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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1226**

In re the Estate of: Alex Batinich, Deceased.

**Filed March 25, 2019
Affirmed
Hooten, Judge**

St. Louis County District Court
File No. 69VI-PR-16-165

Karl J. Yeager, Julia J. Nierengarten, Joseph P. Bottrell, Meagher & Geer, P.L.L.P.,
Minneapolis, Minnesota (for appellants Arthur and Jacqueline Renander)

Robert D. Butterbrodt, St. Paul, Minnesota (for respondent representative of estate)

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

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

HOOTEN, Judge

In this probate proceeding, appellants challenge the district court's grant of summary judgment. They argue that they are entitled to an accounting of a limited liability corporation of which the decedent was a member, that they were deprived of a meaningful opportunity to oppose summary judgment, and that there are genuine issues of material fact. We affirm.

FACTS

Appellants Arthur W. Renander and Jacqueline Zara Renander organized RAI, LLC—an Iowa limited liability company—in 2001. Alex Batinich, whose estate is the respondent in this case, purchased what would eventually become a 34% share in RAI. The sole asset of RAI was a 100-acre parcel of land in Iowa, which became the subject of much litigation between appellants, Batinich, and RAI. *See Batinich v. Renander*, No. 15-2053, 2017 WL 1086220 (Iowa Ct. App. 2017); *Northern Investments, L.C. v. Renander*, No. 14-1454, 2015 WL 6509540 (Iowa Ct. App. 2015); *Batinich v. Renander*, No. A09-1137, 2010 WL 2035725 (Minn. App. May 25, 2010), *review denied* (Minn. Aug. 10, 2010).

RAI owned a 50% interest in the land, and the other 50% was owned by Northern Investments. In May 2013, RAI, appellants, and Northern Investments entered into an agreement with a development company to list the property for sale in order to avoid foreclosure on the land. In May 2014, Northern Investments exercised its option to purchase the land pursuant to the agreement. Appellants attempted to block the purchase, but an Iowa district court ruled that Northern Investments had properly exercised its option to purchase. The Iowa Court of Appeals affirmed in October 2015. *Northern Investments*, 2015 WL 6509540, at *1. The purchase was completed in February 2016.

Batinich sued appellants and RAI, both individually and derivatively on behalf of RAI, for breach of their fiduciary duties, amongst other things. One of the main thrusts of Batinich's lawsuit was that the Renanders, who exercised complete control of RAI at the time, cost him a significant amount of money by refusing to sell the land at an earlier date.

The land apparently could have been sold in 2010 for at least \$4.7 million instead of the \$4.5 million for which it was to be sold. Moreover, the debt against the property had increased significantly after 2010. The district court found that Batinich's share of the profit from the sale would have been \$499,342 in 2010, but was decreased to \$125,462 because of the lower sale price and increased debts. The district court concluded that Batinich sustained \$373,880 in damages. The Iowa Court of Appeals affirmed this part of the district court's award for damages. *Batinich*, 2017 WL 1086220, at *9. The district court also dissociated the Renanders from RAI for their repeated misconduct. The Iowa Court of Appeals affirmed the dissociation. *Id.* at *7. After the dissociation, appellants became transferees who no longer had a role as members or managers in RAI but who were entitled to a distribution for their percentage share of any proceeds. The district court also ordered appellants to pay Batinich \$79,956.01 in attorney fees. The Iowa Court of Appeals affirmed the sum but remanded to the district court to order RAI to pay the attorney fees instead of appellants. *Id.* at *11. The Iowa Supreme Court denied the subsequent petition for further review in June 2017.

Alex Batinich died on June 15, 2016. He resided in St. Louis County, Minnesota at the time of his death. A probate proceeding regarding his estate was commenced, and his wife Mary Batinich was appointed personal representative of the estate in October 2016. In February 2017, appellants filed a claim against Batinich's estate for \$10.6 million. Mary Batinich disallowed the claim in May 2017. Appellants then filed a petition for allowance of a claim previously disallowed in July 2017. In the petition, appellants alleged that they believed, "[b]ased upon information obtained from public records," that Batinich caused

RAI to sell all of its assets in November 2015 and had unlawfully converted and distributed all of the proceeds to himself and not providing an accounting of the transaction. Appellants presented no evidence that any of RAI's assets had been distributed while Batinich or his estate controlled RAI, either to Batinich and his estate or to anyone else. The estate's attorney represented at oral arguments on appeal that nothing has been distributed. RAI is not and has never been a party to this probate proceeding.

The district court granted summary judgment for Batinich's estate in May 2018. It concluded that there were no issues of material fact as to whether any of RAI's remaining assets belong to appellants. The district court also concluded that there is no factual dispute regarding the net proceeds from the sale of the land and therefore RAI's only remaining asset is \$497,986.20 in cash. It based this conclusion on information contained in an affidavit from attorney Paul D. Burns explaining that, after closing costs, RAI received a net of \$441,043.21 as well as \$56,924.99 which was released from an escrow to RAI. This totaled \$497,968.20 to RAI. From this, the district court subtracted the \$79,956.01 that RAI owed Batinich in attorney fees, leaving a total of \$418,012.19. The district court then construed the evidence in the light most favorable to appellants and assumed that nothing more was owed to Batinich from RAI for money Batinich had expended keeping RAI afloat and concluded that appellants would at most be entitled to \$275,888.04 (66% of \$418,012.19) from the sale. Since the sum is less than the \$373,880 that appellants owe Batinich's estate for the lost profits from the sale of the property, the district court granted summary judgment in favor of Batinich's estate. This appeal follows.

DECISION

Appellants challenge the district court's grant of summary judgment. "Whether summary judgment was properly granted is a question of law, which we review de novo." *In re Estate of Kotowski*, 704 N.W.2d 522, 526 (Minn. App. 2005), *review denied* (Minn. Dec. 21, 2005). This requires considering whether there are any genuine issues of material fact and whether the district court erred in applying the law. *Id.* The evidence must be viewed in the light most favorable to the party against whom summary judgment was granted. *Id.* And there is a genuine issue of material fact "if a rational trier of fact, considering the record as a whole, could find for the party against whom summary judgment was granted." *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 39 (Minn. App. 2010).

Appellants raise three principal issues on appeal: (1) that they are entitled to an accounting of RAI's assets both by virtue of their former status as members of RAI and later by their status as transferees; (2) that they were deprived of a meaningful opportunity to respond to summary judgment because the district court relied on an affidavit submitted after they could respond and did not allow further discovery before making its summary judgment decision; and (3) that there are outstanding issues of material fact.

I. Accounting

Appellants argue that under Iowa law they are entitled to an accounting of RAI. Appellants provide two bases for their request for an accounting. First, they argue that they are entitled to an accounting for the time during which they were members of RAI. Indeed, under Iowa Code § 489.410(3) (2018):

[A] dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection 2, paragraph “b”.

And second, they maintain that they are entitled to an accounting, as transferees, upon the dissolution of RAI. Under Iowa Code § 489.502(3) (2018), “In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company’s transactions only from the date of dissolution.” This second basis is premised on the idea that RAI automatically dissolved on September 14, 2016, 90 days after Alex Batinich’s death because he was the last remaining member of the LLC. See Iowa Code § 489.701(1)(c) (2018) (“A limited liability company is dissolved, and its activities must be wound up, upon . . . the passage of ninety consecutive days during which the company has no members.”).¹

Even if appellants are correct that they have a right to an accounting of RAI under Iowa law, the district court did not have the authority to order an accounting. A “district court may not exercise jurisdiction over a nonparty.” *In re Marriage of Sammons*, 642 N.W.2d 450, 457 (Minn. App. 2002). RAI was not made a party to this action. Accordingly, the district court did not have personal jurisdiction over RAI and could not order an accounting. Summary judgment was appropriate on the request for an accounting.

¹ Batinich’s estate asserts that RAI has not been dissolved because it is the subject of ongoing litigation.

II. Meaningful Opportunity to Respond

Appellants claim that the district court's reliance on the Burns affidavit deprived them of a meaningful opportunity to oppose summary judgment. The district court used this affidavit to calculate how much money RAI received from the sale of the land. Specifically, the affidavit authenticated a document titled "CLOSING FIGURES." This document was originally included in an affidavit from Mary Batinich, acting as personal representative of the estate. Appellants argued to the district court that the document constituted inadmissible hearsay because it was drafted by Burns and not Mary Batinich. After appellants made this argument, Batinich's estate submitted the affidavit from Burns.

On appeal, appellants do not argue that the Burns affidavit is inadmissible hearsay. Rather, they argue that they were deprived of an opportunity to meaningfully oppose the summary judgment motion because the affidavit was submitted after their time to respond to the estate's opening brief. Appellants cite to two cases to support their position.

