STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of NANCY FARLEY WOOD,
Deceased.

WILLIAM L. WOOD, Personal Representative of the Estate of NANCY FARLEY WOOD, Deceased,

Petitioner-Appellee,

v

MARJORY CRAWFORD,

Respondent-Appellant,

and

NANCY AHRENS and ELIZABETH TRIMM,

Appellees.

UNPUBLISHED
January 3, 2008

No. 265991
Berrien Probate Court
LC No. 2003-000287-DE

In re Estate of NANCY FARLEY WOOD,
Deceased.

WILLIAM L. WOOD, Personal Representative of the Estate of NANCY FARLEY WOOD, Deceased,

Petitioner-Appellant,

v

MARJORY CRAWFORD,

Respondent-Appellee,

and

No. 268024
Berrien Probate Court

LC No. 2003-000287-DE

NANCY AHRENS, ELIZABETH TRIMM and
DAVID F. WOOD,

Appellees.

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

In docket no. 265991, Marjory Crawford (Crawford) appeals as of right an order on objection to her amended inventory[1] of the estate of Nancy Farley Wood (decedent). In docket no. 268024, William L. Wood (William), personal representative of the estate of decedent, appeals as of right the order denying his petition to surcharge Crawford and for sanctions. In both appeals, we affirm.

Decedent was born in 1903. She had five children: Elizabeth Trimm, Crawford, Nancy Ahrens, David F. Wood and William. Decedent lived a remarkable life. She was, in her youth, a suffragette who marched for women's rights and was a founder of the National Organization for Women. She taught high school at age 19. Later she got her master's degree from the University of Chicago and taught mathematics at the University of Nebraska. Despite sex discrimination in the field of physics, she did research in physics and secret work on the Manhattan (atomic energy) project.

Decedent made approximately 14 wills between 1986 and 2003. William drafted most of them. Decedent lived alone and frequently drove. That continued until mid-2000, when decedent moved-in with William.

In 1997, decedent and William established joint accounts at a bank and with the United States Treasury Direct program, to trade in treasury securities. In that year, decedent and William jointly acquired two treasury bills, one redeemed for $180,000 and the other for $200,000. The funds were initially deposited in an Old Kent Bank account, and then used to purchase treasury bills, which were redeemed, and then used to purchase more treasury bills (and this process continued numerous times), and William added $100,000 of his own funds, and then approximately $480,000 in proceeds eventually were split into a Bank One account and two First Resource Federal Credit Union accounts.

In February 2003, decedent appended to her will a document entitled "Privacy Issues – My personal Finances – My Care – My Health." In this document, decedent emphasized that only William had a right to her financial and medical information, or a right to participate in her decision making.

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[1] Crawford filed the amended inventory during the time she was personal representative of decedent's estate.

In March 2003, decedent died. In 2004, decedent's 1999 will was admitted to probate by stipulated order. In December 2004, Crawford, as personal representative (PR) of the estate, filed an amended inventory, indicating total estate assets of $508,565.47. The amended inventory included treasury bills "owned solely or jointly by Nancy Wood." William filed objections to Crawford's amended inventory, indicating, inter alia, that treasury bills valued at $461,895 were not part of the estate. William contended that the joint accounts relating to the treasury bills were his property, because they had been joint accounts in his name and decedent's, with rights of survivorship. Subsequently, the probate court appointed William successor PR.

Crawford defended against William's objection to inclusion of the treasury bill accounts, by arguing that the joint accounts were established as a result of undue influence by William over decedent. Crawford also argued that the depositors into the joint accounts did not intend there to be rights of survivorship. The parties bench-tried these issues, and the trial court sustained William's objection concerning the joint accounts, finding that William did have rights of survivorship in the joint accounts, and that William had not used undue influence in the creation of the joint accounts. Crawford appeals as of right from the trial court's ruling, contending that the trial court erred in failing to impose an inference of undue influence, given the fiduciary relationship between William and decedent, and that the trial court erred in its finding that Crawford had failed to overcome statutory presumptions that depositors into joint accounts intended rights of survivorship.

After the trial court's ruling, William filed a petition to surcharge Crawford and for sanctions, contending that Crawford failed to conduct a reasonable inquiry before filing the amended inventory, that Crawford filed a frivolous claim of undue influence, and that Crawford as PR committed negligence and breached duties owed to beneficiaries of the will. The trial court denied the petition. William appeals as of right from that denial.

The first issue is whether the trial court erred in failing to impose a mandatory inference of undue influence because of a fiduciary relationship between William and decedent. We hold that the trial court did not err.

Undue influence is an equitable matter. *Adams v Adams*, 276 Mich App 704, 714 n 5; ____ NW2d ____ (2007). Michigan appellate courts review dispositional rulings on equitable matters de novo. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). But we review all of the trial court's underlying findings of fact for clear error. *In re Duane V Baldwin Trust*, 274 Mich App 387, 396; 733 NW2d 419 (2007). "A finding is clearly erroneous where, although there is evidence to support it, the reviewing court is firmly convinced that a mistake has been made." *In re Forfeiture of $180,975*, 478 Mich 444, 450; 734 NW2d 489, 492 (2007); *Roberts v Farmers Ins Exch*, 275 Mich App 58, 66; 737 NW2d 332 (2007). Questions of law are reviewed de novo on appeal, and the proper interpretation of a statute is a question of law. *Omdahl v West Iron Co Bd of Ed*, 478 Mich 423, 426; 733 NW2d 380 (2007).

In dispute are funds contained in three depositary accounts: (1) Bank One account, which Crawford admits was a joint account (of decedent and William); (2) an account (of decedent and William) at First Resource Federal Credit Union, which Crawford admits was a joint account; and (3) another First Resource account, which Crawford admits was entitled "Nancy F. Wood as Trustee for William L. Wood." It is undisputed that the funds in these accounts were proceeds of

treasury bills (redeemed for $180,000 and $200,000, respectively) which decedent placed in joint ownership (of herself and William) in or around 1997.

MCL 490.56 provides a presumption of a right of survivorship of jointly-owned multiple-party credit union accounts:

> *A multiple-party account payable to 2 or more persons, jointly or severally*, which does not expressly provide that there is no right of survivorship, though there is no mention of survivorship or joint tenancy, *is presumed to be a survivorship account*. At the death of a party, sums on deposit in a survivorship account belong to the surviving party or parties as against the estate of the decedent. . . . [Emphases added.]

MCL 490.58 provides that the foregoing presumption, regarding credit union accounts, is rebuttable only by clear and convincing evidence:

> The presumptions stated herein are based upon inferences of the intention of the parties to multiple-party accounts arising from the form of the accounts and the usual expectations of people using these accounts. *The presumptions are rebuttable by clear and convincing evidence of a different intention.* The presumptions of survivorship are not subject to change by will but may be rebutted by a written order received by the credit union to change the form of account or directing that payment not be made in accordance with the account which is signed by a party and is received by the credit union during the party's lifetime. [Emphasis added.]

Similarly, MCL 487.703 provides a presumption of joint tenancy of multiple-party bank accounts:

> *When a deposit shall be made, in any bank by any person in the name of such depositor or any other person, and in form to be paid to either or the survivor of them, such deposits* thereupon and any additions thereto, made by either of such persons, upon the making thereof, *shall become the property of such persons as joint tenants, and the same* together with all interest thereon, shall be held for the exclusive use of the persons so named and *may be paid to either during the lifetime of both, or to the survivor after the death of 1 of them*, and such payment and the receipt or acquittance of the same to which such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.
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> *When a deposit has been made, or shall hereafter be made, in a banking institution transacting business in this state, in the name of 2 or more persons, payable to either or the survivor or survivors, such deposit* or any part thereof or any interest or dividend thereon and any additions thereto, made by any 1 of the said persons, *shall become the property of such persons as joint tenants and the same shall be held for the exclusive use of the persons so named and may be paid*

> *to any 1 of said persons during the lifetime of said persons or to the survivor or survivors after the death of 1 of them*, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.
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> *The making of the deposit in such form shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceeding, to which either such banking institution or surviving depositor or depositors is a party, of the intention of such depositors to vest title to such deposit and the additions thereto in such survivor or survivors*. [Emphases added.]

Thus, by statute, where there are joint accounts, there is a mandatory presumption of rights of survivorship, which presumption cannot be overcome except by a preponderance of the evidence, in the case of bank accounts, MCL 487.703, or by clear and convincing evidence, in the case of credit union accounts, MCL 490.58. Case law acknowledges that "the statutory provision authorizing creation of joint bank accounts with rights of survivorship, MCL 487.703, . . . creates a presumption that the funds placed in such accounts are intended to be the property of the survivor." *Habersack v Rabaut*, 93 Mich App 300, 305; 287 NW2d 213 (1979), citing *Kirilloff v Glinisty*, 375 Mich 586, 589; 134 NW2d 707 (1965).

Crawford's claim, under this issue, is not so much that decedent did not intend the joint accounts to have rights of survivorship, but that her intention to do so was the result of undue influence. Undue influence requires that the claimant show

> that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, are not sufficient. [*In re Estate of Karmey*, 468 Mich 68, 75; 658 NW2d 796 (2003), quoting *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976).]

In some circumstances, a presumption of undue influence arises. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). This presumption arises when the claimant can show evidence of the following elements: "(1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary, or an interest represented by the fiduciary, benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction." [*Id.*, quoting *Kar*, *supra* at 537.] In these circumstances, the burden shifts to the defendant to rebut the presumption. *In re Peterson Estate*, 193 Mich App 257, 260; 483 NW2d 624 (1991). Whether this presumption has been rebutted is a matter of fact for the trier of fact to decide. *Id.* at 261-262.

For the presumption of undue influence to arise, the claimant must first show the existence of a confidential or fiduciary relationship. The Estates and Protected Individuals Code (EPIC) states:

> A fiduciary stands in a position of confidence and trust with respect to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary. A fiduciary shall observe the standard of care described in section 7302 and shall discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; and segregation of assets held in the fiduciary capacity. . . . [MCL 700.1212(1).]

Accordingly, a fiduciary, under MCL 700.1212(1), is a person who "stands in a position of confidence and trust" vis-à-vis another person. A fiduciary has also been defined as a "relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship." *In re Estate of Karmey, supra* at 75, quoting Black's Law Dictionary (7th ed). There are four typical ways in which such a relationship arises:

> (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer. [*Id.*]

This Court has noted that a fiduciary relationship is created through the grant of a general power of attorney. *In re Conant Estate*, 130 Mich App 492, 498; 243 NW2d 593 (1983).

The effect of a presumption of undue influence is not to shift the burden of persuasion, but rather, to shift the burden of production from the person claiming undue influence to the person denying undue influence. *Kar, supra* at 541-542. As the Court explained:

> If the trier of fact finds the evidence by the defendant [respondent] as rebuttal to be equally opposed by the presumption [of undue influence], then the defendant has failed to discharge his duty of producing sufficient rebuttal evidence and the "mandatory inference" remains unscathed. This does not mean that the ultimate burden of proof has shifted from plaintiff to defendant, but rather that *plaintiff may satisfy the burden of persuasion with the use of the presumption, which remains as substantive evidence, and that the plaintiff will always satisfy the burden of persuasion when the defendant fails to offer sufficient rebuttal evidence.* [*Id.* at 542 (emphasis added).]

The trial court acknowledged that if a fiduciary relationship existed between decedent and William, a presumption of undue influence arises. But the trial court found that the joint accounts did not result from a fiduciary relationship between William and decedent. The trial court reasoned that the critical time in question was the summer and fall of 1997, when the first joint accounts were established. In leading to its conclusion that, at that time, no fiduciary relationship existed between William Wood and the deceased, the trial court reasoned: "At that time, Mr. Wood was not acting in any such confidential capacity [as agent under a durable power

of attorney given to William by decedent]. None of the agency capacities were utilized in setting up these accounts."

The trial court further reasoned: "At no time, thereafter, did [William] create any joint accounts acting in his agency capacity." The trial court concluded that no fiduciary relationship existed between William and decedent at the time the joint account arrangements were established.

The trial court's conclusion that no fiduciary relationship existed between decedent and William in 1997 is supported by evidence. In 1997, when the original joint accounts were established, decedent was not permanently living with William. That did not happen until 2000. Further, there was no evidence that in creating the joint accounts, William utilized his power of attorney. These two key facts support the trial court's conclusion.

The trial court was sitting as the trier of fact. Its conclusion that no fiduciary relationship existed in 1997, when the joint accounts were first created, is a finding of fact. As such, it must be respected unless clearly erroneous. *In re Erickson Estate, supra* at 331. Crawford has failed to show that this conclusion is clearly erroneous. Because the trial court's conclusion that there was no fiduciary relationship in 1997 is not clearly erroneous, the trial court was not required to impose a mandatory inference of undue influence.

The second issue is whether the trial court erred in determining that Crawford failed to overcome the statutory presumptions that joint depositors intended there to be rights of survivorship. We find no error.

"The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Brown v Mayor of Detroit*, 478 Mich 589, 593; 734 NW2d 514 (2007). "The first step is to review the language of the statute." *Brown, supra* at 593. "If the statutory language is unambiguous, the Legislature is presumed to have intended the meaning expressed in the statute and judicial construction is not permissible." *Id*. "A statute is ambiguous if reasonable minds can differ regarding its meaning, and, thus, judicial construction is appropriate." *The Mable Cleary Trust v The Edward-Marlah Muzyl Trust*, 262 Mich App 485, 496; 686 NW2d 770 (2004).

MCL 487.703 is unambiguous. Reasonable minds cannot differ that MCL 487.703 provides that where a deposit is made, in form payable to either of two or more depositors or to the survivor of them, such form shall, in the absence of undue influence, be prima facie evidence of the intention of the depositors to provide rights of survivorship. Thus, the form of the deposit, "to be paid to either [of the depositors] or [to] the survivor of them," MCL 487.703, creates a presumption that the depositors intended to provide rights of survivorship. Accordingly, under the plain words of MCL 487.703, a person challenging the ownership of the survivor must show *either* undue influence, or that the depositors did not intend for there to be survivorship rights. Here, Crawford argues that there was evidence of undue influence, and that the presumption regarding the depositors' intent was overcome.

Crawford argues that decedent's tax records show that the income from the joint assets was reported as income to decedent. Crawford also argues that decedent's 1997 will states, regarding treasury bills, bonds, notes and certificates of deposit, that "If co-owned, the amount

shall be given to the co-owner," while the 1999 will, admitted to probate, specifies that "Co-owned *bonds* shall be given to the co-owner." (Emphasis added.)

The Michigan Supreme Court has considered the presumption (of depositors' intent to allow survivorship of joint bank accounts) contained in MCL 487.703. The Court stated: "The creation of a joint bank account does not conclusively establish title in the surviving depositor after the death of one of the depositors but merely creates a presumption of ownership in the survivor rebuttable by competent evidence to the contrary." *Pence v Wessels*, 320 Mich 195, 199-200; 30 NW2d 834 (1948) (internal quotation marks and citation omitted). To rebut the statutory presumptions, the person arguing against rights of survivorship must present "*[r]easonably clear and persuasive proof* . . . . Otherwise there would be no security or certainty as to the rights of such surviving depositors." *Lau v Lau*, 304 Mich 218, 224; 7 NW2d 278 (1943) (emphasis added). *Pence* further stated:

> A rebuttable or prima facie presumption has no weight as evidence; it may establish a prima facie case, but, if challenged by rebutting evidence, the presumption cannot be weighed against the evidence, and *upon introduction of supporting evidence, the actual evidence introduced is then weighed without giving any evidential force to the presumption itself.* [*Pence, supra* at 199-200 (emphasis added; internal quotation marks and citation omitted).]

The tax returns do not shed light on the depositors' intent with respect to rights of survivorship. Decedent could have reported income from joint assets on her own federal income tax return, and still intended that William would have a right of survivorship in such assets. Reporting income from a joint asset merely acknowledges the taxpayer's ownership interest in the joint asset. It acknowledges an income tax liability. It does not tend to shed light on the taxpayer's intent regarding survivorship. For example, William and decedent could have assigned the federal income tax liability (resulting from income to the joint accounts) to decedent while she was living, because decedent was in a lower tax bracket. In that case, decedent's tax return would not shed light on the depositors' intent regarding survivorship. Accordingly, the tax returns did not constitute reasonably clear and persuasive proof regarding the depositors' intent regarding the bank account, and certainly did not constitute clear and convincing evidence of the depositors' intent regarding the credit union accounts.

The differences between the 1997 and 1999 wills also do not constitute reasonably clear and persuasive proof that decedent intended William not to have a right of survivorship to the joint treasury bills and related accounts. Decedent could have meant "bonds," as that word is used in the 1999 will, to include any debt instruments issued by the United States Treasury. In any event, at the time decedent died in 2003, the treasury bill proceeds in question were no longer invested in treasury bills, so the evidence from the 1997 and 1999 wills does not shed light on the intent of investors into treasury bills. In other words, when decedent died in 2003, there were no longer any treasury bills or bonds to be cashed.

For the foregoing reasons, the evidence presented by Crawford did not rebut the presumptions that the depositors into the joint bank and credit union accounts intended to provide for rights of survivorship. The trial court did not err in so holding.

We next consider Crawford's argument regarding undue influence. The trial court found little evidence that decedent was in a position in 1997 to be controlled by William through threats, misrepresentation, undue flattery, fraud, or physical or moral coercion. The trial court found that

> all of the witnesses who testified indicated that Nancy F. Wood was an extremely independent female. She was one of the founding members of the National Organization for Women. Ms. Wood was its national secretary for some 8 years. She was extremely well educated and a successful businesswoman. Among those decisions she independently made, Mrs. Wood decided whom she wanted to help financially, in what amounts and over what period of time. Often she didn't tell other family members about those gifts because she felt it was none of their business.

This evidence is strong. It suggests that in 1997, decedent's will was not overcome by William. Therefore, the trial court's conclusion that Crawford failed to carry her burden of proof of undue influence is affirmed.

The next issue, raised by William, is whether the trial court committed clear error by failing to surcharge and sanction Crawford for signing, as PR, the amended inventory, without conducting a reasonable inquiry that the information it contained was well grounded in fact and warranted by existing law, under MCR 2.114. This Court reviews a trial court's determination whether to impose sanctions for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002); *McDonald v Election Comm*, 255 Mich App 674, 697; 662 NW2d 804 (2003). "A decision is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made." *In re Costs & Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002) (internal quotation marks and citation omitted).

MCR 2.114(D) provides:

> The signature of an attorney or party . . . constitutes a certification by the signer that
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> * * *
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> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law . . . .

The sanction for violation of MCR 2.114(D) is provided by MCR 2.114(E): "If a document is signed in violation of this rule, the court . . . shall impose . . . an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. . . ."

Here, William argues that an estate inventory, showing treasury bill proceeds as estate assets, was signed by Crawford (during her time as PR) in violation of MCR 2.114(D)(2). William argues that Crawford signed the inventory in question without conducting a reasonable

inquiry into whether the information it contained was well grounded in fact and warranted by existing law. Essentially, William argues that Crawford's position, taken in the inventory (that the jointly-owned treasury bill proceeds were estate assets and not William's property by survivorship) was not well grounded in fact or warranted by existing law.

