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STATE OF MICHIGAN

COURT OF APPEALS

In re PETER & LOIS O'DOVERO IRREVOCABLE TRUST.

PETER E. O'DOVERO, PETER J. O'DOVERO, and JEAN TEMPLE,

Appellants,

v

CONNIE LYNN MCCAULEY, JAMES RICHARD O'DOVERO, and JOSEPH A. O'DOVERO, cotrustees of the PETER & LOIS O'DOVERO IRREVOCABLE TRUST,

Appellees.

UNPUBLISHED
May 14, 2020

No. 346896
Marquette Probate Court
LC No. 17-033757-TV

Before: CAVANAGH, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Appellant Peter E. O'Dovero (PEO) and petitioners Peter J. O'Dovero (PJO) and Jean Temple[1] appeal as of right an order, following a bench trial, that denied petitioners' request to terminate a trust. We affirm.

I. OVERVIEW AND BACKGROUND CASELAW

In 1996, PEO executed an irrevocable life-insurance trust (ILIT) for the benefit of the children he has with his wife, Lois O'Dovero (Lois). A life-insurance policy with SunLife

[1] PEO was initially a petitioner in the lower court but was denied standing to continue pursuing the claim. For ease of reference, we use the term "petitioners" when referring to arguments made by PEO, PJO, and Jean Temple on appeal.

Financial, Inc., is the sole asset of the ILIT; it is a second-to-die policy insuring the lives of PEO and Lois. The couple have nine children—PJO, Jay, John, Paul, Jean, Gerald, Connie, Joseph, and James.[2] Connie, Joseph, and James—the current respondents and appellees—are the designated trustees for the ILIT. A large part of the testimony and arguments in this case relate to the repeated failure to provide so-called *Crummey* notices to the beneficiaries of the trust when PEO made monthly premium payments for the life-insurance policy. For background, therefore, we provide a brief summary of such notices. In *Crummey v Comm'r of Internal Revenue*, 397 F2d 82 (CA 9, 1968), the petitioners executed a trust for the benefit of their four children. For the years 1962 and 1963, they made contributions to the trust and claimed the maximum annual gift tax exclusion for each child. *Id*. at 83.[3] The trust included a provision indicating that the beneficiaries could withdraw donations to the trust as present-day payments. *Id*. The federal tax court disallowed the gift tax exclusions for the contributions to the two children who were under 18 years old; it concluded that those gifts were gifts of future interests, given that the children's young ages prevented them from making an effective demand of present payment. *Id*. at 83, 87. The Ninth Circuit Court of Appeals concluded that minor children can, in fact, make a demand of present payment from a trustee, after which a guardian would be appointed to effectuate the demand. *Id*. at 87-88. The Ninth Circuit concluded, therefore, that the claimed gift tax exclusions for all four of the children were permissible because gifts of present interest had occurred. *Id*. at 88.

After the issuance of *Crummey*, "*Crummey* provisions" began being included in trust documents "to give the trust beneficiaries present interest gifts, thereby qualifying the gifts for the annual gift tax exclusion." *Hatleberg v Norwest Bank Wisconsin*, 283 Wis 2d 234, 242; 700 NW2d 15 (2005). "In effect, the provisions require the trustee to notify the trust beneficiaries that they have a right of withdrawal of the gifted funds." *Id*. So-called *Crummey* notices, therefore, are notices to trust beneficiaries about the right to present-day withdrawal of donated funds.

It is not disputed that for many years no *Crummey* notices were provided to the beneficiaries in the present case when PEO made SunLife premium payments. Petitioners contended that the lack of *Crummey* notices meant that the claimed gift tax exclusions made in connection with the premium payments were ineffective and that, after the death of PEO and Lois, the Internal Revenue Service (IRS) would end up taxing the estate for the payments after all. Petitioners contended that an alternate possibility was that (1) the IRS would conclude that no effective trust had ever been established in the first place because PEO did not really make a "gift" and retained incidents of ownership over the insurance policy, and (2) the life-insurance death benefit—as opposed to the premium payments—would therefore be taxed as part of his estate. Petitioners argued that the ILIT's goal of tax avoidance had been thwarted and that the trust must be terminated.

