

STATE OF MICHIGAN
COURT OF APPEALS

In re the Estate of HENRY CLYDE JOHNSON,
Deceased.

MARY ELLEN GOTSHALL,

Petitioner-Appellant,

v

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Respondent-Appellee.

UNPUBLISHED

May 26, 1998

No. 201404

Oakland Probate Court

LC No. 95-244285 IE

Before: Whitbeck, P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Petitioner Mary Ellen Gotshall appeals the probate court order granting summary disposition in favor of respondent pursuant to MCR 2.116(C)(7). On appeal, petitioner asserts that the probate court erred in determining that petitioner's claims were based on and barred by MCR 2.612. Further, petitioner argues that the probate court erred by ignoring the statutory provisions on which petitioner's claims are based and by treating the matter as a will contest. We affirm.

I. Basic Facts

Petitioner and decedent, Henry Clyde Johnson, were married on January 7, 1995.¹ On December 27, 1994, in anticipation of the marriage, petitioner and decedent executed a premarital agreement. The agreement, that was prepared and typed by decedent, provided that petitioner agreed not to take against decedent's will and suggested that decedent's estate was worth between \$5,000,000 and \$6,000,000. The agreement was incorporated into decedent's last will and testament, that was executed March 31, 1995. Decedent died on June 9, 1995.

On August 2, 1995, the will was admitted to probate. On August 24, 1995, petitioner elected to abide by the will, signing the election that had been sent to her by the attorney for the estate a few

days prior to the will's admission to probate. On February 13, 1996, petitioner received a draft copy of decedent's federal estate tax form that valued his gross estate at slightly under \$9,300,000. Petitioner moved to withdraw her election on August 2, 1996, and filed four petitions on November 1, 1996, including a petition to set aside the premarital agreement.

The probate court granted respondent's motion for summary disposition pursuant to MCR 2.116(C)(7). In reviewing this grant of summary disposition, this Court must accept the petitioner's well-pleaded allegations as true, construing them in a light most favorable to petitioner. *In re Beglinger Trust*, 221 Mich App 273, 275; 561 NW2d 130 (1997). We will affirm the grant of such a motion unless no factual development could justify recovery. *Id.* at 275-276. A summary disposition determination is a question of law that this Court reviews de novo. *Id.* at 276.

II. Acceptance of Benefits and the Doctrine of Election

Assuming for purposes of discussion that petitioner's motion to withdraw her election was timely, her claim is barred because she accepted benefits under the will and did not tender back those benefits before bringing this action. A surviving spouse cannot receive benefits under the will and take his or her statutory share unless a contrary intent plainly appears in the will. MCL 700.282(2); MSA 27.5282(2).² Given that the will incorporates the premarital agreement in which petitioner agreed to abide by the will, a contrary intent does not appear in the will.

While petitioner asserts that she could withdraw her election because the sixty-day period for making an election under § 700.282(2) was never "triggered" by the filing of the required inventory, the doctrine of election nevertheless precludes petitioner's claim.³ "Under the doctrine of election, a party who accepts a benefit under a will adopts the whole and renounces every right inconsistent with it." *Belinger, supra* at 277.

However, the doctrine of election is subject to the "fraud and deception" exception:

The general rule of estoppel by acceptance is subject to the qualification that if the benefit was received by the beneficiary without knowledge of his right to elect between the benefit so conferred and of his right to the property outside of the will, or in ignorance of the value of the property devised, or of the nature of the estate devised, or of facts showing the invalidity of the will, or if he was induced by fraud or deception to accept the benefit conferred by the instrument, he may withdraw the acceptance and contest the validity of the instrument and claim under the law, provided innocent third persons will not suffer by such withdrawal, and provided further that there has been no unreasonable delay in exercising the right of withdrawal, and that he pay into court the benefits received. [*Beglinger, supra* at 278 (quoting 96 CJS, Wills, § 1149, pp 947-948, ns 16-23).]⁴

This exception may not be invoked by a contestant who fails to tender back benefits received under the pertinent instrument before initiating an action to challenge the instrument's validity. *Belinger, supra* at 279. Petitioner did not so tender back benefits she received under the will. On

the contrary, she acknowledges that she has accepted \$1,000,000 worth of stock under the will. Thus, the doctrine of election bars petitioner's attempt to contest portions of decedent's will.

Affirmed.

/s/ William C. Whitbeck

/s/ Barbara B. MacKenzie

/s/ William B. Murphy

¹ It was a second marriage for both parties. Petitioner and her first husband, George Gotshall, and decedent and his first wife, Dorothy, had known each other socially. Mr. Gotshall died on June 20, 1991, and Mrs. Johnson died on January 31, 1994.

² MCL 700.282; MSA 27.5282 provides in pertinent part:

(1) If a decedent who was domiciled in this state dies testate leaving a surviving spouse, the fiduciary appointed to represent the estate, before the date for presentment of claims, shall serve notice on the surviving spouse of the spouse's right to an election as provided by this section and to file with the court an election in writing that the spouse elects 1 of the following:

(a) That the spouse will abide by the terms of the will:

(b) That the spouse will take $\frac{1}{2}$ of the sum or share that would have passed to the spouse had the testator died intestate, reduced by $\frac{1}{2}$ of the value of all property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death.

(c) If a widow, that the spouse will take her dower right under sections 1 to 29 of chapter 66 of the revised statutes of 1846, as amended.

(2) The surviving spouse shall be entitled to only 1 election choice under subsection (1) unless the contrary plainly appears by the will to be intended by the testator. The right of election of the surviving spouse may be exercised only during the lifetime of the surviving spouse. The election shall be made within 60 days after the date for presentment of claims, or within 60 days after filing proof of service of the inventory upon the surviving spouse, whichever is later.

³ Although the lower court found the doctrine of election inapplicable, we do not reverse if a court reaches the right result for a wrong reason. *General Aviation, Inc v Capital Region Airport Authority (On Remand)*, 224 Mich App 710, 716; 569 NW2d 883 (1997).

⁴ Obviously, the "fraud and deception exception" is somewhat of a misnomer as the exception extends to circumstances where a party is ignorant of material facts without fraud on anyone's part.