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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1477**

In re the Estate of: Irene B. Horton, Deceased.

**Filed July 1, 2019
Affirmed
Florey, Judge**

Ramsey County District Court
File No. 62-PR-16-271

Herbert Charles Horton, Falcon Heights, Minnesota (pro se appellant)

James M. Crist, Steinhagen & Crist, P.L.L.P., Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant challenges the district court's denial, following a court trial, of his petition for allowance of a \$1,829,700 claim against the estate of his deceased mother. He argues that he had a contract with his mother to provide her care, she had the capacity to enter into that contract, and he did not unduly influence her to enter into the agreement. Because the record supports the district court's findings concerning both the mother's lack of capacity and appellant's undue influence, and because appellant's remaining arguments are unavailing, we affirm.

FACTS

Irene B. Horton (Irene) died in January 2016 at the age of 95. She was predeceased by her husband and survived by three daughters, C.M., E.G., and L.S., and one son, appellant Herbert Charles Horton. For many years, appellant lived with his parents and provided care for them. After his father died, in 2013, appellant continued to live with Irene and provide her care. He also served as her health-care agent and attorney-in-fact.

Following his father's death in 2013, appellant solicited legal assistance to draft an employment agreement regarding his mother's care, and ultimately retained attorney Scott Nelson (Nelson) in the summer of 2014. Nelson prepared an employment agreement under which appellant would receive \$25 per hour for services rendered to Irene. The agreement contained a clause providing that the term of employment began in September 2007 and ended upon Irene's death. Appellant and Irene signed the agreement on January 29, 2015. Nelson also signed the agreement.

In March 2016, following Irene's death, C.M. petitioned for formal probate of Irene's will and for appointment of herself and E.G. as representatives of the estate. Irene and her husband had each executed will-and-trust instruments in 1991 and made subsequent amendments to those documents; the most current versions divided the assets equally amongst the four children. The district court appointed C.M. as personal representative. Appellant filed an unsecured claim against the estate. He sought \$1,829,700 based on the employment agreement. C.M. disallowed the claim, and appellant petitioned the district court for allowance of the claim.

In May 2018, the district court held a court trial on appellant's claim. At the time of trial, the assets in the estate totaled less than \$1.8 million. Appellant and C.M. testified, as did a retired nun who occasionally visited Irene. Nelson died prior to the trial and was not deposed prior to his death. However, numerous exhibits were admitted into evidence, including Irene's medical records.

Following the trial, the district court filed an order disallowing appellant's claim. The court found that Irene was a vulnerable adult who "lacked the capacity to contract at the time she executed the [e]mployment [a]greement." The court found that Irene's "cognitive and physical condition prevented her from being able to read the [e]mployment [a]greement and understand the nature and effects of her actions."

The district court also found that the agreement was "the product of undue influence by [appellant] and therefore void." The court found that appellant "possessed and exercised exclusive and dominating control over [his mother]." The court found that appellant retained attorneys to craft the employment agreement "providing him with significant retroactive payments," chose its language, exclusively communicated with counsel regarding the agreement, and chose when and where the agreement would be signed. This appeal followed.

D E C I S I O N

Appellant points to a number of findings in the district court's order as erroneous and generally asserts that the district court erred in finding that Irene lacked capacity and was unduly influenced. We will reverse a district court's findings, following a court trial, supporting the disallowance of a claim against a decedent's estate only if they are clearly

erroneous. *See In re Estate of Beecham*, 378 N.W.2d 800, 802 (Minn. 1985); *In re Estate of Olsen*, 357 N.W.2d 407, 411 (Minn. App. 1984) (“On appeal from a probate court’s decision, after a trial without a jury, its findings of fact will be disturbed only if clearly erroneous.”), *review denied* (Minn. Feb. 27, 1985). Because the finder of fact is in the best position to determine witness credibility, we defer to the district court’s credibility determinations. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

I. The district court did not err in finding that Irene lacked the capacity to enter into the employment agreement.

Appellant first argues that the district court erred by finding Irene lacked the capacity to enter into the employment agreement. A contracting party must have the mental capacity to enter into a binding contract, that is, the ability to understand the nature and effect of the agreement. *See State Bank of Cologne v. Schrupp*, 375 N.W.2d 48, 51 (Minn. App. 1985), *review denied* (Minn. Dec. 13, 1985). Whether a party has that capacity is a fact question. *See id.* at 51-52; *see also Appeal of Borstad*, 45 N.W.2d 828, 832 (Minn. 1951). “Mental weakness alone is not sufficient to demonstrate that a contracting party is mentally incompetent if that party reasonably understands the nature and effect of entering into the contract.” *Nelson v. Holland*, 776 N.W.2d 446, 451 (Minn. App. 2009). Competence is measured at the time the agreement is signed. *See Sullivan v. Joint Indep. Consol. Sch. Dist. No. 102*, 88 N.W.2d 1, 4-5 (Minn. 1958).

The employment agreement had a retroactive component. According to the agreement, appellant was entitled to \$25 per hour for “24-hour personal care services and supervision.” The agreement was entered into in January 2015, yet it indicated that

appellant's term of employment began in September 2007. Therefore, by signing the agreement, Irene was accepting over \$1.5 million of debt. However, as the district court found, the agreement "did not set forth the total number of days and/or hours" for services rendered by appellant between September 2007 and the date the agreement was executed, nor did the agreement list "the total amount due and owing in backdated payments at the time of execution." At trial, appellant conceded that his mother was not provided with calculations of the debt that would be owed.

The record indicates that Irene was 95 years old when she signed the agreement, and she died less than a year after signing. C.M. testified that, at the time the agreement was executed, Irene could not read newspapers. Medical records indicate that Irene had cognitive impairment as far back as February 2013. During an August 2014 mini-mental examination, Irene was unaware of the year, day of week, and date; she could not recall three words that she was asked to remember; and she was unable to deduct seven from 100. The record supports the district court's finding that Irene lacked the capacity to enter into the employment agreement.

II. The district court did not err in finding that appellant unduly influenced Irene.

Appellant argues that the district court erred by finding that he unduly influenced Irene to enter into the employment agreement. As stated in *Nelson*:

To prove undue influence, the evidence must establish not only that influence was exerted, but also that the influence was so dominant and controlling of the influenced party's mind that, in making the contract, the influenced party ceased to act of his or her own free will, becoming a mere puppet of the wielder of that influence.

776 N.W.2d at 451 (quotation omitted). “Where a confidential relationship exists, a showing of an opportunity to exercise undue influence, an inclination to do so, and a resulting disposition of property which ignores the natural recipients is usually sufficient to establish undue influence.” *Norlander v. Cronk*, 221 N.W.2d 108, 112 (Minn. 1974). “Participation by the [alleged influencer] in the transaction of transfer and the physical and mental state of the grantor are also factors to be considered.” *Id.* “[T]he question of undue influence is usually one of fact.” *Borstad*, 45 N.W.2d at 832. The party asserting undue influence has the burden of proving that it occurred. *Id.*

The record indicates that Irene had cognitive difficulties, as well as hearing and vision difficulties. Appellant was Irene’s attorney-in-fact and caretaker. After the death of appellant’s father, only appellant and Irene lived in the home. Appellant limited Irene’s interactions with outsiders and orchestrated the drafting and signing of the employment agreement.¹ As the district court found, appellant “was Nelson’s exclusive point of contact in preparation and drafting of the [e]mployment [a]greement,” and he provided “desired language” for the agreement. During one documented exchange with Nelson, appellant wrote:

Next time I will awaken [Irene] in advance of your arrival. I will get her out of the easy chair and to the kitchen

¹ Appellant challenges the district court finding that he proposed the hourly rate of \$25 for his services. He argues that attorney Nelson made the determination to charge that amount. The record indicates that Nelson suggested charging \$25 per hour. However, on this record, any error on this point is de minimis. See *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (declining to remand for de minimis technical error). The record establishes that appellant suggested other terms for the agreement, such as the retroactive component and 24-hour-care term, and appellant orchestrated the drafting and signing of the agreement.

table where all can be marshaled on a flat surface and the document will be closer to the limits of her vision and less a handicap to her signature to [be] engaged with a swipe of a blue ballpoint pen. I have a crosscut shredder for the existing [e]mployment [a]greement. I need a document that will stand up to scrutiny by opposing forces right down to the last colon. I will scrub the document for any-other weakness.

The employment agreement effectively voided Irene's estate plan, which provided for the equal distribution of assets to her children. The record supports the district court's finding of undue influence.

Appellant argues that there is no evidence to support the district court's finding that he "limited access by outsiders to the home, including clergy and his siblings." However, at trial, appellant conceded that "a visitor would not be able to get into the home without [him] granting them entrance," he videotaped rooms in the house, and Irene's priest stopped visiting because of the videotaping. The nun testified that she stopped visiting Irene after appellant expressed intense anger both toward her and toward Irene. C.M. testified that she had to make an appointment with appellant to visit her mother. The district court's finding is supported by the record.

III. Appellant's remaining arguments are without merit.

We next address appellant's remaining arguments. Appellant asserts that the district court erred in finding that Irene appointed C.M. as personal representative of her estate, because he was, in fact, nominated as personal representative, and his nomination was, in effect, "thrown out by the [c]ourt [r]eferee." However, the May 2016 order appointing C.M. as personal representative was an appealable order. *See* Minn. Stat. § 525.71 (2018) (listing appealable orders). Appellant failed to appeal the order within the statutory

timeframe, and the appointment of C.M. is, therefore, not subject to appellant's collateral attack. *See In re Will of Kelly: Cole v. Hayes*, 266 N.W.2d 700, 702-03 (Minn. 1978) (concluding that decree of distribution was not subject to collateral attack because it was not appealed, and the appeal time had lapsed).

Appellant makes a number of additional challenges to the district court's findings, and raises a number of additional arguments. After a thorough review, we conclude that those challenged findings are supported by the record, and appellant's remaining arguments are unavailing. *See Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951) (stating that the function of an appellate court "does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court's findings," and an appellate court's "duty is performed when [it] considers all the evidence, as we have done here, and determine[s] that it reasonably supports the findings"); *see also Engquist v. Wirtjes*, 68 N.W.2d 412, 414 (Minn. 1955) (stating that "[t]he function of an appellate court is that of review. It does not exist for the purpose of demonstrating to the litigants through a detailed statement of the evidence that its decision is right. If the length of judicial opinions is to be kept within reasonable bounds, appellate courts must more closely adhere to the purpose for which they exist").

Affirmed.