

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of JEFFREY F. REAUME.

CLAUDETTE REAUME, Personal Representative
of the Estate of Jeffrey F. Reaume,

UNPUBLISHED
May 16, 2013

Plaintiff-Appellant,

and

MATTA BLAIR, P.L.C. and STEVEN A.
MATTA,

Appellants,

v

FRANK H. REAUME,

No. 310557
Washtenaw Circuit Court
LC No. 11-000410-CK

Defendant-Appellee.

Before: FORT HOOD, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

The decedent formed Jaffer, L.L.C. with defendant.¹ After the decedent passed in June 2010, defendant sent notice to plaintiff, the decedent's widow, of his intent to purchase the decedent's interest in the company. Plaintiff opened an estate and acted as the personal representative of the estate and challenged defendant's exercise of the purchase pursuant to the terms of the operating agreement. The parties agreed that this challenge raised in the probate action would proceed as a civil complaint. Defendant moved for summary disposition relying on the language of the operating agreement and Michigan statutory law, and plaintiff opposed the motion, alleging that the probate code as well as breaches or noncompliance with the terms of

¹ The company was also formed with Angela Reaume-Larson as a member. However, at the time of this dispute, she was not a member.

the operating agreement precluded summary disposition. The probate court granted defendant's motion. After the time for filing a claim of appeal expired, defendant filed a motion for costs and attorney fees, alleging that the claim was frivolous in violation of MCL 600.2591 and MCR 2.625. Plaintiff alleged that there was legal merit to her claim, noting that she cited statutory authority in support. The probate court held that plaintiff's claim was frivolous in part; the terms of the operating agreement were plain, but the issue of valuation was not frivolous. Following an evidentiary hearing, the probate court ruled that appellants, plaintiff, her attorney, and the law firm that represented her, were responsible for \$23,750 in costs and attorney fees jointly and severally. Appellants appeal by right, and we reverse.

“A trial court's finding that an action is frivolous is reviewed for clear error.” *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). “A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *Id.* at 661-662. Whether a claim is frivolous pursuant to MCL 600.2591 is contingent on the facts and circumstances of the individual case. *Id.* at 662. A plaintiff's failure to prevail on a legal claim does not warrant a finding of frivolity when the plaintiff presents “a sufficient argument grounded in law and fact[.]” *Id.* “The mere fact that plaintiffs did not ultimately prevail does not render the . . . complaint frivolous.” *Id.* Whether a claim is frivolous is analyzed in light of the circumstances at the time it was raised. *Robert A Hansen Family Trust v FGH Indus, LLC*, 279 Mich App 468, 486; 760 NW2d 526 (2008). When a plaintiff alleged and believed that an operating agreement arguably was contrary to Michigan statutory law, the claim was not patently frivolous. *Id.* at 486-487.

Pursuant to the facts and circumstances of this case, plaintiff, the personal representative of the estate of the decedent, alleged that defendant's purchase of the decedent's interest was defective pursuant to the terms of the operating agreement as well as Michigan probate law. The personal representative is a fiduciary who shall use the authority of the Estates and Protected Individuals Code (EPIC) as well as the terms of any will to act for the best interests of a claimant whose claims have been allowed against the estate and for successors to the estate. See MCL 700.3703(1); *In re Baldwin Trust*, 274 Mich App 387, 403-403, n 4; 733 NW2d 419 (2007). Accordingly, plaintiff had an obligation to act in the best interests of the estate and to ensure that the estate acquired the assets to which it was entitled. *Id.* Moreover, defendant's interpretation of the operating agreement was not dispositive. The interpretation and construction of a contract presents a question of law for the court to decide. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). Although the probate court noted that defendant presented an affidavit from an expert, but plaintiff had not,² the failure to provide an affidavit cannot be equated with a frivolous legal argument. The duty to interpret and apply the law is allocated to the courts, not the parties' expert witnesses. *Hottmann v Hottmann*, 226 Mich App 171, 179-180; 572 NW2d 259 (1997).

² Plaintiff argued that summary disposition was premature until she could conduct further discovery and provide an affidavit, but the probate court did not grant her request.

Furthermore, plaintiff cited authority in support of her position that she acquired the right to vote the decedent's interest pursuant to MCL 700.3711. In light of this statute, plaintiff arguably thought she had the right to vote as the decedent would have under the terms of the operating agreement. Whether this statute or the terms of the operating agreement should prevail presented an issue of law for the courts to resolve. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 599; 648 NW2d 591 (2002). Courts must "construe contracts that are potentially in conflict with a statute, and thus void as against public policy, where reasonably possible, to harmonize them with the statute." *Id.* Furthermore, a plaintiff's allegation that an operating agreement was contrary to Michigan statutory law is not patently frivolous. *Robert A Hansen Family Trust*, 279 Mich App at 485-487. In light of the foregoing, the probate court clearly erred in concluding that appellants, in part, filed a frivolous action warranting an award of costs and attorney fees for violating MCL 600.2591. We reverse the award of costs and attorney fees.

Reversed. We do not retain jurisdiction. Appellants, the prevailing party, may tax costs. MCR 7.219.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell