STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0696

James E. Thulin, petitioner,
Appellant,

vs.

Glenna Ann Thulin,
Respondent.

Filed January 2, 2018
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-16-4303

Mark G. Ohnstad, DeWitt Mackall Crounse & Moore S.C., Minneapolis, Minnesota (for appellant)

Diana M. Ringuette, Julian C. Zebot, Maslon LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's dismissal of his financial-exploitation claim against respondent and the district court's approval of respondent's accounting for her actions taken on behalf of respondent and appellant's mother. We affirm.

FACTS

Appellant James Thulin and respondent Glenna Thulin are siblings. In 2008, their elderly mother, Glendora Thulin (mother), appointed respondent as her attorney in fact, naming appellant as successor attorney in fact. Respondent first exercised the power of attorney in 2014. That year, mother moved in with respondent for three to four months before moving into an assisted-living and memory-care facility. This appeal arises from appellant's dissatisfaction with respondent's performance as mother's attorney in fact.

In 2015, appellant filed a petition in the probate division of Hennepin County District Court, seeking appointment of a guardian and conservator for mother, demanding an accounting from respondent, and claiming damages for respondent's purported financial exploitation of a vulnerable adult under Minn. Stat. § 626.557, subd. 20 (2016). After respondent provided an accounting, appellant withdrew the petition, and the matter was dismissed by the district court in December 2015. No guardian or conservator was ever appointed for mother.

In March 2016, appellant filed a second petition in the civil division of Hennepin County District Court. It similarly demanded an accounting and claimed damages for financial exploitation under Minn. Stat. § 626.557, subd. 20. The petition also identified, as a third cause of action, a demand for "other relief as is just, including but not limited to ordering [respondent] to repay the amounts wrongfully taken." Respondent moved to dismiss the petition. The district court granted the motion to dismiss the financial-exploitation claim, determining that appellant lacked standing to assert the claim. The district court denied the motion to dismiss with respect to appellant's request for an accounting and referred that claim to the probate division.[1] It did not explicitly address the demand for “other relief as is just.”

The probate court ordered an accounting; respondent served and filed a 288-page accounting. The probate court then held a hearing on appellant’s objections, at which only respondent testified. Following the hearing, the probate court filed an order “settl[ing], allow[ing], and approv[ing]” the accounting. Appellant now appeals from the dismissal of his petition and the approval of the accounting.

D E C I S I O N

I.

Appellant argues that the probate court erred in approving the accounting filed by respondent. We review the approval of an accounting for abuse of discretion. *In re Conservatorship of Moore*, 409 N.W.2d 14, 16 (Minn. App. 1987). We review factual determinations for clear error. *In re Conservatorships of T.L.R.*, 375 N.W.2d 54, 58 (Minn. App. 1985).

Appellant first argues that the probate court mistakenly limited its review of the accounting to whether the accounting complied with the required form. Appellant relies on a statement by the probate court that its “subject matter jurisdiction in this matter is limited to determining whether Respondent provided an adequate accounting pursuant to the Court’s [earlier order] and Minnesota Statutes section 523.26.” Based on this

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[1] “The district court shall also be a probate court.” Minn. Stat. § 484.011 (2016); *see also In re Estate of Mathews*, 558 N.W.2d 263, 265 (Minn. App. 1997) (“There is no district court which is not also a probate court, and no distinction between the courts.”).

statement, appellant contends that the probate court approved the accounting only because it was in the correct form, even though the contents evidenced rampant abuse by respondent. We disagree. We understand the probate court's statement to mean that its role was limited to ruling on the matter referred to it by the civil court, not that it did not have full authority to resolve the petition for an accounting. We are satisfied that the probate court reviewed the substance of the accounting, not just its form.

Appellant next argues that the accounting should not have been approved because it showed that respondent had improperly transferred mother's assets to herself, which the power of attorney did not authorize. Specifically, appellant argues that the accounting showed that respondent used mother's assets to: pay her own real estate taxes; make cash gifts to herself; make reimbursements to herself; pay for the cleaning of respondent's house while mother was not living with her; pay for the grooming of respondent's dogs; and obtain a competency assessment of mother, the results of which she declined to share with appellant. The probate court found that: the payment of real estate taxes was intended by mother as compensation for work performed by respondent; cash withdrawals were used to pay for assisted-living expenses; and reimbursements were for legitimate household, clothing, food, and medication expenses. We are satisfied based on our review of the record that the probate court's findings of fact are not clearly erroneous, and that respondent did not exceed her powers by making these transfers.

With respect to appellant's challenge related to housecleaning expenses, the probate court did not make specific factual findings, but the evidence in the record could only support a finding that the expenses were incurred while mother was living with respondent.

