

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of EVERETT RANDOLPH CASEY, a/k/a the Estate of EVERETT RANDOLPH CASEY, JR.

GERALD ROSSI, as Special Personal Representative, KATHRYN M. CASEY and KIRK CASEY,

Appellees,

v

RENEE KEENE,

Appellant,

and

CORINNE KEENE and BRUCE KEENE,

Interested Parties.

In the Matter of the Estate of EVERETT RANDOLPH CASEY, a/k/a the Estate of EVERETT RANDOLPH CASEY, JR.

GERALD ROSSI, as Special Personal Representative, KATHRYN M. CASEY and KIRK CASEY,

Appellees,

v

FOR PUBLICATION
July 31, 2014
9:05 a.m.

No. 314209
Oakland Probate Court
LC No. 2012-342604-DE

BRUCE KEENE,

Appellant,

and

CORINNE KEENE and RENEE KEENE,

Interested Parties.

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

MURRAY, P.J.

This is an inheritance dispute between the natural children of Everett and Mary Alice Casey, Kathryn and Kirk Casey, and Renee and Bruce Keene, who claim to be the offspring of Everett and their mother's (Corinne Keene) adulterous affair in the 1960's. Both Everett and Corinne were separately married during their alleged affair. In these consolidated appeals, appellants, Renee and Bruce Keene, appeal as of right the order granting summary disposition in favor of appellee, Kathryn Casey. Ms. Casey filed three separate motions for summary disposition below and argued: (1) neither Renee nor Bruce were interested persons or heirs of the decedent; (2) the decedent's 1997 will is valid and unrevoked; and (3) the decedent did not gift the contents of the safe located at his company's office to Bruce before his death. Renee and Bruce challenge the probate court's determination that they are not interested persons or heirs of the decedent. Bruce also challenges the probate court's determination that decedent did not gift the contents of his safe to him. We affirm.

I. FACTS AND PROCEEDINGS

The decedent, Everett Casey, and his wife Mary Alice, who predeceased him, had two marital children, Kathryn and Kirk Casey. During the latter part of decedent's lifetime, Bruce worked for the decedent's company, Precision Standard Inc. (PSI). In July 1997, the decedent executed a will and trust, naming in his trust Kathryn and Kirk as his only children.¹ After the decedent's death on March 24, 2012, Kathryn filed a petition for probate and sought to admit the decedent's 1997 will to probate. Renee and Bruce filed demands for notice and objections to the petitions for probate, and claimed that the decedent was their biological father. Renee and Bruce alleged that the decedent and their mother, Corinne Keene, had an extramarital affair while she was married to Robert Keene, the man listed as Bruce's and Renee's father on their birth certificates. Robert Keene died in 1996, and Renee and Bruce did not seek to establish the decedent's paternity until the present action.

¹ Decedent's will left certain property to his children, but did not explicitly state their names.

The probate court issued a thorough written opinion and order granting Kathryn's motions for summary disposition on the grounds that (1) Renee and Bruce were not interested persons, (2) the 1997 will was valid and unrevoked, and (3) no genuine issue of material fact existed that the decedent did not gift the contents of the safe to Bruce. The decedent's 1997 will was admitted to probate and the court ordered an evidentiary hearing as to the amount of money in the decedent's safe at the time of his death.

With respect to the interested person determination, the probate court ruled that MCL 700.2114(1)(b)(v) was inapplicable because the plain language of the statute requires an initial finding that Renee and Bruce were either born out of wedlock, or born or conceived during the marriage but were not the issue of the marriage before the court could make a natural parent determination under MCL 700.2114(1)(b)(v). The court reasoned that because Corinne and Robert Keene were married when Bruce and Renee were born, Robert Keene is the presumed father and "there has been no determination that the children were not an issue of the marriage," and thus, Renee and Bruce were not interested persons.

II. ANALYSIS

A. INTERESTED PERSONS

Renee and Bruce contend that the probate court erred in its interpretation and application of MCL 700.2114(1)(b)(v), and improperly granted summary disposition in favor of Kathryn on this basis. This challenge involves questions of statutory interpretation and standing, which we review *de novo*. *In re MCI Telecom Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999); *Michigan Ed Ass'n v Superintendent of Pub Instruction*, 272 Mich App 1, 4; 724 NW2d 478 (2006). Additionally, this Court reviews *de novo* a probate court's decision on a motion for summary disposition. *Wortelboer v Benzie Co*, 212 Mich App 208, 213; 537 NW2d 603 (1995). In reviewing a motion brought under MCR 2.116(C)(5) (regarding whether a party lacks the capacity to sue), this Court considers the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. *McHone v Sosnowski*, 239 Mich App 674, 676; 609 NW2d 844 (2000). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the claim as pleaded, and all factual allegations and reasonable inferences supporting the claim are taken as true. *Id.*

"The paramount rule of statutory construction is to give effect to the intent of the Legislature." *Omelenchuk v City of Warren*, 466 Mich 524, 528; 647 NW2d 493 (2002) (citation omitted). "To do so, we begin with the statute's language. 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." *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 506; 778 NW2d 282 (2009) (citation omitted). "In construing a statute, this Court should give every word meaning, and should seek to avoid any construction that renders any part of a statute surplus or ineffectual." *In re Turpening Estate*, 258 Mich App 464, 465; 671 NW2d 567 (2003). It is well established that "to discern the Legislature's intent, statutory provisions are *not* to be read in isolation; rather, context matters, and thus statutory provisions are to be read as a whole." *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010) (emphasis in original). Provisions not included by the Legislature should not be included by the courts. *Michigan Basic*

Prop Ins Ass'n v Office of Fin & Ins Regulation, 288 Mich App 552, 560; 808 NW2d 456 (2010).

