STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0748

In re the Estate of: Randy Brian Sukut, Deceased.

Filed January 29, 2018
Reversed and remanded
Reyes, Judge

Nicollet County District Court
File No. 52-PR-16-224

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota (for appellant Linda Sukut)

Julie Wacker Hanjani, Hanjani Law Office, Hutchinson, Minnesota (for respondent Jeremy McInerney)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Smith, Judge.

U N P U B L I S H E D   O P I N I O N

REYES, Judge

Appellant challenges the district court's decision to remove her as trustee. We reverse and remand the district court's appointment of respondent because notice under Minn. Stat. § 501C.0203 (2016) was not proper.

FACTS

Randy Sukut (decedent) and appellant Linda Sukut (Sukut) married in 2007. They have a large, blended family, with each having four children from prior relationships.

Decedent's children are respondent Jeremy McInerney (McInerney), Tanya Thom, Stacy Sassen, and Christina Pagelsdorf. Sukut's children are Jenna Odegard, Justin Dauer, Jacob Dauer, and Jared Dauer.

On March 24, 2014, decedent executed a will appointing Sukut as his personal representative. Decedent and Sukut also executed a trust agreement appointing the surviving spouse as trustee and transferred all separate and marital property into the trust.

The trust provides for the separation and distribution of property upon the death of either spouse based on the property's status as marital property or separate property. In the event of the death, incapacity, or removal, decedent and Sukut's children, in order named, govern as successor trustees as set forth in the trust: Jenna Odegard (Sukut's daughter), McInerney, Jared Dauer, and Tanya Thom. The trust's schedule of assets provides in relevant part that decedent's separate property consists of 50% of a parcel of South Dakota real property, a Northwestern Mutual investment account, a boat, and a gun collection.

Decedent passed away on February 3, 2015. On February 1, 2016, Sukut as trustee attempted to distribute decedent's separate property to decedent's children according to the terms of the trust, with each receiving a check for $53,949.18. One of decedent's children, Stacy Sassen, accepted the terms and payment.

On April 7, 2016, McInerney served Sukut with a Petition for Formal Probate of Will and for Formal Appointment of Personal Representative. On May 26, 2016, the day before an evidentiary hearing, McInerney filed and served an amended petition because he failed to include and serve the original pleading on his sister Stacy Sassen, an interested party, as required by Minn. Stat. § 524.1-403(3)(i) (2016).

At the May 27, 2016 hearing, the parties contested the valuation of certain items, the validity of the trust, the distribution of the estate, and the validity of the transfers of the money from Northwestern Mutual. McInerney's appointment as trustee was brought up only once, in passing. The district court scheduled an evidentiary hearing for July 14, 2016, to resolve the parties' disagreements.

On July 13, 2016, the day before the evidentiary hearing, McInerney mailed Sukut's counsel a Responsive Petition to Amend Petition for Formal Probate of Will and for Formal Appointment of Personal Representative (responsive petition). In it, he requested that the district court appoint him as trustee. McInerney did not mail the responsive petition to Sukut personally, nor did he serve the responsive petition on any of the other qualified beneficiaries, including Odegard. Sukut's counsel did not receive the responsive petition until July 15, 2016, one day after the evidentiary hearing.

At the evidentiary hearing, the district court heard testimony from Sukut, her financial advisor, McInerney, and his sisters Thom and Pagelsdorf. Sukut's children were not present and did not testify, and little was said about the trust during the hearing.

McInerney testified that he believed that Sukut was not living up to her responsibilities as to either the will or the trust in this matter. His counsel referenced his appointment without specifying whether she meant appointment as personal representative or trustee. McInerney testified about the actions he had taken to ask Sukut to distribute the property. He also testified that he is willing to either be the trustee or personal representative, and that he would act diligently and dutifully in executing the will and trust. Thom testified that she wants McInerney to distribute the estate, either as the trustee or personal representative. Pagelsdorf testified that she is asking that McInerney handle the estate of her father.

On October 7, 2016, the district court filed an order denying McInerney's petition for probating of decedent's will and granting his request for the removal of Sukut as trustee and his appointment as trustee. Based on Sukut's testimony at the hearing, the district court found that Sukut shirked her duties as trustee because she did not fully understand her responsibilities in executing the trust. Despite acknowledging the validity of the trust and that Odegard is the first-named successor trustee, the district court named McInerney as trustee due to substantial mistrust and ill will between decedent's and Sukut's children.

On November 4, 2016, Sukut filed a motion for amended findings and for relief from the order and judgment pursuant to Minn. R. Civ. P. 52.02 and 60.02. The motion contained affidavit attachments from Sukut, her former counsel, and her daughter, Odegard. Sukut's former counsel wrote that she did not know that Sukut's position as trustee was at issue during the hearing. Sukut wrote the same. Odegard wrote that, as the first successor trustee in the trust agreement, had she known that the identity of the trustee would be an issue, she would have appeared at the hearing and testified. On March 21, 2017, the district court filed an order denying Sukut's motion. Sukut appeals.

D E C I S I O N

Sukut argues in part that the district court improperly removed her as successor trustee because McInerney did not follow the statutory requirements in Minn. Stat. § 501C.0203. We agree.

The interpretation of a statute is a question of law that we review de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). When a district court finds that a party consented to a new argument at an evidentiary hearing, our review is for clear error. *See Hopper v. Rech*, 375 N.W.2d 538, 542-43 (Minn. App. 1985) (citing Minn. R. Civ. P. 15.02), *review denied* (Minn. Dec. 30, 1985).

Generally, the district court "is required to base relief on issues either raised by the pleadings or litigated by consent" because "it is fundamental that a party must have notice of a claim against him and an opportunity to oppose it before a binding adverse judgment may be rendered." *Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983). "Procedural due process provides a constitutional floor that requires any notice to be 'reasonably calculated' to 'appraise interested parties of the pendency of the action' before depriving them of life, liberty, or property." *Jaeger v. Palladium*, 884 N.W.2d 601, 606 (Minn. 2016) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652 (1950)). However, neither precedent nor the Due Process Clause of the 14th Amendment prevent states from adopting statutes "that exceed the minimum requirements of due process." *Jaeger*, 884 N.W.2d at 606 (states may adopt procedural rules "that exceed the minimum requirements of due process"). Thus, we must analyze the text of Minn. Stat. § 501C.0201 (2016).

A person interested in a trust may petition the district court for an order to remove a trustee for cause. Minn. Stat. § 501C.0201(a), .0202(9) (2016). The statute sets out procedures for removal petitions. Minn. Stat. § 501C.0203. A petitioner "must" give notice of the hearing:

> (1) by publishing, at least 20 days before the date of the hearing, a copy of the order for hearing one time in a legal newspaper for the county in which the petition is filed; and (2) *by mailing, at least 15 days before the date of the hearing, a copy of the order for hearing to those current trustees and qualified beneficiaries of the trust* whose identity is known and whose location is known or reasonably ascertainable to the petitioner after making reasonable efforts to locate such persons.

Id. (emphasis added). This is the same manner that notice is given pursuant to Rule 4 of the Minn. R. Civ. P. Minn. Stat. § 501C.0203, subd. 2. The statute clearly and unambiguously requires that McInerney notify Sukut and the other qualified beneficiaries by mail 15 days before the hearing. McInerney failed to comply with this requirement. Instead, McInerney filed his responsive petition seeking the removal of Sukut and his appointment as trustee just one day before the July 14, 2016 hearing and then only served it on Sukut's counsel and not on Sukut or the other qualified beneficiaries personally.

The statute states that notice may also "be given in any other manner as the court directs." *Id.* Here, the district court did not direct or provide another manner for McInerney to inform Sukut that the identity of the trustee was at issue. Instead, more than a month after the July 14, 2016 hearing, the district court found that Sukut had implicitly consented to the trustee-removal issue.

The supreme court has distinguished compliance and notice, stating that an unambiguous statute or rule must be strictly or substantially complied with. *Jaeger*, 884 N.W.2d at 608. Compliance is based on adherence to the statutory requirements, not notice or inferred consent. *Id.* at 608-09; *see Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309, 317-18 (likening notice and inferred consent as one in the same). Instead, we interpret statutes based on their plain language regardless of whether the parties have received actual notice of the action. *Jaeger*, 884 N.W.2d at 609 (citing *Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016) (the plain language of the service-by-mail rule, Minn. R. Civ. P. 4.05, "must be followed"); *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 383 (Minn. 2008) (interpreting the service-by-publication rule, Minn. R. Civ. P. 4.04(a) in accordance with its plain language)). Thus, the district court erred in removing Sukut as trustee based on the finding of Sukut's inferred consent to litigation of the trustee-removal issue because McInerney failed to strictly comply with the unambiguous statutory requirements of Minn. Stat. § 501C.0203.

Because we reverse and remand on the removal of Sukut as trustee, we also vacate the appointment of McInerney.

Reversed and remanded.