STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of MOLLIE STERN.

ELEANORE KAYE,

Plaintiff/Counter-Defendant-Appellee,

v

GERALD STERN,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
July 20, 2010

No. 291234
Oakland Probate Court
LC No. 2007-309116-CZ

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

Defendant/counter-plaintiff, Gerald Stern, appeals as of right the trial court's order, which confirmed the terms of a settlement agreement reached between Stern and plaintiff/counter-defendant, Eleanore Kaye. We affirm in part and reverse in part.

I. BASIC FACTS

In February 2007, Kaye filed a complaint and jury demand against Stern, alleging conversion and breach of fiduciary duty. The complaint stated that Kaye was a co-trustee of the living trust of Mollie Stern, and also an heir at law to Mollie Stern's estate under a will that had been submitted by petition to Oakland County Probate Court. Apparently, an "original trust document" also designated Stern as a co-trustee.

The complaint alleged that Stern had withdrawn money from a Chase Bank checking account, a Chase Bank savings account, and a TD Ameritrade account belonging to the Mollie Stern Irrevocable Trust. Kaye attached records from these accounts to the complaint. Kaye further alleged that the trust also had an account with Citizens First Bank, but the bank refused to provide any information. Kaye also implied that Stern forged a will in Mollie Stern's name, but regardless, "both wills would have prohibited [Stern] from taking any actions to deplete the assets of the trust and/or make distributions to himself on a basis that would have been ultra vires his requirements as a trustee . . . ." Kaye asked that the trial court freeze the assets in the above-referenced accounts.

Kaye also moved for a temporary restraining order and/or preliminary injunction in regard to freezing the accounts. After considering this ex parte motion, the trial court ordered Stern to show cause. After a February 2007 hearing, the trial court ordered:

> [Stern] and [Kaye] will each provide a full and complete disclosure and accounting of all funds related to the estate and trusts of Mollie Stern . . . within 14 days of this order.
>
> All banks/financial institutions served with this order are hereby restrained and enjoined from disbursing any funds from the estate of Mollie Stern, Mollie Stern Irrevocable Trust, Mollie Stern Living Trust or other accounts related to Mollie Stern, until further order of this court.

Stern moved for reconsideration. He asked the trial court "to state what sort of accounting it requires, keeping in mind that [Stern] does not have total control over the estate, since [Kaye] has restricted [Stern] from completing the duties of the successor trustee." Stern maintained that no funds belonging to Kaye were depleted; rather, the funds that were moved "belong to [Stern] or are part of the monies necessary to pay the estate bills and distribution pursuant to the trust." The motion further asserted that the trust had not been "registered or filed with this Court," and therefore, "the issue arises . . . whether this court has jurisdiction over a trust that has not been filed with the court." Additionally, Stern claimed that the trial court's order "contradict[ed] the trust and binds the proper activities of the trustee in the performance of his duties." Without holding a hearing, the trial court entered an order denying the motion for reconsideration.

In February 2008, Stern filed a counter-complaint, alleging breach of fiduciary duty. He also alleged a count of "improper disclosure of the affairs of the estate," by publishing the contents of Stern's trust, will, codicils, and amendments to non-interested persons. Stern further alleged breach of contract, explaining that, after the parties agreed not to submit an accounting to the trial court, Kaye did exactly that and refused to remove the accounting from the trial court file. Stern next alleged conversion, stating that in the brief time Kaye had been sole trustee, she converted funds from a Comerica bank account. Finally, Stern contended that there had been a violation of the will's no contest clause.

Kaye moved to strike Stern's counter-complaint, asserting that Stern had to bring a motion before filing the counter-complaint and that he was required to file another motion to terminate the arbitration agreement. Stern responded, stating that (1) the case was ordered to arbitration along with a second matter between the parties, and therefore, it was in the interests of judicial economy to file a counter-complaint instead of a third action, and (2) regardless, his counter-complaint was not improperly filed in violation of an agreement to arbitrate.

