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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1762**

In the Matter of the Estate of: Martha R. Houle DeHaven,
a/k/a Martha R. Zuettel, a/k/a Martha R. Tomczak,
a/k/a Martha R. Houle, Decedent

**Filed June 11, 2018
Affirmed
Connolly, Judge**

Anoka County District Court
File No. 02-PR-15-374

Sean O. Skrypek, Kueppers, Kronschnabel & Skrypek, P.A., St. Paul, Minnesota (for appellant)

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Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Smith, John, Judge.*

UNPUBLISHED OPINION

CONNOLLY, Judge

In this probate dispute, appellant argues that the district court erred by failing to extend the time for him to petition for an elective share and by failing to invalidate his

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

elective-share waiver. Appellant also argues that the district court erred by approving the personal representative's petition to sell a portion of land. We affirm.

FACTS

Decedent Martha DeHaven and appellant John DeHaven were married in 2004. Decedent died in 2015. Her probate estate consisted of a small amount of cash and one parcel of real property that is approximately 13 acres.

Decedent's will, two codicils, and two property lists were formally probated on October 23, 2015. The will divided the real property into Parcel A and Parcel B. Article III of the will described the homestead and called it "Parcel B." Article IV of the will described a ten-acre vacant lot and called it "Parcel A." The will stated that the legal descriptions for the parcels were attached as "Exhibit A," but the probated will did not have an "Exhibit A" attached to it.

Under Article III, the will devised the homestead to appellant, for life, with the remainder divided between two people. A codicil dated January 20, 2015, changed the remainder to be divided among four people. Under Article IV, the will provided that the residue, including the ten-acre vacant lot, would be sold and the proceeds distributed in specified percentages to eight residuary beneficiaries. A codicil dated April 15, 2015, changed the residue to be divided among 11 beneficiaries. Appellant was to receive ten percent of the residuary estate.

On March 10, 2015, about two months before her death, decedent entered into a Vacant Land Purchase Agreement to sell five acres of the vacant property to a third party. The legal description of this portion of land was:

The South 555 feet of the West 494.50 feet of the Northwest Quarter of the Southwest Quarter of Section 26, Township 31, Range 22, Anoka County, Minnesota, Except the west 24.75 feet thereof and except road. Subject to easements of record.

After decedent's death, appellant refused to consent to the sale, so the personal representative petitioned for the district court to approve the sale.

On August 3, 2015, the personal representative's counsel mailed a Notice to Spouse and Children to both appellant and his attorney at the time. The notice informed appellant that he had a statutory spousal right to make an election within a deadline of nine months after decedent's death, or, for property subject to probate, six months after the probate of decedent's will. Appellant petitioned for an elective share on January 10, 2017.

However, on September 24, 2009, six years before decedent died, appellant had signed a Spousal Consent and Waiver that waived his right to the elective share. At the evidentiary hearing, appellant testified that he and decedent went to her attorney's office and he sat on a couch while decedent and her attorney worked on documents. Appellant claimed that he did not know what he was signing, that he was not told what he was signing, that he did not ask any questions because he did not want to upset decedent or her attorney, and that he signed the document because he wanted to make decedent happy. Through the waiver, appellant acknowledged that he had read decedent's will. Appellant now claims that he had not read it. Appellant did not testify as to whether he had the opportunity to talk to another attorney before signing the waiver.

The district court denied appellant's petition for an extension of time to petition for the elective share, denied appellant's request to find the Spousal Consent and Waiver

invalid, and approved the personal representative's petition to sell a portion of the land in decedent's estate. This appeal follows.

DECISION

I.

Appellant first argues that the district court abused its discretion when it concluded that appellant failed to provide any equitable reasons to extend the time for him to petition for the elective share. We disagree.

Under Minnesota law, a surviving spouse's election for his elective share "must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires." Minn. Stat. § 524.2-211(a) (2016). "Within nine months after a decedent's death, the surviving spouse may petition the court for an extension of time for making an election." Minn. Stat. § 524.2-211(b) (2016). Whether a district court decides to extend a statutory time limit is discretionary and will not be reversed absent an abuse of discretion. *See In re Estate of Kruegel*, 551 N.W.2d 718 (Minn. 1996) (reversing this court's holding that the district court should have extended the time for a surviving spouse to petition for his elective share because "it is for the [district] court to determine, in the exercise of its discretion, whether such equitable consideration exists and then whether the statutory time limitations may be avoided"). "Among other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported

by the record, or if it misapplies the law.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (internal quotation marks and citations omitted).

The district court did not err when it concluded that the last day for appellant to timely petition for his elective share was April 23, 2016—six months after decedent’s will was formally probated. Within that time, appellant neither petitioned for his elective share nor requested an extension of time. Instead, appellant petitioned for his elective share on January 10, 2017, which was more than eight months after the deadline. Appellant did not provide the district court with any reason for his untimely petition. He now asserts, for the first time on appeal, that since appellant “worked as a machinist all of his life, . . . he had no concept as to the deadlines in filing such a claim, nor the value of the elective share.” The personal representative’s counsel sent both appellant and his former attorney a Notice to Spouse and Children that explained the elective share and the deadline to petition for it. Appellant presents no persuasive argument for why the district court abused its discretion in determining that appellant failed to provide any equitable reasons to extend the time for making an election.

Because we conclude that the district court did not abuse its discretion by denying appellant’s request for an extension of time to petition for an elective share, we decline to address whether the district court abused its discretion in finding that appellant provided no evidence to sustain his claim that his Spousal Consent and Waiver was invalid.

II.

Appellant also argues that the district court erred by approving the sale of the real property, but he does not outline a coherent legal argument or cite to legal authority to

explain why he should prevail. In one sentence, appellant suggests that, since he and decedent had a line of credit on decedent's entire real estate, this court should conclude that the sale of part of Parcel A would be against decedent's intent. Appellant made a similar argument before the district court, and the district court analyzed whether the sale was consistent with decedent's will. This court reviews a district court's interpretation of an unambiguous instrument de novo. *In re Trust of Hill*, 499 N.W.2d 475, 482 (Minn. App. 1993).

Unless a contrary intent appears from the will, an agreement made by a testator for the sale or transfer of real property disposed of by the will previously made, does not revoke or adeem such disposal; but all the right, title, and interest of the decedent in such property and in said agreement shall pass, according to the terms of the will. Such an agreement shall be enforceable and subject to the same remedies for specific performance or otherwise against devisees as exists against a decedent's successors if the same passed by succession.

Minn. Stat. § 525.253, subd. 1 (2016).

Here, decedent's will divided her real property into Parcel A and Parcel B. The will directed that Parcel A, the vacant parcel, be sold and its proceeds be distributed to the residuary beneficiaries. The purchase agreement that decedent entered into after she executed her will was for a portion of the vacant parcel. The will gave appellant a life estate in Parcel B, the homestead parcel. The purchase agreement does nothing to alter that life estate arrangement. Thus, the district court did not err in concluding that the purchase agreement was consistent with decedent's will.

Affirmed.