

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0943
A17-0981**

In re the Estate of: Duane Francis Strub, Deceased.

**Filed February 12, 2018
Affirmed
Halbrooks, Judge**

Houston County District Court
File No. 28-PR-16-354

William G. Peterson, Peterson Law Office, LLC, Bloomington, Minnesota (for appellants Alan Strub and Matthew Strub)

Wayne E. Pflughoeft, Joseph E. Winandy, Pflughoeft, Pederson, Johnsrud & Winandy, LLP, Winona, Minnesota (for respondent Janice L. Scheidecker)

Kari C. Stonelake-Hopkins, Dunlap & Seeger, P.A., Rochester, Minnesota (for respondent Merchants Bank, N.A.)

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Kirk, Judge.

S Y L L A B U S

A district court has subject-matter jurisdiction to remove a personal representative in an informal probate proceeding under Minn. Stat. § 524.3-301 (2016).

O P I N I O N

HALBROOKS, Judge

On appeal from the district court's orders (1) removing appellants as personal representatives in a probate matter and (2) denying their motion to vacate the removal

order, appellants argue that the district court lacked subject-matter jurisdiction to remove them as personal representatives in an informal probate proceeding. We affirm.

FACTS

On January 22, 2014, Duane Strub executed a will that nominated two of his children, appellants Alan and Matthew Strub, as co-personal representatives of the estate. Duane Strub died on January 14, 2016. Upon application for informal probate and informal appointment of personal representatives, the registrar accepted the application, informally probated the will, and appointed appellants as personal representatives. The will provided that both appellants and Duane Strub's girlfriend, respondent Janice Scheidecker, would receive a portion of the residue of the estate. The residue of the estate included two real estate parcels that are adjacent and encompass approximately 212 acres. The will also provided respondent with a life estate and a right to purchase a homestead in the estate for 50% of its estimated market value in the year of Duane Strub's death.

In June 2016, respondent asked appellants to conduct an appraisal of the farmland in order to exercise her option for partition of the land in the estate. Appellants' attorney responded by letter, stating, "The farmland will not be for sale and an appraisal is not necessary at this time." On October 6, respondent asked appellants to arrange for an appraisal of the farmland and to provide her with an appraisal that had already been completed for the house. Appellants' attorney responded, stating "An appraisal of the farm is not necessary or required. If Ms. Scheidecker would like an appraisal, she can have it done and pay for it on her own." Appellants did not provide respondent with a copy of the completed appraisal of the house.

Respondent petitioned the district court on November 21, 2016, to remove appellants as personal representatives on the grounds that they had disregarded their responsibilities and refused to proceed with an appraisal of the land. In appellants' responsive filing in December, appellants attached the appraisal for the house that was done on October 2 but never provided to respondent and stated that they had "arranged for an appraisal of the Family Farm and [would] discuss a potential buyout with [respondent]."

The district court determined that appellants "have failed to act in the best interests of the Estate by denying [respondent] the ability to liquidate her portion of the farmland. . . . They have used their power to act for their own benefit rather than proceed toward the full settlement of the Estate." The district court discharged appellants as personal representatives of the estate and ordered the parties to either stipulate to a new personal representative or, if they could not agree, to submit names of other candidates to the district court.

The district court stated that, once identified, the new personal representative would draft a proposal for partition of the farmland. If the parties could not agree on the proposal, the new personal representative would be directed to bring an action for partition to the district court under Minn. Stat. § 524.3-911 (2016).

Appellants moved the district court to vacate its order removing them as personal representatives, arguing that the district court should have considered the actions that appellants took after the hearing but before the district court issued its order. The district court denied their motion. Appellants now challenge the district court's order removing

them as personal representatives and the order denying their motion to vacate the removal order. We consolidated the appeals.

ISSUE

Does a district court have subject-matter jurisdiction to remove a personal representative in an informal probate proceeding commenced under Minn. Stat. § 524.3-301?

ANALYSIS

Appellants argue that the district court lacked subject-matter jurisdiction to remove them as personal representatives because (1) respondent did not commence a formal testacy proceeding and (2) respondent did not satisfy the procedural requirements to remove them as personal representatives. Subject-matter jurisdiction is a question of law, which we review de novo. *Nelson v. Schlener*, 859 N.W.2d 288, 291 (Minn. 2015). Subject-matter jurisdiction refers to a court’s authority to hear and decide an issue in controversy. *In re Civil Commitment of Giem*, 742 N.W.2d 422, 426 (Minn. 2007) (citing *Robinette v. Price*, 214 Minn. 521, 526, 8 N.W.2d 800, 804 (1943)). A district court has original jurisdiction in all civil cases, including cases in law and equity for the administration of estates of deceased persons. See Minn. Const. art. VI, § 3; Minn. Stat. § 484.01, subd. 1(4) (2016). “[D]istrict courts exercise all the functions of the probate court. . . .” *In re Guardianship of Doyle*, 778 N.W.2d 342, 345 n.1 (Minn. App. 2010). They have “jurisdiction over all subject matter relating to estates of decedents.” Minn. Stat. § 524.1-302(a) (2016). Because district courts have subject-matter jurisdiction over all matters relating to the estate of a decedent and because the removal of a personal representative relates to a

decedent's estate, the district court had subject-matter jurisdiction to remove appellants as personal representatives from decedent's estate.

Authority to Remove Personal Representatives

Appellants argue that a district court does not have subject-matter jurisdiction to remove a personal representative appointed in an informal probate proceeding unless an interested party commences a formal testacy proceeding with the district court. The “informal appointment proceedings” statute in the Minnesota Probate Code does not support appellants’ argument. An informal appointment fully establishes a personal representative’s status, but “[a]n appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 524.3-608 to 524.3-612” Minn. Stat. § 524.3-307(b) (2016). Respondent properly petitioned the district court to remove appellants under Minn. Stat. § 524.3-611(a) (2016), which states that “[a] person interested in the estate may petition for removal of a personal representative for cause at any time.” Therefore, appellants were not insulated from removal simply because they were appointed through an informal probate proceeding. The district court acted pursuant to its authority granted by Minn. Stat. §§ 524.3-307(b), -611 (2016), when it removed appellants as personal representatives based on its determination that they refused to perform their duties.

Additionally, the removal statute’s placement in the Minnesota Probate Code does not support appellants’ argument that the district court may only remove a personal representative if an interested party has commenced a formal testacy proceeding. The personal-representative removal statute is not listed in the “formal testacy” sections, Minn.

Stat. §§ 524.3-401 to -414 (2016), or the “informal probate” sections, Minn. Stat. §§ 524.3-301 to -311 (2016), but it is within “Part 6, Personal Representative; Appointment, Control and Termination of Authority,” Minn. Stat. §§ 524.3-601 to -618 (2016). And the removal statute that provides that a district court may remove a personal representative for cause does not include any language referring to formal or informal probates. Minn. Stat. § 524.3-611. To the contrary, the statute provides that a district court may remove a personal representative “at any time” if “it is in the best interests of the estate” or if the personal representative otherwise fails in performing statutorily assigned duties. Minn. Stat. § 524.3-611(a)-(b).

Appellants further contend that the Minnesota General Rules of Practice demonstrate that the district court did not have subject-matter jurisdiction to remove them as personal representatives. We disagree. Appellants rely on Minn. Gen. R. Pract. 405, which states that “[t]he court has no power to intervene in any unsupervised administration unless a formal petition invoking the court’s authority is filed by an interested person.” Appellants contend that a “formal petition” refers to a petition for a “formal testacy proceeding.” But this argument is not supported by the probate code’s “General Definitions” section, which defines a “petition” as “a written request to the court for an order after notice.” Minn. Stat. § 524.1-201(41) (2016).

The probate code defines a “testacy proceeding” as “a proceeding to establish a will or determine intestacy.” Minn. Stat. § 524.1-201(54) (2016). Respondent did not petition the district court for a formal testacy proceeding because she did not seek “to establish a will or determine intestacy.” *Id.* Instead, respondent filed a formal “petition” invoking the

district court's authority to remove appellants as personal representatives. The district court properly exercised its authority to intervene in the informal probate proceeding because a "formal petition invoking the court's authority [was] filed by an interested person." *See* Minn. R. Gen. Pract. 405.

Minn. Gen. R. Pract. 402 and 415 also support the conclusion that a district court may act in an informal probate proceeding. Minn. Gen. R. Pract. 402(b) states that an informal proceeding is conducted by a judge, a registrar, or a person designated by the judge for probate of a will or appointment of a personal representative. And Minn. Gen. R. Pract. 415(a)(1) states that "[e]ach judge of the court may at any time perform the functions of registrar regardless of whether the court has designated other persons to perform those functions."

Appellants also argue that Minn. Stat. § 524.3-302, which states that "[i]nformal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding," prevents the district court from acting in a probate proceeding unless an interested person commences a formal testacy proceeding. We are not persuaded. Minn. Stat. § 524.3-301 defines both an "informal probate proceeding" and an "informal appointment proceeding," which demonstrates that these phrases constitute two separate proceedings. "An informal probate proceeding is an informal proceeding for the probate of decedent's will. . . . An informal appointment proceeding is an informal proceeding for appointment of a personal representative" Minn. Stat. § 524.3-301. Respondent did not move the district court to probate the will. Respondent only sought to remove appellants as personal representatives, and the "informal probate proceeding" in which the

registrar probated the will is still “conclusive as to all persons.” We therefore conclude that an interested party was not required to commence a formal testacy proceeding before the district court could remove appellants as personal representatives in the informal probate proceeding.

Procedural Requirements to Remove Personal Representatives

Appellants also assert that the district court did not have subject-matter jurisdiction because respondent did not meet the procedural requirements outlined in Minn. Stat. § 524.3-403, which applies to parties seeking to commence a formal testacy proceeding. But this statute does not apply because, as noted, respondent was not seeking to commence a formal testacy proceeding. Respondent was required to meet the procedural requirements outlined in Minn. Stat. § 524.3-611(a), which applies to the removal of a personal representative. Minn. Stat. § 524.3-611(a) states that when a “person interested” petitions the district court to remove a personal representative, “the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order.” Respondent was a “person interested in the estate” because she is designated in the will as a devisee. Minn. Stat. § 524.3-611(a). She filed a petition to remove appellants as personal representatives. She provided notice to the personal representatives by serving appellants’ attorney. Therefore, respondent satisfied the procedural requirements for removing a personal representative, and the district court properly exercised its authority to remove appellants as personal representatives.

D E C I S I O N

The district court had subject-matter jurisdiction in the informal probate proceeding to remove appellants as personal representatives of decedent's estate. We therefore affirm the district court's orders removing appellants as personal representatives and denying appellants' motion to vacate the removal order.

Affirmed.