

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ROBERT ARTHUR VIEWIG,
Deceased.

EDGAR J. DIETRICH, Trustee of the DIETRICH
FAMILY IRREVOCABLE TRUST,

UNPUBLISHED
May 22, 2008

Petitioner-Appellant,

v

No. 276199
Wayne Probate Court
LC No. 2005-687321-DA

HOWARD T. LINDEN, Personal Representative
of the Estate of ROBERT ARTHUR VIEWIG,
Deceased,

Respondent-Appellee,

and

DANIEL KUHNLEIN, Personal Representative of
the Estate of MARY MARGARET BRYAN,
Deceased,

Respondent-Appellee.

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

PER CURIAM.

Petitioner Edgar J. Dietrich, as trustee of the Dietrich Family Irrevocable Trust (Trust), appeals as of right from an order denying his petition for the removal of Howard T. Linden as personal representative of the estate of Robert Arthur Viewig. We affirm.

Before his death, Viewig was employed by the Trust. Following the personal representative's published notice to creditors regarding Viewig's estate, Dietrich filed a statement and proof of claim as an individual. Dietrich first claimed entitlement to \$55,000, the amount of an unpaid loan from Dietrich to Viewig. Dietrich also sought \$52,841.30, the total amount of forged checks that Viewig allegedly cashed from the Trust's bank account. In addition to the statement and proof of claim, Dietrich, as trustee of the Trust, filed a lawsuit for conversion against Viewig's estate to recover the money Viewig received from the forgeries.

An initial inventory calculated Viewig's estate to be worth \$15,986.10. However, Viewig's estate and Dietrich filed a petition and statement of claim against the estate of Mary Margaret Bryan for the distribution of a bequest by Bryan to Viewig for 13 percent of her estate, which exceeded \$1,000,000. The probate court ruled that Bryan's bequest was conditioned upon Viewig's performance as a personal representative of Bryan's estate. Because Viewig died before Bryan's will was substantially administered, the court ruled that Viewig was only entitled to fair and reasonable compensation for the services he actually performed. Linden, on behalf of Viewig's estate, elected not to appeal the probate court's order. This appeal arises out of the denial of Dietrich's petition to remove Linden and appoint a successor personal representative who would appeal the order.

Assuming, for purposes of this opinion, that Dietrich, acting on behalf of the trust, was a creditor of the Viewig estate and could nominate a successor personal representative, see MCL 700.3203(1)(f) and MCL 700.1106(n), we nevertheless find no basis for reversal.

A probate court's decision whether to remove a personal representative is reviewed for an abuse of discretion. *Shoaff v Woods*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007). A court abuses its discretion when it chooses an outcome that lies outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

A "personal representative is a fiduciary of the estate who is charged with settling and distributing the estate. The personal representative must use his authority in the best interest of the estate and in the interests of the parties." *McTaggart v Lindsey*, 202 Mich App 612, 617; 509 NW2d 881 (1993). Upon a petition for removal of a personal representative, the probate court may remove the personal representative if:

(a) Removal is in the best interests of the estate.

(b) It is shown that the personal representative or the person who sought the personal representative's appointment intentionally misrepresented material facts in a proceeding leading to the appointment.

(c) The personal representative did any of the following:

(i) Disregarded a court order.

(ii) Became incapable of discharging the duties of office.

(iii) Mismanaged the estate.

(iv) Failed to perform a duty pertaining to the office. [MCL 700.3611(2).]

Dietrich does not contend that Linden disregarded a court order, mismanaged the estate, misrepresented material facts, or was incapable of discharging or failed to discharge his duties. In fact, Dietrich told the probate court, "We have no dispute with the way . . . Mr. Linden has handled the View[i]g Estate" Dietrich's only claim is that it would be in the best interests

of the estate to remove Linden and appoint a personal representative who would appeal the probate court's order. In denying Dietrich's petition, the probate court opined that there would be no legal basis for a personal representative to appeal the order regarding Bryan's bequest to Viewig. Presumably, if a personal representative chose to pursue such an appeal, the liquidation of Viewig's estate would be delayed and there would be little prospect of success. Indeed, Dietrich, tellingly, does not expend any effort in his appellate brief setting forth the merits of the appeal and explaining *why* an appeal would be in the best interests of the estate. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Indeed, the mere fact that a successor personal representative *could* pursue an appeal does not mean that an appeal would be a prudent course of action. Under the circumstances, Dietrich has not convinced us that the probate court's decision failed to fall within the range of reasonable and principled outcomes. *Maldonado, supra* at 388.

Dietrich also argues that the court should have appointed a public administrator for the estate. This argument is completely undeveloped and has therefore been abandoned. *Peterson Novelties, supra* at 14.

Affirmed.

/s/ Donald S. Owens
/s/ Patrick M. Meter
/s/ Bill Schuette