We disagree with William's argument. Although Crawford ultimately lost on the issue of the inclusion in the estate of the treasury bill proceeds, it does not necessarily follow that her position on that issue was frivolous. Indeed, there was a good basis to support Crawford's position that the treasury bill proceeds should be included in the estate, and not belong to William by survivorship. Accordingly, the trial court did not err in denying sanctions under MCR 2.114.

The next issue is whether the trial court clearly erred in denying sanctions for a frivolous claim under MCL 600.2591. This Court will not disturb a trial court's finding on whether a claim or defense was frivolous under MCL 600.2591 unless the finding was clearly erroneous. *In re Costs & Attorney Fees*, 250 Mich App 89, 94-95; 645 NW2d 697 (2002).

The Revised Judicature Act provides that "if a court finds that . . . a civil action . . . was frivolous, the court . . . shall award to the prevailing party the costs and fees incurred . . . in connection with the action . . . ." MCL 600.2591(1). "To determine whether sanctions are appropriate under MCL 600.2591, it is necessary to evaluate the claims or defenses at issue at the time they were made." *In re Costs and Attorney Fees, supra* at 94. The court must examine "the particular facts and circumstances of the claim involved." *Id*. at 94-95. The statute defines "frivolous" to include instances where "The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true[.]" MCL 600.2591(3)(a)(ii).

Here, Crawford's claims, in essence, were that the statutory presumptions regarding joint bank and credit union accounts were rebutted by evidence that the depositors did not intend there to be rights of survivorship, and that the transfer of the treasury bill funds into joint accounts resulted from undue influence by William.

Crawford had a reasonable basis to believe, for instance, that William had a power of attorney and that William occupied a position of trust and confidence vis-à-vis decedent. Accordingly, the trial court did not clearly err in denying sanctions under MCL 600.2591.

We next consider whether the trial court abused its discretion in failing to surcharge Crawford for breach of her duties as PR. This Court review for abuse of discretion the probate court's decision whether to surcharge a fiduciary. *In re Duane V Baldwin Trust, supra* at 396. An abuse of discretion exists when the trial court's ruling falls outside the range of principled outcomes. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). Issues of statutory interpretation are questions of law reviewed de novo. *In re Duane V Baldwin Trust, supra* at 396, citing *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526, 697 NW2d 895 (2005).

MCL 700.3712 provides: "If the exercise or the failure to exercise a power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss *resulting from breach of fiduciary duty* to the same extent as a trustee of an express trust." (Emphasis added.) MCL 700.1308(1) provides, in relevant part: "A fiduciary is liable for a loss

to an estate that arises from . . . negligence in the handling of an estate . . . and for misfeasance, malfeasance, nonfeasance, or other breach of duty." MCL 700.1212(1) provides: "A fiduciary stands in a position of confidence and trust *with respect to each heir, devisee, beneficiary, protected individual, or ward* for whom the person is a fiduciary." (Emphasis added.) Thus, a personal representative may be held liable to interested persons for an improper exercise of his or her powers, or an improper failure to exercise powers, if there is a breach of fiduciary duty. MCL 700.3712.

A personal representative is authorized by the EPIC to "[p]rosecute or defend a claim or proceeding . . . for the protection of the estate and of the personal representative in the performance of the personal representative's duties." MCL 700.3715(y). Thus, Crawford, when she was PR, was authorized to prosecute a claim that the estate should have title to the funds resulting from trading in treasury securities.

Case law defines what constitutes a breach of fiduciary duty. "Damages may be obtained for a breach of fiduciary duty when a position of influence has been acquired and abused, or when confidence has been reposed and betrayed." *In re Duane V Baldwin Trust, supra* at 401, citing *The Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 47; 698 NW2d 900 (2005) (internal quotation marks omitted).

We conclude the trial court correctly found that Crawford did not breach any duty when she filed and defended the inventory. Crawford's duties when she was PR were to the beneficiaries under the will, namely her siblings. If Crawford, as PR, had failed to include in her inventory the accounts that were allegedly acquired by survivorship by William, she would have been neglecting her duties to the beneficiaries of the will. Accordingly, the trial court did not abuse its discretion in failing to surcharge Crawford.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder