

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re BARBARA HROBA Trust.

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LUANN HROBA,

Petitioner-Appellee/Cross-  
Appellant,

v

GARY HROBA,

Respondent-Appellant/Cross-  
Appellee.

UNPUBLISHED

October 9, 2007

No. 266783

Oakland Probate Court

LC No. 2004-294178-TV

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Before: Bandstra, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from a probate court opinion and order interpreting a trust and determining the parties' rights and interests in real property. Petitioner cross appeals from the same order. We reverse.

I. Background

This case involves a March 1, 2000, trust agreement created by Barbara Hroba, who died on July 17, 2001. Petitioner, who was named as the trustee, and respondent, a beneficiary under the trust, are two of Barbara's children. The trust was partially funded by residential property, which is the subject of this action. The real property was jointly owned by Barbara Hroba and petitioner, with full rights of survivorship. Following the death of Barbara Hroba, respondent's occupancy and financial obligations regarding the residence became an issue. On April 30, 2002, petitioner sent respondent a notice to quit for non-payment of rent and demanded that he vacate the residence by June 30, 2002. Respondent refused and, on July 9, 2002, petitioner filed a termination of tenancy complaint in district court seeking to evict him. In response, respondent filed a motion for summary disposition arguing that petitioner's complaint was frivolous because he was not a renter subject to a lease and requested sanctions.

Petitioner failed to appear for the hearing on respondent's motion, and the complaint was dismissed without prejudice. Petitioner subsequently filed a motion to set aside the dismissal. A hearing on petitioner's motion and respondent's motion for sanctions was held at which

petitioner agreed that the trust was governed by a purported amendment, which provided as follows:

### 1. Primary Beneficiary

Upon my death, my Trustee shall allow [respondent] to reside at the home located at 288 Leroy, Clawson, Michigan until his father's death, with the stipulation that he will be required to pay the taxes, house insurance, and normal utilities on the respective due date for said premises. Should [respondent] fail to pay these items pursuant to their respective due dates, Luann will have the authority, as my Trustee to evict [respondent] from said premises, allowing him 2 months in which to vacate the premises. Upon the death of [respondent's] Father, the home will be immediately sold and distributed into my Trust Agreement and distributed in accordance with the Articles that follow.

Petitioner also admitted that she was not seeking to evict respondent for failure to pay monthly rent, but rather for his failure to reimburse her for the expense of a renter's insurance policy that she obtained, which she asserted was required by the trust terms. She contended that the applicable trust provision was the equivalent of a rental agreement. The district court disagreed and found that the trust gave respondent a life estate pur autrie vie in the property. Thus, the homeowner's insurance policy respondent purchased satisfied the provision's condition that he pay for insurance. Accordingly, the district court found that petitioner's action was baseless, dismissed it with prejudice, and granted respondent's motion for sanctions.

Subsequently, in December 2003, petitioner demanded that respondent begin paying \$1,000 a month in rent, effective January 1, 2004. When he failed to make any payments, petitioner filed a petition in probate court demanding possession for non-payment of rent, totaling \$4,710.<sup>1</sup> Relying on the district court's decision, respondent argued that the probate court action was barred by res judicata. The probate court disagreed, finding that the district court lacked subject-matter jurisdiction over the dispute. It further found that the trust amendment was invalid, that respondent was required to pay for the renter's insurance policy obtained by petitioner, and that petitioner was entitled to collect monthly rent of \$1,000 from respondent, but only effective as of the date of the probate court's order.

### II. Subject-Matter Jurisdiction

Respondent argues that the probate court erred in finding that the district court lacked subject-matter jurisdiction over the dispute before it. This Court reviews de novo the question whether a court has subject-matter jurisdiction. *Huron Valley Schools v Secretary of State*, 266 Mich App 638, 645; 702 NW2d 862 (2005). A court's subject-matter jurisdiction may be attacked at any time, even collaterally. *In re Hatcher*, 443 Mich 426, 438; 505 NW2d 834 (1993). "[A] proven lack of subject matter jurisdiction renders a judgment void." *Id.*

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<sup>1</sup> The \$710 represented the amount of the renter's insurance policy for which petitioner maintained she was entitled to reimbursement.

