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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1944**

Jean J. Vogt,
Appellant,

vs.

Arnold A. Juliar, et al.,
Respondents,

Sally Hanson,
Respondent.

**Filed June 10, 2019
Reversed and remanded
Schellhas, Judge**

Blue Earth County District Court
File No. 07-CV-18-859

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Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and Tracy M. Smith, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the dismissal of her declaratory-judgment action, arguing that the district court erred by concluding it could not grant the relief sought by appellants. We reverse and remand.

FACTS

Appellant Jean Vogt and respondent Arnold Juliar are the only children of Virgil and Erma Juliar. In his 1979 will, Virgil named his children as equal devisees of his estate and Arnold as personal representative.¹

Beginning around 1990, Arnold began residing with his parents in their home. On February 1, 2012, Virgil appointed Arnold attorney-in-fact and Vogt successor attorney-in-fact. Erma died in 2015, and Virgil moved to an assisted-living facility in June 2015. Virgil subsequently executed a quitclaim deed to his homestead, granting Arnold a life estate with the remainder to Arnold's son, respondent Jared Juliar. Arnold also cashed or sold various financial assets belonging to Virgil and deposited the proceeds in an account in Virgil's name but payable on death to Arnold. Arnold also proceeded to sell Virgil's farm property, and Vogt therefore petitioned for, and obtained, an order for an emergency guardianship and conservatorship. After a hearing, the probate court vacated the order, discharged the guardian and conservator, and ordered that no inventory or final account was required. Vogt did not appeal the order.

¹ We use first names of the parties who share the same last name.

Virgil died on December 18, 2016. Immediately following Virgil's death, Vogt petitioned the district court for an accounting from Arnold, as attorney-in fact, under Minn. Stat. § 523.21 (2016). On March 20, 2017, the court denied Vogt's petition. Vogt did not appeal the order.

On May 30, 2017, the probate court admitted Virgil's will to probate and appointed respondent Sally Hanson as personal representative.² In February 2018, Vogt commenced an action in district court for declaratory judgement, seeking a declaration that Virgil's property and assets transferred by Arnold into his name and Jared's name prior to Virgil's death are property of Virgil's estate, and seeking an order that Arnold and Jared return the assets to the estate. Vogt alleged that Virgil was not competent to sign the quitclaim deed to his homestead, that Arnold engaged in undue influence over Virgil, and that Arnold's power of attorney for Virgil did not authorize him to deposit Virgil's financial assets into an account payable on death solely to Arnold, thereby making gifts to himself. Vogt also asserted that she had prevailed upon Hanson, as personal representative of Virgil's estate, to pursue a claim or action related to the alleged wrongful transactions. In her answer to Vogt's complaint, Hanson declined to do so.³

On respondents' motion, the district court dismissed Vogt's complaint for failure to state a claim upon which relief could be granted. The court stated that Hanson had "noted

² Hanson is not participating in this appeal.

³ In her answer to Vogt's complaint, Hanson stated that she "was advised that the court had previously issued a ruling which suggested there was insufficient evidence to support [Vogt's] claim," and that she "advised [Vogt] that she should consult her own independent legal counsel, to determine whether there was a basis to bring an action."

certain matters have been decided by the Court already and [Vogt]’s claims are typically handled in the probate file.” (Footnote omitted.) The court concluded that the “action should be dealt with in the pending probate matter,” and that the court could not grant the declaratory relief that Vogt demanded. The court dismissed Vogt’s claims without prejudice, and the court administrator entered judgment.

This appeal follows.

D E C I S I O N

I. This court’s jurisdiction to consider this appeal

Respondents argue that this court lacks subject-matter jurisdiction over this appeal because the district court’s dismissal without prejudice did not amount to a final order from which an appeal could be taken. We disagree. “Jurisdiction refers to a court’s power to hear and decide disputes.” *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 584–85 (Minn. 2016) (quotation omitted). Minnesota court rules define subject-matter jurisdiction “including . . . the requirement that an appeal in a civil case be taken from a final judgment.” *Id.* at 585.

