

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of Donald Louis
Ludden, Jr., deceased.

GARY P. DANIELS,

Petitioner-Appellee,

v

BARBARA JENDRASIAK,

Respondent-Appellant.

UNPUBLISHED

December 18, 2003

No. 243075

Kent County Probate Court

LC No. 00-169718-DA

Before: Fitzgerald, P.J., and Neff and White, JJ.

MEMORANDUM.

Respondent appeals as of right the order for a new determination of heirs and redistribution of estate assets. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner bore the burden of proving by a preponderance of the evidence that he was the son of Howard Ludden and an heir to his cousin's estate. *Smith v Robbins*, 91 Mich App 284; 283 NW2d 725 (1979). The certified copy of petitioner's birth certificate was prima facie evidence of the facts stated in the document. MCL 333.2886. Prima facie evidence, if not rebutted, is sufficient by itself to establish the truth of a legal conclusion. *American Casualty Co v Costello*, 174 Mich App 1, 7; 435 NW2d 760 (1989).

This Court will defer to the trial court's ability to judge the credibility of witnesses. *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991). Where the trial court found that petitioner gave credible supporting testimony, the discrepancies identified by respondent failed to rebut the presumption established by the birth certificate.

Respondent failed to raise a laches defense until the probate court had already ruled against her. Where the situation of neither party has changed materially and the delay of one has not put the other in a worse condition, the defense of laches cannot be recognized. *Kuhn v Secretary of State*, 228 Mich App 319, 334; 579 NW2d 101 (1998). Petitioner had no reason to establish his paternity until it was challenged by respondent. Petitioner did not sleep on his rights.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White