[2] The children, aside from PJO, will be referred to by their first names in this opinion.

[3] In other words, they claimed an amount for each child as a "gift" that would not be subject to taxation.

II. RULINGS DURING AND AFTER THE BENCH TRIAL

Petitioners relied below and rely on appeal on MCL 700.7410 and MCL 700.7412(2) in arguing that the trust must be terminated. MCL 700.7410 states, in pertinent part, that "a trust terminates to the extent . . . no purpose of the trust remains to be achieved, or the purposes of the trust have become impossible to achieve . . . ." MCL 700.7412(2) states, in pertinent part, that a court may terminate a trust "if, because of circumstances not anticipated by the settlor, . . . termination will further the settlor's stated purpose or, if there is no stated purpose, the settlor's probable intention." The probate court ruled, in part, that any federal tax consequences were hypothetical and that petitioners had, therefore, failed to meet the requirements for terminating a trust. It also pointed out that the children would obtain net proceeds from SunLife regardless of the tax arguments being advanced.

We review the probate court's factual findings for clear error and its dispositional ruling for an abuse of discretion. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008).

As noted, there are two overarching tax arguments being made by petitioners—that the IRS will deem the insurance policy as belonging to PEO and therefore it will be included in his estate and taxed accordingly, and alternatively, that the IRS will deem the premium payments not available for gift tax exclusions because of the lack of *Crummey* notices, thus subjecting the total amount of previously made premium payments to taxation.

Petitioners first contend, in connection with the first overarching argument, that the IRS will deem the trust the entire property of PEO because no proper gifting occurred in order to form a trust corpus.

In *Morgan v Comm'r of Internal Revenue*, 309 US 78, 80-81; 60 S Ct 424; 84 L Ed 2d 1035 (1940), the Court stated, "State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed." It is state law, therefore, that governs whether a proper trust was created. In *Osius v Dingell*, 375 Mich 605, 613; 134 NW2d 657 (1965), the Court stated, "It is a general principle of trust law that a trust is created only if the settlor manifests an intention to create a trust, and it is essential that there be an explicit declaration of trust accompanied by a transfer of property to one for the benefit of another." The trust agreement states that the trustees were being given ownership over the life insurance and provides for use of money by the trustees for the benefit of the grantor's children. It also states, "*The Grantor relinquishes all rights in life insurance contracts that the Grantor contributes to this Trust*, and the Grantor shall, at the Trustees' request, execute all instruments reasonably required to effect this relinquishment." (Emphasis added.) PEO signed the agreement as grantor, and Connie, James, and Joseph signed the agreement as trustees.[4] It is not disputed that PEO funded

[4] Although an intent to make a gift is clear from the trust document itself, PEO also testified that he wanted to "give" the trust to his "kids."

the trust through premium payments to SunLife and that a substantial amount of life-insurance money was available in the trust.[5] Petitioners' argument about a lack of gifting is not persuasive.

Petitioners refer to an incident when SunLife demutualized as evidence that PEO retained ownership over trust monies. In 2000, PEO received money from SunLife when it demutualized. However, trial testimony clearly established that this receipt of money by PEO was a mistake[6] that was corrected by the transfer of the money, with interest, to the trust. The trust ended up paying taxes on this money. An accountant testified that PEO agreed with the way the transaction was ultimately handled and corrected. Far from supporting petitioners' position, the ultimate resolution of the demutualization incident bolsters the idea, as set forth in the trust document, that PEO did *not* retain control over the trust monies.[7] Petitioners' appellate arguments fail to demonstrate that the trust is defective due to a lack of gifting.

Petitioners also complain that the trustees failed in their duties to administer the trust properly. But the SunLife policy remains in effect and substantial assets are available for the beneficiaries. That the trustees could have been more proactive in managing the trust does not somehow establish that no funded, legal trust was ever created.

Petitioners contend that even if a trust was initially created, federal tax law reveals that the IRS will deem the life insurance as belonging entirely to PEO and will therefore tax the full death benefit. Petitioners repeatedly cite 26 USC 2035, which states, in part:

> (a) Inclusion of certain property in gross estate.--If--
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> (1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and
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> (2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,
>
> the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

[5] It is also not disputed that PEO filed gift tax returns for many years in connection with the premium payments. See, generally, *In re Rudell Estate*, 286 Mich App 391, 405; 780 NW2d 884 (2009) (filing of a gift tax return is somewhat probative in determining whether a gift has been given).

[6] Indeed, the receipt of trust monies by PEO violated the wording of the trust document.

[7] In addition, in 2018, SunLife refused to follow directions from PEO regarding how to handle the insurance policy.

It is unclear why petitioners repeatedly cite this provision, given that it deals with the three-year period preceding a decedent's death. The trust was created in 1996, and at the time of trial in September 2018, PEO was still alive. At any rate, the pertinent question is whether any transferred interest "would have been included in the decedent's gross estate under section . . . 2042[8] . . . if . . . [it] had been retained by the decedent on the date of his death[.] 26 USC 2035. It is 26 USC 2042 that is key.

26 USC 2042 states:

> The value of the gross estate shall include the value of all property—
>
> (1) Receivable by the executor.--To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.
>
> (2) Receivable by other beneficiaries.--To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For purposes of the preceding sentence, the term "incident of ownership" includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent. As used in this paragraph, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate.

The question is whether PEO would have "incidents of ownership" in the policy at the time of his death. The language of the trust document itself, as well as the resolution of the demutualization incident and the refusal of SunLife in 2018 to follow PEO's directions regarding the policy, indicates that he would not. Petitioners take issue with the fact that PEO made direct premium payments to SunLife, but the trust document itself contemplates that contributions might occur by way of direct payment of premiums to an insurer. And a federal court has emphasized that a decedent's payment of premiums is irrelevant toward determining whether he or she retained

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[8] It is 26 USC 2042 that deals with life insurance.

incidents of ownership. *Estate of Headrick v Comm'r of Internal Revenue*, 918 F2d 1263, 1266 (CA 6, 1990).[9]

Petitioners' argument that the IRS will view the trust and insurance policy as belonging fully to PEO at the time of his death and therefore impose taxes on the full death benefit is not persuasive.[10]

Petitioners' argument regarding the lack of *Crummey* notices—and the accompanying possibility that the premium payments, as opposed to the entire death benefit, will be retroactively taxed based on the lack of present-interest gifts—is more viable. As noted, *Crummey* provisions began being included in trust documents "to give the trust beneficiaries present interest gifts, thereby qualifying the gifts for the annual gift tax exclusion." *Hatleberg*, 283 Wis 2d at 242. "[T]he provisions require the trustee to notify the trust beneficiaries that they have a right of withdrawal of the gifted funds." *Id*. The trial court spoke of *Crummey* powers being included in the trust document itself. These powers, however, are worded in a particular matter in the O'Dovero trust document. The trust document states, in part:

> A. Withdrawals by Beneficiary. A donor may from time to time designate by prior or simultaneous notice to the Trustees that one or more of the present or contingent beneficiaries of the Trust have the right to withdraw all or a portion of that donor's contributions to the Trust ("Withdrawal Beneficiary"). At any time within 30 days following a contribution to the Trust where a Withdrawal Beneficiary has been designated, each Withdrawal Beneficiary shall have the noncumulative right to withdraw the specified portion of the contribution ("Demand Assets") from the trust assets.
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> (1) Demand Assets. The term "Demand Assets" includes life insurance contracts, or any interest therein, contributed to the Trust and also includes any premiums on life insurance contracts, or any interest therein, owned by the Trust which are paid directly to an insurer by or on behalf of a donor. For such purposes, the date of contribution shall be deemed to be the date on which the premium payment is transmitted to such insurer. The amount of a contribution to the Trust

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[9] We note that petitioners cite an outdated case—*Bel v United States*, 452 F2d 683 (1971), superseded by statute as stated in *Estate of Perry v Comm'r of Internal Revenue*, 927 F2d 209, 212-213 (CA 5, 1991)—on appeal. The court in *Estate of Perry*, 927 F2d at 210, 212-213, explained that *Bel* was based on an outdated law that had since been revised, in 1981, to explicitly incorporate into 26 USC 2035 the life-insurance provision of 26 USC 2042 and its incidents-of-ownership test. Petitioners in general cite cases *predating* current tax statutes and also misrepresent certain holdings. The upshot is that the plain language of the two federal statutes relied upon, *in their form at the time of trial*, do not support petitioners' taxation argument, despite any earlier caselaw dealing with 26 USC 2035 when it was worded differently.

[10] In addition, the policy proceeds are paid at the last death of either PEO or Lois. If PEO dies first, then clearly he will retain no incidents of ownership over the policy.

shall be the value of such contribution for the donor's federal gift tax purposes, if known to the Trustees.

(2) Satisfaction of Withdrawal. The Trustees may satisfy a withdrawal in cash or in kind and may sell or liquidate trust assets or borrow in order to satisfy a withdrawal.

(3) Notice to Beneficiary. The Trustees shall give notice of the contribution and withdrawal right to each Withdrawal Beneficiary. If the contribution of Demand Assets occurs due to the direct payment of premiums to an insurer, the Trustees' obligation to give notice shall arise upon the Trustees' actual knowledge of the contribution. The notice to each Withdrawal Beneficiary may be given prior to or following a contribution. If such notice of withdrawal is not given before or within 10 days after the contribution, the withdrawal period shall continue for 20 days following the date the notice is given.

(4) Minor or Legal Incapacity. If a Withdrawal Beneficiary is a minor or under other legal disability, the notice shall be given to such person's legal guardian or conservator or, if none, to the Beneficiary's parent, who may exercise withdrawal right on such person's behalf.

* * *

D. Limitation. The . . . distribution of Demand Assets shall be subordinate to a Withdrawal Beneficiary's presently exercisable right of withdrawal.

The document is worded in such a way that a donor to the trust must specifically *designate* when a beneficiary has the right to present withdrawal of a contribution. It is this wording that distinguishes the present case from a decision of the United States Tax Court upon which respondents heavily rely. Petitioners have, in fact, made a strong argument that the IRS will end up viewing many of the premium payments as *not* subject to the annual gift tax exclusion.

But merely because more tax might be owed[11] than PEO had hoped does mean that the trial court abused its discretion by failing to terminate the trust. Again, MCL 700.7410 states, in pertinent part, that "a trust terminates to the extent . . . no purpose of the trust remains to be achieved, or the purposes of the trust have become impossible to achieve . . . ." MCL 700.7412(2) states, in pertinent part, that a court may terminate a trust "if, because of circumstances not

[11] The possibility of additional tax is highly hypothetical because any premium payments retroactively taxed because of the lack of present-interest gifting would be applied toward a lifetime gift-and-estate-tax exclusion of $22,400,000 for PEO and Lois combined. (This, at any rate, was the amount applicable by law at the time of trial.) It is hypothetical whether including SunLife premium payments would cause this limit to be exceeded. Indeed, the trial court gave credible reasons for finding less-than-believable the testimony of a witness who spoke about the value of PEO's and Lois's assets.

anticipated by the settlor, . . . termination will further the settlor's stated purpose or, if there is no stated purpose, the settlor's probable intention." It is clear from the trust document itself and from PEO's testimony that one purpose of the trust was to leave life insurance proceeds to his children. And John Sharp, petitioners' own witness, testified that life-insurance proceeds held in trust are outside the estate of the grantor.[12] Accordingly, there will be *some* tax advantage from the trust because the death-benefit amount will be excluded from the estate, and even under a scenario whereby all premium payments are included for estate-tax purposes, only $3,000,000 would be subject to taxation (*assuming* that the $3,000,000 exceeds the lifetime exclusion). This would leave approximately $3,800,000 for the children (the death-benefit payout of approximately $5,000,000 minus taxes of approximately $1,200,000). This is more than would be available if the policy were cashed out now, and a cash-out now would lead to *speculative* returns from a company that is not currently viable and that is *partially* owned by only *eight* of the children.[13]

Under all the circumstances, it was not an abuse of discretion for the probate court to conclude that petitioners failed to establish that the trust must be terminated.

Petitioners make a general assertion that the trial court improperly weighed the credibility of various witnesses. However, as stated in *In re Estate of Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993), a "reviewing court will defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." No error is apparent regarding petitioners' argument about the credibility of witnesses. Petitioners argue that the testimony of a particular accountant, Patrick Gregory, and the testimony about the general mismanagement of the trust by the trustees conclusively established that the trust needed to be terminated. But as discussed *supra*, the trial court's conclusion that petitioners did not establish the need to terminate the trust was not an abuse of discretion in light of all the circumstances.

Petitioners also contend that the trial court, in conducting the trial, erred by disallowing certain testimony by Sharp. The court's evidentiary rulings are reviewed for an abuse of discretion. *Hecht v Nat'l Heritage Academies, Inc*, 499 Mich 586, 604; 886 NW2d 135 (2016).

Petitioners' attorney attempted to get Sharp to explain whether one of the notices that was sent *by PEO*[14] was adequate *Crummey* notice under the terms of the trust. Respondents' attorney argued that the question was improper and that it was the court's job to interpret contracts. The court agreed with respondents' attorney. But immediately after this ruling, petitioners' attorney rephrased the question and asked, "[W]ould a Crummey or a notice [sic] from a Grantor be sufficient for annual gift tax purposes?" Sharp answered "[n]o" and stated that notice needed to

[12] As noted *supra*, petitioners have failed to establish that PEO retained ownership of the life insurance such that it would be included in his estate.

[13] It was repeatedly emphasized throughout trial that PEO, if allowed to take ownership over the SunLife policy, would cash the policy out and apply the proceeds to a negative-value business interest.

[14] PEO did send three *Crummey*-type notices.

go *to the beneficiaries from the trustees*. Accordingly, Sharp, in effect, provided the very information that petitioners wanted him to provide—that any notice from PEO was deficient. The issue about the sustained objection is moot. See, generally, *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Petitioners contend that the trial court erred when it sustained another objection by respondents' attorney. Petitioners' attorney asked Sharp if PEO should be allowed to apply the insurance-policy money to the indebted company as a remedy for the defective trust. The court agreed with respondents' attorney that Sharp's answer would be an improper opinion on the ultimate issue in the case. Once again, however, Sharp immediately went on to opine that the trust did not ever exist and that PEO, as a "fix[]," was free to do *whatever he wanted to do* with the insurance-policy money. Petitioners complain that Sharp was not allowed to opine regarding the ultimate issue in the case, but Sharp *did*, in fact, do so. Even if an error occurred, there is no remedy this Court could provide because the testimony petitioners wanted to elicit was elicited. See *id*.

III. MOTION FOR RECONSIDERATION REGARDING STANDING

Petitioners contend that the trial court erred by denying PEO's motion for reconsideration of the ruling denying him standing. This Court "review[s] a trial court's decision on a motion for reconsideration for an abuse of discretion." *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008).

Respondents argued, in response to a motion for summary disposition, that PEO lacked standing. The trial court ruled that PEO lacked standing because he was not an "interested person" within the meaning of MCL 700.1105(2)(c). PEO filed a motion for reconsideration, arguing that the trial court erred in its ruling because it failed to adequately consider other applicable statutes, court rules, and caselaw.

MCR 2.119(F)(3) states:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

The court denied the motion for reconsideration, stating that the motion presented "the same issues ruled on by the [c]ourt, either expressly or be [sic] reasonable implication." The court stated, "The moving party has failed to demonstrate a palpable error by which the [c]ourt and the parties have been misled and show that a different disposition of the motion must result from correction of the error."

MCL 700.7410 states, in pertinent part:

> (1) In addition to the methods of termination prescribed by sections 7411 to 7414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust

> have become impossible to achieve or are found by a court to be unlawful or contrary to public policy.
>
> (2) A proceeding to confirm the termination of a trust under subsection (1) or to approve or disapprove a proposed modification or termination under sections 7411 to 7416 or trust combination or division under section 7417 may be commenced by a trustee or beneficiary.

Petitioners acknowledge that the applicable provisions for their request to terminate the trust are MCL 700.7410 and MCL 7412(2). Under MCL 700.7410, a "trustee or beneficiary" may commence such proceedings. PEO is not a trustee or beneficiary of the trust. We note, however, that MCL 700.7410 uses the phrase "may be commenced" and not the phrase "may only be commenced." Petitioners contend that PEO had standing under MCL 700.7201 and MCL 700.1105(c).[15]

MCL 700.7201 states, in part:

> (1) A court of this state may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.
>
> (2) A trust is not subject to continuing judicial supervision unless ordered by the court. Registration of a trust or another proceeding concerning a trust does not result in continuing judicial supervision unless ordered by the court. Subject to court jurisdiction as invoked by an interested person or as otherwise exercised as provided by law, the management and distribution of a trust estate, submission of an account or report to beneficiaries, payment of a trustee's fees and other trust obligations, acceptance and change of trusteeship, and any other aspect of trust administration shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention, and without court order or approval or other court action.
>
> (3) A proceeding involving a trust may relate to any matter involving the trust's administration, including a request for . . . termination of a trust[.]

MCL 700.1105(c) states:

> "Interested person" or "person interested in an estate" includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has

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[15] Petitioners also contend that PEO had standing under MCR 5.125(C)(32), which indicates that the settlor has an interest in the termination of a noncharitable irrevocable trust. But this court rule deals with who is entitled to *notice* of proceedings. See MCL 5.125(A) and (C).

priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and by the supreme court rules.

This statute refers to "any other person that has a property right in or claim against a trust estate . . . ." *Id*. The trust agreement in this case states that the trust is irrevocable and states that the grantor "relinquishes all rights in life insurance contracts that the Grantor contributes to this Trust." PEO clearly did not have a "property right in" the trust estate. In addition, it is difficult to conclude that he had a "claim against" the trust estate, when he clearly and unambiguously, in an irrevocable trust, disavowed all rights to the life insurance monies he now seeks to obtain. Even given the nonexclusive nature of the definition in MCL 700.1105(c), we conclude, on balance, that there was no "palpable error" in the court's ruling. See MCR 2.119(F)(3); see also *Luckow v Luckow*, 291 Mich App 417, 426; 805 NW2d 453 (2011) (defining "palpable" as obvious and readily visible). In addition, the trial court had already ruled, in conjunction with the summary-disposition ruling, that PEO lacked standing because he was not an "interested person" within the meaning of MCL 700.1105(2)(c). A repeating of that argument was not a basis for granting the motion for reconsideration. See MCR 2.119(F)(3).

Moreover, the ultimate problem with PEO's argument is that he does provide any information regarding how his inclusion as a petitioner would have affected the proceedings in any possible way. PJO and Jean, trustees and therefore clearly allowable as petitioners under MCL 700.7410, brought the action, and the entire trial involved their assertion that PEO was entitled to the insurance monies. Even if this Court remanded the case, petitioners have advanced no manner in which relief could be granted, because the relief sought—an advancement of PEO's alleged interest in the insurance monies—has, in effect, already been provided. This is a situation akin to mootness because even *if* the trial court erred, petitioners have identified "no meaningful relief this Court can provide[.]" *B P 7*, 231 Mich App at 359.

IV. JUDICIAL BIAS

Petitioners claim that the trial court was biased against them. This issue is not preserved. Cf. *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009). Unpreserved issues of judicial bias are reviewed for plain error affecting substantial rights. *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011).

This issue is patently without merit and does not require an extended discussion. First, the issue appears to be merely a reiteration of the already-dealt-with arguments that the trial court erred by denying PEO standing and by limiting Sharp's testimony. Second, "[t]he mere fact that a judge ruled against a litigant, even if the rulings are later determined to be erroneous, is not sufficient to require disqualification or reassignment." *In re Contempt of Henry*, 282 Mich App at 680. There must, instead, be evidence of deep-seated antagonism or favoritism. *Id*. Petitioners identify *no* basis for their bias argument other than the court's rulings with regard to Sharp's

testimony and PEO's standing. There is, quite simply, no evidence of any antagonism or favoritism and no plain error. See *Jackson*, 292 Mich App at 597.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Michael J. Riordan