

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of DONALD L. CRANE, Deceased.

LILIA CRANE,

Petitioner-Appellee,

v

JACK D. CRANE,

Respondent-Appellant,

and

DONALD M. STREHL, Successor Personal
Representative of the Estate of Donald L. Crane,
Deceased,

Appellee.

Before: JANSEN, P.J., and MURRAY and GLEICHER, JJ.

PER CURIAM.

Respondent Jack D. Crane (respondent) appeals by right the probate court's determination that he lacked legal standing to challenge the validity of the marriage of his late brother, decedent Donald L. Crane (the decedent), to petitioner Lilia Crane (petitioner). For the reasons set forth in this opinion, we affirm.

I

In approximately 2004, the decedent became acquainted with petitioner via the Internet. Petitioner was a resident of the Republic of Moldova. The decedent exchanged e-mails with petitioner throughout 2004 and 2005, and ultimately made plans to travel to Moldova to meet her. In late 2005, petitioner e-mailed the decedent and informed him that she was pregnant with another man's child. Nevertheless, the decedent remained undeterred, and traveled to Moldova to meet petitioner for the first time in March 2006.

The decedent stayed in Moldova for a short time before returning to the United States. He then traveled to Moldova for a second time in May 2006. During his second visit to Moldova, the decedent married petitioner on May 10, 2006. On May 19, 2006, petitioner gave birth to a son, naming him Vladislav Crane. The decedent thereafter returned to the United States, but was apparently unable to obtain visas for petitioner and her son. Consequently, petitioner and her son remained in Moldova.

On September 15, 2007, the decedent died intestate at his home in Macomb County, Michigan. Respondent filed an application for informal probate in the Macomb Probate Court. In his filing, respondent informed the court that the decedent had left no surviving spouse and no children. Respondent was appointed personal representative of the decedent's estate on September 21, 2007.

On November 9, 2007, petitioner filed a petition for removal of the personal representative and for other relief, including a determination of heirs. Petitioner alleged that respondent had knowingly failed to include her name as the surviving spouse and her son's name as the surviving child in his initial filing. Petitioner also alleged that respondent was attempting to deprive her and her son "of their rightful inheritance." Petitioner requested that respondent be removed as personal representative, and asserted that she and her son were the decedent's legal heirs. Specifically, she asserted that she was the decedent's surviving spouse, and that because her son had been born during the marriage, Vladislav was the decedent's surviving child. Petitioner attached copies of a Moldovan marriage certificate and her son's Moldovan birth certificate, both accompanied by a certified translation from Romanian into English. The marriage certificate stated that petitioner had married the decedent in Moldova on May 10, 2006, and had changed her last name to Crane at that time.¹ The birth certificate stated that Vladislav had been born to petitioner in Moldova on May 19, 2006. It listed the decedent as Vladislav's father and petitioner as Vladislav's mother.

Respondent filed objections to the petition on December 10, 2007, challenging the validity of the decedent's marriage to petitioner and contending that Vladislav was not the decedent's biological child. In particular, respondent stated that "[i]t is believed the alleged marriage to Lilia Crane is not valid and thus she is not an heir," and that "[i]t is believed that Vladislav Crane is not [the d]ecedent's child and thus is not an heir." Respondent maintained that, as the decedent's only surviving sibling, he was the decedent's sole legal heir. However, respondent did agree that, in light of his objections to petitioner's petition, it would be appropriate for the probate court to replace him with a disinterested successor personal representative. Thereafter, the probate court appointed Donald M. Strehl as successor personal representative of the estate.

On April 16, 2008, respondent filed objections to the admissibility of the Moldovan marriage certificate and Moldovan birth certificate. Although both documents were accompanied by a certified translation from Romanian into English, respondent argued that

¹ According to the marriage certificate, which is contained in the probate court file, petitioner's maiden name was Lilia Untila.

neither document was “self-authenticated as required for admissibility,” and that no ambassador, consul general, or other consular agent had attested to the genuineness of the signatures of the alleged Moldovan officials that appeared on the two documents.