First, they cite to *Superior Const. Servs., Inc. v. Belton*, and mischaracterize it as "holding that the district court acted correctly by not admitting the belatedly offered testimony in support of a summary judgment motion." See 749 N.W.2d 388, 393 (Minn. App. 2008). But the *Belton* court actually stated that the district court had acted within its discretion by not accepting the late testimony. *Id.* *Belton* did not say that a district court is obligated to reject late testimony or affidavits, but merely reemphasized the discretionary authority of the district court. See *id.*

Second, appellants cite to *Hebrink v. Farm Bureau Life Ins. Co.*, for the proposition that a district court must "afford the adverse party a meaningful opportunity to oppose" a

summary judgment motion. 664 N.W.2d 414, 419 (Minn. App. 2003). But *Hebrink* is inapposite to our current case. The *Hebrink* court was discussing a sua sponte grant of summary judgment, whereas here, both parties moved for summary judgment. Moreover, appellants were put on notice of the estate’s intention to introduce the “CLOSING FIGURES” document. And it was foreseeable that the estate might authenticate that document by procuring an affidavit from Burns, whose signature appears at the bottom of the closing figures document. Rather than introduce contradictory evidence that would create a genuine issue of material fact, they relied on their conclusory allegations that they were owed money by RAI—which was not even a party to this action. As required by *Hebrink*, the district court gave appellants a meaningful opportunity to oppose summary judgment.

Appellants also argue that the district court erred by ruling on the summary judgment motions prior to the close of discovery. Under the rules in effect at the time, a party can move for summary judgment at any time after the expiration of 20 days from the service of the summons. Minn. R. Civ. P. 56.01 (2016)²; *Molde*, 781 N.W.2d at 45. And the opposing party “may request that the district court deny or continue the motion on the ground that the non-moving party should be permitted to conduct additional discovery.” *Molde*, 781 N.W.2d at 45; *see also* Minn. R. Civ. P. 56.06 (2016). A district court’s

² Rule 56 of the Minnesota Rules of Civil Procedure was recently “revamped” to more “closely follow” the federal rules. Minn. R. Civ. App. P. 56 2018 advisory comm. cmt. The Minnesota Supreme Court specifically indicated that the language describing the standard for granting summary judgment reflected recent caselaw. *Order Promulgating Amendments to Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar. 13, 2018). We cite to the former version of the rules because that was the version the district court applied.

decision to rule on a summary judgment motion without allowing additional discovery is reviewed for an abuse of discretion. *Molde*, 781 N.W.2d at 45.

The district court noted that the case had been going on for nearly a year and that appellants had only specifically asked to depose Mary Batinich. It questioned why appellants had not “explained why they waited to pursue discovery until after the Estate filed its motion for summary judgment.” And it noted “that the same fact situation has been litigated in multiple forums by [appellants] who have previously deposed Mary Batinich.” We agree with the district court’s assessment and conclude that it did not abuse its discretion in ruling on the summary judgment motion prior to the close of discovery.

III. Genuine Issues of Material Fact

Appellants argue that there remain genuine issues of material fact on the merits of their claims. Appellants are essentially rehashing their prior arguments. Their primary contention is that there is a genuine issue of material fact about RAI’s assets and whether those assets remain with RAI or were converted by Batinich. But this line of argument runs into three problems. First, even if the assets do remain with RAI, the district court would not be able to provide appellants with any relief because it does not have personal jurisdiction over RAI. Second, appellants have not provided any evidence that Batinich converted funds from RAI. And to the extent that appellants have argued that an accounting would provide the necessary evidence on this point, the district court lacks the personal jurisdiction over RAI to order an accounting because RAI is not a party to this action. And third, even if there were evidence that Batinich had converted the funds from RAI, the evidence in the record, viewed in the light most favorable to appellants, would

still demonstrate that they are not entitled to relief. Specifically, the estate submitted affidavits from both Mary Batinich and Burns about the money RAI received from the sale of its only asset—the Iowa land. Appellants have not provided any evidence to contradict these affidavits. So we would be left to conclude that the district court was correct in its calculations showing that appellants owe Batinich’s estate more than even the most optimistic estimate would show they are owed from RAI. There are no genuine issues of material fact and the district court did not abuse its discretion.

Affirmed.