At the time of the decedent's death in 2012, the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.* was in effect, and accordingly governs the question before us.² See *In re Adolphson Estate*, 403 Mich 590, 593; 271 NW2d 511 (1978) ("Determinations of heirs are to be governed by statutes in effect at the time of death, and an adoption statute in effect at the time of death is controlling."). That statute defines "interested person" – the category of people entitled to notice of probate proceedings – to include a child or heir, among others. MCL 700.1105(c). Because Renee and Bruce claim to be interested persons as the biological children of the decedent, the parties focused their attention on MCL 700.2114, which sets forth the framework for establishing the parent child relationship for purposes of intestate succession. That section provides in relevant part:

(1) Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

(a) *If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession.* A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

(b) *If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage,* a man is considered to be the child's natural father for purposes of intestate succession if any of the following occur:

* * *

² Throughout these proceedings the parties have operated under the correct understanding that MCL 700.1105, which relates to intestate succession, applies to this issue despite the decedent having a valid will at the time of his death. That is because EPIC describes who is entitled to notice to challenge a will, and the statutory definitions lead us to the intestate succession provisions of MCL 700.2114. Specifically, notice must be given to all interested persons, MCL 700.1401, and interested persons is defined to include a "child," MCL 700.1105(c), and child is in turn defined as "an individual entitled to take as a child under this act by intestate succession from the parent whose relationship is involved." MCL 700.1103(f). That definition thus requires application of MCL 700.2114.

(v) Regardless of the child's age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent's estate determines that the man is the child's father, using the standards and procedures established under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

* * *

(5) Only the individual presumed to be the natural parent of a child under subsection (1)(a) may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent. [MCL 700.2114 (emphasis added).]

As a preliminary matter, we recognize that the statute clearly provides that, for purposes of intestate succession, a child is to take from his or her natural parent, "regardless of their marital status." MCL 700.2114(1). The statutory language also could not more clearly establish that the parents of children born during a marriage *are presumed* to be the natural parents of those children. MCL 700.2114(1)(a). The statute then provides that the parent child relation with the *alleged natural parent* can be established in a number of ways. Relevant to this case, the statute provides that (1) "if" a child is born or conceived during a marriage but is not issue of that marriage, then (2) the court can determine whether the alleged father is the child's natural one under the procedures of the paternity act. MCL 700.2114(1)(b)(v). In other words, "if" a person can establish that he was born or conceived during a marriage but is not issue of that marriage (and therefore has disclaimed that the *presumed natural father* is not the natural father), the court can then proceed to the next step of DNA testing under the paternity act to determine whether the *alleged father* (here the decedent) is the natural parent of Renee and Bruce.

The Legislature's use of the word "if" at the start of the subsection and the relevant clause is critical. *The Random House Webster's College Dictionary* (2001) offers several definitions of "if," the more pertinent being: "1. in case that; granting or supposing that; on condition that[.]" See *Hottmann v Hottmann*, 226 Mich App 171, 178; 572 NW2d 259 (1997) (a dictionary definition is appropriately used to construe undefined statutory language according to common and approved usage).³ Thus, the use of "if" in the first and second clauses of MCL

³ In response to our concurring colleague, we simply state that although there may be more than one dictionary definition to a term, this does not render the statute ambiguous, *Lash v Traverse City*, 479 Mich 180, 189 n 12; 735 NW2d 628 (2007), for when faced with multiple definitions the courts must look to the context in which the word is used in the statute before determining the correct definition to apply, *Feyz v Mercy Memorial Hospital*, 475 Mich 663, 684 n 62; 719 NW2d 1 (2006). Both the state and federal courts long ago concluded that utilizing dictionaries is a proper and objective means to define undefined words, with the context of the word being important in those circumstances in which various definitions of the same word exist. See *Taniguchi v Kan Pacific Saipan Ltd*, ___ US ___, ___; 132 S Ct 1997; 182 L Ed 2d 903 (2012) (canvassing numerous dictionaries for the common understanding of an undefined statutory term), *Spectrum Health Hosp v Farm Bureau Mut Ins Co*, 492 Mich 503, 516; 813 NW2d 117 (2012), and *Feyz*, 475 Mich at 684 n 62. In any event, the definition of "if" we utilize today is

700.2114(1)(b) sets forth the alternative conditions upon which the rest of that subsection is premised. Absent satisfaction of one of those conditions, the remainder of subsection 2114(1)(b) does not come into play.