However, at a hearing on October 2, 2008, the parties put a settlement agreement on the record, wherein they agreed to distribute certain jewelry and dollar coins. They further agreed that Stern would give Kaye $328,000 in three installments over the next 90 days. Finally, the parties agreed to sign a mutual release of claims, after which the trial court would dismiss the case, with prejudice.

Stern moved to set aside the settlement agreement of October 2, 2008, because of alleged fraud on the part of Kaye and because of Stern's hearing disability. Stern asserted that the reason

for the October 2, 2008 hearing was for the trial court to decide Stern's motion to seal the files and to make Stern sole personal representative and sole trustee, and Kaye's motion to strike. Yet, at the hearing, according to Stern, Kaye's attorney convinced the trial court to hold a settlement conference. Stern had not been previously notified that there would be a settlement conference, and therefore, he was at a disadvantage. Further, Stern asserted that he was diagnosed with Meniere's disease in 2004, which affects his ear canals. His hearing had slowly degraded, and as a result, at the proceedings on October 2, 2008, he was unable to understand some of what the trial court said. He did not realize this lack of understanding until he read the transcript of the hearing. Further, a letter from Stern's doctor explained that Stern's hearing is unreliable because he cannot discriminate some word sounds.

Kaye responded to Stern's motion to set aside the settlement. Kaye alleged that Stern had actively engaged Kaye's counsel in settlement negotiations and made a new proposal the night before the October 2, 2008 hearing. According to Kaye, there could be no fraud where Stern himself invited further negotiations by injecting new terms into the process. Regardless, the transcript shows that Stern understood the nature and terms of the agreement and, further, since the agreement was for Kaye to receive less than the amount she was entitled to, Stern could not claim harm from the agreement. Further, according to Kaye, the results of Stern's hearing test showed that he has near perfect hearing in his right ear. Thus, Kaye argued that Stern's motion should be denied and that she was entitled to fees, costs, and sanctions. Stern replied to Kaye's motion for entry of order for release of accounts, wherein he repeated his claims that the settlement of October 2, 2008 was invalid.

After a hearing in February 2009, the trial court entered an order stating:

> Based upon the court's review of the transcript of proceedings from October 2, 2008, and the court having reviewed the parties' pleadings and heard the parties' at oral argument on January 30, 2009, and February 20, 2009, and the court being fully advised . . . . The Court finds that an agreement or consent was knowingly, understandably, and voluntarily made. The court further finds that there was no mistake, inadvertent surprise, excusable neglect, fraud, misrepresentation, or other misconduct of an adverse party or their attorney.

Stern moved for reconsideration of the February 2009 order, arguing that (1) the settlement agreement was palpable error, (2) the trial court lacked jurisdiction over the trust because an interested person never invoked jurisdiction, (3) the cash owed to Kaye must come from the estate and not from Stern's personal funds, (4) the order for Stern to pay Kaye interest constitutes unjust enrichment, and (5) enforcement of the settlement agreement would deny Stern due process.

In March 2009, the trial court entered an order denying Stern's motion for reconsideration. The trial court stated:

> In this matter, [Stern]'s motion for reconsideration merely seeks to reargue the issues previously argued and decided by this court on February 20, 2009. The court remains of the opinion that the parties knowingly, understandably and voluntarily entered into a settlement agreement and then placed its terms on the record on October 2, 2008. That settlement agreement is embodied in this court's

order of February 20, 2009. Further, judgment interest from October 2, 2008 is appropriate pursuant to MCL 600.6013.

[Stern]'s jurisdiction and due process arguments are without merit. The Probate Court has exclusive legal and equitable jurisdiction over matters that relate to the settlement of a deceased individual's estate, the validity, internal affairs, and settlement of trusts, and to determine an action or proceeding that involves the settlement of an irrevocable trust. MCL 700.1302. Moreover, [Stern] was not deprived of due process as he knowingly, understandably, and voluntarily entered into the settlement agreement on the matters at issue in this case.

Kaye moved for entry of judgment against Stern, distribution of accounts, and attorney fees. Stern filed a claim of appeal with this Court. Stern responded to Kaye's motion for entry of judgment arguing that the trial court should (1) deny any distribution to Kaye due to Stern's pending appeal, (2) order that all the cash assets be placed under court protection until the appeal has been decided, (3) order that the stocks be placed under Stern's care pursuant to the prudent investor rule, and (4) deny all relief as it is moot due to the filing of the appeal. Stern moved for a stay of proceedings due to his appeal.

In April 2009, the trial court entered an order requiring that:

1. [Stern] shall pay $50,000 in cashier's check to [Kaye] on 4/22/2009.

2. Within 14 days of receipt of all funds from all accounts payable to [Kaye] under court order dated 4/22/2009, [Kaye]'s counsel Lynne Lourim shall provide [Stern] with an accounting of the $328,000 plus interest owed by [Stern], less all funds received by [Kaye] through that date from [Stern] and all financial institutions.

3. [Stern] shall pay [Kaye] the balance due by cashier's check 14 days after receipt of the accounting required under #2 of this order, or the next legal business day, whichever is later. [Stern] shall deliver these funds at a meeting between the parties. During the meeting, all remaining personal property shall be divided according to the court order dated 2/20/2009. At that meeting, [Stern] shall receive the stock certificates from the safe deposit box.

4. [Kaye] shall provide any agreements or signatures necessary to transfer the stock certificates to [Stern].

5. If [Stern] fails to fully pay [Kaye] the balance due under this order and the order dated February 20, 2009, by the date specified in paragraph 3 of this order, [Stern] shall pay [Kaye] $33,000 in liquidated damages. In such case, [Kaye] may secure an ex parte order of judgment against [Stern] in the amount of $33,000.

6. Within 60 days of [Kaye] receiving the final payment from [Stern] as required under paragraph 3 of this order, [Kaye] shall comply with paragraph 1 of the order dated February 20, 2009, with regard to the charm bracelet . . . .

A second order entered the same day provided, in pertinent part:

> [A]ny and all accounts titled in the name of the Mollie Stern Living Trust and/or Estate of Mollie Stern and/or Mollie Stern and/or Mollie Stern Trust and frozen by prior court order shall be immediately liquidated to cash. All proceeds from any and all such accounts shall be immediately distributed in the form of a check payable only to [Kaye] from the financial institution holding the account. Funds shall not be made payable or distributed to any other individual or entity.

The accounts the Court referred to were with CF Bankcorp, National City Bank, three Chase accounts, and three Comerica Bank accounts.

A third order entered in April 2009, stated that Stern was the sole trustee and sole personal representative, and that he was not required to post any bond. A fourth order stated that the Mollie Stern accounts with Morgan Stanley, TD Ameritrade and Scottrade "shall immediately transfer all cash and/or stocks . . . to an account in the name of [Stern]."

Kaye filed a supplemental response to Stern's petition for payment of claim for out of pocket expenses and statement and proof of claim and in support of attorney fees for Kaye. In June 2009, the trial court entered an opinion and order denying Kaye's petition for payment of claim for out of pocket expenses. The trial court stated that it had previously ruled that the parties knowingly, understandingly, and voluntarily entered into a full and final settlement of all matters, on the record on October 2, 2008, in open court, and that Stern

> acknowledged at that hearing that the settlement placed on the record was a *full and complete settlement*.[1] Fees and expenses were at issue in that hearing. Further, [Stern]'s argument on judgment interest has twice been addressed and decided by this court—first in this court's order of February 20, 2009, and then again in this court's order denying [Stern's] motion for reconsideration of March 10, 2009, and therefore, the court refuses to address the argument a third time.

Kaye moved for an order to show cause for Stern's failure to comply with the court order dated April 22, 2009. The trial court granted the motion and ordered Stern to immediately pay Kaye $39,612.01, plus an additional $1,940 for attorney fees and costs. Stern's attorney who held the disputed personal property at issue was ordered to distribute the property to Kaye's attorney without Stern's presence or approval. Stern now appeals.

II. JURISDICTION

A. STANDARD OF REVIEW

Stern argues that the jurisdiction of the probate court was not properly invoked because no interested person filed a petition or gave notice. Furthermore, Stern argues, the trust instructed that it was to have no court supervision, and therefore, no settlement should have been

[1] Emphasis in original.

upheld.[2] This Court reviews jurisdictional issues de novo.[3] In addition, "this Court reviews de novo the language used in wills and trusts as a question of law."[4]

B. LEGAL STANDARDS

"The term jurisdiction refers to the power of a court to act and the authority a court has to hear and determine a case."[5] The Estates and Protected Individuals Code[6] establishes that the probate court "has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary that concern the administration of a trust[.]"[7] Further, "[a] court of this state may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law."[8] A proceeding brought under MCL 700.7203 "is initiated by filing a petition in the court and giving notice to interested persons as provided in [MCL 700.1401]. . . . A judgment or order binds each person who is given notice of the proceeding . . . ."[9] A "petition" is "a written request to the court for an order after notice."[10]

C. APPLYING THE STANDARDS

Kaye, a co-trustee and interested person, filed a complaint and jury demand against Stern, alleging conversion and breach of fiduciary duty in regard to Stern's withdrawal of funds from the Mollie Stern Trust, and asking the trial court to order the trust's accounts frozen. Similarly, Stern filed a counter-complaint, also alleging breach of fiduciary duty. Here, the parties' complaints constituted "written request[s] to the court for an order" regarding the trust.[11] And the trial court record indicates that both complaints were properly noticed. Thus, the parties invoked the probate court's jurisdiction.[12]

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[2] Stern includes one sentence in the argument section of his first issue that implies that the trial court wrongly denied his request for attorney fees. Aside from this issue not being included in Stern's statement of questions presented, Stern cites no statutes or case law in support of his position that he is entitled to such fees. Therefore, we deem this issue as abandoned. *Ammex, Inc v Dep't of Treasury*, 273 Mich App 623, 646; 732 NW2d 116 (2007).

[3] *Pontiac Food Ctr v Dep't of Community Health*, 282 Mich App 331, 335; 766 NW2d 42 (2008).

[4] *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005).

[5] *Wayne Chief Executive v Governor*, 230 Mich App 258, 269; 583 NW2d 512 (1998).

[6] MCL 700.1101 *et seq*.

[7] MCL 700.7203(1).

[8] MCL 700.7201; see also MCR 5.501(C).

[9] MCL 700.7208.

[10] MCL 700.1106(p).

[11] See *id*.

[12] MCL 700.7208.

Further, Stern's argument that the trust prohibits court supervision is without merit. It is true that "[u]nder EPIC, the general rule is that trusts are administered without judicial supervision."[13] As Kaye notes, however, the Mollie Stern trust merely states, that "no trust created under this agreement shall require the active supervision of any state or federal court." Thus, the trust document does not require supervision, but it also does not specifically prohibit it. Moreover, the trust also provides that "if the trustees are not able to reach agreement on any decision as set forth in this section, they shall petition a court of competent jurisdiction, and shall take no action on the disputed matter until a court order deciding the issue has been rendered." There is no ambiguity in this statement and thus no further interpretation needed: the trust instructs the trustees to petition the court when there is a dispute involving trust administration.[14] Therefore, the trial court had jurisdiction to uphold the settlement agreement.

III. VALIDITY OF SETTLEMENT AGREEMENT

A. STANDARD OF REVIEW

Stern argues that the settlement agreement was invalid because he suffered from a hearing disability that rendered him unable to hear properly when the parties put the settlement agreement on the record. He argues that the trial court violated the Persons with Disabilities Civil Rights Act[15] and the Fourteenth Amendment.[16] "[A]ppeals from a probate court decision are on the record, not de novo."[17] Accordingly, this Court reviews the trial court's factual findings for clear error and reviews the trial court's dispositional rulings for an abuse of discretion.[18] This Court also reviews de novo questions of statutory interpretation.[19] Finally, this Court reviews de novo the issues whether a party has been afforded due process.[20]

B. DUE PROCESS

1. LEGAL STANDARDS

With respect to due process, "[n]o person may be deprived of life, liberty, or property without due process of law. US Const, Am XIV, § 1; Const 1963, art 1, § 17."[21] In addition, "[t]he essence of the right of due process is the principle of fundamental fairness. The concept of

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[13] *In re Temple Marital Trust*, 278 Mich App 122, 141; 748 NW2d 265 (2008), citing MCL 700.7201(2).

[14] *In re Kostin Estate*, 278 Mich App 47, 53; 748 NW2d 583 (2008).

[15] MCL 37.1101 *et seq*.

[16] US Const, Am XIV.

[17] *Temple*, 278 Mich App at 128.

[18] *Id.*

[19] *Id.*

[20] *In re Contempt of Henry*, 282 Mich App 656, 668; 765 NW2d 44 (2009).

[21] *Id.* at 669 (citations omitted).

due process is flexible, and analysis of what process is due in a particular proceeding depends on the nature of the proceeding, the risks involved, and the private and governmental interests that might be affected."[22]

2. APPLYING THE STANDARDS

At a hearing on October 2, 2008, Kaye's attorney, Sara Zwickl, explained that the parties, who had met earlier that day in the judge's chambers, reached an agreement that she wished to put on the record. She further asked the trial court to have the parties state whether the terms were acceptable. With the trial court's assent, Zwickl began by repeating the terms of the agreement relating to certain items of jewelry. At one point, Stern interrupted Zwickl, stating, "your honor, one daughter's going to get the gold charm bracelet." Zwickl then moved on to discuss coins in a safety deposit box, at which point Stern again interjected to clarify that the coins at issue were "the dollar ones." The trial court responded, "whatever coins are there, they're going to split 50-50, and they'll take turns taking what they want." Stern responded:

> We've agreed that there would be quarters would [sic] all go to me plus the paper money that was held in the original set. She got half the silver, because there's a lot of other things I was supposed to receive that for somehow [disappeared] when she was in the apartment. So the deal was originally that we would split the silver dollars 50-50 and all the rest of the coins would go to me. They're worthless much anyway, but what's fair is fair.

Zwickl then discussed the bulk of the trust, and at one point, Stern interrupted:

> *Zwickl:* And then [Stern] will give in cashiers' funds a check for $328,000 to his sister. He will pay a third in 30 days, a third in 60 days, and a third in 90 days—
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> *The Court:* Fine. Go ahead.
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> *Zwickl:* —from today.
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> *Stern:* No, from the release. We have to do it from the mutual release.
>
> *Zwickl:* Judge, I'll get—
>
> *The Court:* From today?
>
> *Zwickl:* From today.
>
> *The Court:* From today, period. Go ahead.

The discussion continued regarding signing a release and sealing the files in both this case and a companion case involving a will contest, and Stern again participated in the conversation:

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[22] *Id*.

Zwickl: And there will be a dismissal with prejudice of all claims pending in this court in the litigation between the two of them. We will seal the record. Is that in both files, Mr. Stern, that you want the record?

Stern: Yes.

Zwickl: . . . I will prepare a consent order to that effect. And upon signing the mutual release and all the consent orders, [Stern] will become the sole personal representative and sole trustee.

Stern: I have to be made before then in order to liquidate some of this [sic] bank accounts in order to pay her the money.

Zwickl: Judge, he's got 30 days.

Stern: If she doesn't do the—if you don't do the mutual release until 35 days—

Zwickl: Judge, I'll have the mutual release to him by Monday.

The trial court then addressed the parties:

The Court: Mrs. Kaye, you've heard the settlement. Has anyone threatened you or promised you anything, intimidated you in order for you to have entered into this settlement?

Kaye: Well, I was somewhat intimidated, but I didn't give in.

The Court: Well, strike that. Now, I'm going to have to rephrase my question. Are you settling this case voluntarily?

Kaye: Yes.

The Court: Do you understand the terms?

Kaye: Yes.

The Court: And are you still willing to settle today?

Kaye: Yes, I am.

The Court: Do you understand that you never can make a claim against Mr. Stern?

Kaye: Yes, I do.

The Court: Mr. Stern, you're a lawyer.[23] With you I can just say one thing: Do you understand this is a full and complete settlement and you know what you're doing?

Stern: Yes.

The Court: Very well, any other questions?

Kaye. Yes. . . . Since he wants the file sealed, I feel that it should be his expense and not mine.

The Court. So ordered. Anything else?

Stern: Is there a charge for that? I didn't think so.

Stern contends that he could not clearly hear when the trial court asked, "Do you understand this is a full and complete settlement and you know what you're doing?" Instead, Stern thought the trial court was asking him the same question it had earlier asked Kaye, that is, whether he had been intimidated into entering an agreement. This is why he answered "yes" instead of "no." Further, Stern points out that he is not an attorney and would not have answered, "yes," if he could hear. We find Stern's arguments unpersuasive.

Stern has failed to show that the court proceeding wherein the parties put their settlement agreement on the record was fundamentally unfair in violation of due process. Although he claims to have a hearing disability, as is clear from the above excerpt from the hearing transcript, and as noted by the trial court, "every single one of [Stern's] statements . . . is responsive, directly, to the issues being discussed." Indeed, through those responses, Stern reasonably sought to protect his self-interest. Further, Stern's contention that he thought the judge was asking him the "same" question as he asked Kaye is unpersuasive, first, because that proves that Stern could hear what the judge was saying, and second, because the judge asked Kaye several additional questions after asking her whether she had been "intimidated" into reaching a settlement.

Finally, had Stern honestly believed that he just told the judge he did not voluntarily enter the settlement, it is unlikely that, in response to the judge's next query—whether there were any other questions—Stern would remain silent. In fact, *Kaye* at that point stated that she had a question, and she asked the trial court to require Stern to pay for the cost of sealing the files. The judge agreed and stated, "so ordered," and again asked if there were additional questions. In response, Stern simply remarked, "Is there a charge for that? I didn't think so." Again, this is an unusual response for someone who had allegedly informed the trial court that he did not voluntarily enter a settlement agreement. After reviewing this transcript and hearing arguments, the trial court properly concluded that Stern entered the settlement agreement knowingly, understandingly, and voluntarily. Thus, the October 2, 2008 hearing itself was fair and the trial court's review of proceedings further protected Stern's right to due process. Moreover, the trial

[23] It is undisputed that Stern is *not* a lawyer.

court properly upheld the settlement agreement, as it was consented to in open court, pursuant to MCR 2.507(G).

C. PERSONS WITH DISABILITIES CIVIL RIGHTS ACT

We note that Stern did not properly preserve his argument under the Persons with Disabilities Civil Rights Act, because he did not raise it below,[24] but we will nevertheless address it briefly.

1. LEGAL STANDARDS

When this Court interprets a statute, "[t]he primary goal . . . is to ascertain and give effect to the intent of the Legislature."[25] Further:

> Statutory language should be construed reasonably, keeping in mind the purpose of the act. The first criterion in determining legislative intent is the specific language of the statute. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written. In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory.[26]

Pursuant to the Persons with Disabilities Civil Rights Act, "a person[27] shall accommodate a person with a disability for purposes of employment, public accommodation, *public service*, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship."[28] Further, as stated in MCL 37.1210(18):

> A person with a disability may allege a violation against a person regarding a failure to accommodate under this article *only if* the person with a disability notifies the person in writing of the need for accommodation *within 182 days after the date the person with a disability knew or reasonably should have known that an accommodation was needed*.[29]

2. APPLYING THE STANDARDS

Stern contends that, after a visit to an ear doctor, he notified the trial court of his hearing disability in his November 2008 motion to set aside the settlement of October 2, 2008. He

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[24] *Ligon v Detroit*, 276 Mich App 120, 129; 739 NW2d 900 (2007).

[25] *Bageris v Brandon Twp*, 264 Mich App 156, 161; 691 NW2d 459 (2004).

[26] *Id*. at 161-162 (internal citations omitted).

[27] "Person" includes "this state, or any other legal, commercial, or governmental entity or agency." MCL 37.1103(g).

[28] MCL 37.1102(2) (emphasis added; footnote added).

