

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of EDWARD JOSEPH MCCORMICK,
Deceased.

ERIC A. BRAVERMAN,
Petitioner-Appellee,

UNPUBLISHED
February 8, 2005

v

LINDA MCCORMICK,
Respondent-Appellant.

No. 250361
Wayne Probate Court
LC No. 92-513517-DE

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from the probate court's order reopening this administratively closed case and reinstating petitioner as personal representative of the Estate of Edward Joseph McCormick, Deceased. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent argues that the probate court's order was void because it lacked subject matter jurisdiction to hear petitioner's petition for reinstatement or any other issues until it first decided her 1994 petition to disqualify the court under MCR 2.003. We disagree. The matter before the probate court was within the class of matters for which it had power to act. Therefore, it had subject matter jurisdiction over the matter. *Davis v Dep't of Corrections*, 251 Mich App 372, 374; 651 NW2d 486 (2002). Whether the probate court should have first entertained the earlier petition for disqualification under MCR 2.003 affects only the court's exercise of jurisdiction. Although a want of subject matter jurisdiction voids a court's orders, an irregularity or erroneous exercise of jurisdiction does not. *In re Waite*, 188 Mich App 189, 200; 468 NW2d 912 (1991).

We note that orders entered by a judge while disqualified to act, while not jurisdictional, were deemed void in an early line of Michigan cases. See *In re Hudson*, 301 Mich 77, 83; 3 NW2d 17 (1942); *S & S Excavating Co v Monroe Co*, 37 Mich App 358; 194 NW2d 416 (1971). But current Michigan court rules did not provide for absolute voidance. *S & S Excavating Co, supra* at 364-365. Under the current rule, MCR 2.003(B), a judge is disqualified when unable to impartially decide a case. *Cain v Dep't of Corrections*, 451 Mich 470, 494; 548 NW2d 210

(1996). The threshold decision regarding disqualification is made by the challenged judge. MCR 2.003(C)(3); *Homestead Development Co v Holly Twp*, 178 Mich App 239, 248; 443 NW2d 385 (1989). To preserve a disqualification issue, a party must follow proper procedures. *People v Bettistea*, 173 Mich App 106, 123; 434 NW2d 138 (1988). Here, the probate case was administratively in 2000, without the probate court having decided the 1994 petition for disqualification. When petitioner filed his petition in 2003 to reopen the case and be reinstated as personal representative, respondent never sought to renote the 1994 disqualification petition. Respondent has not established any error with respect to the probate court's ruling that her petition for disqualification was not properly noticed for hearing. Further, the court informed respondent that she was free to pursue a petition for disqualification by complying with proper procedures. We find no basis for disturbing the probate court's decision in this regard.

Respondent also challenges the merits of the probate court's decision reinstating petitioner as personal representative of the decedent's estate. Petitioner was reinstated in conjunction with the reopening of an administratively closed case. As petitioner observes, the probate court's decision is governed and authorized by MCR 5.144(B). Because respondent does not address this rule, we need not consider this issue further. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998).

Nonetheless, we reject respondent's claim that a de novo standard of review applies to the probate court's decision. The use of the word "may" in MCR 5.144(B) indicates that the probate court's decision was discretionary. See generally *Howard v Bouwman*, 251 Mich App 136, 145; 650 NW2d 114 (2002); *In re Powell Estate*, 160 Mich App 704, 715; 408 NW2d 525 (1987). We find no indication that the probate court abused its discretion. We decline to address respondent's various challenges to petitioner's conduct or the substance of petitioner's accounting. These issues were not addressed by the probate court. *Becker-Witt v Bd of Examiners of Social Workers*, 256 Mich App 359, 365; 663 NW2d 514 (2003). The probate court did not foreclose respondent from properly pursuing these matters, but indicated that it was necessary to reopen the case before these matters could be considered. We find no error.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello