

STATE OF MICHIGAN
COURT OF APPEALS

In re ROBERT A. BURCH TRUST.

ROBERT A. BURCH,

Petitioner-Appellant,

v

LINDA KAY CARSON,

Respondent-Appellee.

UNPUBLISHED
February 26, 2004

No. 242285
Livingston Probate Court
LC No. 01-004868-TI

Before: O’Connell, P.J., and Wilder and Murray, JJ.

O’CONNELL, J. (*dissenting*).

I respectfully dissent. I agree that whether EPIC applies should not alter the outcome of this case. Self dealing has always been a strong indicator of malfeasance which, in turn, always justifies discharging a trustee. *Waddell v Waddell*, 335 Mich 498, 508-509, 511; 56 NW2d 257 (1953). EPIC only streamlined the process of finding self dealing by expressly prohibiting respondent’s actions.¹ MCL 700.1214. The majority holds that petitioner’s acquiescence to the lease prevents him from removing her as trustee based on respondent’s use of the lakefront estate. The majority fails to note that the disputed facts it deems irrelevant include respondent’s use of all the meager lease proceeds to keep the house outfitted with material comforts that, of course, inure to her benefit. When one of only two trust properties exclusively benefits the trustee, a court should not shut its eyes to avoid seeing facts that prove self dealing and malfeasance. I would reverse.

/s/ Peter D. O’Connell

¹ Contrary to the majority’s factual finding, the trust agreement does not “expressly authorize” a lease to the trustee.