

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of THOMAS HENRY BOROWY,
Deceased.

PAMELA BOROWY, Personal Representative of
the Estate of THOMAS HENRY BOROWY,
Deceased,

UNPUBLISHED
December 21, 2004

Petitioner-Appellant,

v

JENNIFER DROTT,

No. 249775
Macomb Circuit Court
LC No. 00-167597-DE

Respondent-Appellee,

and

CYNTHIA BOROWY,

Appellee.

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Petitioner appeals as of right the probate court's order declaring respondent the decedent's daughter and heir. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner argues that the probate court erroneously admitted the decedent's statements to third parties, wherein the decedent acknowledged respondent-appellee as his daughter. A trial court's decision to admit evidence is reviewed for an abuse of discretion, but preliminary issues involving questions of law are reviewed de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). We agree that the probate court erred to the extent that it allowed the statements under MRE 803(19). Looking to the analogous federal rule, FRE 803(19), for guidance, *People v Watson*, 245 Mich App 572, 582; 629 NW2d 411 (2001), it is apparent that the statements were not admissible under this rule because they did not pertain to a "reputation" concerning the decedent's blood-relationship among members of a designated group. *Blackburn v United Parcel Service, Inc*, 179 F3d 81 (CA 3, 1999).

But the statements were admissible under MRE 804(b)(4)(A) as statements concerning the decedent's own blood relationship with respondent. Contrary to what petitioner argues, evidence of an actual blood relationship was not a foundational requirement for admitting the decedent's statements. *In re Estate of Egbert*, 105 Mich App 395; 306 NW2d 525 (1981). Because the probate court reached the right result, we affirm its decision to allow the challenged statements. *People v Watson*, 245 Mich App 572, 582; 629 NW2d 411 (2001).

Nor did the probate court abuse its discretion in overruling petitioner's hearsay objection to respondent's testimony concerning property that she received from the decedent and the circumstance of the property transfer. *Lukity, supra*. Respondent's use of the descriptive word "gift" does not demonstrate error because the probate court did not consider that term as a statement to prove the truth of the matter asserted. MRE 801(c). Rather, it considered the circumstances of the property transfer to infer that a gift was intended. *In re Mensinger Estate*, 201 Mich App 290, 291; 506 NW2d 238 (1993). The fact that the decedent's nonverbal conduct supported an inference that he had a donative intent did not render it inadmissible hearsay. "It is well settled that evidence that demonstrates an individual's state of mind will not be precluded by the hearsay rule." *People v Fisher*, 449 Mich 441, 449; 537 NW2d 577 (1995).

Giving due deference to the probate court's superior opportunity to determine the credibility of the witnesses before it, we find no clear err in the probate court's determination that respondent proved a "mutually acknowledged relationship of parent and child" that began before respondent was eighteen years old and continued until the decedent's death, as set forth in former MCL 700.2114(1)(c)(iii) [now MCL 700.2114(1)(b)(iii), as amended by 2004 PA 314]. MCR 2.613(C); *In re Webb H Coe Marital & Residuary Trusts*, 233 Mich App 525, 531; 593 NW2d 190 (1999). Neither the lack of documentary evidence, nor the evidence regarding the decedent's and respondent's lack of contact before his death, precluded the probate court from finding that MCL 700.2114(1)(c)(iii) was proven. As noted by this Court with respect to the former "mutually acknowledged relationship" provision in the former Revised Probate Code, MCL 700.111, "[t]he legislative purpose is accomplished through a showing that both parent and child have acknowledged a biological relationship which neither has disturbed during the course of either's lifetime" *In re Spencer Estate*, 147 Mich App 626, 631; 383 NW2d 266 (1985).

Finally, petitioner's argument regarding the statute of limitations and laches is not properly before us because petitioner has not briefed the summary disposition proceeding or the probate court's decision underlying this claim. The failure to address a necessary issue precludes appellate relief. *Roberts & Sons Contracting, Inc v North Oakland Development Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987). Petitioner's laches argument also lacks citation to supporting authority. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Further, we find no merit to petitioner's claim that the statute of limitations governing circuit court paternity actions under either the common law, *Phinisee v Rogers*, 229 Mich App 547, 556; 582 NW2d 852 (1998), or the paternity act, MCL 700.714, apply to an action to determine heirs under MCL 700.2114(1)(c)(iii).

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens