

No.

In The
Supreme Court of the United States

LINDA SMITH and KIRK SIDDELL,
Petitioners,

v.

**DAVID R. HEILMAN, TRUSTEE OF
THE RALPH A. SIDDELL LIVING
TRUST and the WILLIAM H.
JOHNSON JR. LIVING TRUST,**

Respondent.

**On Petition for Writ of Certiorari
to the Michigan Court of Appeals**

**APPENDIX TO THE
PETITION FOR WRIT OF CERTIORARI**

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

In re RALPH A. SIDDELL LIVING TRUST.	UNPUBLISHED May 11, 2023
DAVID HEILMAN, Trustee of the RALPH A. SIDDELL LIVING TRUST, and WOUNDED WARRIOR PROJECT, Appellees, v. KIRK A. SIDDELL, Appellant.	No. 359979 Allegan Probate Court LC No. 21-062791- TV

<p>DAVID R. HEILMAN, Trustee of the RALPH A. SIDDELL LIVING TRUST, and WOUNDED WARRIOR PROJECT,</p> <p>Appellees, v. LINDA K. SMITH,</p> <p>Appellant.</p>	<p>No. 359991 Allegan Probate Court LC No. 21-062888- TV</p>
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Before: MARKEY, P.J., and MURRAY and
FEENEY, JJ.

PER CURIAM.

These consolidated appeals arise from the administration of individual trusts created by William (Bill) H. Johnson and his spouse, Ralph A. Siddell. In Docket No. 362535, Linda K. Smith, Bill's sister, appeals the probate court's order issued after a bench trial. In addition to challenging several of the court's findings and rulings after the trial, Smith challenges the court's earlier orders dismissing her claims against David Heilman for conversion and denying her motion for leave to amend her complaint. In Docket No. 359991, Smith

appeals the probate court's order denying her petition for declaratory relief and to invalidate the 2017 amendment to the Ralph A. Siddell Living Trust. In Docket No. 359979, Kirk Siddell, Ralph's son, appeals the probate court's order granting summary disposition of the petition to determine the validity of the Ralph A. Siddell Living Trust in favor of Heilman. Finding no error requiring reversal, we affirm the probate court's orders.

I. RELEVANT FACTS AND PROCEEDINGS

In 1998 Bill and Ralph each created a trust, and in 2012, each amended and restated his trust agreement. Each assigned to his trust "all of [his] interest in" "[a]ll tangible and intangible personal property of any kind or nature whatsoever and wherever located." Article Three of each trust addressed the distribution of the trust property. Pertinent to these appeals, Smith was to receive \$100,000 under each trust, and the survivor received the decedent's pets, along with \$25,000 for a pet trust. If the decedent did not have any animals at the time of his death, that gift would lapse and be added to the remainder. The remaining assets, including all tangible personal property, were to be held in trust for the survivor's benefit. The trustee was given the "discretion to distribute income and/or principal" for the survivor's "health, support and maintenance" if the trustee determined that the income and other property available to the survivor was insufficient to provide for his maintenance.

After the survivor's death, three named friends were to have the opportunity to select any item from the household furnishings or outdoor items, and one of them also received a large bronze deer that stood in the front yard of Bill and Ralph's residence. All remaining tangible personal property was to be distributed to Smith. The remaining financial assets were to be evenly divided between the All Saints Episcopal Church Endowment Fund, under certain conditions, and Smith. Bill and Ralph were co-trustees of each other's trust, with the survivor being named successor trustee. Both trusts were revocable.

Bill died suddenly in 2016. At the time of his death, Bill had \$371,476.94 in assets in trust accounts with Edward Jones. Ralph began serving as the sole trustee of Bill's trust in accordance with the terms of the trust. In February 2017, the probate court appointed Heilman as co-trustee of Bill's trust. According to the petition, Ralph, who was 86 years old at the time, did not wish to resign as trustee but wanted help with administering Bill's trust. The following month, Ralph restated and amended his trust agreement (the 2017 Siddell Trust), substantially changing Smith's distribution. Under the 2017 Siddell Trust, upon Ralph's death, the three friends were to have the opportunity to select any items of tangible personal property from Bill's and Ralph's residence. After the three men selected everything they wanted, Smith could choose 10 items from the remaining personal property. Any items remaining after that were to be sold by the

trustee. The trustee was to create a pet trust in accordance with Ralph's instructions and give \$50,000 to Kirk and a total of \$12,000 to five specified charities. The remainder of the trust principal was to be given to All Saints Episcopal Church Endowment Fund (50%), Christian Neighbors (25%), and Wounded Warriors Project (25%). Smith had no share of the remainder.

Ralph died in August 2019, and the trustee notified the beneficiaries of the existence of Ralph's trust and of their interests therein. On January 6, 2020, Smith presented Heilman with a statement and proof of claim in the amount of \$500,000, alleging that assets transferred to Bill's trust had been mismanaged, thereby depriving her of tangible personal property. Heilman denied the claim. Four days later, Smith filed a civil action against Heilman, in his capacity as trustee of Bill's trust and the Siddell Trust, alleging breaches of fiduciary duties regarding Bill's trust's tangible personal property and financial assets, common-law conversion, statutory conversion under MCL 600.2919a, and sought treble damages under MCL 700.7813(4).

After the close of discovery in the civil case, Heilman moved for partial summary disposition of Smith's complaint. Heilman argued that Smith's claims for conversion failed because Bill and Ralph owned the tangible personal property jointly, with rights of survivorship, and, therefore, the property passed to Ralph's sole ownership after Bill's death.

In addition, even if Smith had an ownership interest in the personal property, she had no right of immediate possession of any of the property during Ralph's lifetime, and the dispute about the ownership of the property that arose after Ralph's death justified Heilman's not distributing the property until the dispute was resolved. Further, Smith could not show that she suffered any damages because all the tangible personal property was currently stored in Bill and Ralph's marital home, awaiting distribution. Smith did not respond to Heilman's motion.

After an attempt at mediation failed, Heilman petitioned the probate court to determine the validity of the 2017 Siddell Trust and then moved for summary disposition on his petition. Heilman argued that the beneficiaries of the 2017 Siddell Trust had received notice that complied with MCL 700.7604(1)(b), which meant that anyone who wanted to challenge the validity of the 2017 Siddell Trust had six months to do so. No one had petitioned to set aside the trust during the limitations period, and now all such challenges were time-barred.

While Heilman's motions for summary disposition on Smith's conversion claims and on his petition for validation were pending, Smith moved for leave to amend her complaint to add a challenge to the validity of the 2017 Siddell Trust. Smith asserted that Ralph lacked the capacity to execute the trust and that the trust resulted from the "misrepresentation, coercion, deceit, and undue

influence" exerted by Heilman and others. Before the probate court ruled on Smith's motion, she petitioned for declaratory relief and to set aside the 2017 Siddell Trust. Smith contended that the notice she received after Ralph's death did not comply with MCL 700.7604 because it did not include the relevant portion of the Ralph's 2012 trust (2012 Siddell Trust) that would have shown that the 2017 Siddell Trust disinherited her and because the notice did not clearly inform her that if she did not challenge the validity of the 2017 Siddell Trust during the six-month limitations period, she would be forever barred from doing so.

After a period of additional briefing, the probate court granted Heilman's motion for summary disposition of his petition to validate the 2017 Siddell Trust. The probate court determined that Kirk did not have standing to challenge the validity of the 2017 Siddell Trust because he did not experience any property loss under the trust. Instead, he received a beneficial increase of \$15,000. The court found that Smith was the real party in interest for purposes of challenging the trust because the trust significantly affected her interests. The probate court further concluded that neither Smith's nor Kirk's claims survived the six-month limitations period provided by MCL 700.7604(1)(b), as the trustee's notices to Kirk and Smith complied with MCL 700.7604(1)(b). For the same reason, the probate court denied Smith's petition for declaratory relief. As to Ralph's alleged incapacity, the court concluded that the 2017 Siddell

Trust was revocable while Ralph was alive and that Ralph was never deemed incapacitated in any of the ways provided for in the trust: he was never pronounced incapacitated by a court, and he was not declared incapacitated by a physician who had examined him within the last three months.

The probate court also granted partial summary disposition of Smith's complaint in favor of Heilman. As to common-law conversion, the court found that Smith had not shown that she had a property right in, or a right to immediate possession of, the personal property being held by Heilman. The probate court further determined that because there was no indication that the tangible personal property was not still located within Bill and Ralph's common home and ready for distribution upon settlement of the 2017 Siddell Trust, Smith had not suffered any actual damages. Smith's claim for common-law and statutory conversion therefore failed. Lastly, the probate court denied Smith's motion for leave to amend her complaint, explaining that a petition to set aside a trust must be filed as a new matter and could not arise out of an amendment to a civil action.

After a bench trial on Smith's claims for breach of fiduciary duty, the probate court agreed that the trustees of Bill's trust had breached their fiduciary duties and ordered the return of \$120,000 to Bill's trust. The probate court also ordered Heilman to sell the tangible personal property and to split the proceeds equally between Bill's trust and Ralph's

trust. Kirk and Smith appealed the court's orders, and their appeals were consolidated.¹

II. ANALYSIS

A. DOCKET NO. 359979

As an initial matter, Heilman urges this Court to dismiss Kirk's appeal for lack of appellate standing.

Whether a party has standing is a question of law that this Court reviews de novo. *Newman v Real Time Resolutions, Inc*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 357279); slip op at 3. To have appellate standing, a person must be an “aggrieved party.” MCR 7.203(A); *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291; 715 NW2d 846 (2006).

This requirement stems from the fact that this Court's judicial power, established by Const 1963, art 6, § 1, extends only to a genuine case or controversy between the parties, one in which there is a real, not a hypothetical, dispute, and one in which the plaintiff has suffered a particularized or personal injury. [*Manuel v Gill*, 481 Mich 637, 643; 753 NW2d 48 (2008) (quotation marks and citation omitted).]

¹ *In re Ralph A Siddell Living Trust*, unpublished order of the Court of Appeals, entered December 8, 2022 (Docket Nos. 359979, 359991, and 362535).

“To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency.” Id. (quotation marks and citation omitted). Further, to have standing on appeal, a litigant must have suffered a concrete and particularized injury, as would a party plaintiff initially invoking the court’s power. The only difference is a litigant on appeal must demonstrate an injury arising from either the actions of the trial court or the appellate court judgment rather than an injury arising from the underlying facts of the case. [Federated Ins Co, 475 Mich at 291-292.]

Kirk has not identified any “concrete or particularized injury” that he suffered from the probate court’s conclusion that Kirk was time-barred from challenging the 2017 Siddell Trust, nor has he shown how he would benefit if this Court reversed the probate court’s decision.

Kirk received \$50,000 under the 2017 Siddell Trust. Had the probate court invalidated that trust and reinstated the 2012 Siddell Trust, Kirk would have received \$35,000 and had a contingent interest in 25% of the gift designated for the All Saints Episcopal Church Endowment Fund if that gift lapsed on the basis that the church was no longer active or had merged with another church or organization. The 2017 Siddell Trust made a gift to the church’s Endowment Fund with similar conditions attached. The record shows that an attorney appeared on behalf of the church’s

Endowment Fund in Docket No. 362535, and that Kirk and Smith served their claims of appeal on the Endowment Fund. These facts tend toward the conclusion that the church is active, independent, and able to receive the designated distribution. Accordingly, Kirk would not benefit from the invalidation of the 2017 Siddell Trust and reinstatement of the 2012 Siddell Trust. “A party who could not benefit from a change in the judgment has no appealable interest.” *Ford Motor Co v Jackson*, 399 Mich 213, 226; 249 NW2d 29 (1976) (quotation marks and citation omitted).

Because Kirk failed to identify a particularized or concrete injury from the probate court’s action or how it would improve his position if this Court granted the requested relief, we dismiss his appeal for lack of jurisdiction. See *Manuel*, 481 Mich at 643.

B. DOCKET NO. 359991

1. SUFFICIENCY OF NOTIFICATION

Turning to Smith’s challenges to the probate court orders, Smith first argues that the court erred by denying her petition for declaratory relief and to set aside the 2017 Siddell Trust on the basis that the trustee’s notification met the requirements of MCL 700.7604.

This Court reviews *de novo* whether a probate court properly interpreted and applied the relevant statutes. *In re Estate of Carlsen*, 339 Mich App 483, 489; 984 NW2d 788 (2021). This Court reviews the probate court’s dispositional rulings for an abuse of

discretion. *In re Lundy Estate*, 291 Mich App 347, 352; 804 NW2d 773 (2011). An abuse of discretion occurs when the probate court's decision is outside the range of principled outcomes. See *In re Kostin*, 278 Mich App 47, 51; 748 NW2d 583 (2008).

MCL 700.7604 provides in relevant part:

- (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:
 - (a) Two years after the settlor's death.
 - (b) Six months after the trustee sent the person a notice informing the person of all of the following:
 - (i) The trust's existence.
 - (ii) The date of the trust instrument.
 - (iii) The date of any amendments known to the trustee.
 - (iv) A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any.
 - (v) The settlor's name.
 - (vi) The trustee's name and address.
 - (vii) The time allowed for commencing a proceeding.

Smith argues that because the notice she received regarding her interest in the 2017 Siddell Trust lacked information material to her ability to protect her interest under the 2012 Siddell Trust, the notice did not fulfill the

requirements of MCL 700.7604(1)(b)(iv) and therefore did not trigger the six-month period limitations period. Smith's argument fails because the 2012 Siddell Trust was not relevant to her interest under the 2017 Siddell Trust.

MCL 700.7604(1)(b)(iv) requires the trustee to send only the “relevant portions” of the terms of a trust that describe or affect the beneficiary’s interest in the trust. The 2012 Siddell Trust specifically allowed Ralph to amend or revoke the trust at any time. The trust stated that it was intended to be revocable and would be irrevocable when Ralph died or was declared incapacitated in the manner described in the trust. If a trust is in writing, it may be revoked or amended with a writing that clearly manifests the settlor’s intent to do so. MCL 700.7602(3)(b)(i). The 2017 Siddell Trust clearly manifested Ralph’s intent to amend the 2012 Siddell Trust, and he believed that the extensive amendments he wanted to make to his trust would be “better understood” if he restated his entire trust. To that end, Ralph replaced the 2012 Siddell Trust with the 2017 Siddell Trust, which set forth the terms of the distribution of Ralph’s property going forward. Having been replaced by the 2017 Siddell Trust, the 2012 version of Ralph’s trust was no longer relevant to the distribution of Ralph’s property. The trustee’s notice under MCL

700.7604(1)(b) was not insufficient because it lacked portions of the 2012 Siddell Trust.²

We also reject Smith's argument that the notice was inadequate because it did not plainly advise her that challenges to the validity of the 2017 Siddell Trust would be time-barred if not raised within six months of the date of the notice. MCL 700.7604(1)(b)(vii) requires the trustee's notice to include "[t]he time allowed for commencing a proceeding." The notice provided to Smith stated, "If you wish to commence a judicial proceeding to contest the validity of the Trust, you must do so prior to six months from the date of the mailing of this letter." "Must" is commonly understood to mean to "be commanded or requested to"; in a legal

² This interpretation of MCL 700.7604(1)(b)(iv) is supported by consideration of the purpose of the Michigan Trust Code (MTC), MCL 700.7101 et seq. MCL 700.8201(1) requires the MTC to be construed and applied to promote its underlying purposes and policies. Among those purposes and policies are "[t]o make more comprehensive and to clarify the law governing trusts in this state" and to "foster certainty in the law so that settlors of trusts will have confidence that their instructions will be carried out as expressed in the terms of the trust." MCL 700.8201(2)(b) and (c). **Including irrelevant terms from superseded documents in the notice required by § 7604 arguably would muddy the law governing trusts and unsettle settlors with the possibility that a beneficiary unhappy with the settlor's instructions would commence trust-depleting litigation to obtain the distribution reflected in a superseded document.**

context, “must” means to be “required by law, custom, or moral conscience.” Merriam-Webster’s Collegiate Dictionary (11th ed). The notice sent to Smith clearly advised her that if she wanted to contest the validity of the 2017 Siddell Trust in a judicial proceeding, the law required her to do so within six months from the date of the letter, October 24, 2019. MCL 700.7604 requires trustees to provide notice informing recipients that they may challenge the validity of a trust and the period allowed for bringing such a challenge. Nothing in the statute requires a trustee to inform the recipients of the specific legal consequences of not acting during the time allowed.

In re Pollack Trust, 309 Mich App 125, 136; 867 NW2d 884 (2015), does not alter our conclusion, as the relevant question in that case was whether the limitations period in MCL 700.7604 applied because the Michigan Trust Code (MTC), of which the statute is a part, became effective after the plaintiff acquired his right to challenge the validity of the trust. *Id.* at 136-137. This Court did not address the language of the notification, let alone hold that it had to include information about the legal consequences of not challenging the validity of a trust within the limitations period.

2. MOTION FOR LEAVE TO AMEND

Smith next argues that the probate court erred by denying her motion for leave to amend her complaint. We review a probate court’s decision on

a motion for leave to amend a complaint for an abuse of discretion. See *In re Kostin*, 278 Mich App at 51.

A party who wishes to amend a pleading outside the period provided in MCR 2.118(A)(1) can only amend her pleading by leave of the court or by written consent of the opposing party, MCR 2.118(A)(2). Leave to amend “shall be freely given when justice so requires.” MCR 2.118(A)(2). “An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.” MCR 2.118(D); see also *Doyle v Hutzel Hosp*, 241 Mich App 206, 212-213; 615 NW2d 759 (2000) (stating that an “amended pleading can introduce new facts, new theories, or even a different cause of action as long as the amendment arises from the same transactional setting that was set forth in the original pleading”). “The doctrine of ‘relation back’ was devised by the courts to associate the amended matter with the date of the original pleading, so that it would not be barred by the statute of limitations.” *LaBar v Cooper*, 376 Mich 401, 405; 137 NW2d 136 (1965). “[T]he relationback doctrine does not extend to the addition of new parties.” *Miller v Chapman Contracting*, 477 Mich 102, 105; 730 NW2d 462 (2007) (quotation marks and citation omitted).

Proceedings in the probate court are governed by the general rules of civil procedure found in MCR

2.001 through MCR 2.630, except when modified by the rules governing procedure in probate courts, found in Chapter 5 of the Michigan Court Rules. MCR 5.101(A) provides that there are two forms of action in the court: a “proceeding” and a “civil action.” See also *In re Brown*, 229 Mich App 496, 501; 582 NW2d 530 (1998) (indicating that “the specialized court rules pertaining to the probate court recognize a petition-initiated proceeding as a proper form of action”). An action filed by a claimant after notice that her claim has been disallowed “must be titled civil actions and commenced by filing a complaint and are governed by the rules applicable to civil actions in circuit court.” MCR 5.101(C)(2). However, a proceeding concerning a trust is commenced by filing a petition in court. MCR 5.501(C). MCL 700.7208 likewise instructs that a proceeding in the probate court brought by a beneficiary that concerns the validity of a trust “is initiated by filing a petition”

Although Smith correctly initiated a civil action against Heilman by filing a complaint, see MCR 5.101(C)(2), she did not commence a new proceeding to invalidate the 2017 Siddell Trust by filing a petition, as required under MCL 700.7208 and MCR 5.501(C). Smith cites no authority allowing the amendment of a complaint with a cause of action that should have been filed in a petition. Her reliance on the definition of “proceeding” in MCL 700.1106(t) to argue that the probate court’s distinction between a civil action and a proceeding was a distinction without a substantive difference is

unavailing, given the clear instruction in MCL 700.7208 and MCR 5.501(C) that a proceeding concerning a trust is initiated by a petition.

In any event, even if the probate court erred by denying Smith's motion for leave to amend, the court's error did not affect the outcome of the proceeding. See MCR 2.613(A); Matter of Moriconi, 337 Mich App 515, 522; 977 NW2d 583 (2021). The amended pleading would not have allowed Smith to avoid the consequences of MCL 700.7604's limitations period by relating back to the date that she filed her original complaint because the amendment did not arise out of the "conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading." MCR 2.118(D).

The transactional setting for Smith's original complaint was Heilman's denial of her claim against Ralph's estate, the alleged mismanagement of Bill's financial assets, and the alleged mismanagement of tangible personal property that Smith believed belonged wholly and solely to Bill's trust. By contrast, the transactional setting for Count I of Smith's proposed amended pleading involved the creation of the 2017 Siddell Trust and inferences drawn from Heilman's and others' interactions with Ralph, which Smith believed constituted "misrepresentation, coercion, deceit, and undue influence." Although Smith made no mention of Ralph's capacity when she alleged the mismanagement of Bill's trust, she alleged in her

proposed amended pleading that Ralph lacked capacity and that Heilman and George Stoutin took advantage of Ralph's age, frailty, grief, and cognitive decline to overpower his freewill. Because Smith's proposed amendment did not arise out of the same conduct as did her allegations of breach of fiduciary duties with regard to the management of Bill's trust, the relation-back doctrine would not have applied and, therefore, even if the probate court had granted her motion for leave to amend, Smith's count for the invalidation of the 2017 Siddell Trust would have been time-barred.

The probate court did not abuse its discretion by rejecting Smith's motion for leave to amend. See *In re Kostin*, 278 Mich App at 51.

C. DOCKET NO. 362535

1. PARTIAL SUMMARY DISPOSITION

Smith contends that the probate court erred by granting partial summary disposition of her complaint in favor of Heilman. This Court reviews *de novo* a probate court's decision on a motion for summary disposition. See *In re Leete Estate*, 290 Mich App 647, 659; 803 NW2d 889 (2010).

The probate court granted summary disposition under MCR 2.116(C)(10). A motion 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). A trial court evaluating a motion for summary disposition under subrule (C)(10) "considers affidavits, pleadings,

depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion.” Maiden v Rozwood, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition is appropriate when, “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10).

To establish a claim for common-law conversion, a plaintiff must show (1) an ownership interest, absolute or qualified, in identifiable personal property, see Hance v Tittabawassee Boom Co, 70 Mich 227, 231; 38 NW 228 (1888); (2) that he or she had the right to immediate possession of the property, see Thomas v Watt, 104 Mich 201, 207; 62 NW 345 (1895); (3) that the defendant wrongfully exerted dominion over the property inconsistent with the plaintiff’s rights, Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc, 497 Mich 337, 351-352; 871 NW2d 136 (2015), and (4) actual damages. Proof of conversion is necessary to establish claims of statutory conversion under MCL 600.2919a and MCL 700.7813.

Viewing the evidence in the light most favorable to Smith, she did not identify any tangible personal property that Bill owned individually and to which she had a right, nor did she establish that she ever had a right of immediate possession of any of the tangible personal property. Bill’s trust was very clear that the tangible personal property was to be

held in trust for Ralph's benefit until Ralph died. Because Bill's trust instructed Ralph, as successor trustee of Bill's trust, to hold the tangible personal property in trust for his benefit, Smith did not have the right of immediate possession of the property after Bill died. After Ralph died, a dispute arose over ownership of the property and the validity of the 2017 Siddell Trust, and these disputes delayed the distribution of property. In light of Heilman's general duty to administer the trust in accordance with its terms and purposes, MCL 700.7801, Heilman's waiting to distribute the trust property until the ownership dispute was resolved could hardly constitute an unauthorized exercise of dominion or control over the property.³ The probate court did not err by granting summary disposition

³ As to damages, Smith asserts that all the personal property assigned by Bill to his trust is gone from the trust. It is true that Heilman maintained that Bill's trust did not contain any tangible personal property, and the probate court suggested that Bill's trust assign all of Bill's tangible personal property to Ralph. However, Heilman attested that all the tangible personal property was accounted for and in storage, ready to be distributed upon resolution of the ownership dispute. The property was available to be distributed to Smith had the probate court determined that she was the rightful owner and had an immediate right to possess any identifiable property. Given that the tangible personal property at issue remained in the possession of the trustee, awaiting distribution to the rightful owner, Smith failed to show what actual damages she suffered.

on Smith's claim for common-law conversion in favor of Heilman.

Nor did the probate court err by granting summary disposition of Smith's statutory conversion claims. To establish statutory conversion under MCL 600.2919a, a plaintiff must satisfy the elements of a common-law conversion claim, as well as show that the defendant actually knew that the property was converted. See *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 197; 694 NW2d 544 (2005). Because Smith cannot establish common-law conversion, she cannot establish statutory conversion under MCL 600.2919a or MCL 700.7813(4). Accordingly, the trial court did not err by granting summary disposition of her statutory conversion claim in favor of Heilman.

2. ORDER AFTER TRIAL

Lastly, Smith contends that the probate court erred by ruling after trial that the deductions from Bill's trust for Ralph were properly characterized as health, maintenance, and support payments. She also argues that the probate court erred by ordering Heilman to sell the tangible personal property and split the proceeds between Bill's trust and Ralph's trust.

Although Bill's trust became irrevocable upon Bill's death, it came to light after Ralph's death that, while acting as trustee of Bill's trust, Ralph frequently comingled his money with the money in Bill's Edward Jones accounts. Ralph paid for expenses such as utilities, healthcare, and online

shopping and made charitable contributions using money from Bill's Edward Jones accounts. But as indicated, Bill's trust allowed Ralph "discretion to distribute income and/or principal" for the survivor's "health, support and maintenance" if the trustee determined that the income and other property available to the survivor was insufficient to provide for his maintenance. Smith challenged whether utilities, online shopping, and other such expenses fell under health, maintenance, or support, and whether there had been any proper determination that Ralph's income and property were insufficient to provide for his maintenance before funds from Bill's trust were used.

Smith argues primarily that the money Ralph spent from Bill's trust on shopping because it made him feel good did not fall into the categories of health, support, or maintenance. Black's Law Dictionary (11th ed) defines "health" as: "1. The quality, state, or condition of being sound or whole in body, mind, or soul; esp., freedom from pain or sickness. 2. The relative quality, state, or condition of one's physical or mental well-being, whether good or bad." Similarly, MerriamWebster's Collegiate Dictionary (11th ed) defines "health" as "the condition of being sound in body, mind, or spirit; esp: freedom from physical disease or pain" or "the general condition of the body." "Support" and "maintenance" are synonyms and imply a level of intended support in keeping with the "accustomed standard of living or station in life" that the beneficiary enjoyed at the time of the settlor's death.

Restatement Trusts, 3d, § 50, comment d(2). Support and maintenance provisions “do not normally encompass payments that are unrelated to support but merely contribute in other ways to a beneficiary’s contentment or happiness.” Id.

The probate court considered that Michigan allowed broad discretion in the application of a maintenance provision, the length of the couple’s relationship, Bill’s desire to provide for Ralph’s medical needs and happiness, and evidence indicating that Ralph’s life after Bill’s death was similar to his life with Bill, and concluded that Ralph did not abuse his discretion by using Bill’s trust funds to pay for healthcare expenses, utilities, credit cards, insurance, other debts, and online purchases. The record supports the probate court’s conclusion.

Although shopping did make Ralph feel good, the record suggests that shopping and collecting were part of Ralph’s usual manner of living. Heilman affirmed that Ralph was a “prolific shopper,” and testified that Bill said that Ralph was the reason that they began collecting and had “all their stuff.” Heilman said that Bill wanted Ralph to be financially able to stay in the house as long as possible, but that he should be “left to his shopping.” This record evidence supports the probate court’s observation that Ralph’s “expenses would not have been a surprise to Bill do [sic, due] to the circumstances and habits of the parties. The testimony showed that Ralph’s life, while his health

was failing, was similar to his life with Bill.” The court found that “Bill unquestionably wanted to provide for Ralph’s medical needs and happiness” and that, for this reason, Ralph’s use of Bill’s trust funds to pay for utilities, credit cards, insurance, other debts, and online purchases was not shown to be an abuse of discretion. Under these facts, we cannot conclude that the probate court’s factual findings were clearly erroneous or that its decision was an abuse of discretion.

However, the probate court agreed with Smith that the trustees “committed breaches of fiduciary duties regarding the financial assets/residue” of Bill’s trust. Consequently, the probate court ordered the return of \$120,000 to Bill’s trust, as well as half the proceeds from the sale of the tangible personal property at issue. Smith asserts that the probate court erred by determining that she was entitled to 50% of the proceeds from the sale of the tangible personal property rather than all the actual personal property. And even if she was entitled to only half of the property, she should receive the actual property rather than proceeds from the property’s sale. In arriving at the decision to sell the property and split the proceeds, the probate court found no easy way to assist in determining Bill’s personal property at the creation of the Trust. The couple desired to share equally, but did not take steps to separate the items or clean up the Trust. There were no bills of sale or joint ownerships created, other than the house and the automobiles.

The probate court's factual findings are supported by the record and are not clearly erroneous and, under the circumstances presented, it cannot be said that the probate court's decision to order the property sold and the proceeds evenly split between Bill's trust and Ralph's trust fell outside the range of reasonable outcomes.⁴

Affirmed.

/s/ Jane E. Markey

/s/ Christopher M. Murray

/s/ Kathleen A. Feeney

⁴ Heilman urges this Court to reconsider the probate court's damages award, asserting that Ralph did not transfer \$120,000 from Bill's trust to himself. "In the absence of a cross appeal, errors claimed to be prejudicial to appellee ordinarily cannot be considered, nor can affirmative relief to appellee be granted." See *McCardel v Smolen*, 404 Mich 89, 95 n 6 (1978) (quotation marks and citation omitted). Because Heilman did not file a cross-appeal, he cannot obtain a more favorable decision from this Court.

**Probate Court Amended Order Entered
11/1/2021**

**STATE OF MICHIGAN
IN THE PROBATE COURT FOR THE
COUNTY OF ALLEGAN**

IN RE RALPH A. SIDDELL LIVING TRUST	<u>Court Address and</u> <u>Phone:</u> Allegan County Building 113 Chestnut Street
File no. 21-62791-TV	
21-62806-TV	
21-62888-TV	Allegan, MI 49010
20-62158-CZ	(269) 673-0250
	Assigned to Probate Judge
	Michael L. Buck

AMENDED ORDER

At a session of said Court held in the
City and County of Allegan, State of
Michigan, on the 1st day of November 2021

Present: The Honorable MICHAEL L.
BUCK
Allegan County Probate Judge

Before the Court are a number of motions. First, is Petitioner's Motion for Summary Disposition, claiming that the relevant statute of limitation prohibits persons from contesting the Ralph A. Siddell Living Trust, Dated March 8, 2017 ["2017 Trust"]. This 2017 Trust is a restatement to the Ralph A. Siddell Trust executed on August 29, 2012 [2012 Trust]. Numerous individuals and charities were named beneficiaries; but of note are, David Heilman [Trustee], Kirk [Kirk] Siddell, Linda K. Smith [Linda/ Ms. Smith]. Kirk is a specific beneficiary while Ms. Smith was a 50% beneficiary of the 2012 Trust, but was mostly removed from the 2017 Trust. **Kirk Siddell has also filed a Motion for Summary Disposition, declaring the 2017 Trust invalid.** Also pending is the Trustee's petition to approve payments of administrative fees. Kirk is Mr. Siddell's child, and Ms. Smiths is William Johnson's.⁵

Mr. Siddell passed on August 30, 2019. David Heilman, acting as trustee, sent notice to Kirk and Ms. Smith, who admitted receiving notices, although indicating they did not receive the full Trust document.

In March of 2020, Ms. Smith filed a civil action

⁵ In the prior order the Court mistakenly referred to Ms. Smith as Mr. Siddell's child. This was in error. This is the only change made to this amended order.

in this Court - 20-62158-CZ, against David Heilman as Trustee. This action proceeded to mediation, during which time negotiations broke down and soon thereafter Kirk filed a petition to remove the Trustee in the CZ action. That petition was filed as 21-62806-TV in March of 2021. The Trustee, David Heilman, then filed a Validity Petition, arguing that all beneficiaries of the 2017 Trust are time-barred from challenging the trust. The cases were consolidated for legal arguments.

Important to the time line, in 20-62158-CZ, Linda Smith attempted to amend the civil action, seeking to invalidate the 2017 Trust. The request to amend was denied. Ms. Smith then filed a petition in action 21-62888-TV on or about August 20, 2021, seeking to invalidate the 2017 Trust for the same allegation made by Kirk.

At arguments, Kirk indicated that he wished to invalidate the 2017 Trust and thereby reinstate the 2012 Trust. He acknowledged that he would thereby reduce his specific distribution from fifty to thirty-five thousand. Invalidating the 2017 would be of great benefit to Ms. Smith but not Kirk.

In this matter, the first consideration is the standing of the parties. Standing is the legal term used to denote the existence of a party's interest in the outcome of the litigation; an interest that will assure sincere and vigorous advocacy. *"Allstate Ins Co v. Hayes*, 442 Mich. 56, 68; 499 N.W.2d 743 (1993) (quotation marks and citations omitted). In general, "to have standing, a party must have a legally protected interest that is in jeopardy of being adversely affected." *In re Foster*, 226 Mich App 348,

358; 573 N.W.2d 324 (1997). Moreover,

A party bringing a claim cannot rightfully invoke the jurisdiction of the court to enforce private rights, or maintain a civil action for the enforcement of such rights, unless one has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.

Bowie v Arder, 441 Mich. 23, 42-43; 490 N.W.2d 568 (1992) (quotation marks and citation omitted).]

Under MCR 5.125(C)(6), (16), (28) and (32) "[t]he persons interested in a [...] proceeding where the property has been assigned to a trust under the will are the (a) trustee and (b) beneficiaries affected by the partition." MCR 5.125(C)(16). Further MCL 700.1105 (c):

"Interested person" or "person interested in an estate" includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and by the supreme court rules.

MCL 700.1105 "The identity of the interested persons can change not only over time but also depends on the nature of the proceedings and the relief requested. *In re Rhea Brody Living Tr*, dated January 17, 1978 (On Remand), 325 Mich App 476, 486, 925 NW2d 921 (2018), vacated in part, leave to appeal denied in part, 504 Mich 882, 928 NW2d 222 (2019)

Looking to the cases at hand, the Court does not believe Kirk has standing. Between the 2013 and 2017 Trusts, Kirk specific benefit was increased from 35-50 thousand dollars. Thus he has no property loss in the 2017 Trust, but rather a beneficial increase. As such any "harm" done to Kirk can be simply be cured by him waving the additional increase. As such his standing does not allow him to dissolve the 2017 Trust.

Ms. Smith is the real party of interest in the 2017 Trust and has been actively involved with the matter while represented bout counsel. However, ignoring standing issues, neither she nor Kirk's arguments survive the statue of limitations.

Petitioner seeks Summary Disposition under MCR 2.116(c)(7)., "statute of limitations." The relevant statute of limitations for trust matters is MCL 700.7604, which provides that:

A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following: (a) Two years after the settlor's death. (b) Six months after the trustee sent the person a notice informing the person of all of the following: (i) The trust's existence.

- (ii) The date of the trust instrument. (iii) The date of any amendments known to the trustee.
- (iv) A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any. (v) The settlor's name. (vi) The trustee's name and address. (vii) The time allowed for commencing a proceeding.

MCL 700.7604. A beneficiary's due process rights are not violated by application of limitations / repose period contained in Michigan Trust Code for challenging the validity of a trust when beneficiary received the full statutory period to bring his claim after receiving requisite notice *In re Gerald L. Pollack Trust*, 309 Mich App 125 (2015). In an unpublished case the Court of Appeals noted that an action to challenge an inter vivos trust on grounds of undue influence is barred if not filed within two years of the settlor's death. *In re Genevieve Garcia Revocable Living Trust*, 2014 WL IS 61243 (Mich. Ct. App. 2014). Thus MCL 700.7604 applies to this matter and the is if notice was provided.

Notice was provided to the parties. That notice clearly meets the terms of MCL 700.7604. Thus the statute of limitations ran on March 24, 2020. In subsequent briefing, Kirk argues that the notice was invalid because it did not contain the full Trust document. However, neither Kirk nor Ms. Smith were entitled to the entirety of the trust documents and, as such, the notice was valid. For Ms. Smith the notice should have, and given that she filed the CZ matter, did provide her notice that she had an interest at jeopardy in the Trust

Kirk and Ms. Smith raise a vast number of counter-arguments asking to toll the statute: that the 2012 Trust constituted a “reciprocal trust agreement” and therefore the 2017 Trust is invalid; that Mr. Siddell himself/ his partner was under disability and that prevented the 2017 trust; and that the Trustee executed undue influence or breach of trust over Mr. Siddell and that invalidates the 2017 Trust.

These claims are barred by MCL 700.7604. The primary issue with all these arguments is that they were facts or events that were, or should have been, known to Kirk before the limitations period ran. The Court was not presented with any legally viable reason why the statute of limitations would not apply to this case.

Moreover, factually Kirk's argument ignores the clear language of the two trusts. The 2017 Trust opens with the statement that:

Under the terms of Article 1.17 of the declaration off trust identified above, I reserved the right to amend or revoke that declaration of trust from time to time, in whole or in part, by written instrument filed with the trust record. I now desire to amend....

This statement alone makes the 2017 Trust revocable and that any reciprocal trust argument invalid. Moreover, the 2012 Trust, 1.17 stated that "I may amend or revoke this trust agreement at any time." There is nothing on the face of either trust that renders the other void. The Court must rely the

actual content of the Trusts, which are more than clear in their language that they are independently revocable.

This statement alone makes the 2017 Trust revocable and that any reciprocal trust argument invalid. Moreover, the 2012 Trust, 1.17 stated that "I may amend or revoke this trust agreement at any time." There is nothing on the face of either trust that renders the other void. The Court must rely the actual content of the Trusts, which are more than clear in their language that they are independently revocable.

Kirk also argues that The Siddell Trust was invalid because Mr. Siddell was "disabled." Section 2.1(c) indicates that "a person is considered to be disabled (and disability is similarly removed) when a non-biased beneficiary or Trustee receives proof that: (i) A court of competent jurisdiction has determined that the individual is (or is no longer) legally incapacitated to handle financial transactions; (ii) Two physicians licensed by the State in which the person is domiciled have certified in writing that he or she is incapable(or is again capable) of exercising judgement about or attending to

financial or property transactions.⁶ While Kirk makes numerous arguments that there is circumstantial evidence that Mr. Siddell was "disabled" before he passed, the gating events in 2.1(c) never occurred, therefore by the terms of the Trust, Mr. Siddell was not disabled. Article II Section C further provides that a "Committee" appointed under a durable power of attorney had the sole authority to Declare Mr. Siddell disabled with the written concurrence of a physician that had examined him within the last three months. This also did not occur. No such committee ever took this action. Therefore Mr. Siddell was not disabled under the terms of the trust.

Kirk's and Ms. Smith's numerous other arguments were considered and denied. The statute is not tolled by distribution. The Court's action of previously appointing a successor trustee in no way tolls the statue. Other arguments presented relate to trustee conduct after death. They include that a car was converted or was fraudulently transferred. These allegations have no bearing on if the trust itself was valid at the time of death or notice itself was valid. They therefore are irrelevant to the limitations argument. But again, nothing prevented the discovery or knowledge of these arguments

⁶ The 2012 trust contains the same language.

during the statutory period. Self-dealing after the creation of the trust does not invalidate the trust.

The Covid 19 Pandemic did begin while these matters were pending. Allegan County Probate Court never closed its doors, although some hearings did take place utilizing the Zoom platform provided by the Michigan Supreme Court. The Court does not believe that the Pandemic in any way affected the parties ability to litigate this matter.

As to Ms. Smith, she was represented by legal counsel throughout these actions and proceedings. Ms. Smith, as the real party in interest, actively initiated a CZ action and thereby chose a response to the notice.

This Court is persuaded by the memoranda and briefs filed by Attorney Browers and hereby incorporates that legal reasoning by reference in this opinion.

Therefore the Court finds:

(1) Petitioner's motion for Summary Disposition is granted in 21-62791-TV. The claims relating to the creation and validity of the trust are barred.

(2) As the Petitioner's motion was granted, Kirk Siddell's motion for summary Disposition is Denied for the reasons stated above;

(3) To the extent that it remains relevant given the above, Petitioner's Petition to Authorize Trust the payment of Trust Expenses is Granted;

(4) Linda's Smith's Petition for Declaratory Relief and to Set Aside the 2017 Siddell Trust is Denied as it is barred for the reasons stated above;

(5) The Motion for Summary Disposition in 20-62158-CZ is still being considered by the Court and an order will issue before the next status conference: and

(6) This is not a final order and does not resolve the case.

IT IS SO ORDERED AND ADJUDGED.

11/1/2021

/s/ Michael L. Buck
HON. MICHAEL L.
BUCK P27674
Probate Judge

**Order Denying Reconsideration Entered
12/28/2021**

**STATE OF MICHIGAN
IN THE PROBATE COURT FOR THE
COUNTY OF ALLEGAN**

IN RE RALPH A. SIDDELL LIVING TRUST	<u>Court Address and</u> <u>Phone:</u> Allegan County Building 113 Chestnut Street
File no. 21-62791-TV 21-62806-TV 21-62888-TV 20-62158-CZ	Allegan, MI 49010 (269) 673-0250 Assigned to Probate Judge MICHAEL L. BUCK

**ORDER REGARDING RECONSIDERATION
AND ORDER REGARDING THE STANDING OF
KIRK SIDDELL**

At a session of said Court held in the
City and County of Allegan, state of Michigan,
On the 28th day of December 2021

Present: the honorable Michael L Buck

Allegan County Probate Judge.

Before the Court are Linda Smith's (Ms. Smith) Motion for Reconsideration, and Kirk Siddell's Motion for Reconsideration. The Court received the motions, allowed the Respondent Heilman to respond and has considered the motions, the responses (and response to the responses)⁷, and all other pleading in this matter and DENIES the Motions

MCR 2.119(F)(3) provides that “[g]enerally, and without restricting the discretion of the court, a motion for re hearing or reconsideration which merrily presents the same issues ruled by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” MCR 2.119(F)(3).

Although all arguments were considered, those that are merely repetitive of prior pleadings are not persuasive, and the Court finds no error in its prior analysis. The parties' new or relevant arguments are considered below.

Ms. Smith argues that she was timely in her motion to amend the CZ to a petition to set aside the Trust and because the Court errored in denying the motion to amend, summary disposition should not have been

⁷ Mr. Siddell was not ordered to provide a response to the response, nor do the court rules allow such a pleading.

granted. The Court has considered the amendments numerous times now and continues to find that a petition to set aside must be filed as a new matter and cannot rise out of an amendment to a civil action, a CZ.

Both Kirk Siddell and Ms. Smith argue that the notice letter they received was not sufficient under MCL 700.7604. The Court disagrees. The notice letter did provide that there were amendments in 2004, 2006, 2012, and 2017. It noted that “[i]f you wish to commence a judicial proceeding to contest the validity of the Trust, you must do so prior to six months from the date of mailing this letter.” It ended with “Please contact us if you have any questions.” Again, this was more than sufficient for the parties to know they had an interest in the Trust and that it had been amended. The Trustee was required to provide reasonable notice of the devisee’s award, not the entirety of the Trust with all prior amendments, and to provide further legal advice.

The Court continues to believe Kirk Siddell lacks standing for his claims. Siddell relies on 700.7405(3) which provides: “(3) the settlor, a named beneficiary, or the attorney general of the state, among others, may maintain a proceeding to enforce a charitable trust.” MCL 700.740(C) (emphasis added). Kirk Siddell is not seeking to enforce a trust, he is seeking to set it aside and reduce his award. Moreover, the numerous charities in this matter have appeared, and are represented by counsel that supports both supports Mr. Siddell’s lack of standing and summary disposition.

Mr. Siddell again raises bias. As noted during the last status conference, this motion is not timely and the Court has no bias for or against Mr. Siddell. Allegations regarding other members of the Allegan Bench are simply irrelevant.

Therefore, Linda Smith and Kirk Siddell's motion for reconsideration are DENIED.

The Court finds that Kirk Siddell lacks standing and his claims are DISMISSED.

THIS IS NOT A FINAL ORDER AND NOT CLOSE
THE CASE

IT IS ORDERED AND ADJUDGED.

/s/ Michael L. Buck

12-28-2021

HON. MICHALE L. BUCK

P27674

Probate Judge

Order Denying Review Entered 3/1/2024

Order

March 1, 2024
165817-8

Michigan
Supreme Court
Lansing, Michigan
Elizabeth T.
Clement,
Chief Justice
Brian K. Zahra
David F. Viviano
Richard H.
Bernstein
Megan K.
Cavanagh
Elizabeth M.
Welch
Kyra H. Bolden
Justices

In re RALPH A.
SIDDELL LIVING
TRUST.

SC: 165817
COA: 359991
Allegan PC: 21-062888-
TV

DAVID HEILMAN,
Trustee of the RALPH A.
SIDDELL LIVING
TRUST, and
WOUNDED WARRIOR
PROJECT,

Appellees,

LINDA SMITH,
Appellant

LINDA K. SMITH,
Plaintiff-Appellant,

v.

SC: 165818
COA: 362535
Allegan PC: 20-062158-
CZ

DAVID HEILMAN,
Trustee of the RALPH A.
SIDDELL LIVING
TRUST, and Trustee of
the WILLIAM H.
JOHNSON, JR.
LINVING TRUST,

Defendant-Appellee.

On order of the Court, the application for leave to appeal the May 11, 2023 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is true and complete copy of the order entered at the direction of the Court.

March 1, 2024

/s/ Larry S. Royster

Clerk

Order Denying Review Entered 3/1/2024

Order

March 1, 2024
165816

Michigan
Supreme Court
Lansing, Michigan
Elizabeth T.
Clement,
Chief Justice
Brian K. Zahra
David F. Viviano
Richard H.
Bernstein
Megan K.
Cavanagh
Elizabeth M.
Welch
Kyra H. Bolden
Justices

In re RALPH A.
SIDDELL LIVING
TRUST.

SC: 165816
COA: 359979
Allegan PC: 21-062791-
TV

DAVID HEILMAN,
Trustee of the RALPH A.
SIDDELL LIVING
TRUST, and
WOUNDED WARRIOR
PROJECT,
Appellees,

V

KIRK A. SIDDELL,
Appellant

/

On order of the Court, the application for leave to appeal the May 11, 2023 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is true and complete copy of the order entered at the direction of the Court.

March 1, 2024

/s/ Larry S. Royster

Clerk

**CONSTITUTIONAL AND STATUTORY
PROVISIONS**

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment - Section 1

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” (Emphasis Added.)

Article III - Section 2

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be

discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

UNITED STATES CODES

28 U.S.C. §1257(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

MICHIGAN COMPILED LAWS

600.834 Probate register or deputy probate register; powers in uncontested matter or hearing; entry of judgment prohibited; restriction on powers; orders and acts; trial or hearing of issues.

(1) Except as provided in subsection (2), a probate register or deputy probate register is competent to exercise any of the following powers in an uncontested matter or hearing if authorized by

general order of the probate judge or chief probate judge of the county in which the probate register or deputy probate register was appointed:

- (a) Determine whether the petitioner or the petitioner's attorney has complied with the requirements of law and supreme court rules.
- (b) Take acknowledgments.
- (c) Administer oaths.
- (d) Set hearings.
- (e) Sign notices, citations, and subpoenas.
- (f) Take testimony required by law or supreme court rules in all of the following matters:
 - (i) Appointment of a fiduciary of an estate of a deceased or minor.
 - (ii) Admission to probate of a will, codicil, or other testamentary instrument.
 - (iii) Determination of heirs.
 - (iv) Sale, mortgage, or lease of property.
 - (v) Assignment of residue of an estate or any part of the residue of an estate.
 - (vi) Setting and approval of bonds.
 - (vii) Removal of fiduciaries.
 - (viii) Issuing of a license to marry, if the issuance of the license is authorized under section 1 of 1897 PA 180, MCL 551.201.
- (g) Perform an act or issue an order as specified in the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, if that act authorizes the probate register to do so.

(2) A probate register or deputy probate register shall not enter a judgment. A probate register or deputy probate register shall not exercise any power provided in subsection (1) if the matter or hearing is:

(a) For a commitment to, or incarceration in, an institution or facility.

(b) For appointment of a guardian of a legally incapacitated individual or the appointment of a conservator for a reason other than minority.

(c) For or involves a developmentally disabled person.

(3) An order made by a probate register or deputy probate register shall be made over the name of the probate judge for whom the order is made, and the probate register or deputy probate register shall place his or her signature under the name of the judge. An act done or order made by the probate register or deputy probate register authorized under this section shall have the same validity, force, and effect as though done or made by the judge.

(4) Upon the oral or written request of an interested party made before commencement or during the hearing of the proceeding, the proceeding shall be taken immediately before the judge for trial or hearing of the issues.

600.838 Disqualification of probate judge.

Sec. 838.

(1) A probate judge shall not sit in any proceeding:

(a) In which he is a party, or is financially interested.

(b) In which he would be excluded from being a juror by reason of consanguinity or affinity to any of the parties.

(c) In which he is related within the third degree of consanguinity or affinity to any of the attorneys of any party, witness, or representative in the proceeding. This disqualification may be waived by stipulation filed in the proceeding.

(d) Which involves or may involve the validity or interpretation of a will, contract, deed, mortgage, bill of sale, note or other document which he prepared, in the preparation of which he assisted, or to the execution of which he acted as a witness.

(e) Which involves a contested matter concerning which he advised a party to the contest.

(f) In which a probate register or other employee of the probate court in that county or probate court district, while holding that office or employment, prepared or assisted in the preparation of a will, contract, deed, mortgage, bill of sale, note, or other document involved in the hearing or trial, or acted as a witness to the execution thereof.

(2) A judge of probate shall not decide nor participate in the decision of any question which is argued in the court when he was not present and sitting therein as a judge.

(3) When a probate judge is disqualified within the meaning of subsection (1) or (2), the judge shall be deemed incapacitated for purposes of section 824.

ESTATE AND PROTECTED INDIVIDUALS
CODE – Act 336 of 1998

700.1045(9) Rights, actions, and claims of creditor.

(9) In an action against a trustee that received property in a qualified disposition, if a court takes any action declining to apply the law of this state in determining the validity, construction, or administration of the trust, or the effect of a spendthrift provision in the trust instrument, the trustee shall immediately on the court's action, and without the further order of any court, cease in all respects to be trustee of the trust. The former trustee does not have any power described in section 4(2) except to convey the trust property to the successor trustee and, at the former trustee's election, to petition the court for appointment of a successor trustee and collect its attorney fees, costs, and expenses. If the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, all of the following apply:

(a) The probate court, on the request of a qualified trust beneficiary of the trust, shall appoint a successor trustee on the terms and conditions it determines to be consistent with the purposes of the trust and this act.

(b) A former trustee may, but has no duty to, petition the probate court to appoint a successor trustee if a petition for appointment of a successor trustee is not brought by a qualified trust beneficiary within 30 days after the date on which the former

trustee ceases to be a trustee of the trust. If the former trustee elects to petition for the appointment of a successor trustee, the former trustee is entitled to reimbursement for all attorney fees, costs, and expenses associated with the petition, and the amount of the attorney fees, costs, and expenses is a lien against the trust's property. (Emphasis added.)

STATUTORY DEFINITIONS

700.1102 Applicability of definitions.

The definitions contained in this part apply throughout this act unless the context requires otherwise or unless a term defined elsewhere in this act is applicable to a specific article, part, or section."

700.1104(b) – Definition of “Estate”

"Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout administration. Estate also includes the rights described in sections 3805, 3922, and 7606 to collect from others amounts necessary to pay claims, allowances, and taxes.

700.1104(m) – Definition of “Governing Instrument”

“Governing instrument” means a deed; will; trust; funeral representative designation; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit

plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type." (Emphasis added.)

700.1105(a) Definition of Incapacitated Individual

"Incapacitated individual" means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions." (Emphasis added.)

700.1106(u) Definition of "Proceeding"

"Proceeding" includes an application and a petition, and may be an action at law or a suit in equity. A proceeding may be denominated a civil action under court rules.

700.1107(k) Definition of "Terms of the Trust"

"Terms of a trust" or "terms of the trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding. (Emphasis added.)

700.1107(n) Definition of Trust

“Trust” includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created. Trust includes, but is not limited to, a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust, conservatorship, personal representative, custodial arrangement under the Michigan uniform transfers to minors act, 1998 PA 433, MCL 554.521 to 554.552, business trust providing for a certificate to be issued to a beneficiary, common trust fund, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or another arrangement under which a person is a nominee or escrowee for another. (Emphasis added.)

700.1107(o) Definition of “Trustee”

“Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court.” (Emphasis added.)

700.1201 Purposes; rules of construction.

This act shall be liberally construed and applied to promote its underlying purposes and policies, which include all of the following:

(a) To simplify and clarify the law concerning the affairs of decedents, missing individuals,

protected individuals, minors, and legally incapacitated individuals.

(b) To discover and make effective a decedent's intent in distribution of the decedent's property.

(c) To promote a speedy and efficient system for liquidating a decedent's estate and making distribution to the decedent's successors.

(d) To make the law uniform among the various jurisdictions, both within and outside of this state. (Emphasis added.)

700.1205(3) Discovery and remedies for fraud, embezzlement, conversion, or withholding of assets.

(3) If fraud is perpetrated in connection with a proceeding or in a statement filed under this act or if fraud is used to avoid or circumvent the provisions or purposes of this act, a person injured by the fraud may obtain appropriate relief against the perpetrator of the fraud or restitution from a person, other than a bona fide purchaser, that benefited from the fraud, whether innocent or not. An action under this subsection shall be commenced within 2 years after the discovery of the fraud, but an action shall not be brought against a person that is not a perpetrator of the fraud later than 5 years after the time of the fraud's commission. This section does not affect a remedy relating to fraud perpetrated against a decedent during his or her lifetime that affects the succession of the decedent's estate. (Emphasis added.)

700.1212(1) Fiduciary Duties

(1) 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 7803 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. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule. (Emphasis added.)

700.1214 Self-Dealing Prohibited

Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, except as provided in section 3713, 5421, or 7802, or except as provided in section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, a fiduciary in the fiduciary's personal capacity shall not engage in a transaction with the estate that the fiduciary represents and shall not invest estate money in a company, corporation, or association with which the fiduciary is affiliated, other than as a bondholder or minority stockholder. A fiduciary in the fiduciary's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the estate's

property. A fiduciary's deposit of money in a bank or trust company, in which the fiduciary is interested as an officer, director, or stockholder, does not constitute a violation of this section." (Emphasis added.)

700.1403 Formal proceeding; pleadings; parties bound by others; notice.

In a formal proceeding that involves an estate of a decedent, minor, protected individual, or incapacitated individual or in a judicially supervised settlement relating to such matters, the following apply:

(a) An interest to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument that creates the interests, or in another appropriate manner.

(b) A person is bound by an order binding others in each of the following cases:

(i) An order that binds the holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment binds another person to the extent the person's interest, as a permissible appointee, taker in default, or otherwise, is subject to the power.

(ii) To the extent there is no conflict of interest between the persons represented, as follows:

(A) An order that binds a conservator, plenary guardian, or partial guardian binds the estate that the conservator, plenary guardian, or partial guardian controls.

(B) An order that binds an agent under a durable power of attorney having authority to act binds the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(C) An order that binds a guardian having authority to act with respect to the matter binds the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power of attorney has authority to act.

(D) An order that binds a trustee binds beneficiaries of the trust.

(E) An order that binds a personal representative binds a person interested in the undistributed assets of a decedent's estate in an action or proceeding by or against the estate.

(F) An order that binds a parent who represents his or her minor or unborn child binds that minor or unborn child if a conservator or plenary guardian has not been appointed.

(iii) A minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable and who is not otherwise represented is bound by an order that binds another party that has a substantially identical interest in the proceeding, but only to the extent there is no conflict of interest between the representation and the person represented.

(c) Notice is required as follows:

(i) Notice as prescribed by section 1401 shall be given to every interested person or to one who can bind an interested person as described in subdivision

(b)(i) or (ii). Notice may be given both to a person and to another who may bind the person.

(ii) Notice is given to an unborn or unascertained person, who is not represented under subdivision (b)(i) or (ii), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained person.

(d) At any point in a proceeding, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out the reasons for appointing a guardian ad litem as a part of the record of the proceeding. If he or she accepts the appointment, the guardian ad litem shall report of his or her investigation and recommendation concerning the matters for which he or she is appointed in writing or recorded testimony. In making recommendations, a guardian ad litem may consider the general benefit accruing to living members of the individual's family. After the attorney general files an appearance as required by law in an estate proceeding on behalf of an unknown or unascertained heir at law, the attorney general represents the interest of the heir at law, and the court shall not appoint a guardian ad litem. If a

guardian ad litem was previously appointed for the interest, the appointment of the guardian ad litem terminates.” (Emphasis added)

RELEVANT MICHIGAN TRUST CODES

700.7103(b) Definition of “Ascertainable Standard”

“Ascertainable standard” means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code of 1986, 26 USC 2041 and 2514.

700.7103(n) Definition of “Trust Instrument”

“Trust instrument” means a governing instrument that contains the terms of the trust, including any amendment to a term of the trust.

700.7303(d) Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute, all of the following apply:

(a) A conservator, plenary guardian, or partial guardian having authority to act with respect to the trust may represent and bind the estate that the conservator, plenary guardian, or partial guardian controls.

(b) An agent under a durable power of attorney having authority to act with respect to the trust may represent and bind the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(c) A guardian having authority to act with respect to the trust may represent and bind the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power has authority to act.

(d) A trustee may represent and bind the beneficiaries of the trust. (Emphasis added.)

700.7604 Proceeding to contest validity of revocable trust; limitation; distribution of property; liability.

(1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

- (a) Two years after the settlor's death.
- (b) *Six months* after the trustee sent the person a notice informing the person *of all of the following*:
 - (i) The trust's existence.
 - (ii) The date of the trust instrument.
 - (iii) The date of any amendments known to the trustee.
 - (iv) A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any.

- (v) The settlor's name.
- (vi) The trustee's name and address.
- (vii) The time allowed for commencing a proceeding." (Emphasis added.) Words or phrases bolded and underlined are defined by statute.

700.7604(3)

(3) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless either of the following applies:

- (a) The trustee knows of a pending judicial proceeding contesting the validity of the trust.
- (b) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 63 days after the contestant sent the notification.

700.7604(4)

A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

700.7801 Administration of trust; duties of trustee.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and

purposes, for the benefit of the trust beneficiaries, and in accordance with this article.

700.7802 Duty of loyalty.

(1) A trustee shall administer the trust solely in the interests of the trust beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in section 7912, a sale, encumbrance, or other **transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a substantial conflict between the trustee's fiduciary and personal interests is voidable by a trust beneficiary affected by the transaction** unless 1 or more of the following apply:

(a) The transaction was authorized by the terms of the trust.

(b) The transaction was approved by the court after notice to the interested persons.

(c) The trust beneficiary did not commence a judicial proceeding within the time allowed by section 7905.

(d) The trust beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 7909.

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(f) The transaction is otherwise permitted by statute." (Emphasis added.)

700.7814 Duty to inform and report.

(1) A trustee shall keep the qualified trust beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a trust beneficiary's request for information related to the administration of the trust. (Emphasis added.)

(2) A trustee shall do all of the following:

(a) Upon the reasonable request of a trust beneficiary, promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property.

(b) Subject to subsection (6), within 63 days after accepting a trusteeship, notify the qualified trust beneficiaries of the acceptance, of the court in which the trust is registered, if it is registered, and of the trustee's name, address, and telephone number.

(c) Subject to subsection (6), within 63 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the qualified trust beneficiaries of the trust's existence, of the identity of

the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the trust beneficiary's interests.

(d) Notify the qualified trust beneficiaries in advance of any change in the method or rate of the trustee's compensation. (Emphasis added.)

700.7820a(1) Irrevocable trust including discretionary trust provision; distribution; definitions.

(1) If an irrevocable trust includes a discretionary trust provision, the trustee of the trust may, unless the terms of the first trust expressly provide otherwise, distribute by written instrument all or part of the property subject to that provision to the trustee of a second trust, if both of the following conditions are satisfied:

(a) The terms of the second trust do not materially change the beneficial interests of the beneficiaries of the first trust.

(b) If the governing instrument of the first trust expressly indicates an intention that the first trust qualify for a tax benefit or the terms of the first trust are clearly designed to qualify the first trust for a tax benefit, and if the first trust would qualify for the intended tax benefit, the governing instrument of the second trust is not inconsistent with the tax planning that informed the first trust. (Emphasis added.)

700.7820a(7) Notice Before Exercise of Power

(7) A trustee of the first trust may exercise the power described in subsection (1) without the consent of that trust's settlor, any beneficiary, or a court. However, the trustee shall give written notice of an intended exercise of the power to the settlors of the first trust, if living, and qualified trust beneficiaries not later than 63 days before exercise of the power. The notice required by this section must include a copy of the proposed instrument of exercise. If the living settlors and qualified trust beneficiaries waive the 63-day notice period in writing, a distribution under subsection (1) may be made before expiration of the notice period.

700.7820a(10) Definition – First Trust

(10) As used in this section:

(a) “First trust” means an irrevocable trust that has a discretionary trust provision that is exercised as described in subsection (1).

700.7901(1) Remedies for breach of trust.

(1) A violation by a trustee of a duty the trustee owes to a trust beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may do any of the following:

(a) Compel the trustee to perform the trustee's duties.

(b) Enjoin the trustee from committing a breach of trust.

- (c) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means.
- (d) Order a trustee to account.
- (e) Appoint a special fiduciary to take possession of the trust property and administer the trust.
- (f) Suspend the trustee.
- (g) Remove the trustee as provided in section 7706.
- (h) Reduce or deny compensation to the trustee.
- (i) Subject to section 7912, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.
- (j) Order any other appropriate relief.

700.7902 Breach of trust; liability; damages.

A trustee who commits a breach of trust is liable to the trust beneficiaries affected for whichever of the following is larger:

- (a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred.
- (b) The profit the trustee made by reason of the breach.

700.7903 Damages in absence of breach.

- (1) A trustee is accountable to an affected trust beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(2) Absent a breach of trust, a trustee is not liable to a trust beneficiary for a loss or depreciation in the value of trust property, for failure to generate income, or for not having made a profit.

(3) This section does not do either of the following:

(a) Limit a trustee's right to compensation under section 7708 or payments allowed under section 7802(5).

(b) Make a trustee accountable to an affected beneficiary in connection with a matter to which section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, applies and the requirements of that section have been satisfied. (Emphasis added.)

700.7905 Commencement of proceedings; limitations.

(1) The following limitations on commencing proceedings apply in addition to other limitations provided by law:

(a) A trust beneficiary shall not commence a proceeding against a trustee for breach of trust more than 1 year after the date the trust beneficiary or a representative of the trust beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the trust beneficiary of the time allowed for commencing a proceeding.

(b) A trust beneficiary who has waived the right to receive reports pursuant to section 7814(5) shall not commence a proceeding for a breach of trust more than 1 year after the end of the calendar year in

which the alleged breach occurred." (Emphasis added.)

(2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the trust beneficiary or representative knows of the potential claim or should have inquired into the potential claim's existence.

**VULNERABLE ADULTS AND
ELDERLY ADULT STATUTES**

**500.3901 Long-term care insurance;
definitions.**

(a) 'Acute condition" means that the individual is medically unstable, requiring frequent monitoring by medical professionals in order to maintain his or her health status.

(b) 'Applicant' means:

(i) For an individual long-term care insurance policy, the person who seeks to contract for long-term care benefits.

(ii) For a group long-term care insurance certificate, the proposed certificate holder.

(c) "Group long-term care insurance" means a long-term care insurance certificate that is delivered or issued for delivery in this state and issued to any of the following:

(i) One or more employers or labor organizations, or to a trust or the trustees of a fund established by 1 or more employers or labor organizations for employees or former employees or

members or former members of the labor organization.

(ii) A professional, trade, or occupational association for its members or former or retired members if the association is composed of individuals who were all actively engaged in the same profession, trade, or occupation and the association has been maintained in good faith for purposes other than obtaining insurance unless waived by the commissioner.

(iii) Subject to section 3903(2), an association or to a trust or to the trustees of a fund established, created, or maintained for the benefit of members of 1 or more associations.

(iv) A group other than that described in subparagraphs (i), (ii), or (iii) if the commissioner determines all of the following:

(A) The issuance of the group certificate is not contrary to the best interests of the public.

(B) The issuance of the group certificate would result in economies of acquisition or administration.

(C) The benefits are reasonable in relation to the premiums charged.

(d) "Guaranteed renewable" means the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and the insurer does not have a unilateral right to make any change in any provision of the policy or rider while the insurance is in force and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(e) "Home care services" means 1 or more of the following prescribed services or assessment team recommended services for the long-term care and treatment of an insured that are to be provided in a noninstitutional setting according to a written diagnosis and plan of care or individual assessment and plan of care:

(i) Nursing services under the direction of a registered nurse, including the service of a home health aide.

(ii) Physical therapy.

(iii) Speech therapy.

(iv) Respiratory therapy.

(v) Occupational therapy.

(vi) Nutritional services provided by a registered dietitian.

(vii) Personal care services, homemaker services, adult day care, and similar nonmedical services.

(viii) Medical social services.

(ix) Other similar medical services and health-related support services.

(f) "Home health or care agency" means a person certified by medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility, 1 or more of the following services: nursing services, therapeutic services, social work services, homemaker services, home health aide services, or other related services.

(g) "Intermediate care facility" means a facility, or distinct part of a facility, certified by the department of community health to provide intermediate care, custodial care, or basic care that is less than skilled nursing care but more than room and board.

(h) "Long-term care insurance" means an individual or group insurance policy, certificate, or rider advertised, marketed, offered, or designed to provide coverage for at least 12 consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for 1 or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal, or custodial care services provided in a setting, including an assisted living facility operating legally in this state, but not including an acute care unit of a hospital. Long-term care insurance includes individual or group annuities and life insurance policies or riders that provide directly or supplement long-term care insurance. Long-term care insurance does not include a life insurance policy that accelerates the death benefit specifically for 1 or more of the qualifying events of terminal illness or medical conditions requiring extraordinary medical intervention or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Long-term care insurance does not include an insurance policy offered primarily to provide coverage for rehabilitative and convalescent care and is not

offered, advertised, or marketed as a long-term care policy, or offered primarily to provide basic medicare supplemental coverage, hospital confinement indemnity coverage, basic hospital expense coverage, basic medical-surgical expense coverage, major medical expense coverage, disability income protection coverage, catastrophic coverage, comprehensive coverage, accident only coverage, specific disease or specified accident coverage, or limited benefit health coverage.

(i) "Medicare" means title XVIII of the social security act, 42 USC 1395 to 1395ggg.

(j) "Nonprofit health care corporation" means a nonprofit health care corporation operating pursuant to the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704.

(k) "Preexisting condition" means a condition for which medical advice or treatment was recommended by, or received from, a provider of health care services within the 6 months immediately before the effective date of coverage of an insured person.

(l) "Policy" means an insurance policy or certificate, rider, or endorsement delivered or issued for delivery in this state by an insurer or subsidiary of a nonprofit health care corporation.

(m) "Skilled nursing facility" means a facility, or a distinct part of a facility, certified by the department of community health to provide skilled nursing care." (Emphasis added.)

750.145m(m) Definition - Personal Care

"Personal care" means assistance with eating, dressing, personal hygiene, grooming, or maintenance of a medication schedule as directed and supervised by a vulnerable adult's physician. (Emphasis added.)

750.145m(u)(i) and (iii) Definition - Vulnerable Adult

"Vulnerable adult" means 1 or more of the following:

- (i) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently.
- (ii) An adult as defined in section 3(1)(b) of the adult foster care facility licensing act, MCL 400.703.
- (iii) An adult as defined in section 11(b) of the social welfare act, MCL 400.11." (Emphasis added.) (Emphasis added.)

400.11(f) – Definition Vulnerable Adult

As used in this section and sections 11a to 11f:

- (a) "Abuse" means harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to, nonaccidental physical or mental injury, sexual abuse, or maltreatment.
- (b) "Adult in need of protective services" or "adult" means a vulnerable person not less than 18

years of age who is suspected of being or believed to be abused, neglected, or exploited.

(c) "Exploitation" means an action that involves the misuse of an adult's funds, property, or personal dignity by another person.

(d) "Neglect" means harm to an adult's health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult's health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, or medical care. A person shall not be considered to be abused, neglected, or in need of emergency or protective services for the sole reason that the person is receiving or relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, and this act shall not require any medical care or treatment in contravention of the stated or implied objection of that person.

(e) "Protective services" includes, but is not limited to, remedial, social, legal, health, mental health, and referral services provided in response to a report of alleged harm or threatened harm because of abuse, neglect, or exploitation.

(f) "Vulnerable" means a condition in which an adult is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age." (Emphasis added.)

750.174(1) – Embezzlement by agent, servant, or employee, or trustee, bailee, or custodian; penalty; prima facie proof of intent; enhanced sentence based on prior convictions; consecutive sentence; conditions; definitions.

(1) A person who as the agent, servant, or employee of another person, governmental entity within this state, or other legal entity or who as the trustee, bailee, or custodian of the property of another person, governmental entity within this state, or other legal entity fraudulently disposes of or converts to his or her own use, or takes or secretes with the intent to convert to his or her own use without the consent of his or her principal, any money or other personal property of his or her principal that has come to that person's possession or that is under his or her charge or control by virtue of his or her being an agent, servant, employee, trustee, bailee, or custodian, is guilty of embezzlement. (Emphasis added.)

750.174(7) – Embezzlement in excess of \$100,000.00

(7) If the money or other personal property embezzled has a value of \$100,000.00 or more, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$50,000.00 or 3 times the value of the money or property embezzled, whichever is greater, or both imprisonment and a fine.

750.174(12)(a), (b) and (c) – Embezzlement from adult over 60 years of age.

(12) The court may order a term of imprisonment imposed for a felony violation of this section to be served consecutively to any term of imprisonment imposed for any other criminal offense if the victim of the violation of this section was any of the following:

(a) A nonprofit corporation or charitable organization under federal law or the laws of this state.

(b) A person 60 years of age or older.

(c) A vulnerable adult as defined in section 174a. (Emphasis added.)

750.174a Vulnerable adult; prohibited conduct; violation; penalty; enhanced sentence; exceptions; consecutive sentence; definitions; report by office of services to the aging to department of human services.

§750.174a(1)

(1) A person shall not through fraud, deceit, misrepresentation, coercion, or unjust enrichment obtain or use or attempt to obtain or use a vulnerable adult's money or property to directly or indirectly benefit that person knowing or having reason to know the vulnerable adult is a vulnerable adult.

750.174a(7)(a)

(7) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than

\$50,000.00 or 3 times the value of the money or property used or obtained or attempted to be used or obtained, whichever is greater, or both imprisonment and a fine:

- (a) The money or property used or obtained, or attempted to be used or obtained, has a value of \$100,000.00 or more.
- (b) The person violates subsection (6)(a) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subdivision, however, a prior conviction does not include a conviction for a violation or attempted violation of subsection (2) or (3)(b).

750.174a(15)(c)

(15) As used in this section:

(a) "Broker" means that term as defined in section 8102 of the uniform commercial code, 1962 PA 174, MCL 440.8102.

(b) "Financial institution" means a bank, credit union, saving bank, or a savings and loan chartered under state or federal law or an affiliate of a bank, credit union, saving bank, or savings and loan chartered under state or federal law.

(c) "Vulnerable adult" means that term as defined in section 145m, whether or not the individual has been determined by the court to be incapacitated.
(Emphasis added.)

**Additional material
from this filing is
available in the
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