STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of RAMON SORIA, Deceased.

CHARLES ROUSSEAU, Personal Representative of the Estate of RAMON SORIA, Deceased, RAYMOND SORIA, and TILLIE DALE,

Appellees,

v

JULIAN SORIA,

Appellant.

UNPUBLISHED
February 24, 2004

No. 242584
Saginaw Probate Court
LC No. 99-107769-DE

Before: Talbot, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Appellant, Julian Soria, appeals as of right from the trial court's order settling and distributing the decedent's estate. We reverse.

On March 30, 2000, Julian Soria filed a petition for commencement of supervised proceedings arising out of the last will and testament of the decedent, his father Ramon G. Soria, who died on July 5, 1999, at the age of 100. There were five children who survived the death, son Julian, son Raymond, and daughters Rosalia Gomez, Bella S. Tafoya, and Tillie Dale.[1] Julian Soria initially acted as the personal representative of the estate. The relationship between the siblings became acrimonious. Julian alleged that siblings Tillie and Raymond had obtained assets of the estate and refused to return them for distribution in accordance with the terms of the will. The provision of the will at issue provided:

IV.

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[1] Throughout the record, the name "Tillie Dale" is repeatedly spelled differently. For example, in the last will and testament of the decedent, the name is spelled "Tillie Dalli." Additionally, "Rosalia Gomez" is also referred to as "Rosalee" and "Bella Tafoya" is referred to as "Belia." We will consistently use "Tillie," "Rosalia" and "Bella" in reference to these siblings because we cannot determine the correct spelling.

> After the payment of all of my funeral expenses, debts, expenses of my last illness and administration of my estate as above mentioned, I hereby give, devise and bequeath my estate in the following manner:
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> **A.** I hereby direct that my house, located at 130 N. 5th Street, Saginaw, Michigan 48601, which is titled in my name and also in my son RAYMOND SORIA's name, be sold by him, and that the proceeds from its sale be divided among my children, living at the time of my decease, in equal parts, share and share alike.
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> **B.** I further direct that (1) my MICHIGAN NATIONAL BANK OF SAGINAW savings account, which is jointly held with TILLIE DALLI [sic], (2) my PUTNAM U.S. GOVERNMENT INCOME TRUST FUND, which is jointly held with RAYMOND SORIA, and (3) my household furniture and furnishings, be divided among my children, living at the time of my decease, in equal parts, share and share alike.
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> **C.** All of the rest, residue and remainder of my estate, of whatever location or description, over which I have power of disposition, or any claims or interest whatsoever, with all right and title, I give and bequeath to my children, living at the time of my decease, in equal parts, share and share alike.

Julian alleged that Tillie and Raymond refused to divide these assets in accordance with the terms of the will because the property was held jointly with the decedent. Julian further alleged that there was a substantial amount of cash at the decedent's home, estimated to be in excess of $80,000 that was removed by Tillie.

Tillie petitioned for removal of Julian as the personal representative of the estate, alleging that he was hostile to other devisees and treated the sisters in a demeaning manner. Tillie requested that she be appointed personal representative of the estate. Julian initially opposed the petition. However, an order entered that provided that Julian agreed to resign as personal representative. On May 3, 2001, Charles Rousseau accepted the court's appointment to act as successor personal representative. On March 21, 2002, the successor personal representative (SPR) filed a report of assets that were included in the estate and subject to distribution in accordance with the last will and testament.[2] The SPR met with the devisee siblings and attempted to negotiate a settlement of the distribution of the assets. On March 26, 2002, the SPR filed a motion to approve settlement.[3] The motion provided that settlement of the suit brought by

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[2] Specifically, the SPR found that: (1) the value of the interest in the home was $4,000, (2) the Putnam fund was valued at $67,727 at the time of death, (3) a certificate of deposit had a value of $56,537 at the time of death, (4) the savings and check accounts were valued at $158,686, and (5) $50,000 in cash money was in the home at the time of death, but was in the custody of the sisters, the majority of it retained by Tillie.

[3] The terms of the settlement provided that Tillie would pay $10,000 to Julian, Bella and Rosalia with no monies paid to Raymond or to the estate. Tillie would disclaim any further interest in the estate and would obtain a release from liability.

Tillie would be settled when she paid $10,000 to Julian, Bella, and Rosalia, with no payments to Raymond or the estate. Additionally Tillie agreed to sign a disclaimer from any further interest in the estate of the decedent. The motion also provided:

> (C) Your Petitioner and this Estate will release Tillie Dale from any and all liability upon all claims heretofore brought against her, including any claim to recover alleged assets of Ramon G. Soria from Tillie Dale or any member of her immediate family; your Petitioner will also sign a release and a stipulation to dismiss the suit, with prejudice and without collection of costs or attorney fees, in order to conclude the litigation;
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> (D) Neither the Estate nor Tillie Dale will make any further claims for reimbursement of expenses, costs, etc., against each other.
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> 4. Your Petitioner is continuing discussions with the counsel for Raymond Soria in regard to settling the suit against Ms. Soria[4] in an amount not less than $1,000.00 and not more than $7,500.00. Your Petitioner seeks approval of a settlement within that range.
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> 5. In your Petitioner's opinion, the settlement of the litigation upon the terms heretofore described is in the best interest of the Estate as well as the best interest of the interested persons.

However, on the date of hearing, the SPR moved to withdraw the petition, stating that a settlement had not been reached. Counsel for Julian objected to any order of settlement by the probate court:

> It is proposed to the Court as a settlement. A settlement among heirs. The R.P.C. [Revised Probate Code] and EPIC [Estates and Protected Individuals Code] thereafter allows heirs among themselves to reach a settlement but it does not allow a settlement to be imposed upon them without some sort of judicial hearing, be it trial, motions for summary disposition, or whatever. There is no settlement. As [counsel for Raymond] referred, there were discussions that if A then B would be an acceptable solution on my client's part, Mr. Julian Soria, he would accept payment of a certain sum of money if and only if other parties accepted either the same or a different sum of money.
>
> I believe that the two persons upon whom his acceptance was conditional Bella and Rosalie [sic] have not accepted this as a settlement and therefore there's no settlement to enforce, and as to the authority of the personal representative, certainly a personal representative can negotiate on behalf of the estate but the estate is the heirs and if those persons for whom the fiduciary is acting say no, I

[4] Because the daughters did not keep their maiden names, it is unknown who is referenced as Ms. Soria. Presumably, this reference is to Tillie because she was the only daughter to file objections and a petition in the action.

> don't understand how the fiduciary, without causing a whole lot of trouble for the fiduciary, can then proceed in the face of contrary instructions from the principal.

In response to that statement, the SPR stated that his understanding was that he was to propose a statement with the assumption that the court would approve it:

> I'd like to say something also. I propose to settle and I think my understanding of it was assuming the Court approved it. I didn't out right settle the case. I don't believe that I out right settled the case. I think I made it clear that I wasn't doing that. I wanted the Court to approve it. I wasn't going to settle the case myself.[5]

The SPR then went on to acknowledge that, at the time he filed the petition for settlement, he did not have a definitive understanding of settlement with regard to *all* of the devisees:

> At the time of March 5, that was before anything was settled, I was under the impression that Julian Soria was going to settle the case. The problem was with Bella. She was hesitant through the whole – right from the beginning and she met with me at my office and she at that point didn't – didn't want to settle either. She was going to let me know later and I filed this and I find out today she does not want to settle along with [Julian] so I just thought it would be best to withdraw the petition.

In response, counsel for Tillie alleged that an agreement had been reached with the SPR, and she demanded enforcement of that agreement. After submission of briefs by the parties, the trial court ruled in a written order:

> That the Successor Personal Representative had the approval and authority to negotiate, settlement and compromise any and all claims in this matter. That authority is found in MCL 700.3715(dd) which confirms the implicit language and thrust of parts 8 and 9 of Article 3 of EPIC. This section only reiterates the authority previously granted an independent personal representative in RPC Section 334(aa), MCLA 700.334(aa), MSA 27.5334 (aa).. "[sic] satisfy and settle claims and distribute the estate as provided by law."
>
> Should the Court have needed to approve such settlement, the Court would have explicitly approved the settlement, and does approve the settlement and approves the powers of the Personal Representative, to settle this matter as set forth in writing and as filed with this Court in the Petition to Approve Settlement.

