

MEMORANDUM

TO: Marlane C. Teahan, Chair, Probate & Estate Planning Council
FROM: David L.J.M. Skidmore, Chair, Amicus Committee
DATE: June 14, 2018

RE: **Amicus Committee Report**

There are recent case law developments to report, relevant to amicus briefs we have filed.

- *Breakey v Department of Treasury*, Docket No 339345, 2018 WL 2746431 (Mich Ct App June 7 2018): In a published decision, the Michigan Court of Appeals held that a beneficiary of an irrevocable trust, who had the right to occupy the marital home rent-free during her lifetime, is an “owner” of the property for purposes of MCL 211.7dd(a), the personal residence exemption (PRE) under the General Property Tax Act (reversing ruling of Tax Tribunal that beneficiary was not an owner and not entitled to claim PRE). This ruling is consistent with the amicus brief filed by the Probate & Estate Planning Section.
- *In re Estate of Joseph Vansach, Jr.*, Docket No 334732, 2018 WL 2324113 (Mich Ct App May 22 2018): In a published decision, the Michigan Court of Appeals held that probate courts (1) have the authority to enter protective orders providing support for a community spouse whose institutionalized spouse is receiving Medicaid benefits; but (2) abuse their discretion by entering such protective orders without consideration of the institutionalized spouse’s needs and patient-pay obligations under Medicaid. Part (1) of the ruling is consistent with the amicus brief filed by the Probate & Estate Planning Section.
- *In re Rhea Brody Living Trust*, Docket No 156670, 2018 WL 2889678 (Mich Supr Ct June 8 2018): In a published decision, the Michigan Supreme Court – in lieu of granting leave to appeal – vacated the Court of Appeals’ standing analysis and remanded the case to the Court of Appeals for reconsideration of its standing analysis. This ruling is consistent with the amicus brief filed by the Probate & Estate Planning Section.
- *In re Conservatorship of Rhea Brody*, Docket No 156689, ___ Mich ___; 911 NW2d 194 (2018): In a published memorandum decision, the Michigan Supreme Court denied leave to appeal the decision of the Court of Appeals, noting that the final version of the opinion had omitted much of the objectionable text (i.e., “As Rhea’s husband, Robert was an individual entitled to priority consideration. However, Robert was not entitled to consideration unless the probate court considered an independent fiduciary and found him or her unsuitable. Lyneis, as trustee and independent fiduciary, had statutory

priority over Robert, despite Robert's marriage to Rhea. MCL 700.5409(1).”). The amicus brief filed by the Probate & Estate Planning Section may have played a role in the Court of Appeals’ revision of its decision.

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