In addition, while the probate court did not make a specific factual finding concerning the dog-grooming expenses, the accounting shows that mother was paying for the dog grooming as compensation for respondent helping to sell her car. And appellant fails to explain how an expenditure for an assessment of mother's competency would violate the power of attorney or invalidate the accounting. The power of attorney form specifically says that it will continue to be effective even if the principal becomes incapacitated or incompetent.

Appellant further argues that the accounting shows that respondent failed to use mother's Social Security payments to cover her rent at the assisted-living facility and committed welfare fraud. The probate court found that respondent used mother's funds to pay for mother's assisted-living expenses, and this finding is not clearly erroneous. Appellant's welfare-fraud allegation is similarly meritless. The probate court found that respondent withdrew money from mother's checking account to avoid disqualification for certain benefits while she worked with the assisted-living facility, Hennepin County, and Scott County to resolve the question of how much mother owed the assisted-living facility. The probate court found that respondent did not commingle these funds with her own and that respondent used the withdrawn funds to make payments to the assisted-living facility. These findings are not clearly erroneous.

Finally, appellant argues that the accounting should not have been approved because respondent did not keep complete records. The probate court found that respondent did not retain receipts for each item that she purchased for mother, but that this was not required. This finding is supported by the record.

The probate court found that the accounting was adequate because it satisfied the requirements of the court's earlier order and Minn. Stat. § 523.26 (2016). Specifically, it found that the accounting was signed under oath; provides start and end dates for the period in which respondent acted as attorney in fact; provides the beginning and end balances of mother's accounts that respondent accessed; lists all transactions involving those accounts; provides bank records for the relevant accounts; explains the reasons for the challenged property tax payment; and provides additional details about reimbursements made to respondent. We are satisfied that the probate court did not abuse its discretion by approving the accounting.

II.

Appellant next argues that the district court erred in dismissing his financial-exploitation claim under Minn. Stat. § 626.557, subd. 20, for lack of standing. Standing presents a question of law that appellate courts review de novo. *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014). Under the relevant statute, "A vulnerable adult who is a victim of financial exploitation . . . has a cause of action against a person who committed the financial exploitation." Minn. Stat. § 626.557, subd. 20(a) (2016). Relying on *Radke v. County of Freeborn*, 694 N.W.2d 788 (Minn. 2005), appellant argues that, as mother's next of kin, he has standing to bring a claim against respondent on mother's behalf. But neither *Radke*, nor *Hoppe by Dykema v. Kandiyohi County*, 543 N.W.2d 635 (Minn. 1996), which *Radke* explicitly overruled, addressed standing.

In overruling *Hoppe, Radke* allowed a cause of action for negligence in failing to act on reports of abuse. *Radke*, 694 N.W.2d at 799; *see also Hoppe*, 543 N.W.2d at 638 (stating that there was no cause of action for negligent investigation or intervention after receiving reports of abuse). Here, there is no claim of negligence in failing to act on reports of abuse. And in *Radke* and *Hoppe*, a special legal relationship gave those plaintiffs standing to pursue their claims. *See Radke*, 694 N.W.2d at 790-91 (stating that Radke was trustee and next of kin of his son); *Hoppe*, 543 N.W.2d at 637 (stating that Dykema was appointed special guardian for Hoppe). Here, appellant is not mother's guardian or trustee. Nor does he have any other special legal relationship with mother. The district court therefore properly concluded that appellant does not have standing to bring a claim under Minn. Stat. § 626.557, subd. 20.

III.

Appellant argues that the district court erred in failing to recognize and address his third cause of action. The third cause of action in appellant's petition states in its entirety, "For the reasons stated above, the court should order such other relief as is just, including but not limited to ordering [respondent] to repay the amounts wrongfully taken."

On appeal, appellant cites Minn. Stat. § 523.26 as the basis for his claim for "other relief." "The principal or any interested person . . . may petition the court for a protective order directing an attorney-in-fact to provide an accounting . . . or for *any other relief* as provided in sections 524.5-401 to 524.5-502." Minn. Stat. § 523.26(a) (2016) (emphasis added). Appellant argues, based on section 523.26(a), that the district court erred in declining to (1) remove respondent as attorney in fact, (2) order repayment of assets improperly transferred, (3) order respondent to give appellant "information about the principal's competency," (4) order respondent to pay appellant's attorney fees, and

(5) grant the relief available under Minn. Stat. § 626.557, subd. 20, i.e., compensatory damages, treble damages, attorney fees, and expenses. Because the district court did not find that respondent wrongfully took mother's assets or otherwise violated the power of attorney, there was no basis for the district court to order repayment or other relief. Thus, we need not address appellant's argument that section 523.26(a) provides an independent vehicle to claim the relief available under section 626.557, subd. 20. We conclude that the district court properly denied appellant's vague and generalized request for "other relief."

Affirmed.