[5] Indeed, the petition for settlement did not definitely establish a settlement with regard to the payment amount to be made by Raymond and to whom payment was to occur.

> Further the parties were entitled to legally rely on the terms of the Settlement Agreement and no contingencies were created by this Court appointing a Successor Personal Representative.
>
> The Court further finds that this is a full, fair and final settlement, and that the attempts to overturn the settlement reached are merely the result of a division of family members. Personalities and spite against one another which would not allow any type of settlement to be reached under any circumstances without the Court appointing a Successor Personal Representative who was successfully able to negotiate this settlement. These recent attempts to overturn the settlement reached are contrary to the spirit of the settlement and in the Court's opinion are only interjected to further delay and cause personal harm to other members of the Estate.

In a written order, the trial court denied Julian's motion for reconsideration, admonishing him for the late filing of his brief and stating:

> As the Court stated previously, it was the Court's opinion that the attempted and late "change of heart" or denial of their agreement, is nothing but a vindictive and visceral means of the moving party to cause further anathema to this family and disembowel the entire family structure that exists.
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> Without the enforcement of this settlement, every party loses. This Court sent this to a Special Personal Representative to have this matter resolved. That Personal Representative resolved this within the powers granted to him by this Court. Compromise and settlement was [sic] reached based upon the special Personal Representative's negotiations with all parties which stressed to them the alternatives to litigation and the benefits of compromise. Even assuming the Defendant were to win, it would be a nominal win and as Abraham Lincoln indicated, circa 1850, from his "Notes for a Law Lecture";
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> *"The nominal winner is often a real loser – in fees, expenses and a waste of time."*

An appeal was filed by Julian and opposed only by Tillie.

I. STANDARDS OF REVIEW

This case involves issues of contract and statutory construction. The construction and interpretation of a contract presents a question of law that is reviewed de novo. *Bandit Industries, Inc v Hobbs Int'l, Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001). The goal of contract construction is to determine and enforce the parties' intent from the plain language of the contract itself. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). If contract language is clear and unambiguous, its meaning presents a question of law for the courts to determine. *UAW-GM Human Resource Center v KSL Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). The duty to interpret and apply the law is allocated to the courts, not the parties' witnesses. See *Hottman v Hottman*, 226 Mich App 171, 179; 572 NW2d 259

(1997). In *Columbia Associates, LP v Dep't of Treasury*, 250 Mich App 656, 668-669; 649 NW2d 760 (2002), this Court set forth the applicable law governing the settlement of lawsuits:

> This Court has stated that an agreement to settle a pending lawsuit constitutes a contract, and therefore the agreement is governed by legal principles applicable to the interpretation and construction of contracts. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001). A settlement agreement will not be enforced even if it fulfills the requirements of contract principles where the agreement does not additionally satisfy the requirements of MCR 2.507(H). *Michigan Mut, supra* at 484-485. MCR 2.507(H) provides:
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> An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

Issues of statutory construction also present questions of law that are reviewed de novo. *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *In re MCI Telecom Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). This determination is accomplished by examining the plain language of the statute itself. *Id*. If the statutory language is unambiguous, appellate courts presume that the Legislature intended the meaning plainly expressed and further judicial construction is neither permitted nor required. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). To discover legislative intent, provisions of a statute must be read in the context of the entire statute to produce, if possible, a harmonious and consistent whole. *Michigan ex rel Wayne Co Prosecutor v Bennis*, 447 Mich 719, 732; 527 NW2d 483 (1994), aff'd 516 US 42 (1996).

Lastly, we note that the findings of fact by a probate court sitting without a jury will not be reversed unless clearly erroneous. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). A finding is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id*. However, deference will be given to the probate court with regard to matters of credibility in light of the unique vantage point regarding the testimony of the witnesses. *Id*.

