



PROBATE LITIGATION

FALL 2017

Trial Attorneys | Inheritance Disputes | Elder Law Issues

HOT TOPICS

P2 Sibling Agreements Without Counsel

P4 Family Caregiver Disputes

P6 Assisted Living Care Costs

WHO WE ARE

DAVID SKIDMORE & LAURA MORRIS



Best Lawyers in America and *Michigan Super Lawyers Magazine* recognize both David and Laura as Best Lawyers in 2018 and as a Super Lawyer and Rising Star.

SIBLING AGREEMENTS WITHOUT COUNSEL



We are seeing a number of trust and estate disputes arising from an individual or family trying to solve a legal problem without consulting an attorney. We recommend hiring counsel at the outset to avoid inadvertently setting the table for a family dispute.

- **EXAMPLE 1:** Several siblings initially agreed on how to manage their incapacitated parent's property and finances. Later, a dispute arose when some siblings did not perform under the agreement as the other siblings expected them to.
- **EXAMPLE 2:** A family member serving as trustee developed a plan for handling the trust's debt, given that the trust had no cash. Later, some trust beneficiaries objected to the plan, after it had been implemented.
- **EXAMPLE 3:** A group of siblings agreed on a plan for transferring, maintaining, and eventually selling the estate's residence; the agreement fell apart, and a dispute arose.

We have much experience assisting families in memorializing agreements and solving problems — sometimes extremely complicated problems involving difficult family dynamics.

FOR FUN

Dave & Laura are both proud MSU grads...



Dave was a member of the MSU marching band.



Laura was a member of the MSU Varsity Women's soccer team.

WHAT WE DO

We handle all issues relating to inheritance disputes and vulnerable people:

- Trust disputes
- Will disputes
- Power of attorney disputes
- Life insurance disputes
- Joint account disputes
- Sibling disputes
- Blended family disputes
- Guardianship disputes
- Conservatorship disputes
- Trust/estate creditor issues
- Seeking to remove a trustee or executor
- Getting more information from a trustee or executor
- Defending a trustee or executor
- Protecting an elderly person from financial abuse
- Obtaining judgments against a person who took advantage of an elderly person
- Challenges to a will or trust's validity
- Challenges to a property transfer's validity
- Forgery issues
- Claims of mental incapacity
- Claims of undue influence
- Appointment of guardians (adult and children)
- Appointment of conservator (adult and children)
- Seeking to remove a guardian or conservator
- Modifying an existing guardianship or conservatorship
- Modifying a trust
- Obtaining court clarification of a trust's terms
- Memorializing a family agreement

FAMILY CAREGIVER DISPUTES

It is common for a family member to provide in-home care to an aging loved one. Sometimes there is an expectation by the family member that they will be paid for these services, particularly if the care services provided are time consuming and the family member's employment income is reduced or eliminated in order provide the care.

Family disputes can arise if the caretaking family member expects to be paid but has not been paid at the family member's death.

In Michigan, it is presumed that a family member was providing the care services for a family member gratuitously.

To rebut this presumption, the caretaking family member must prove there was an expectation to be paid by both the caretaking family member and the family member receiving the care. Family disputes can also arise over how much is "reasonable" for a caretaking family member to be paid.

To avoid or minimize a dispute, a caretaking agreement should be discussed, put in writing, and signed by both the caretaker and the family member receiving the care. If the family member receiving the care has questionable mental capacity, other steps should be taken. If the care recipient is or will be applying for Medicaid, special care must be given to the caregiver agreement to avoid jeopardizing Medicaid eligibility. We can help with all of these issues.



COMMUNITY INVOLVEMENT

Probate Council. David was elected Treasurer of the Probate and Estate Planning Council, the governing body of the Probate & Estate Planning Section of the Michigan State Bar that is committed to improving the practice of law in this area. After serving one year as Treasurer, David will be considered for further officer roles on the Council.

Leadership Grand Rapids. Laura was selected for Leadership Grand Rapids for the class of 2018. Leadership Grand Rapids is a nine-month community leadership program committed to enhancing and connecting leaders from business, non-profits and government.

Charitable Sponsorships. Warner Norcross also provides sponsorships to non-profits that work to improve the lives of seniors, including Senior Neighbors and the Kent County Council on Aging.

Speaking Engagements. Dave and Laura help the community by regularly sharing their knowledge on ways to avoid or minimize inheritance and elder disputes.

- "View from the Probate Court Bench," ICLE On-Demand Seminar, January 4, 2017 (Dave)
- "Drafting After In re Jajuga Estate," ICLE Drafting Estate Planning Documents Seminar, January 19, 2017 (Laura)
- "Not All Mental Capacity is Created Equal: The Various Civil Legal Standards," Kent County Elder Abuse Coalition, March 21, 2017 (Dave and Laura)
- "Hot Topics in Probate Litigation," Michigan Forum of Estate Planners, April 21, 2017 (Dave)
- "Anatomy of a Lawsuit: Practice and Procedure in Probate Litigation," ICLE's 57th Annual Probate and Estate Planning Institute, Acme, Michigan, May 20, 2017 (Dave)
- "Fiduciary Litigation Update," Midwest Trust & Wealth Management Conference (Michigan Bankers Association), October 4, 2017 (Dave)
- "Will and Trust Litigation," ICLE Handling Contested Probate Proceedings, October 26, 2017 (Laura)

ASSISTED LIVING CARE COSTS



Most people avoid thinking about leaving their home someday and moving into assisted living. But, this is a foreseeable reality for many of us and we should be planning for it financially.

Here are some interesting facts from the October 2017 *Consumer Reports* article, "Who Will Care for You?"

- In 2016, the national median cost for a private one-bedroom apartment in assisted living was \$43,539 a year.
- In 2016, the average move-in age for assisted living was 84 years old.
- Studies have showed that more than half of residents have some form of cognitive impairment.
- For most, savings and Social Security income are not enough to afford assisted living.
- The term "assisted living" can describe anything from a facility that provides just room and board to full-time nursing care, causing confusion to consumers when searching for the right facility.

According to *Genworth*,¹ a source relied upon by *Consumer Reports* in tracking care costs, the figures for 2017 and the median cost of care in **Michigan** are as follows:

ASSISTED LIVING

Private One-Bedroom Room

\$42,000/YEAR

NURSING HOME

Semi-Private Room

\$95,630/YEAR

NURSING HOME

Private Room

\$103,295/YEAR



¹ <https://www.genworth.com/about-us/industry-expertise/cost-of-care.html>

WHAT DO YOU DO?

Tell us what you're up to and how we can connect you to our community resources.



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