

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF MARQUETTE

IN THE MATTER OF: MARY V. MARTINDALE (and JAMES L. MARTINDALE)
Declaration of Trust, dated March 12, 1982,
as amended May 4, 1989 and December 7, 1993

FILE NUMBER: 09-31585-TV

**ORDER FOLLOWING HEARING ON RESPONDENT'S
OBJECTION TO THE COURT ORDER**

On October 9, 2009, Elizabeth Vaessen, one of the trust beneficiaries, filed a petition requesting that this court enjoin the trustee from making further distributions to satisfy claims that arose before the death of Mary Martindale, to enjoin further distributions for attorney or fiduciary fees, to require the trustee to supply an accounting, and to order distribution of personal property equally among trust beneficiaries.

A responsive pleading was filed on behalf of the trustee on November 16, 2009. The responsive pleading requested that the court dismiss the petition.

The parties agreed to submit their dispute to case evaluation. On November 30, 2010, a panel of three attorneys issued a unanimous decision awarding \$5000 to Elizabeth Vaessen and \$8000 to Margaret Martindale. On December 3, 2010, the case evaluation panel issued a "clarification", which is attached as Exhibit One.

Both parties agreed to accept the results of the case evaluation. Checks were issued to both Petitioner and Respondent.

On January 3, 2011, Petitioner submitted another pleading requesting the return of the \$8000 payment to the trustee, among other relief. This Court conducted a hearing on January 10, 2011, on that Motion.

After the hearing, the Court issued an Order prohibiting further payments of attorney fees or fiduciary fees, or further distribution of trust assets unless approved by the Court. The trustee was ordered to submit an accounting for the period from the inception of the trust to November 30, 2010. The accounting was to be filed by January 31, 2011 and was in fact filed on that date.

The court also directed that each party submit a copy of the material which had been submitted to the case evaluation panel. The purpose of this request was to allow the court to determine exactly what the case evaluation panel's award was intended to cover.

On January 18, the trustee's attorney filed an objection. The gist of the objection is that the case evaluation award covered all claims and the court should simply enter an order dismissing the petition because checks for the amounts approved by the panel have been distributed. The trustee's attorney also asserts that MCR 2.403(J)(4) prohibits the court from considering material submitted to the case evaluation panel.

Petitioner's attorney has responded that MCR 5.143(B) should limit the application of MCR 2.403 because it states that MCR 2.403 only applies to probate proceedings "...to the extent feasible."

At the hearing on February 1, I indicated that I intended to review the parties' case evaluation materials for the purpose of identifying what claims had been submitted by the parties for resolution. On further reflection, I have determined that I should not review these materials, and in fact, have not done so. MCR 2.403(J)(4) is quite clear that

materials "...are not admissible." In spite of strenuous efforts, I have not been able to arrive at any rationale that would support my use of the summaries as anything other than evidence. Accordingly, the parts of the initial petition that related to monetary damages are HEREBY DISMISSED WITH PREJUDICE, pursuant to MCR 2.403(M)(1).

This resolution does not terminate the court's involvement with the case. MCR 2.403(A)(1) states that case evaluation is intended to dispose of civil actions that involve "money damages or a division of property." The case evaluation panel's clarification, attached as Exhibit One, states that it is not intended to effect claims arising after the date of the case evaluation hearing. Any claims for services that arose after that date may be the subject of further litigation.

The request for an accounting from the trustee falls outside the scope of MCR 2.403(A)(1) because it is not a claim for money damages or division of property. Objections to the accounting based on fiduciary fees or attorney fees incurred before the date of the case evaluation will not be heard, since the case evaluation award makes such objections res judicata. The same rule will apply to divisions or distributions of personal property which took place before November 30, 2010.

The case evaluation summaries will be sealed and returned to the parties.

IT IS SO ORDERED.

DATED:

HON. MICHAEL J. ANDEREGG P10166
Probate Court Judge