STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF ELDRIDGE DEAN HUNTINGTON.

ELDRIDGE D. HUNTINGTON, JR., Successor Personal Representative of the ESTATE OF ELDRIDGE DEAN HUNTINGTON,

Appellee,

and

STEVEN HUNTINGTON,

Other Party,

v

LATONIA MCDANIEL-HUNTINGTON, Personal Representative of the ESTATE OF ELDRIDGE DEAN HUNTINGTON,

Appellant.

FOR PUBLICATION
September 16, 2021
9:05 a.m.

No. 354006
Oakland Probate Court
LC No. 2018-383955-DE

Before: TUKEL, P.J., and SAWYER and CAMERON, JJ.

TUKEL, P.J.

In this supervised administration of nonresident decedent Eldridge Huntington, Sr.'s (Eldridge Sr.) estate,[1] appellant LaTonia McDaniel-Huntington appeals as of right the probate court's order denying her petition to require Eldridge Huntington, Jr. (Eldridge Jr.) to "provide

[1] It is undisputed that Eldridge Sr. was domiciled in California at the time of his death, and any distinction between residency and domicile is not at issue. We will therefore use terms such as residence and domicile interchangeably. See *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 498-499; 835 NW2d 363 (2013) (discussing distinction between residence and domicile).

statutory authority that allows him to pursue assets outside the jurisdiction of [the probate court]," and deeming admitted the contents of Eldridge Jr.'s request for admissions. We affirm the probate court's decision that it had subject-matter jurisdiction over the portion of Eldridge Sr.'s estate in Michigan, but reverse its decision that it did not have authority to distribute that portion of Eldridge Sr.'s estate. Additionally, we affirm the probate court's ruling that McDaniel-Huntington admitted the contents of Eldridge Jr.'s request for admissions because McDaniel-Huntington failed to address it at the probate court level and thus waived the issue. Thus, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

I. UNDERLYING FACTS

Eldridge Sr. died in California where he was domiciled, without a will, survived by his wife—McDaniel-Huntington—and two sons, including Eldridge Jr. The sons are not McDaniel-Huntington's children. McDaniel-Huntington was appointed personal representative of the estate in Michigan, but the parties soon began to contest the existence and proper disposition of various assets located in Michigan and California. The main, and perhaps only, asset located in Michigan was a condominium, though Eldridge Jr. argued that Eldridge Sr. had a Michigan-based consulting business that might have value. An initial hearing was held, at which it became clear that no California probate estate had been opened and that McDaniel-Huntington was hoping to distribute the condominium to herself under her intestate share, MCL 700.2102. The probate court ordered that the administration be supervised and that all Michigan assets be frozen. McDaniel-Huntington later filed a petition for complete estate settlement, requesting that the condominium be distributed to her. Eldridge Jr. objected, arguing that McDaniel-Huntington was withholding information and playing a "shell game." Eldridge Jr. also filed a request for admissions. McDaniel-Huntington replied to the request for admissions by stating that she did not have to answer the request for admissions because there had been no discovery order.

At an evidentiary hearing, it became clear that McDaniel-Huntington had not investigated certain potential assets in California, including a deed found in a safe-deposit box and a car that was repossessed by the financer when McDaniel-Huntington failed to make payments. The probate court told McDaniel-Huntington she should have listed all estate assets in her Michigan inventory, even if they were located in California. The probate court, concerned about McDaniel-Huntington's failure to investigate the estate, appointed Eldridge Jr. as successor personal representative, and stated that he could use this role to investigate the estate assets. Soon thereafter, McDaniel-Huntington filed a petition requesting Eldridge Jr. be required to "provide statutory authority that allows him to pursue assets outside the jurisdiction of this Court," and arguing that the Michigan condominium should be distributed to McDaniel-Huntington under her intestate share, MCL 700.2102. In essence, McDaniel-Huntington argued that Eldridge Jr. was not entitled to use the Michigan probate proceeding to inquire into California assets.

At a final hearing on McDaniel-Huntington's petition, the probate court stated that McDaniel-Huntington had no right to "Michigan elections or allowances" and further stated that "[t]his administration is ancillary (ph). The distributions need to be made via a California Probate estate opened and administered in California. That's pursuant to MCL 700.4201. I'm not—we can't . . . partition this." The probate court further stated that, in terms of spousal elections, MCL 700.2202 states that "the surviving widow of a decedent who was domiciled in this state, and who dies intestate may file with the court an election in writing. She was not domiciled in this state. . . .

[S]he's not entitled to real property pursuant to Michigan elections and allowances." McDaniel-Huntington argued that she was requesting an intestate share, not a spousal election.

After a recess to review the law, the probate court stated:

> *THE COURT*: Okay, here's the bottom line, you are misinterpreting EPIC.[2] You are going under Part 1, which is basically exclusive rights to Michigan residents. What's really applicable is Part 3 of EPIC and that is 700.4205, Ancillary and Other Local Administrations. Basically, the decedent was domiciled in California.
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> *[COUNSEL FOR MCDANIEL-HUNTINGTON]*: Yes.
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> *THE COURT*: Therefore, California laws apply. The only thing you can do in Michigan as full faith and credit is marshal the assets, liquidate them, and send it over to California. California has community property rights. For example, I own property in Tennessee, if I died today my estate's not gonna be distributed or intestate or otherwise through Tennessee laws, it's gonna be Michigan laws. So the only jurisdiction we have here is full faith and credit to marshal the assets and send them to California. Your motion is denied and you've come back here three times. I'm not doing this again. The answer is no, she does not get her intestate share through Michigan.
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> If she wants her intestate share follow California laws, they're totally different than Michigan.

The probate court later issued a written order denying McDaniel-Huntington's petition for the reasons stated on the record, further holding that "it is undisputed by the parties that the decedent was domiciled and a resident of the State of California at the time of his death, and the Michigan decedent estate administration is ancillary to California decedent estate administration."

The probate court also ordered that McDaniel-Huntington be deemed to have admitted the contents of Eldridge Jr.'s request for admissions. After a petition for rehearing or reconsideration, the probate court issued a further opinion and order denying the petition. The probate court "acknowledge[d] that LaTonia McDaniel-Huntington may have rights to claim an intestate share of her husband's assets," but noted that the California assets were unknown, and that Eldridge Jr. stated he would open an estate in California, which would make the Michigan estate ancillary under MCL 700.3919. This appeal followed.[3]

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[2] Estates and Protected Individuals Code, MCL 700.1101 *et seq*.

[3] The trial court entered its order denying rehearing on April 7, 2020, and appellant filed a claim of appeal on June 29, 2020. The rule regarding appeals from a probate court order provides that in the absence of anything specific in the probate rules, the normal appellate rules of Chapter 7 apply. See MCR 5.802(A). Nothing in Chapter 5 modifies the time for filing an appeal, so the normal 21-day period of Chapter 7 applies. MCR 7.204(1)(d). That deadline was tolled by

II. THE PROBATE COURT'S AUTHORITY TO ADMINISTER ELDRIDGE SR.'S ESTATE

McDaniel-Huntington argues that the probate court wrongly held that it had no subject-matter jurisdiction in this case. We disagree. The probate court never concluded that it lacked subject-matter jurisdiction in this case. Rather, it concluded that it did not have the authority to administer the portion of Eldridge Sr.'s estate located in Michigan. The probate court erred by doing so and we remand to the probate court for it to properly administer the portion of Eldridge Sr.'s estate located in Michigan.

A. STANDARD OF REVIEW

"Statutory interpretation and a determination whether subject-matter jurisdiction exists are questions of law reviewed de novo on appeal." *In re Haque Estate*, 237 Mich App 295, 299; 602 NW2d 622 (1999).

> Statutory interpretation begins with the plain language of the statute. We read the statutory language in context and as a whole, considering the plain and ordinary meaning of every word. When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted. [*O'Leary v O'Leary*, 321 Mich App 647, 652; 909 NW2d 518 (2017) (quotation marks and citations omitted).]

Our review of the probate court's interpretation of a court rule is also de novo, and "subject to the same rules of construction as statutes." *In re Leete Estate*, 290 Mich App 647, 655; 803 NW2d 889 (2010). Consequently, individual court rules are to be read in context to create a "harmonious whole." *Hill v LF Transp, Inc*, 277 Mich App 500, 507; 746 NW2d 118 (2008).

This Court reviews "the probate court's findings of fact for clear error. A factual finding is clearly erroneous when this Court is left with a definite and firm conviction that a mistake has

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Administrative Order AO 2020-4 until June 8, 2020, during the Covid pandemic, when it was lifted, AO 2020-16. Once lifted, appellant had the full 21 days to file a claim of appeal. That period ran on June 30, 2020, so the claim of appeal was timely filed.

Neither party saw fit to address in its brief the timeliness of the filing of the claim of appeal. "The time limit for an appeal of right is jurisdictional," MCR 7.204(A), and briefs are required to contain "A statement of the basis of jurisdiction of the Court of Appeals." Thus, the parties' briefs were not in conformance with the rules. In the future, it would behoove counsel to comply with all requirements regarding briefs and appeals, rather than leaving it to this Court to construct a basis for jurisdiction. We have done so in this case, but not all panels would be as accommodating. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (citation omitted) ("It is not sufficient for a party 'simply to announce a position . . . and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.").

been made." *In re Guardianship of Redd*, 321 Mich App 398, 403; 909 NW2d 289 (2017) (quotation marks and citations omitted). The probate court's decisions are generally reviewed for an abuse of discretion. See *id.*; *In re Duane v Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007) (listing several probate court decisions subject to abuse of discretion review), criticized on other grounds 480 Mich 915 (2007). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). "An error of law necessarily constitutes an abuse of discretion." *Denton v Dep't of Treasury*, 317 Mich App 303, 314; 894 NW2d 694 (2016).

B. CLARIFICATION OF THE ORDER UNDER APPEAL

"The probate court is a court of limited jurisdiction. The jurisdiction of the probate court is defined by statute." *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 354-355; 833 NW2d 384 (2013) (citations omitted). Although McDaniel-Huntington characterizes the issue in this appeal as concerning whether the probate court had subject-matter jurisdiction, the probate court never ruled that it lacked subject-matter jurisdiction. Indeed, the probate court concluded that it had jurisdiction over this dispute under MCL 700.1302, which it plainly did. We agree that the probate court had jurisdiction over this matter because it "relates to the settlement of a deceased individual's estate . . . who . . . was at the time of death domiciled out of state leaving an estate within the county to be administered." MCL 700.1302(a). Venue also was proper under MCL 700.3201(1)(b) (county where decedent's property was located). Consequently, regardless of how the parties frame this issue on appeal, the question before us is whether the probate court had the *authority* to administer the portions of Eldridge Sr.'s estate located in Michigan, not whether it had *jurisdiction* to do so.

C. ADMINISTRATION OF THE ESTATE'S ASSETS LOCATED IN MICHIGAN

The probate court made various rulings at different times in support of its order. First, it held that MCL 700.3919 would "impact the distribution of assets" because a California estate had been opened, or was about to be opened. That provision requires that "[i]f there is a personal representative of the decedent's domicile willing to receive it, a nonresident decedent's estate being administered by a personal representative appointed in this state shall be distributed to the domiciliary personal representative . . . ." MCL 700.3919(1). The probate court was thus correct that, if at that time, an estate already had been opened in California and a personal representative already appointed there, then the Michigan property would have to be distributed to that personal representative, unless certain exceptions applied, provided the personal representative was willing to receive the property. *Id.*

But the record fails to establish that a California estate had been opened. At most, Eldridge Jr. claimed that he would open one on some undetermined date in the future, but nothing in the record establishes that he ever did so. The probate court chided McDaniel-Huntington for not having opened a California estate and then said to Eldridge Jr. "I don't know if that property in California, because he passed in California, is going to go through here, but if you find out what you think is true, you go out to California and open an Estate there." Eldridge Jr. responded "[a]bsolutely." At most, Eldridge Jr.'s response establishes that, at the time of the hearing, he had the conditional intention to open a California estate in the future if certain facts proved to be true.

Nothing during the later hearings established that a California estate had in fact been opened. We are thus left with the definite and firm conviction that the probate court erred in finding that a California estate had been opened. See *In re Guardianship of Redd*, 321 Mich App at 403 (explaining the "clearly erroneous" standard).

As such, the question becomes how a Michigan probate court should proceed when an intestate person domiciled out of state dies leaving property in both Michigan and the domicile state, and no probate estate is opened in the domicile state. "Michigan probate courts have jurisdiction over property located in this state, including property that is owned by a nonresident decedent, MCL 700.1302, and EPIC explicitly applies to a nonresident's property located in Michigan, MCL 700.1301(b)." *In re Leete Estate*, 290 Mich App at 662.

As noted, MCL 700.3919(1) provides that "if there is a personal representative of the decedent's domicile willing to receive it, a nonresident decedent's estate being administered" by a personal representative appointed in Michigan, shall be distributed to the personal representative of the domiciliary state unless certain exceptions apply. Those exceptions include the situation in which, after reasonable inquiry, the Michigan personal representative "is unaware of the existence or identity of" a personal representative in the domiciliary state. *Id*. at 3919(1)(b). Because MCL 700.3919(1) was inapplicable, given the lack of a California personal representative, "distribution of the decedent's estate shall be made in accordance with the other provisions of" Article III of EPIC, MCL 700.3101-700.3988. *Id*. at 3919(2). See also MCL 700.4205 (stating that Article III of EPIC governs orders concerning the estate of a nonresident decedent, as well as the powers and duties of the local personal representative, and the rights of claimants). The probate court apparently interpreted MCL 700.3919 as prohibiting it from applying any provisions of EPIC other than those contained within Article III. Consequently, it concluded that McDaniel-Huntington had no right to an intestate share under Article II of EPIC. See MCL 700.2102.

The trial court seemingly relied on MCL 700.2202(6), which provides that "The surviving spouse of a decedent who was not domiciled in this state is entitled to election against the intestate estate or against the will only as may be provided by the law of the place in which the decedent was domiciled at the time of death." Because the decedent was not domiciled in Michigan, the trial court reasoned, McDaniel-Huntington was not entitled to make an election.

D. INTESTATE SUCCESSION UNDER THE EPIC AS APPLICABLE HERE

McDaniel-Huntington argues that the trial court's conclusion that no provision of EPIC other than Article III may apply in a case of intestate succession of a decedent not domiciled in Michigan is contrary to the express terms of Article III, which incorporates by reference provisions of law which exist only outside of Article III. MCL 700.3101, which is part of Article III, provides that

> Upon an individual's death, the decedent's property devolves . . . in the absence of testamentary disposition, to the decedent's heirs or to those indicated as substitutes for them in cases involving disclaimer or other circumstances affecting devolution of an intestate estate, subject to homestead allowance, family allowance, and exempt property, to rights of creditors, to the surviving spouse's elective share, and to administration.

The word " Heir" is defined by Article I of the EPIC, not Article III, and thus requires reference to provisions outside of Article III. The word " 'Heir' means, except as controlled by section 2720, a person, including the surviving spouse or the state, that is entitled under the statutes of intestate succession to a decedent's property." MCL 700.1104(p). Furthermore, the statutes "affecting devolution of an intestate estate" are contained solely within Article II. See MCL 700.2102 (intestate share of surviving spouse); MCL 700.2103 (share of heirs other than surviving spouse). Thus, it is readily apparent that although MCL 700.2202(6) in some narrow instances limits a certain type of relief under Article III (that of a surviving spouse of a non-Michigan domiciliary to invoke the right of election) it does not limit the rules of distribution of intestate Michigan property to the provisions of Article III only; to the contrary, Article III clearly invokes definitions and substantive provisions of law outside of Article III's terms.

We are required generally to harmonize all statutory provisions if we can do so reasonably, but if two provisions in a statute conflict, we must apply the more specific one. *Gebhardt v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994) (citations omitted) ("[R]ules of statutory construction require that separate provisions of a statute, where possible, should be read as being a consistent whole, with effect given to each provision. Also, where a statute contains a general provision and a specific provision, the specific provision controls."). See also Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (Thompson/West, 2012), pp 180-182 (discussing the "harmonious-reading canon," the application of which mandates that "[t]he provisions of a text should be interpreted in a way that renders them compatible, not contradictory," but that "if context and other considerations (including the application of other canons) make it impossible to apply the harmonious-reading canon, the principles governing conflicting provisions" such as the "general/specific canon" must apply) and pp 183-189 (discussing the "general/specific canon" which provides that "[i]f there is a conflict between a general provision and a specific provision, the specific provision prevails").

There is some tension between MCL 700.2202(6) and MCL 700.3101, and thus, determining which is the more specific provision would present a close question. MCL 700.3101 provides that intestate property "devolves" to the decedent's heirs, meaning that it does so automatically, by operation of law, but "subject to" a surviving spouse's elective share.[4] That section, however, applies to all intestate successions, and draws no distinction regarding the domicile of the decedent. MCL 700.2202(6), however, specifically applies to intestate succession involving circumstances in which a surviving spouse takes from the Michigan estate of a non-Michigan domiciled spouse. Section 2202(6) thus appears to be more specific, in that it specifically addresses a non-Michigan domiciled decedent, rather than surviving spouses generally.

Nevertheless, we need not answer that question, because McDaniel-Huntington did not seek to make a surviving spouse's election. Rather, she sought to take only under the intestate

[4] EPIC does not define "devolve" so we must turn to a dictionary to do so. *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). "Devolve" is defined as "pass to." *The Oxford Essential Dictionary* (1998). See also *Black's Law Dictionary* (11th ed) (defining "devolve" as "([o]f land, money, etc.) to pass by transmission or succession").

rules of succession. Therefore, even if McDaniel-Huntington was precluded from making an election under Michigan law by virtue of MCL 700.2202(6), Article III of EPIC, MCL 700.3101, would direct us to MCL 700.2203. That section provides in relevant part that in the absence of an election, "it is conclusively presumed that an intestate decedent's widow elects her intestate share," subject to exceptions not at issue here. Article II, which sets forth the rules of intestate succession, provides broadly that "*Any* part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will." MCL 700.2101(1) (emphasis added). " 'Any' is defined as "every; all.' " *Dep't of Agriculture v Appletree Mktg, LLC*, 485 Mich 1, 8; 779 NW2d 237 (2010). Thus, in a situation such as this, involving an out-of-state decedent whose Michigan property passes intestate, Article II of EPIC controls, possibly with the exception of the rules regarding spousal election, as we have noted. But as noted, McDaniel-Huntington was not requesting to make a spousal election. Consequently, because spousal election was not an option in this case, either because MCL 700.2202(6) precluded it or because McDaniel-Huntington renounced any such right, or both, we proceed to MCL 700.2203, for the default rules regarding intestate succession. Section 2202(6), it should be noted, by its plain terms does not limit a surviving spouse's right to intestate succession; it limits only the election rights of a surviving spouse of a non-Michigan domiciliary decedent. In other words, absent an election by a spouse, the laws of intestate succession apply and provide the rules of decision. See MCL 700.2203 (providing that in the absence of an election, "it is conclusively presumed that an intestate decedent's widow elects her intestate share").

Thus, the trial court should have determined who the heirs are under EPIC's rules of intestate succession as regards all Michigan property, and the share of each such heir as provided for by EPIC. To the extent the trial court failed to do so, we reverse its judgment, and remand the case to the trial court to make those determinations. On the other hand, there was no abuse of discretion in denying the specific request that Eldridge Jr. "provide statutory authority that allows him to pursue assets outside the jurisdiction of this Court." That is so because, assuming that McDaniel-Huntington is a surviving spouse for purposes of MCL 700.2102, her share is to be calculated, at least under some circumstances, based on "[t]he entire intestate estate." MCL 700.2102(1)(a). The "entire intestate estate" necessarily includes the California property.

We decline to address exactly how the probate court should consider or not consider out-of-state assets and obligations when it administers the estate under MCL 700.1301(b) and MCL 700.3919(2), as we do not view this question as properly before us, and it has not been briefed by the parties. It is for the probate court to address this issue in the first instance on remand. We additionally note that if an estate has been opened in California then, of course, MCL 700.3919(1) controls, provided that the California personal representative is willing to receive the Michigan property and otherwise comply with the applicable requirements of EPIC. As explained earlier, however, the record before us fails to establish whether that has happened so we must assume that no California estate has been opened.

III. MCDANIEL-HUNTINGTON'S ADMISSIONS

McDaniel-Huntington argues that the probate court abused its discretion by not allowing her to withdraw or amend her deemed admissions. McDaniel-Huntington failed to raise this argument at the probate court level and, therefore, she waived the issue. We decline to address it on the merits.

As a general rule, "a failure to timely raise an issue waives review of that issue on appeal." *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (quotation marks and citation omitted). But this Court has discretion to "overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006) (citation omitted). Indeed, this Court recently reiterated that unpreserved issues are generally waived and that we have discretion regarding whether to review them. *In re Murray*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 349068); slip op at 3-4.

McDaniel-Huntington consistently argued at the probate court level that she was not required to respond to Eldridge Jr.'s request for admissions. She never sought to amend or withdraw her deemed admissions, nor did she "state reasons why he or she cannot admit or deny" the matters submitted. MCR 2.312(B)(4). She now changes course on appeal and seeks to withdraw or amend her deemed admissions. In doing so, McDaniel-Huntington raises the issue of withdrawing or amending her deemed admissions for the first time on appeal. Given the circumstances, we decline to address this issue. McDaniel-Huntington took the position at the probate court level that she was not required to answer Eldridge Jr.'s request for admissions because she believed discovery was unavailable as a matter of law. However, given that she was generally required to "specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny it," MCR 2.312(B)(2), her argument did not constitute a valid colorable objection. In order for McDaniel-Huntington to have been able to rely on an argument that discovery was precluded as a matter of law thus excusing her failure to answer, she was obligated to seek a protective order pursuant to MCR 2.302(C).

In seeking relief on this issue, McDaniel-Huntington essentially asks us to conclude that the probate court erred by failing to sua sponte provide her an opportunity to withdraw or amend her admissions, relief McDaniel-Huntington never asked for and that was inconsistent with her position regarding her obligation to participate in the discovery process. We decline to order such relief. See, e.g., *Duray Dev, LLC v Perrin*, 288 Mich App 143, 161; 792 NW2d 749 (2010) (quotation marks and citation omitted) ("[A] party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention."); *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 455 n 1; 733 NW2d 766 (2006) (quotation marks and citation omitted) ("A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court."). Consequently, we decline to exercise our discretion to review McDaniel-Huntington's argument that she should be permitted to amend or withdraw her deemed admissions and we deem the issue waived. See *In re Murray*, ___ Mich App at ___; slip op at 3-4; *Smith*, 269 Mich App at 427.

IV. CONCLUSION

For the reasons stated int his opinion, we affirm in part, reversed in part, and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jonathan Tukel
/s/ David H. Sawyer
/s/ Thomas C. Cameron