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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1845**

In re: the Estate of LaVonne Ruth Anderson-Stewart, Deceased

**Filed July 23, 2018
Affirmed
Connolly, Judge**

Dodge County District Court
File No. 20-PR-16-683

William L. French, French Law Office, Rochester, Minnesota (for appellant)

Steven M. Sitek, Mark R. Bradford, Bassford Remele, P.A., Minneapolis, Minnesota (for
respondent Delbert Stewart)

Adam J. Kaufman, Susan T. Peterson, Henningson & Snoxell, Ltd., Maple Grove,
Minnesota (for respondent David Anderson)

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this appeal from the district court's denial of appellant's petition to probate decedent's 2016 will, appellant primarily challenges the district court's findings that decedent lacked testamentary capacity and that the 2016 will was the product of undue

influence. Appellant also argues that the district court erred by ordering appellant to transfer decedent's assets to her surviving spouse and by failing to award appellant attorney fees. We affirm.

FACTS

Decedent LaVonne Ruth Anderson-Stewart was married twice. She had several children with her first husband, including Debra Niemeyer, appellant James Anderson, and respondent David Anderson. In 1993, decedent married Delbert Stewart, who also had children from a prior marriage. Decedent and Stewart did not have children together. The district court found that decedent and Stewart “had a long and loving relationship.”

On July 7, 2013, decedent and Stewart each executed standard “married persons’ wills.”¹ The district court found that decedent’s ability to manage her affairs rapidly declined in 2015 and 2016. In September of 2015, decedent designated appellant and Niemeyer as her attorneys-in-fact. In September of 2016, Stewart designated one of his sons as his attorney-in-fact.

In October of 2015, decedent was diagnosed with dementia. On June 3, 2016, fewer than three months before her death, decedent and Stewart met with a new attorney. During that meeting, decedent executed a new will (the 2016 will)—which left her entire estate to appellant and Niemeyer—and Stewart signed a “Consent to Testamentary Documents and Waiver of Spousal Rights”—under which, he purportedly gave up his priority to serve as

¹ These wills each named the surviving spouse as the personal representative and provided that each would inherit the entire probate estate. Upon the death of the surviving spouse, the remaining assets were to be distributed to some of decedent’s and Stewart’s children according to an agreed upon formula.

personal representative of decedent's estate, waived all of his spousal rights, and consented to decedent's 2016 will. Decedent died on August 30, 2016, with dementia listed as a contributing factor. She was 91 years old.

On September 9, 2016, appellant petitioned to probate the 2016 will. Both Stewart and respondent objected to the petition. Stewart moved to invalidate the 2016 will and admit decedent's 2013 will to probate. Alternatively, Stewart moved to invalidate his 2016 spousal waiver so he could petition for his elective share. He argued that decedent lacked the necessary testamentary capacity to sign the 2016 will, that the will was a product of undue influence, and that his elective-share waiver was invalid. Stewart and respondent both formally requested attorney fees from the estate.

On September 6, 2017, before the district court issued its order, Stewart passed away. The district court concluded that decedent did not have testamentary capacity when she executed the 2016 will, decedent did not intend to disinherit Stewart, the 2016 will was the product of undue influence, and Stewart did not knowingly or intentionally waive his spousal inheritance rights. The district court ordered appellant to transfer all of decedent's assets to Stewart and ordered decedent's estate to pay Stewart's and respondent's attorney fees. The district court did not order decedent's estate to pay appellant's attorney fees. This appeal follows.

D E C I S I O N

Appellant's main argument is that the district court clearly erred when it found that decedent's 2016 will was invalid. The district court found the 2016 will invalid on two grounds: because decedent lacked testamentary capacity and because it was the product of

undue influence. This court reviews both of these issues for clear error. *In re Estate of Larson*, 394 N.W.2d 617, 620 (Minn. App. 1986), *review denied* (Minn. Dec. 12, 1986). A district court's factual findings are clearly erroneous "only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

"Where the evidence as to testamentary capacity . . . is conflicting, findings of the [district] court with respect to such questions are final on appeal, even though the appellate court, if it had the power to try the questions de novo, might determine otherwise upon reading of the record." *In re Estate of Olson*, 227 Minn. 289, 295, 35 N.W.2d 439, 444 (1948). "[D]ue regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. Some of the factors that district courts consider when determining testamentary capacity include the reasonableness or naturalness of the property division, testator's conduct within a reasonable time before and after execution of the disputed will, and expert testimony pertaining to the testator's mental capacity. *In re Estate of Anderson*, 384 N.W.2d 518, 520 (Minn. App. 1986).

Appellant's argument relies on evidence that he argues is in conflict with the district court's finding of testamentary incapacity. Appellant first states that a nurse rather than a doctor prepared the October 1, 2015, doctor's note that the district court relied upon when finding that decedent was diagnosed with dementia. Appellant quotes that the nurse wrote that there had been "no formal workup for [dementia]" and "[n]o true signs of delirium or waxing and waning mental status." Appellant also claims that because decedent "had a

good conversation” with hospital staff about her do-not-resuscitate status on August 2, 2016, the decedent necessarily had mental capacity when she signed the 2016 will.

However, the district court’s finding was not based solely on decedent’s medical records. In addition to her medical records, the district court considered witness testimony about decedent’s condition in the months preceding the execution of her 2016 will. The district court found that decedent’s ability to manage her affairs rapidly declined from 2015 to 2016 and substantial safety precautions had to be taken within decedent’s home. The district court also found that decedent and Stewart “had a long and loving relationship” and that there was “nothing in the record to support such a dramatic change in her estate plan.” Appellant’s reference to a small part of decedent’s medical records does not render the district court’s finding manifestly against the evidence. Moreover, it is not our job to reweigh the evidence if that evidence supports the findings of the district court. *In re Salkin*, 430 N.W.2d 13, 16 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988).

Because we affirm the district court’s order denying appellant’s petition to probate the 2016 will based on decedent lacking testamentary capacity, we decline to address appellant’s challenge to the district court’s finding of undue influence. Additionally, appellant’s argument that decedent’s settlement proceeds, as part of decedent’s probate estate, must pass according to the 2016 will necessarily fails.

Appellant also initially argued that the district court erred in concluding that Stewart’s “Consent to Testamentary Documents and Waiver of Spousal Rights” was invalid; however, in his reply brief, appellant withdraws this issue by stating it “is entirely irrelevant because there is no evidence that [Stewart] elected his spousal share.” In his

objection to appellant's petition to probate the 2016 will, Stewart primarily argued that the 2016 will was invalid. He alternatively argued that his spousal waiver was invalid. Stewart did not file for his elective share before his death on September 6, 2017. Because the argument challenging Stewart's waiver of his spousal rights has been withdrawn, and because Stewart never actually asserted or attempted to assert those rights, no effectual relief would be granted by this court if it decided this issue; therefore, the issue is moot. *See In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989) (observing that when an appellate court is unable to grant relief, the issue is moot).

Appellant also argues that an investment account "was a non-probate asset that should have passed to the named beneficiaries." The investment accounts refer to an Edward Jones account that decedent and Stewart jointly owned, with rights of survivorship. Decedent and Stewart's 2013 estate plan included listing nine of their 12 children as equal beneficiaries of the more substantial of two shared accounts. The district court found that, in December of 2015, "some, if not all, of the funds were transferred to a single account in [d]ecedent's name only." In January of 2016, the beneficiary designations of that account were changed to name only appellant and Niemeyer. The record contained no evidence that Stewart consented or knew of this activity. The district court explicitly found that Stewart did not consent to the funds from his and decedent's joint account being diverted into a single account in decedent's name, with Niemeyer and appellant as the designated beneficiaries. The district court also found that appellant and Niemeyer abused their authority under the powers-of-attorney by unilaterally changing the beneficiary designations on the investment account. Appellant's argument is that the district court

“inexplicably” ordered appellant to transfer those funds to Stewart within three days of its order. This argument is contrary to the district court’s findings, which are supported by the evidence.

Finally, appellant argues that the district court should have ordered decedent’s estate to pay for his attorney fees. We review a district court’s award of attorney fees and costs for an abuse of discretion. *In re Estate of Martignacco*, 689 N.W.2d 262, 271 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Jan. 26, 2005). The statute that permits attorney fees for a personal representative, Minn. Stat. § 524.3-720 (2016), requires that the district court find that the personal representative defended a contested will in good faith. It provides, in relevant part:

Any personal representative or person nominated as personal representative who defends or prosecutes any proceeding in good faith, whether successful or not, or any interested person who successfully opposes the allowance of a will, is entitled to receive from the estate necessary expenses and disbursements including reasonable attorney[] fees incurred.

Appellant did not affirmatively move for attorney fees. In his opposition to Stewart’s and respondent’s requests for attorney fees, appellant requested an offset for the attorney fees that he had incurred. Since appellant did not formally request attorney fees, the district court did not make the requisite finding that appellant defended the proceedings in good faith. Conversely, the district court found that appellant’s testimony was not credible and that appellant and Niemeyer diverted funds from Stewart without his consent or knowledge. The district court did not err by failing to award appellant attorney fees.

Affirmed.