Under these provisions, a presumption exists that Bruce and Renee are the children of Corinne and Robert Keene, as they were married when Bruce and Renee were conceived (a fact established by their birth certificates). MCL 700.2114(1)(a). Because of that undisputed fact, Renee and Bruce established that they were born during a marriage. But what of the proof that they were not issue of that marriage? Bruce and Renee claim that DNA evidence purportedly showing that they are the biological children of the decedent accomplishes that task.

However, the plain language of MCL 700.2114(5) provides the exclusive means by which the presumption of natural parenthood set forth in MCL 700.2114(1)(a) may be overcome, and specifies that the *only* person holding the right to challenge the presumption is the presumptive natural parent, and the right to attempt to overcome the presumption ends when the presumed parent is deceased. Here, that person is Robert Keene. However, since Robert Keene has already died, the *exclusive* right to disprove the presumption that Renee and Bruce are his natural children has terminated. Accordingly, Renee and Bruce do not satisfy the express criteria of MCL 700.2114(1)(b). To hold otherwise would effectively allow an additional method to rebut the presumption of paternity provided in subsection 2114(5) and render the relevant portion of subsection 2114(1)(b) superfluous. That we cannot do. *Turpening Estate*, 258 Mich App at 465.⁴

Before moving on, we make two additional points. First, appellants' reliance upon *In re Daniels Estate*, 301 Mich App 450, 453-454; 837 NW2d 1 (2013), is of no moment. In that case our Court ruled that MCL 700.2114(1)(b) did not first require an underlying finding that a child is the biological child of the decedent before MCL 700.2114(1)(b)(i) through (vi) come into play. *Id.* at 459. That argument is not being made here. Moreover, the child in that case was undisputedly born out of wedlock. *Id.* at 452. Accordingly, one of the conditions of MCL 700.2114(1)(b) was satisfied before the Court proceeded to analyze MCL 700.2114(1)(b)(i) through (vi). In contrast, because Renee and Bruce cannot rebut the presumption of natural parentage of Robert Keene, we can proceed no further under subsection 2114(1)(b). Our holding is fully consistent with *Daniels*, and just as importantly, the statute.⁵

Second, we reject Bruce and Renee's assertion that the subsection of the statute allowing for testing under the paternity act (MCL 700.2114(b)(v)) to determine who the natural parent is

certainly a common and ordinary one as reflected in several different dictionaries. See, e.g., *The American Heritage College Dictionary* (1994) and *Oxford American Dictionary* (1980).

⁴ Based on this conclusion, Renee and Bruce lack standing to challenge the admission of the decedent's 1997 will to probate. Kathryn's argument that this issue has been abandoned on appeal is therefore moot.

⁵ The trial court should have relied exclusively on the statutory language, as the citation to *In re Estate of Quintero*, 224 Mich App 682; 569 NW2d 889 (1997), was misplaced. See *In Re Daniels Estate*, 301 Mich App at 459.

would have no meaning if there was an initial requirement to show (under MCL 700.2114(b)) that the child was born out of wedlock (which presumably is accomplished by DNA testing as it is under the paternity act). What that argument glosses over is the different purposes of each showing. It is one thing to prove that a child's presumed parent is not the natural parent; it is a wholly separate thing to prove that another person is the child's natural parent. These are separate issues, and our reading of the statute is that the Legislature has conditioned proof of the former as being required before a child can proceed to proof of the latter.

B. GIFT

Finally, we reject Bruce's contention that a genuine issue of material fact exists regarding whether the decedent made an *inter vivos* gift of the contents of his safe to Bruce. Our review of this issue implicates MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). This Court reviews a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Review is limited to the evidence that was presented to the probate court at the time the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009). "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Prod, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (citations omitted). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the nonmoving party, leaves open an issue upon which reasonable minds could differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013).

"[F]or a gift to be valid, three elements must be satisfied: (1) the donor must possess the intent to transfer title gratuitously to the donee, (2) there must be actual or constructive delivery of the subject matter to the donee, unless it is already in the donee's possession, and (3) the donee must accept the gift." *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997). "A gift *inter vivos* is not only immediate, but absolute and irrevocable." *In re Reh's Estate*, 196 Mich 210, 217; 162 NW 978 (1917). Delivery must be unconditional and must place the property within the dominion and control of the donee. *Osius v Dingell*, 375 Mich 605, 611; 134 NW2d 657 (1965). Additionally, an *inter vivos* gift "must be fully consummated during the lifetime of the donor and must invest ownership in the donee beyond the power of recall by the donor." *Id.*

Here, as the probate court found, Bruce's affidavit fails to establish delivery. Indeed, although Bruce claims the decedent provided him the combination to the safe and indicated that the contents of the safe belonged to him, it was the decedent who retained dominion and control over the safe and its contents. The safe was located in the decedent's office at PSI, a company exclusively owned by the decedent. In addition, the decedent retained control of the combination, which he could change at any time, thereby precluding Bruce's access to the safe's contents. This means the decedent retained not only control, but the power of recall. There was no delivery. *Osius*, 375 Mich at 611.

Affirmed.

No costs will be allowed on appeal. MCR 2.719(A).

/s/ Christopher M. Murray
/s/ Kathleen Jansen