and unambiguous language that applies to this situation, and the application of judicial construction is not necessary or permitted. See *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). When plaintiff's allegations are scrutinized beyond plaintiff's labels, the claims fall within settlement of a decedent's estate and within the exclusive jurisdiction of the probate court. Therefore, the circuit court's grant of summary disposition in

favor of plaintiff on these two claims is void. *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992).

Plaintiff's third claim of negligence is that his father owed a duty to use care and caution in driving automobiles, and his father's breach of this duty was the direct and proximate cause of plaintiff's loss of maintenance and support. This claim is based on the actions of the father while he was alive, but plaintiff seeks to enforce the claim against the father's estate. Therefore, the question is whether the circuit court has subject matter jurisdiction over tort claims against a living person, but now deceased, where any judgment would have to be settled against the decedent's estate.

Plaintiff's claim is against the decedent and necessarily involves the distribution of the decedent's estate and the rights of heirs or devisees. Thus, this case is distinguishable from those cases that hold that a tort claim arising out of circumstances surrounding an estate that does not affect or involve the distribution of the estate and the rights of heirs or devisees is a separate cause of action over which the probate court does not have jurisdiction. See, e.g., *York v Isabella Bank & Trust*, 146 Mich App 1; 379 NW2d 448 (1995) (a plaintiff's claim of intentional infliction of emotional distress by the personal representative of the decedent's estate is not a matter directly related to the settlement of the estate).

The uniqueness of plaintiff's claim also distinguishes it from prior cases. Plaintiff's claim necessarily involves the rights of other heirs or devisees and the obligations of the decedent's estate because plaintiff's claim to support from his deceased father changes or conflicts with the estate distribution specified in EPIC.

"Statutory language should be construed reasonably, keeping in mind the purpose of the statute." *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001). The purpose of EPIC is expressed in MCL 700.1201, which states in part, "This act shall be liberally construed and applied to promote its underlying purposes and policies, which include all of the following: (a) To simplify and clarify the law concerning the affairs of decedents, missing individuals, protected individuals, minors, and legally incapacitated individuals." Allowing an heir's tort claim against a decedent's estate to proceed in circuit court while settlement of the estate proceeds in probate court would not satisfy the purpose of simplifying the law concerning the affairs of decedents or their minor children.

Reversed.²

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper

² Because the circuit court lacked subject matter jurisdiction over this matter, it may not declare the rights and obligations of the parties before it. *Allstate Ins Co v Hayes*, 442 Mich 56, 66; 497 NW2d 743 (1993). Thus, although we agree with defendant that plaintiff failed to state a cause of action under any of his three theories of negligence, we need not address this argument.