Respondent then filed notice of his intent to introduce certain documents into evidence, all of which purportedly showed that the decedent was not married to petitioner. First, respondent intended to introduce a “2006-2007 Verification Worksheet,” which the decedent had apparently submitted in an effort to obtain student financial aid from Stonecliffe College. The Verification Worksheet included the decedent’s purported signature and was dated March 6, 2007. On the Verification Worksheet, the question “Were you married as of the day you signed the FAFSA?”² was answered “No.” Second, respondent intended to introduce the decedent’s 2006 state and federal income tax returns. Although the income tax returns, themselves, were electronically filed and therefore not signed, the decedent had signed an “IRS e-file Signature Authorization” on April 16, 2007. Both the state and federal income tax return indicated that the decedent was “Single.” Respondent contended that these documents would prove that the decedent was not truly married and that his alleged marriage to petitioner had been a sham.³

Respondent also filed notice of his intent to rely on the domestic relations law of the Republic of Moldova. Respondent attached English translations of the Moldovan Family Code and Moldovan Civil Status Law, and requested that the probate court take judicial notice of these foreign statutes pursuant to MRE 202(b).

Prior to trial, respondent’s counsel informed the probate court that although he had subpoenaed petitioner, she would not be physically present. As a consequence of petitioner’s absence, respondent’s counsel asked the court to strike her petition. Petitioner’s counsel pointed out that respondent had been fully aware that petitioner would not be able to attend trial. Petitioner’s attorney also suggested that petitioner’s personal presence was strictly unnecessary because all of the documents and other relevant evidence were in the possession of respondent. Respondent’s attorney complained that he would not be able to cross-examine petitioner. But petitioner’s attorney noted that respondent had retained Moldovan counsel, and therefore could have deposed petitioner in Moldova had he truly wanted to question her. After hearing the attorneys’ arguments on this issue, the court denied respondent’s request to dismiss the petition. The court appeared satisfied with the stated reasons for petitioner’s absence, and the matter proceeded to trial.

Petitioner’s counsel moved for admission of the Moldovan marriage certificate and the accompanying certified translation of the marriage certificate into English. He argued that the document was self-authenticating, that it was admissible under the rules of evidence, and that its

² The acronym “FAFSA” stands for Free Application for Federal Student Aid. Students seeking federal student aid for college must complete a FAFSA each year. It appears from the probate court record that the decedent submitted the 2006-2007 Verification Worksheet because he was interested in the possibility of taking online courses from Stonecliffe College.

³ It appears that neither the 2006-2007 Verification Worksheet nor the 2006 income tax returns were ever admitted into evidence.

admission was required by the Hague Convention. Respondent's counsel objected. The probate court noted that the Moldovan marriage certificate was accompanied by an apostille⁴ that appeared to be regular on its face. After reviewing the document and the relevant rules of evidence, the probate court ruled that the Moldovan marriage certificate was admissible. Petitioner's counsel then moved to admit Vladislav's Moldovan birth certificate and the accompanying certified translation of the birth certificate into English. Like the marriage certificate, the probate court ruled that the birth certificate was admissible.

Petitioner's counsel next moved to admit the affidavit of Ron Jacobs, who had traveled to Moldova with the decedent and averred in his affidavit that the decedent had actually married petitioner in the Republic of Moldova on May 10, 2006. Respondent's attorney argued that Jacobs should be required to appear in person, and noted that petitioner had not even subpoenaed him. Petitioner's counsel responded that Jacobs was a resident of Oregon and was currently financially unable to attend trial in Michigan. Petitioner's counsel observed that although the Jacobs affidavit had been executed in Oregon, it had been submitted to the probate court and to respondent more than a year earlier, as an attachment to petitioner's original petition. Petitioner's counsel stated that he did not have the financial resources to fly Jacobs to Michigan for trial, and asked the court to admit the affidavit in lieu of Jacobs's live testimony. Respondent's attorney suggested that Jacobs was not "unavailable" for purposes of MRE 804, and argued that he should be given the opportunity to cross-examine Jacobs concerning his averments. The probate court ultimately admitted the affidavit, but noted that the affidavit "may carry no weight as far as the Court is concerned"

Lastly, petitioner's counsel moved to admit the affidavit of petitioner, together with a certified translation from Romanian into English. In the affidavit, petitioner averred that she had married the decedent in Moldova on May 10, 2006, and that her son had been born during the marriage, on May 19, 2006. Petitioner's counsel asserted that the affidavit was admissible pursuant to MRE 804(b)(4)(A) because it related to petitioner's own personal and family history, a matter concerning which she had personal knowledge. The court admitted the document, but noted that it would strike and disregard paragraph 5, which contained nothing more than a conclusion of law stating that petitioner and her son were the "legal successors . . . of Donald Crane."

