

STATE OF MICHIGAN
COURT OF APPEALS

MERWIN D. MOSS, SR., individually and as
Personal Representative of the ESTATE OF
JOSEPH E. MOSS, SR.,

Plaintiff-Appellant,

v

UAW LEGAL SERVICES – FORD LEGAL
SERVICES PLAN, RONALD D. FENWICK, and
ROBERT J. ESSICK,

Defendants-Appellees.

UNPUBLISHED
December 21, 2006

No. 270641
Wayne Circuit Court
LC No. 05-516878-CZ

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

In this legal malpractice suit, plaintiff appeals as of right from the circuit court order granting defendants' motions for summary disposition for lack of subject-matter jurisdiction under MCR 2.116(C)(4). We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Joseph E. Moss, Sr. passed away in May 2002. Under the terms of Joseph's will, Beverly Hogan was to act as the personal representative of his estate. Accordingly, Hogan filed a probate petition with the Wayne County Probate Court, which was assigned case number 2002-650304-DE.

Plaintiff Merwin D. Moss, Sr., is Joseph's son. In May 2002, plaintiff hired defendant Fenwick, who was an attorney and employee of defendant UAW Legal Services-Ford Legal Services Plan, to represent his interests in his father's estate.

In September 2002, defendants obtained an ex parte preliminary injunction from the probate court. The preliminary injunction restrained Hogan from transferring, redeeming, removing, or in any way dealing with any and all U.S. savings bonds, bank accounts, stocks, securities, or any other assets titled in the names of Joseph E. Moss and Beverly Hogan until further order of the court. Defendants did not include the financial institutions that held the joint assets within the scope of the injunction and allegedly did not serve those institutions with notice of the injunction against Hogan. Hogan defied the injunction and, by November 2003, had disposed of all the joint assets. In October 2004, the probate court determined that the joint

assets were assets of Joseph's estate and, in accordance with the terms of Joseph's will, awarded them to plaintiff.

In June 2005, plaintiff sued defendants¹ for legal malpractice in Wayne Circuit Court. Plaintiff alleged that defendants should have either included the various financial institutions within the scope of the preliminary injunction or served notice of the injunction on those institutions in order to prevent Hogan from disposing of the joint assets. Plaintiff further alleged that, because defendants failed to take these steps, these assets were not available for distribution to plaintiff. Defendants moved for summary disposition on the ground that the probate court had exclusive jurisdiction over the subject matter of the lawsuit. The circuit court agreed with defendants and granted summary disposition in their favor.

The existence of subject-matter jurisdiction is a question of law that is reviewed de novo. *Midwest Energy Cooperative v Michigan Public Serv Comm*, 268 Mich App 521, 523; 708 NW2d 147 (2005). Questions of statutory construction are also reviewed de novo. *Id.* "The primary goal of judicial interpretation of statutes is to ascertain the intent of the Legislature. The first criterion in determining intent is the specific language of the statute." *Manning v Amerman*, 229 Mich App 608, 612; 582 NW2d 539 (1998) (internal citations omitted).

Circuit Courts are courts of general jurisdiction and "have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605; *Manning, supra* at 610. The Estates and Protected Individuals Code, MCL 700.1101 *et seq.*, vests probate courts with "exclusive legal and equitable jurisdiction" over "[a] matter that relates to the settlement of a deceased individual's estate" MCL 700.1302(a).² Therefore, if plaintiff's malpractice claims are matters that relate to the settlement of a deceased individual's estate, the circuit court could not exercise jurisdiction over them.

In the present case, the trial court determined that plaintiff's claims related to the settlement of his father's estate because the underlying tortious conduct purportedly affected the assets available for distribution. The trial court also determined that the claims were analogous to the breach of fiduciary duties at issue in *Manning, supra*. On appeal, plaintiff contends that *Manning* is inapplicable to the facts of this case and that his malpractice claims do not relate to the settlement of his father's estate. We agree with plaintiff.

In *Manning*, the Court addressed whether the probate court had exclusive jurisdiction to adjudicate various claims by the beneficiaries of a trust against the trustee and the trustee's attorney. *Id.* at 609-610. The beneficiaries alleged that the trustee, with the aid of his attorney, misappropriated the assets of the trust and, thereby, caused them financial and emotional damages. *Id.* The beneficiaries stated various claims, but only appealed the circuit court's

¹ Defendant Robert Essick represented plaintiff after plaintiff terminated his relationship with defendants Fenwick and UAW Legal Services-Ford Legal Services Plan in July 2003. Plaintiff terminated his relationship with Essick early in 2004.

² Probate courts also have concurrent jurisdiction over some types of claims. See MCL 700.1303.

determination that the probate court had exclusive jurisdiction over their intentional infliction of emotional distress and legal malpractice claims. *Id.* at 610. In deciding this issue, the *Manning* Court examined the statutory grant of exclusive jurisdiction to probate courts, which was then codified at MCL 700.21.³ The *Manning* Court noted that the statute provided that “the probate court has exclusive jurisdiction over proceedings concerning the administration of trusts, including the determination of ‘any question arising in the administration or distribution of any trust’” *Id.* at 612, quoting MCL 700.21(b)(v); c.f. MCL 700.1302(b)(v) (granting exclusive jurisdiction to the probate court to hear a proceeding to determine “a question that arises in the administration or distribution of a trust.”). The Court then summarized the plaintiffs’ claims and stated that “it is clear from the face of the complaint that plaintiffs’ emotional distress and malpractice claims arose in the administration of a trust.” *Id.* at 613. Therefore, the Court concluded, these claims were within the exclusive jurisdiction of the probate court.

The statutory grant of jurisdiction for matters involving trusts, as interpreted by the Court in *Manning*, is significantly broader than the grant of jurisdiction for matters involving estates. In contrast to the grant of exclusive jurisdiction for questions that *arise* in the administration of trusts, see MCL 700.1302(b)(v), with regards to estates, probate courts only have exclusive jurisdiction over “[a] matter that *relates* to the settlement of a deceased individual’s estate” MCL 700.1302(a) (emphasis added). The use of “relates” indicates an intent to limit the exclusive jurisdiction to matters that actually affect the settlement of an estate. Further, as applied to a decedent’s estate, settlement is defined to mean “the full process of administration, distribution, and closing.” MCL 700.1107(d). Hence, in order to fall under the exclusive jurisdiction provided by MCL 700.1302(a), the claim at issue must itself relate to the process of administering, distributing or closing the estate. The fact that a particular suit involves an estate or has some tangential connection to the administration or distribution of an estate will not by itself be sufficient to invoke the probate court’s exclusive jurisdiction. See, e.g., *In re Kus Estate*, 136 Mich App 343; 356 NW2d 23 (1984) (holding that, under an older version of MCL 700.21(a), which had similar language to present MCL 700.1302(a), a breach of contract action brought by a personal representative to recover a debt owed to the decedent was insufficiently related to the settlement of an estate to invoke the probate court’s exclusive or concurrent jurisdiction), superceded by statute as recognized in *In re Estate of Shields*, 254 Mich App 367, 369; 656 NW2d 853 (2002) (noting that under MCL 700.1303(1)(i), probate courts now have concurrent jurisdiction to hear contract claims by or against an estate); see also *York v Isabella Bank & Trust*, 146 Mich App 1, 4-7; 379 NW2d 448 (1985) (holding that claims against the personal representative of an estate that run directly to the plaintiff are not matters relating to the settlement of the estate).

In the present case, plaintiff’s claims do not involve the actual administration, distribution or closing of his father’s estate. Indeed, the probate court has already determined that the assets in question were assets of the estate and awarded them to plaintiff. Hence, although plaintiff seeks compensation for damages that arose out of the administration or distribution of an estate, the claims themselves do not directly “relate[] to the settlement of a deceased individual’s estate.” MCL 700.1302(a). Because plaintiff’s claims do not relate to the settlement of an

³ 1998 PA 386 repealed MCL 700.21 and replaced it with MCL 700.1302. The provisions and language of MCL 700.1302 are similar to those stated in MCL 700.21.

estate, they do not fall within the exclusive jurisdiction of the probate court. Consequently, the circuit court could properly adjudicate plaintiff's malpractice claims.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly