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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0749

In re the Estate of John Kenneth Rutt, a/k/a John K. Rutt and John Rutt, Deceased.

Filed March 11, 2019
Affirmed
Connolly, Judge

Carver County District Court
File No. 10-PR-06-104

Roxanne R. Karl, Roxanne R. Karl Law Office, Burnsville, Minnesota (for appellant)

Phillip R. Krass, Patrick B. Steinhoff, Malkerson Gunn Martin LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Florey, Judge.

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

CONNOLLY, Judge

In this third appeal in a supervised probate action, appellant argues that the district court erred when it granted respondents' motion for a partial distribution of probate assets, and when it denied his countermotion—opposing the partial distribution of assets and raising several other issues—in its entirety. Because appellant has failed to demonstrate that the district court erred, we affirm.

FACTS

Decedent John Rutt died in September 2006, survived by two sons and six daughters. The background facts concerning this supervised probate proceeding have been developed extensively by this court in *In Re Estate of Rutt*, No. A09-2336, 2010 WL 3958649 (Minn. App. Oct. 12, 2010), *review denied* (Minn. Dec. 22, 2010) and *In Re Estate of Rutt*, 824 N.W.2d 641 (Minn. App. 2012). The prior appeals established that appellant David Rutt deprived the estate of funds by, among other things, inducing the decedent to convey property to appellant at below market price while concealing the transaction from the other heirs, transferring funds from the decedent's bank account to himself pursuant to a power-of-attorney, and selling other items of decedent's property and keeping the proceeds for himself. Judgments were entered requiring appellant to pay back the funds he took from the estate; but he has not made any voluntary payments and the estate has had to pursue legal action to retrieve the funds.

In January 2018, respondent heirs and successor co-personal representatives Carol Breeggeman and JoAnne Ege filed a notice of motion requesting that the district court approve a partial distribution of estate assets to decedent's heirs. Prior to this request, no distribution had ever been made. One week before the scheduled hearing date appellant filed a countermotion. Appellant's countermotion asked the district court to deny the request for a partial distribution, as well as to (1) direct the successor co-personal representatives to arrange for a certified public accountant (CPA) to review whether federal and state fiduciary income tax returns should have been prepared and filed, to prepare and file any such returns, and to pay any costs or penalties associated with the failure to file the tax returns; (2) order the successor co-personal representatives to pay the costs of certain attorney fees rendered on behalf of the estate; (3) direct the successor co-personal representatives to deliver to appellant certain items of tangible personal property in the possession of the successor co-personal representatives to which appellant is entitled; (4) direct the successor co-personal representatives to apply a credit for the amount of a boat and motor that appellant was incorrectly charged for; (5) direct the successor co-personal representatives to apply monies collected from appellant to the judgments against him with higher rates of interest first; and (6) order an award of reasonable attorney fees and costs payable by the estate to appellant in connection with bringing his countermotion.

In support of his countermotion, appellant filed an affidavit. But he did not file a memorandum of law, and his affidavit contained no legal authority, despite the fact that his countermotion alleged that the respondents violated or breached legal principles or authority. The district court denied appellant's countermotion in its entirety and approved respondents' request for a partial distribution, awarding $13,000 to each heir, with around $13,000 to remain in the estate.

Appellant appeals arguing that the district court erred in denying his countermotion and approving the partial distribution. Appellant alleges errors on all issues presented at the district court.

D E C I S I O N

I. Tax Returns

Appellant challenges the district court's denial of his request to mandate the estate hire a CPA to determine whether or not the estate was compliant on its tax obligations. Appellant argues that the district court clearly erred when it found that the estate has filed all their required tax returns, and if it has not, the IRS "can act accordingly." A district court's findings of fact will not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01; *see In re Disciplinary Action Against Coleman*, 793 N.W.2d 296, 303 (Minn. 2011) (stating that factual findings will not be reversed "if they have evidentiary support in the record and are not clearly erroneous" and that findings of fact are clearly erroneous when an appellate court is "left with the definite and firm conviction that a mistake has been made" (quotations omitted)).

The district court's findings were not clearly erroneous. Appellant failed to provide the district court with any authority or relevant support from which it could have determined whether or not the estate was compliant with its tax requirements. Appellant merely asserted that there was interest collected on the judgments he owed the estate, which he believed would have required the estate to file a fiduciary income tax return. Because appellant did not submit an argument on this issue to the district court, he is not now permitted to do so on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because appellant provided the district court with no information from which to determine whether or not the estate was compliant with its tax requirements, its finding that the estate had filed all necessary tax returns was not clearly erroneous.

II. Attorney Fees

Appellant challenges the district court's denial of his request to be reimbursed by the estate for his attorney fees expended in bringing the countermotion and argues that the district court clearly erred when it found that certain attorney fees paid by the estate—rendered in its attempt to collect funds from appellant to satisfy the judgments against him—were reasonable. Appellant's contention appears to center on the payment for legal services that occurred in or around 2012 and 2013. These services related to the estate's attempt to satisfy the judgments by executing on a Cass County property belonging to appellant, and its attempt to garnish appellant's wages. He argues that these services were either unnecessary or unsuccessful.

We review a district court's decision to award or deny attorney fees for an abuse of discretion. *In re Conservatorship of Malecha*, 607 N.W.2d 449, 451 (Minn. App. 2000). We will not set aside a district court's factual findings unless they are clearly erroneous. *In re Estate of Van Den Boom*, 590 N.W.2d 350, 352 (Minn. App. 1999).

Appellant again provided the district court with no legal authority from which it was to evaluate the reasonableness of the disputed attorney fees. Again, in appellant's brief to this court, he has not cited to a single case and relies only on Minn. Stat. § 525.515 (2018) and Minn. Stat. § 524.3-721 (2018) for the proposition that as an heir, appellant is permitted to seek review of legal fee expenditures.

The district court found that the attorney fees expended in the estate's attempt to satisfy the judgments against appellant were reasonable because,

> [t]he Estate has shown [that appellant] has not voluntarily paid anything toward the judgments issued by [the district court]. The Estate was forced to recover any money owed under the judgment from [appellant] by garnishing his wages.
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> . . . the attorney's fees incurred have only been created due to the actions of [appellant]. The Estate has been forced to seek and obtain judgments against [appellant] based on his fraudulent actions against the estate. The Estate has been forced to defend against appeals and motions brought by [appellant]—as is evidenced by the current motion before the [district court]. The [district court] is cognizant of the fact that all of these legal proceedings cost the Estate money and diminish the value of the assets of the Estate. One of the reasons the [district court] is in agreement with the Estate that the requested partial distribution of Estate assets should be made at this time is so the remaining heirs may receive at least some benefit before all of the assets are depleted by legal costs. . . .
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> . . . that based upon the information contained in the file, the co-personal representatives have diligently served the Estate and have acted in the best interests of the Estate to secure Estate assets in the furtherance of closing this probate matter. There is no showing that any particular animosity or enmity against [appellant] is unreasonably or fraudulently driving up Estate costs in this matter so that the co-personal representatives should be held personally liable for said costs.

Appellant has failed to show that the district court erred in finding that the attorney fees paid for services rendered in the estate's attempt to collect on the judgments against him were reasonable.

Appellant has also failed to demonstrate that the district court erred in denying his request for attorney fees related to bringing his countermotion. Minn. Stat. § 524.3-720 (2018) provides that when,

> services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the

> personal benefit of such person, such attorney shall be paid such compensation from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services.

The district court found that appellant has caused the estate to "endure significant fees and expenses" by his unwillingness to resolve the outstanding judgments and that the estate is forced to continue to defend against motions brought by appellant, as evidenced by the current countermotion. The district court's finding that the attorney fees generated by appellant were not just and reasonable and commensurate with the benefit to the estate was not clearly erroneous.

III. Amended Supplemental Final Account

Appellant argues that the district court erred when it failed to order the successor co-personal representatives to file an amended supplemental final account, to correct the alleged errors and omissions in the prior account. Appellant argues that his affidavit set forth several facts from which the district court could have concluded that the prior account contained errors and omissions. Appellant, however, failed to provide the district court with any reason, or authority, from which it could have determined that the alleged errors and omissions in the account rendered it defective, which would have allowed it to determine that an updated accounting was necessary. Appellant has again failed to articulate on appeal any reason why the prior account is defective.

Moreover, the district court "has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it." Minn. Stat. § 524.1-302 (2018). And the probate code is to be "liberally construed and applied to promote the underlying purposes and policies," which include "promot[ing] a speedy and efficient system for liquidating the estate of the decedent and making distribution to successors." Minn. Stat. § 524.1-102 (2018). Because the district court has broad authority to take all measures necessary to administer a probate estate, and because appellant has failed to demonstrate why an amended or updated account was necessary, we conclude that the district court did not err in denying appellant's request for an updated accounting.

IV. Personal Property

Appellant argues that he is entitled to certain items of tangible personal property in the co-personal representatives' possession. In particular, he alleges that he is entitled to a wedding ring and some flatware. Appellant argues that the district court erred when it found that he successfully bid on the items but that he made no showing that he ever made payment for the items or is in any way unfairly deprived of their possession. Based on the record presented before the district court, we conclude that it did not err in finding that appellant bid on but failed to show that he paid for the items.

Appellant also asked the district court to apply a credit toward the judgments he owes the estate for the estate's alleged failure to deliver title to a pontoon boat and motor he successfully bid on and is in possession of. But again, there was no evidence that appellant ever paid for the pontoon boat and motor he successfully bid on. We conclude that the district court did not err in failing to award a credit for the pontoon boat and motor.

V. Application of Garnished Wages to Outstanding Judgments

Appellant argues that the district court erred when it found that the co-personal representatives could apply his garnished wages to the judgments with lower interest rates first, and that he could only direct that application of funds to particular judgments when he voluntarily makes a payment. But appellant failed to provide the district court with any legal argument that would have supported his assertion regarding the application of involuntary payments of money toward outstanding judgments. In his brief before this court, appellant has again failed to cite a single case and does not support his argument with any relevant authority.

An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by legal analysis or citation). Prejudicial error is not obvious on mere inspection.

VI. Partial Distribution

Appellant argues that the district court erred when it granted respondents' motion for a partial distribution because appellant raised concerns that the estate may not have sufficient funds to pay taxes, penalties, and interest and "[p]rior to making any partial distributions, the [district court] should have carefully and fully reviewed the concerns raised by appellant and correctly applied the law."

Appellant's argument fails. Appellant cannot argue that the district court incorrectly applied the law when appellant failed to provide the district court with any law whatsoever. Appellant also failed to provide this court with any relevant legal authority and cited only one case, outside of the standard of review section, in his entire brief. When asked at oral argument if appellant could provide this court with one case that supported his position, appellant provided *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993). But *Bliss* is a marital dissolution case that holds that verbatim adoption of proposed findings is not reversible error, but can raise questions about whether the district court independently evaluated the evidence. 493 N.W.2d at 590. Consequently, appellant has failed to demonstrate that the district court erred in approving the partial distribution.

Affirmed.