Petitioner's counsel again explained that petitioner was unable to attend trial and requested that she be permitted to testify via telephone.⁵ Respondent's counsel objected to

⁴ The term "apostille" is defined in relevant part by Black's Law Dictionary (7th ed) as "a standard certification provided under the Hague Convention for authenticating documents used in foreign countries."

⁵ Petitioner's counsel explained the reason for petitioner's absence from trial. He explained that the local Moldovan officials would not permit petitioner to travel to the United States for the purpose of testifying because the decedent's death certificate indicated that petitioner and the decedent had been divorced. The probate court accepted this explanation. We wish to note that, despite the fact that the decedent's death certificate listed his marital status as "Divorced," there was absolutely no evidence to suggest that his marriage to petitioner was ever dissolved. Indeed, the probate court record establishes that upon the decedent's death, respondent, acting as
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allowing petitioner to testify via telephone. However, the probate court accepted the explanation given by petitioner's counsel and ruled that petitioner would be permitted to participate by telephone. The court stated that it would arrange to have a telephone line and a translator available. The portion of trial consisting of petitioner's testimony via telephone was apparently not transcribed, and is not contained in the probate court record.

On the second day of trial, the probate court questioned the parties concerning whether respondent even had standing to challenge the validity of the decedent's marriage to petitioner. The court observed that the issue of standing would have to be addressed before the conclusion of the proceedings. Petitioner's counsel argued that respondent had no standing under Moldovan law to challenge the validity of the marriage. Respondent's counsel argued that the issue of standing should have been raised much earlier in the case, and that any consideration by the court of respondent's standing midway through trial was untimely.

The probate court examined the Moldovan domestic relations statutes and observed that it would take judicial notice of the foreign law. The court noted that under Moldovan law, only specific enumerated categories of individuals had legal standing to challenge the validity of a Moldovan marriage. The probate court determined that respondent, as a sibling of one of the spouses, did not fall within any of these enumerated categories. Thus, the court concluded that pursuant to Moldovan law, respondent did not have "standing to bring a request for the nullification of the marriage."⁶ In the absence of any admissible evidence attacking the validity of the decedent's marriage to petitioner, the court ruled that petitioner and her son Vladislav were the decedent's lawful heirs. Following trial, the probate court entered an order providing that "[t]he heirs of the deceased are his surviving wife Lilia Crane and the child of the marriage Vladislav Crane[.]"

II

"Whether a party has standing is a question of law that we review de novo." *Nat'l Wildlife Fed v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004). We similarly review de novo the probate court's application and interpretation of foreign and international law. See *Harkness v Harkness*, 227 Mich App 581, 586; 577 NW2d 116 (1998). A court's decision to take judicial notice is discretionary, and is therefore reviewed for an abuse of discretion. MRE 201(c); *Freed v Salas*, ___ Mich App ___, ___ NW2d ___ (2009).

III

Respondent argues that the probate court erred by ruling that he lacked legal standing to contest the validity of the decedent's marriage to petitioner. We disagree. The probate court

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informant, knowingly misrepresented to the registrar who prepared the death certificate that the decedent was divorced.

⁶ The court also ruled that even if respondent had possessed standing to challenge the marriage, the decedent's marriage to petitioner was clearly not a "fictitious marriage" within the meaning of Moldovan law because a child was born during the marriage and the decedent was listed as the child's father on the Moldovan birth certificate.

properly applied Moldovan law and determined that respondent had no standing to challenge the validity of the decedent's marriage to petitioner under the applicable Moldovan statutes.

A

As an initial matter, we find that the probate court properly took judicial notice of the Moldovan statutes submitted by respondent. The former rule was that the Michigan courts could not take judicial notice of the law of a foreign nation, and that the existence and substance of such foreign law had to be proven like any other fact. See, e.g., *Daniels v Detroit, Gd Haven & Milwaukee R Co*, 163 Mich 468, 472; 128 NW 797 (1910). But this former rule has been changed by the Michigan Rules of Evidence, which now provide that Michigan courts may take judicial notice of the statutes, constitution, and common law of any sister state or territory of the United States, or of any foreign nation. MRE 202(a). It is true that “[a] judicially noticed fact must be one ‘capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.’” *People v Burt*, 89 Mich App 293, 297; 279 NW2d 299 (1979), quoting MRE 201(b)(2). However, both parties agree that the Moldovan statutes submitted by respondent were genuine and valid, and neither party disputes the accuracy of the translation of the statutes from Romanian into English. Accordingly, we conclude that the probate court did not abuse its discretion by taking judicial notice of the Moldovan statutes in this case.

B

Respondent contends that the probate court violated MCR 2.116(G)(1)(a) by ruling that he lacked standing to challenge the validity of the decedent's marriage to petitioner without first providing him 21 days notice. We question whether MCR 2.116(G)(1)(a) would even apply here, as the probate court's consideration of respondent's standing was not confined to a motion for summary disposition. But even assuming arguendo that MCR 2.116(G)(1)(a) would otherwise apply in this context, we note that the issue of standing may be raised at any time, even sua sponte by the court. *Michigan Chiropractic Council v Comm'r of Financial & Ins Services*, 475 Mich 363, 371-372, 374; 716 NW2d 561 (2006) (YOUNG, J.). We must therefore reject respondent's claim of error in this regard.

C

Respondent also contends that petitioner violated MCR 2.112(J)(3) by failing to provide timely written notice of her intent to rely on Moldovan law. But this argument is disingenuous and wholly without merit. We acknowledge that under MCR 2.112(J)(3), “[a] party who intends to rely on or raise an issue concerning the law of . . . a foreign nation or unit thereof . . . must give notice of that intention either in his or her pleadings or in a written notice served by the close of discovery.” However, it was respondent—and *not* petitioner—who asked the probate court to take judicial notice of the Moldovan domestic relations statutes in the first instance. Unlike respondent, petitioner never asked the court to take judicial notice of Moldovan law. Indeed, petitioner only raised the issue of Moldovan law in response to respondent's argument, merely pointing out that the Moldovan statutes in question did not support respondent's position. Because it was respondent, himself, who first introduced the issue of Moldovan law, he necessarily had notice that the issue of Moldovan law would be raised at trial. Thus, petitioner was not required to comply with the terms of MCR 2.112(J)(3). *Zantop Int'l Airlines, Inc v*

Eastern Airlines, 200 Mich App 344, 352; 503 NW2d 915 (1993) (holding that “the purpose of MCR 2.112 is to give notice” and that “a party that already has notice should not be heard to complain of a technical violation of the rule”).

D

As noted previously, the probate court applied the Moldovan statutes submitted by respondent and determined that respondent lacked standing under Moldovan law to attack the validity of the decedent’s marriage to petitioner. We perceive no error. Unlike marriages solemnized in sister states, which are generally recognized as valid in this state pursuant to MCL 551.271(1), Michigan has no statute requiring the recognition of marriages celebrated in foreign nations. Nonetheless, the Michigan courts recognize marriages solemnized in foreign nations as a matter of comity. It is well settled that Michigan’s law and public policy favor the institution of marriage, *Van v Zahorik*, 460 Mich 320, 332; 597 NW2d 15 (1999); *Boyce v McKenna*, 211 Mich 204, 214; 178 NW 701 (1920), and the Michigan courts have long recognized the validity of marriages celebrated in foreign countries, provided that those marriages are valid in the nation of celebration and that they are not antithetical to Michigan’s public policy, see, e.g., *id.* at 215; *People v Imes*, 110 Mich 250, 251; 68 NW 157 (1896); *Hutchins v Kimmell*, 31 Mich 126, 130-131 (1875). The rule in Michigan is that the validity of a foreign marriage must be determined by reference to the domestic relations law of the country of celebration. *Id.* at 131; see also *Noble v Noble*, 299 Mich 565, 568; 300 NW 885 (1941); *In re Osborn’s Estate*, 273 Mich 589, 591; 263 NW 880 (1935); 16 Michigan Civil Jurisprudence, Marriage, § 4, p 561. Accordingly, because the decedent’s marriage to petitioner was celebrated in the Republic of Moldova, we conclude that the probate court correctly looked to Moldovan law for the purpose of determining whether respondent had legal standing to attack the validity of the marriage.

Moreover, we reiterate that it was respondent, himself, who first requested that the probate court apply the domestic relations law of Moldova. Having asked the court to take judicial notice of and to apply Moldovan law, respondent is now estopped from arguing on appeal that the application of Moldovan law was erroneous. See *Joba Constr Co, Inc v Burns & Roe Inc*, 121 Mich App 615, 629; 329 NW2d 760 (1982). It is well settled that an appellant may not harbor error as an appellate parachute. *In re Gazella*, 264 Mich App 668, 679; 692 NW2d 708 (2005).