As the probate court observed, MCL 700.1302 provides, in pertinent part, that the probate court has “exclusive legal and equitable jurisdiction of all of the following”:

(b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:

\* \* \*

(v) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.

Additionally, MCL 700.1303 addresses concurrent jurisdiction of the probate court and states, in pertinent part:

(1) In addition to the jurisdiction conferred by section 1302 and other laws, the [probate] court<sup>2</sup> has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:

(a) Determine a property right or interest.

\* \* \*

(h) Hear and decide a claim by or against a fiduciary or trustee for the return of property.

Although respondent argues that the district court had jurisdiction under MCL 700.1303(1), this statute simply clarifies the probate court’s jurisdiction. It does not confer jurisdiction on other courts.

District courts have limited jurisdiction. MCL 600.8301 *et seq.* Petitioner’s district court complaint sought to evict respondent for non-payment of rent, a matter over which a district court has jurisdiction. MCL 600.5704<sup>3</sup>; MCL 600.5714(1)(a). However, petitioner clarified in the district court that she sought to evict respondent for non-payment of a renter’s insurance policy. Petitioner argued that the insurance policy that respondent purchased did not satisfy the trust provision, which she believed constituted a rental agreement. Petitioner relied on the trust terms to argue that respondent did not have an ownership right in the property and that he was no

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<sup>2</sup> MCL 700.1303 is part of the estates and protected individuals act, MCL 700.1101 *et seq.* MCL 700.1103(j) states that reference to court in the act “means the probate court or, when applicable, the family division of circuit court.”

<sup>3</sup> This statute provides that a district court has jurisdiction over matters contained within MCL 600.5701 *et seq.*

more than a tenant. She argued that because he failed to satisfy the requirements of the “lease” terms defined in the trust, she was entitled to recover possession of the property.

A court must look beyond the complaint’s label to determine the nature of the cause of action. *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 159; 677 NW2d 874 (2003). A district court has jurisdiction over actions to recover the possession of property where it is alleged that a person holds over after termination of a lease. MCL 600.5714(1)(c)(i). This is precisely what petitioner alleged. The accuracy of her allegation is irrelevant to determining the nature of the action for purposes of subject-matter jurisdiction. To the extent that the action required a determination of the parties’ property rights under the trust, the district court had jurisdiction to do so under MCL 600.8302(3), which provides that a district court has jurisdiction to determine property rights and interests in actions brought under MCL 600.5701 *et seq.* Therefore, we conclude that the district court had subject-matter jurisdiction over the action.

We reject petitioner’s argument, and the probate court’s finding, that the probate court had exclusive subject-matter jurisdiction under MCL 700.1302(b)(v) because the action involved a question of trust construction. Construing a trust’s terms will often be an integral part of determining parties’ respective property interests or rights, e.g., to a devise, matters over which the probate court shares jurisdiction under MCL 700.1303(1)(a) and (e), respectively. Provisions of an act should be read together to produce a harmonious whole and seeming inconsistencies should be reconciled if possible. *Nowell v Titan Ins Co*, 466 Mich 478, 482 n 5, 483; 648 NW2d 157 (2002). Reading MCL 700.1302(b) and MCL 700.1303(1) together, we conclude that MCL 700.1302(b)(v) does not divest another court of the ability to resolve questions of trust construction when necessary to determine a matter within that court’s prescribed jurisdiction.

### III. Real Party in Interest

The probate court also found that the district court action was not proper because it was not brought in the name of the real party in interest, the trustee on behalf of the trust, contrary to MCR 2.201(B). However, the district court complaint and court orders clearly indicate that the action was commenced by petitioner, as trustee for the Barbara A. Hroba Living Trust. Additionally, even if the action had been brought in petitioner’s name only, MCR 2.201(B)(1) provides that a trustee “may sue in his or her own name without joining the party for whose benefit the action is brought.” Thus, MCR 2.201(B) did not provide a basis for finding that the district court action was not brought by the real party in interest.

### IV. Res Judicata

Having concluded that the district court had jurisdiction to decide the matters before it, we must determine whether petitioner’s probate court action was barred by res judicata. We conclude that res judicata barred petitioner’s probate court claims.

This Court reviews de novo the applicability of the doctrine of res judicata. *Shuler v Michigan Physicians Mut Liability Co*, 260 Mich App 492, 510; 679 NW2d 106 (2004). The doctrine of res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Chestonia Twp v Star Twp*, 266 Mich App 423, 429; 702 NW2d 631 (2005). Res judicata will apply only if: (1)

the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 10; 672 NW2d 351 (2003).

In the district court action, petitioner sought to evict respondent for non-payment of rent, which she later classified as insurance, contending that it was a requirement of the “lease” terms of the trust. In the probate court action, petitioner sought to deny the validity of the trust amendment on which she relied in the district court and to collect rent from respondent. In the alternative, petitioner sought reimbursement for insurance she obtained on the property, back rent from January 1, 2004, and to evict respondent from the property. There is no dispute that the parties and essential facts are the same in both actions.

The first question is whether the district court decided the case on the merits. Petitioner asserts that it did not because it only awarded respondent sanctions. However, in order to determine if petitioner’s complaint was frivolous under MCL 600.2591, the district court had to consider petitioner’s arguments. In rejecting her arguments, the district court concluded that the trust gave respondent a life estate *pur autrie vie* in the property, and that the trust did not constitute a rental agreement. It further found that because respondent had a life estate, the homeowner’s insurance policy he purchased was proper and satisfied the terms of the trust. Thus, the district court concluded that petitioner’s claims were baseless and sanctions were awarded under MCL 600.2591(3)(a)(iii), because petitioner’s action was devoid of legal merit. Such a determination is considered to be on the merits and is entitled to *res judicata* effect. *Martin v Michigan Consolidated Gas Co*, 114 Mich App 380, 383-384; 319 NW2d 352 (1982) (holding that the denial of a motion to amend because the amendments were frivolous, i.e., legally insufficient, was a decision on the merits to which *res judicata* applied).

Also, it is clear from the district court’s order that its decision was final. Even though it stated that it denied petitioner’s motion to set aside the dismissal, the district court also stated that it dismissed petitioner’s complaint with prejudice. “The decision whether to grant dismissal with or without prejudice, by definition, determines whether a party may refile a claim or whether the claim is permanently barred.” *ABB Paint Finishing, Inc v Nat’l Union Fire Ins Co*, 223 Mich App 559, 562; 567 NW2d 456 (1997). A dismissal with prejudice has *res judicata* effect. *Id.* at 562-563.

Lastly, regarding the similarity of the actions, we conclude that the matters raised in the probate court action were or could have been decided in the district court action. The insurance issue was the same in both actions and was conclusively decided by the district court. With respect to rent, the district court determined that the trust provision was not a rental agreement or lease and that respondent held a life estate; thus, his homeowner’s policy satisfied the trust provision. A life estate is a freehold estate where the beneficiary has a current possessory interest with a right to immediate occupation of the property. *Wengel v Wengel*, 270 Mich App 86, 99; 714 NW2d 371 (2006). A freehold estate is a right to title in land. *Black’s Law Dictionary* (6th ed), p 665. A life tenant is entitled to all the beneficial uses of the land, including the collection of rents. See *Reed v Mack*, 344 Mich 391, 392-393, 398; 73 NW2d 917 (1955); *Palman v Reynolds*, 310 Mich 35, 38; 16 NW2d 657 (1944). It is axiomatic that a life tenant is not required to pay rent. Thus, the district court’s determination that respondent held a life estate settled the issue of respondent’s legal obligation to pay rent.

Additionally, the validity of the amendment could have been raised in the district court action. Instead, petitioner relied on the amendment in making her argument in the district court and agreed that it was the applicable trust provision. She could have contested the amendment's validity to further support her position that respondent was only a tenant, but did not. Thus, res judicata precluded petitioner from relitigating this issue in the probate court. See *Detroit v Nortown Theatre, Inc*, 116 Mich App 386, 397-400; 323 NW2d 411 (1982) (the defendants could have challenged all the zoning ordinances in the first action, but did not, and res judicata applied).

Because we hold that the district court had subject-matter jurisdiction over petitioner's first action and that her probate court claims were barred by res judicata, we reverse the probate court's decision. In light of our decision, it is unnecessary to address the remaining issues on appeal and on cross appeal.

Reversed.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood