

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re DUANE V. BALDWIN TRUST.

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THOMAS M. SHOAFF,  
  
Petitioner-Appellant,

v

THOMAS E. WOODS, Trustee,  
  
Respondent-Appellee,

and

THOMAS E. WOODS, Individually, and GARY  
BALDWIN,  
  
Appellees.

FOR PUBLICATION  
February 27, 2007  
9:10 a.m.

No. 261642  
Ingham Probate Court  
LC No. 00-002046-TI

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In re Estate of DUANE V. BALDWIN, Deceased.

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THOMAS M. SHOAFF,  
  
Petitioner-Appellant,

v

THOMAS E. WOODS, Personal Representative,  
  
Respondent-Appellee,

and

THOMAS E. WOODS, Individually, and GARY  
BALDWIN,

Appellees.

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No. 261643  
Ingham Probate Court  
LC No. 00-001858-DE

Official Reported Version

Before: Before: Sawyer, P.J., and Wilder and Servitto, JJ.

SERVITTO, J. (*concurring in part and dissenting in part*).

While I agree with the majority with respect to jurisdiction and the probate court's authority to sua sponte grant summary disposition, I would reverse the probate court's dismissal of the petition to remove and surcharge Woods as personal representative.

The majority states that under MCL 700.1212(1), a personal representative is not a fiduciary to a creditor. While that may be true, MCL 700.1308(1) provides that a fiduciary

is liable for a loss to an estate that arises from embezzlement by the fiduciary; for a loss through commingling estate money with the fiduciary's money; for negligence in the handling of an estate; for wanton and willful mishandling of an estate; for loss through self-dealing; for failure to account for an estate; for failure to terminate the estate when it is ready for termination; and for misfeasance, malfeasance, nonfeasance, or other breach of duty.

MCL 700.3703(1) additionally provides:

A personal representative is a fiduciary who shall observe the standard of care applicable to a trustee as described by section 7302. . . . The personal representative shall use the authority conferred by this act, the terms of the will, if any, and an order in a proceeding to which the personal representative is party for the best interests of claimants whose claims have been allowed and of successors to the estate.

Finally, if the exercise of or failure to exercise a power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from the breach of a fiduciary duty to the same extent as the trustee of an express trust. MCL 700.3712.

Petitioner is undoubtedly an "interested person" for purposes of the Estates and Protected Individuals Code, see MCL 700.1105(c), and filed a petition against Woods, as a personal representative, for alleged wrongdoings that resulted in a loss to decedent's estate. While Woods may not have owed a *fiduciary* duty to a creditor, he may nevertheless owe *a* duty and be liable to a creditor for a loss to the estate arising from the breach of a duty owed to the estate. Given petitioner's allegations of negligence that led to a loss to the estate, petitioner has stated a claim under MCL 700.1308(1) and MCL 700.3712 against Woods. I would therefore reverse on this issue.

/s/ Deborah A. Servitto