Article 42 of the Moldovan Family Law, Law No. 1316-XIV, enumerates certain categories of individuals who have legal standing to challenge the validity of a marriage and to request a “declaration of marriage nullity.” The Moldovan statute provides that a spouse, the parents of an underage spouse, or a prosecutor may challenge the validity of a Moldovan marriage under certain circumstances. In contrast, Moldovan law makes no allowance for a sibling of a spouse or any other third party to contest the validity of a marriage or request a declaration of marriage nullity. The express statutory enumeration of specific individuals with standing to challenge the validity of a Moldovan marriage necessarily implies exclusion of other individuals, such as third parties in the position of respondent. See *Stowers v Wolodzko*, 386 Mich 119, 133; 191 NW2d 355 (1971) (observing that, under the principal *expressio unius est exclusio alterius*, the “express mention in a statute of one thing implies the exclusion of other similar things”). On the basis of the Moldovan statutes and accompanying translations submitted below, we conclude that the probate court did not err by determining that respondent lacked legal

standing to challenge the decedent's marriage to petitioner or to request a nullification of the marriage under Moldovan law.

IV

Respondent argues that, even if he technically lacked standing to attack the validity of the marriage under Moldovan law, the probate court's application of Moldovan law in this case violated his constitutional right to due process. Specifically, he asserts that the court's use of Moldovan law to determine that he lacked standing to challenge the marriage impinged his "fundamental right . . . to inherit property." But contrary to respondent's assertions, the right to inherit property does *not* rise to the level of a "fundamental" liberty interest for purposes of substantive due process, and the probate court's actions are therefore not subject to strict-scrutiny review. See *Washington v Glucksberg*, 521 US 702, 719-721; 117 S Ct 2258; 138 L Ed 2d 772 (1997) (enumerating which rights constitute fundamental liberty interests for purposes of substantive due process). The Moldovan domestic relations law applied by the probate court simply limits the ability of strangers and third parties to contest the validity of a marriage. As far as we can discern, the application of such a law does not unduly burden any recognized right protected by the Due Process Clause. On the contrary, the application of such a law actually *promotes* the institution of marriage, which is itself a fundamental liberty interest protected by substantive due process. *Loving v Virginia*, 388 US 1, 12; 87 S Ct 1817; 18 L Ed 2d 1010 (1967). Nor can we conclude that the probate court's application of Moldovan law was "arbitrary and thus irrational" as suggested by respondent. Cf. *Morreale v Dep't of Community Health*, 272 Mich App 402, 407; 726 NW2d 438 (2007). Indeed, as noted previously, the validity of foreign marriages in Michigan is always determined by reference to the law of the country of celebration. *Hutchins*, 31 Mich at 131. To the extent respondent argues that the probate court's application of Moldovan law violated his due process right to inherit property, his argument must fail.

It appears that respondent may also be attempting to challenge the probate court's application of Michigan's law of intestate succession on due process grounds. After all, whereas Moldovan law provides the rule of decision concerning respondent's standing to attack the validity of the marriage (and concerning the validity of the marriage, itself), Michigan law provides the rule of decision with respect to the actual determination of heirs in this case.⁷ See MCL 700.1301(a). It is true, as respondent points out, that "property" is among the items specifically protected by the Due Process Clause. However, the right to inherit property is not an absolute or inherent right—it depends entirely upon the consent of the Legislature and may be modified or altered by statute. See, e.g., *In re Clark's Estate*, 100 Vt 217, 225; 136 A 389 (1927); *In re White's Estate*, 208 NY 64, 67; 101 NE 793 (1913). We have no doubt that Michigan's intestate succession statutes, which provide that an intestate decedent's estate should descend to the surviving spouse and child in a case such as this,⁸ are rationally related to a

⁷ Because the decedent was domiciled in Michigan at the time of his death, Michigan's own intestate succession statutes provide the rule of decision with respect to the actual determination of heirs in this case. MCL 700.1301(a).

⁸ See MCL 700.2102(1)(b); MCL 700.2103(a).

legitimate government purpose. See *Cummins v Robinson Twp*, 283 Mich App 677, 701; 770 NW2d 421 (2009).

V

The probate court correctly applied the domestic relations law of Moldova and properly determined that respondent lacked standing thereunder to attack the validity of the decedent's marriage to petitioner. Moreover, the probate court's actions did not violate respondent's constitutional right to due process.

Affirmed. As the prevailing party, petitioner may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen

/s/ Christopher M. Murray

/s/ Elizabeth L. Gleicher