[29] Emphasis added.

concludes that this is less than sixty days *after* the hearing, and therefore "within 182 days" after he knew he had a disability. However, in the motion, Stern admits that he was diagnosed with Meniere's disease, a disorder of the inner ear that can affect hearing, first diagnosed *in 2004*. Here, all notices of hearings from the probate court included the following statement: "If you require special accommodations to use the court because of a disability . . . please contact the court immediately to make arrangements." Therefore, Stern was on notice from the beginning of the proceedings that he needed to inform the trial court of any necessary special accommodations. Furthermore, notification after the fact is a "worst case" scenario clearly not intended by the statute because, "in the absence of a requirement that there be notice of a known disability," a litigant, such as Stern in this case, "could bring a claim of failure to accommodate upon later discovering that he had a disability justifying the accommodation at the time."[30] Therefore, Stern's statutory argument is without merit.

IV. JUDGMENT INTEREST

A. STANDARD OF REVIEW

Stern argues that the probate court improperly assessed judgment interest because there was no judgment in this case. More specifically, Stern argues that judgment interest cannot be charged to a party to a settlement where suit was inappropriate in the first place and, in fact, there was no judgment because the trial court did not rule on any arguments by the parties. Further, Stern asserts that he did not owe any money because the matter involves an estate, and he could not satisfy the settlement because, at the request of Kaye, the trial court froze the assets of the estate and trust. This Court reviews for clear error the trial court's factual findings, and reviews de novo its conclusions of law.[31]

B. LEGAL STANDARDS

MCL 600.6013(1) provides that "[i]nterest is allowed on a money judgment recovered in a civil action, as provided in this section."

C. APPLYING THE STANDARDS

We observe, first, that as discussed above, the suit was proper pursuant to MCL 700.7201 and it was a suit against Stern as an individual. Second, as also discussed above, the agreement required Stern, as an individual, to pay Kaye the money owed, regardless of whether the accounts were frozen. Had Stern signed the release on the Monday after the October 2, 2008 hearing, as provided for in the agreement, he would have been made sole trustee with the ability to access the disputed accounts. Thus, these arguments are without merit.

Regarding Stern's main argument, that the settlement agreement is not a judgment, it is true that "by definition, a settlement agreement is a compromise of a disputed claim[,]"[32] while

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[30] *Bageris*, 264 Mich App at 164 n 4.

[31] *Temple*, 278 Mich App at 128.

[32] *Reicher v SET Enterprises*, 283 Mich App 657, 663-664; 770 NW2d 902 (2009).

"a 'judgment,' is defined as '[a] court's final determination of the rights and obligations of the parties in a case.'"[33] But regarding post-judgment interest, this Court has held that when parties choose "to memorialize their settlement into a consent judgment rather than by a stipulation for dismissal" then the entry of the judgment by the court gives judicial approval to the settlement and commences the running of interest on the judgment.[34] "[O]nce a consent judgment is entered by the sanction and order of the court, it possesses the same force and character as other judgments."[35]

Here, the settlement agreement was entered into on October 2, 2008. But then Stern moved to set aside the settlement agreement. After considering the parties' arguments, the trial court confirmed the parties' agreement and ordered interest paid from the date of the settlement agreement. The trial court's order here was not a consent judgment between the parties by which they chose to memorialize their settlement agreement. Nevertheless, we view the trial court's order here as analogous to that type of judgment because it effectively gave judicial approval to the settlement agreement and provided a final determination of the parties' rights and obligations. Thus, the trial court properly ordered that the running of interest on the judgment. However, we nevertheless conclude that the trial court erred in ordering that the interest commence from the date of the settlement agreement. Rather, the post-judgment interest was proper from the date of the trial court's order of February 20, 2009.[36]

We affirm in part, reverse in part, and remand for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ William C. Whitbeck

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[33] *Peterson v Fertel*, 283 Mich App 232, 237; 770 NW2d 47 (2009), quoting *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 220 n 4; 625 NW2d 93 (2000).

[34] *Madison v Detroit*, 182 Mich App 696, 701; 452 NW2d 883 (1990).

[35] *Id*.

[36] See *id.* (stating that the date of entry of the consent judgment, not the date of the settlement agreement commences the running of interest on the judgment).