

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF RICHARD HENRY HAUK.

GEORGE F. RIZIK, II, Personal Representative of
the ESTATE OF RICHARD HENRY HAUK,

Appellee,

v

FARMERS AND MERCHANTS STATE BANK,

Appellant.

UNPUBLISHED
September 23, 2026
11:15 AM

No. 375818
Genesee Probate Court
LC No. 24-225585-DE

Before: WALLACE, P.J., and CAMERON and KOROBKIN, JJ.

PER CURIAM.

This case involves a priority dispute between the estate of Richard Henry Hauk (decedent) and his secured creditor, appellant (the Bank). The Bank appeals as of right the probate court’s order approving proposed distributions by appellee (Rizik), as personal representative of the estate, to decedent’s widow. We affirm in part, reverse in part, and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

Before to his death, decedent obtained two loans from the Bank. The loans were cross-collateralized under their respective promissory notes. One loan was secured by certain real property, while the other loan was secured by “ALL ASSETS OF DEBTOR, WHEREVER LOCATED AND WHETHER NOW EXISTING OR HEREAFTER ARISING . . . AND ANY PRODUCTS AND/OR PROCEEDS OF THE FOREGOING.” The real-property loan was perfected by a mortgage and the all-assets loan was perfected via a UCC-1 financing statement.

After decedent died intestate, creditors began asserting claims against his estate. The Bank also submitted a claim for the outstanding balances of the two loans. At Rizik’s request, the probate court barred certain claims, including the Bank’s claim, because the claimants had failed

to comply with certain statutory requirements. The Bank did not appeal this ruling because it believed that its secured interest remained enforceable.

Rizik later sought guidance from the probate court regarding the distribution of the estate's remaining assets. The Bank objected, arguing that its secured interest had priority over the other, unsecured claims, under *In re Lundy Estate*, 291 Mich App 347; 804 NW2d 773 (2011). The probate court concluded that *In re Lundy* was distinguishable because it concerned "a certificate of deposit but not . . . the assets as they stand here in this case[.]" and authorized Rizik's requested distributions. The Bank now appeals.

II. STANDARDS OF REVIEW

We review appeals from the probate court on the record. *In re Lundy*, 291 Mich App at 352. "This Court reviews the probate court's factual findings for clear error and its dispositional findings for an abuse of discretion." *Id.* "A factual finding is clearly erroneous when this Court is left with a definite and firm conviction that a mistake has been made." *In re Estate of Huntington*, 339 Mich App 8, 17; 981 NW2d 72 (2021) (quotation marks and citation omitted). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Id.* (quotation marks and citation omitted). "An error of law necessarily constitutes an abuse of discretion." *Id.* (quotation marks and citation omitted). Finally, issues of statutory interpretation are reviewed de novo. *In re Lundy*, 291 Mich App at 352.

III. ANALYSIS

The Bank argues that the probate court erred by authorizing distributions from the estate before the Bank's secured interest had been satisfied or otherwise exhausted. We agree, in part.

The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, establishes a priority scheme for claims against an estate when the estate lacks sufficient funds to pay all claims in full. MCL 700.3805(1) provides:

(1) If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

- (a) Costs and expenses of administration.
- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance.
- (d) Family allowance.
- (e) Exempt property.

(f) Debts and taxes with priority under federal law, including, but not limited to, medical assistance payments that are subject to adjustment or recovery from an estate under section 1917 of the social security act, 42 USC 1396p.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.

(h) Debts and taxes with priority under other laws of this state.

(i) All other claims.

But this Court has recognized that "EPIC treats secured creditors differently than other potential claimants against an estate." *In re Lundy*, 291 Mich App at 354. For example, MCL 700.3104 carves out an exception for secured creditors to the rule against general creditors seeking to enforce their claims against a decedent's estate before the appointment of personal representative:

(1) Except as otherwise provided in subsection (2), a proceeding to enforce a claim against a decedent's estate or the decedent's successors shall not be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, a proceeding or action to enforce a claim against the estate is governed by the procedure prescribed by this article. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 3955 or from a former personal representative individually liable as provided in section 3956.

(2) This act does not apply to a proceeding by a secured creditor of the decedent to enforce the creditor's right to the creditor's security except as provided in part 8 of article III and part 6 of article VII.

Similarly, MCL 700.3803(3)(a) provides that certain time-based requirements do not "affect or prevent" a "proceeding to enforce a mortgage, pledge, or other lien on estate property[.]" and MCL 700.3812 provides that "[a]n execution shall not issue upon nor shall levy be made against estate property under a judgment against a decedent or personal representative. This section shall not be construed to prevent the enforcement of a mortgage, pledge, or lien upon property in an appropriate proceeding."

These statutes demonstrate the Legislature's intent to distinguish secured creditors from general creditors. That distinction is evident in MCL 700.3809, which provides:

A personal representative shall pay a secured claim on the basis of the amount allowed if the creditor surrenders the security. Otherwise, the personal representative shall pay on the basis of 1 of the following:

(a) If the creditor exhausts the security before receiving payment, upon the amount of the claim allowed less the fair value of the security.

(b) If the creditor does not have the right to exhaust the security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement under which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

In other words, a personal representative *must* account for the value of collateral securing a debt when determining the amount owed to a secured creditor. See *Dep't of Environment Great Lakes & Energy v Holloo Farms LLC*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365934); slip op at 8 (“when used in a statute the term ‘shall’ connotes a mandatory duty.”).

MCL 700.3814 further demonstrates the distinct position of secured creditors by identifying the methods a personal representative may use to satisfy an encumbrance:

If property of the estate is encumbered by mortgage, pledge, lien, or other security interest and it appears to be in the estate’s best interest, the personal representative may pay the encumbrance or a part of the encumbrance, renew or extend an obligation secured by the encumbrance, or convey or transfer the property to the creditor in satisfaction of the lien, in whole or in part, *whether or not the encumbrance holder has presented a claim*. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered property unless the distributee is entitled to exoneration. [Emphasis added.]

Although a personal representative has discretion in *how* to pay the secured creditor, this discretion not mean “that an encumbrance may be disregarded if the asset is needed to satisfy the priorities set forth in MCL 700.3805.” *In re Lundy*, 291 Mich App at 358. This is because, “without even making a ‘claim’ against the estate, the [secured creditor] has a priority position with respect to the secured property.” *Id.* at 357.¹ It is only if the secured property is insufficient to satisfy the debt that the secured creditor “is in the same position as any other creditors with respect to any claim against the estate for the amount of any deficiency existing after exhausting the security.” *Id.* “In sum, none of these provisions prevents the secured creditor from exhausting the security. On the contrary, they treat a secured creditor differently and contemplate a secured creditor’s right to collect from the security without bringing a claim against the estate for estate funds.” *Id.* at 358-359.

The probate court distinguished *In re Lundy* from this case on the ground that the collateral in that case was a different type of asset. But nothing in the reasoning of *In re Lundy* supports such a narrow reading of its holding. The reasoning in *In re Lundy* applies to secured creditors of an estate as a class. The fact that the type of collateral in this case differs from the collateral at issue in *In re Lundy* does not undermine this Court’s conclusion that, under the statutory framework, “EPIC treats secured creditors differently than other potential claimants against an estate.” *Id.* at 354.

EPIC does not define the term “secured creditor,” so we turn to its dictionary definition. *McCormick v Carrier*, 487 Mich 180, 195; 795 NW2d 517 (2010). *Black’s Law Dictionary* (12th

¹ Decedent’s widow moved this Court to dismiss this appeal, arguing that the Bank forfeited its challenge to the distribution order by failing to appeal the earlier order barring its claims against the estate. But the Bank was only required to file a claim to the extent that the securities serving as collateral for the loans were insufficient to satisfy the debt. The Bank’s later objection to the distribution of the estate’s remaining assets was based on its rights as a secured creditor, not its barred claim.

ed) defines a secured creditor as “a creditor who has the right, on the debtor’s default, to proceed against collateral and apply it to the payment of the debt.” Regarding the real-property loan, the Bank qualifies as a secured creditor. The all-assets loan, however, was not properly secured because the description of the collateral was insufficient. Under MCL 440.9108(3), “[a] description of collateral as ‘all the debtor’s assets’ or ‘all the debtor’s personal property’ or using words of similar import does not reasonably identify the collateral[,]” and therefore does not sufficiently identify what is described.

Accordingly, the Bank has a priority claim as a secured creditor against the proceeds from the sale of the collateralized real property and is entitled to recover the amount owed to the extent those proceeds are available from the collateralized property. If the proceeds are insufficient to satisfy the debt, the Bank’s claim to any remaining balance is that of a general creditor. The trial court previously barred the Bank’s general-creditor claims, and the Bank did not timely appeal from that order. Therefore, to the extent the secured collateral is insufficient to satisfy the debt, the Bank’s remaining general-creditor claim is barred.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Randy J. Wallace
/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin