

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of UPJOHN.

NATIONAL CITY BANK OF THE MIDWEST,
TRUSTEE,

UNPUBLISHED
February 23, 2010

Petitioner-Appellee,

v

No. 278668
Kalamazoo Probate Court
LC No. 1956-020742-TT

PHARMACIA & UPJOHN COMPANY, L.L.C.,

Respondent-Appellant,

and

KALAMAZOO COMMUNITY FOUNDATION,

Respondent-Appellee,

and

ATTORNEY GENERAL/CONSUMER
PROTECTION AND CHARITABLE TRUSTS
DIVISION,

Intervening-Appellee.

Before: Murray, P.J., and Markey and Wilder, JJ.

MURRAY, P.J. (*concurring*).

I concur in the lead opinion reversing the trial court's order and holding that The Upjohn Company continues to exist and function as contemplated by Dr. Upjohn's will. However, rather than concluding that the Kalamazoo Community Foundation and Attorney General are barred by res judicata from raising whether changes to the corporate structure prior to 1962 and 1996 caused the company to no longer exist or function, I would simply hold that the Foundation waived any such argument at the 1996 hearing, see *People v Dobek*, 274 Mich App 58, 65; 732 NW 2d 546 (2007), citing *People v Carter*, 462 Mich 206, 215, 219; 612 NW2d 144 (2000), and

that both the Foundation and the Attorney General are “estopped by laches from now questioning the righteousness of” the prior orders enforcing and upholding the trust. *Sprague v Trustees of Protestant Episcopal Church*, 186 Mich 554, 564; 152 NW 996 (1915). With respect to the assertions that The Upjohn Company ceased to exist or function based on events occurring since 1997, I fully concur in the lead opinion’s rationale and conclusions.

/s/ Christopher M. Murray