II. ESTATES AND PROTECTED INDIVIDUALS CODE [EPIC]

EPIC took effect on April 1, 2000, MCL 700.8101(1), and applied to a proceeding pending in court on that date regardless of the time of the decedent's death. MCL 700.8101(2)(b). However, the former procedure could be made applicable if the court concluded that it should be applied based on the interests of justice or the inability to apply EPIC's procedure. MCL 700.8101(2)(b). The trial court did not make a determination that the former

law should be applied and did, in fact, apply EPIC to the facts of this case. Therefore, EPIC provides the foundation for our review.[6]

A petition may be filed, at any time, for supervised administration of an estate by an interested person or a personal representative. MCL 700.3502(1). The supervised personal representative is responsible to the court and interested persons and "is subject to directions concerning the estate made by the court on its own motion or on motion of an interested person." MCL 700.3501. A supervised personal representative has all the powers of a personal representative, but "shall not exercise the power to make a distribution of the estate without prior court order." MCL 700.3504. The acceptance of appointment as the personal representative results in the submission of personal jurisdiction "in a proceeding relating to the estate that may be instituted by an interested person." MCL 700.3602. "Except as the court otherwise orders, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had if the appointment had not been terminated." MCL 700.3613. MCL 700.3501 sets forth the responsibilities, duties, and powers of a supervised personal representative:

> (1) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the court's continuing authority that extends until entry of an order approving estate distribution and discharging the personal representative or other order terminating the proceedings.
>
> (2) A supervised personal representative is responsible to the court, as well as to the interested persons, and is subject to directions concerning the estate made by the court on its own motion or on the motion of an interested person.
>
> (3) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

A personal representative, when acting reasonably for the benefit of interested persons, may properly "satisfy and settle claims and distribute the estate as provided in this act." See MCL 700.3715(dd); MCL 700.3504.[7] A personal representative is a fiduciary who shall adhere to the standard of care applicable to a trustee. MCL 700.3703(1). The personal representative must use the authority for the best interests of the claimants and successors and has a duty to settle and distribute the estate in accordance with the terms of a probated will. *Id*.

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[6] We note that Tillie does not dispute appellate jurisdiction, but rather challenges Julian's standing to bring this appeal instead of the SPR. This appeal was properly brought by Julian, as a named devisee with an interest in the estate's assets. *In re Miller's Estate*, 274 Mich 190, 194; 264 NW 338 (1936).

[7] A supervised personal representative has "all the powers of a personal representative under this act" subject to the court's orders and oversight. MCL 700.3504.

Although a supervised personal representative has the authority to settle an estate subject to the direction and order of the court, MCL 700.3501, MCL 700.3504, MCL 700.3715(dd), in this case, the trial court's factual finding that a settlement had been reached was clearly erroneous. *Erickson, supra*. The SPR acknowledged that he filed a petition for settlement with knowledge that Julian would agree to settle the case. However, he also knew *at the time he filed the petition* that devisee Bella was hesitant to approve the settlement agreement and would let him know later.[8] After the petition was filed, the SPR definitively learned that she did not want to settle, and consequently, sought to withdraw the petition.[9] Moreover, the petition setting forth the settlement terms did not comport with the requirements of MCR 2.507(H). The only evidence of an agreement to settle the litigation was based on Tillie's conjecture. The SPR did not provide evidence that the terms of the settlement were subscribed by the parties or counsel for the parties. MCR 2.507(H); *Columbia, supra*. Consequently, while the SPR had authority to act to settle claims and distribute the estate, any action in that regard was tempered by the fiduciary obligations owed to interested persons. *Bennis, supra*. Accordingly, the trial court clearly erred in ruling that a settlement agreement had been reached among the parties for the court to approve. *Columbia, supra; Erickson, supra.*[10]

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

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Karen M. Fort Hood

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[8] The trial court concluded that the parties had come to court that morning and changed their minds. The statements by the SPR do not support that conclusion. Moreover, the devisees were repeatedly apprised by the court that settlement was in the best interest of the estate because further acrimony would merely result in a depletion of assets. The parties were clearly aware of the import of failing to reach a settlement.

[9] We note that counsel for Julian alleged that his acceptance was always contingent on the acceptance of others. Irrespective of whether Julian previously agreed to the settlement, it is clear from the statement of the SPR that Bella was an interested person who did not agree to the settlement.

[10] Based on our disposition of this issue, we need not address Julian's remaining issues on appeal. We note also that Tillie alleged that *her* agreement with the SPR was nonetheless binding. However, even if we could conclude that Tillie had a settlement separate and distinct from the other parties, her settlement did not comport with MCR 2.507(H). Moreover, because her settlement impacts the other devisees, the contention is without merit.