While an appeal from an order dismissing an action without prejudice is generally not appealable, *Sussman v. Sussman*, 178 N.W.2d 244, 244 (Minn. 1970), we may review a dismissal without prejudice if the order involves the merits of the action or if the dismissal affected an appellant’s rights, *Fischer v. Perisian*, 86 N.W.2d 737, 740 (Minn. 1957). Here, because the district court dismissed Vogt’s action without considering the merits of her claim and without consolidating her claim with the probate court proceeding, the dismissal amounts to a dismissal with prejudice. *Cf. Branstrom & Assocs., Inc. v. Cmty. Mem’l Hosp.*,

209 N.W.2d 389, 390 n.1 (Minn. 1973) (concluding dismissal without prejudice appealable where it was a “dismissal with prejudice so far as plaintiff’s rights in this state are concerned”); *Stransky v. Indep. Sch. Dist.* 761, 439 N.W.2d 408, 409 (Minn. App. 1989) (granting discretionary review of dismissal without prejudice that “amounted to a dismissal with prejudice for lack of jurisdiction” because plaintiff was unable to refile action (quotation omitted)), *review denied* (Minn. July 12, 1989). We conclude that because the district court’s dismissal without prejudice may amount to a final order, we have jurisdiction over Vogt’s appeal. We also note that an assertion that this court lacks jurisdiction over an appeal is, functionally, a motion to dismiss the appeal, and that judicial economy strongly counsels that motions to dismiss an appeal be made much earlier in the appellate process than in respondents’ brief.

II. District court’s jurisdiction to consider Vogt’s claims

Respondents challenge the district court’s subject-matter jurisdiction over Vogt’s action. “Courts can question subject-matter jurisdiction at any time.” *McCullough & Sons, Inc.*, 883 N.W.2d at 585. This court reviews a challenge to subject-matter jurisdiction de novo. *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 644 (Minn. 2019). Respondents argue that no justiciable controversy exists because Vogt has no “definite and concrete right” in the challenged transactions. We disagree.

“[L]ike every other action, a declaratory judgment action must present an actual justiciable controversy.” *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011). For a justiciable controversy to exist, a claim must: (1) involve “definite and concrete assertions of right that emanate from a legal source,” (2) involve a “genuine

conflict in tangible interests between parties with adverse interests,” and (3) “is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.” *Id.* at 336–37 (quotation omitted). As a “minimum requirement,” a plaintiff seeking a declaration must “possess a bona fide legal interest which has been . . . affected in a prejudicial manner.” *State ex rel. Smith v. Haveland*, 25 N.W.2d 474, 477 (Minn. 1946) (footnote omitted). And under the Uniform Declaratory Judgment Act (UDJA), Minn. Stat. §§ 555.01–.16 (2018), “[a]ny person interested as” a “devisee, [or] legatee, . . . in the administration of . . . the estate of a decedent . . . may have a declaration of rights or legal relations . . . to determine any question arising in the administration of the estate.” Minn. Stat. § 555.04(3).

Here, the UDJA provides Vogt the opportunity to receive a declaration of rights or legal relation regarding a question arising from the administration of the Virgil’s estate. As Virgil’s devisee or legatee, Vogt has a right or legal relation to potential proceeds in Virgil’s estate; and, if Virgil’s homestead and financial assets were wrongfully transferred prior to his death and should be a part of the estate, Vogt’s bona fide legal interest in the estate has been prejudiced. Vogt’s claim therefore involves a definite and concrete right emanating from a legal source. *See In re Estate of Jones*, 826 N.W.2d 540, 542–43 (Minn. App. 2012) (reviewing objection to transfers of decedent’s assets that occurred prior to his death, and was brought by decedent’s devisee to recover wrongfully transferred assets), *review denied* (Minn. Mar. 19, 2013); *cf. Harrington v. Fairchild*, 51 N.W.2d 71, 73 (Minn. 1952) (concluding that validity of contracts may be challenged in declaratory-judgement action before or after breach).

Respondents also argue that Vogt’s claims would result in the district court issuing an advisory opinion based on “hypothetical facts of [Virgil]’s competency and intentions.” This argument is unpersuasive. In *Hoefl v. Hennepin County*, the parents of a deceased police officer sought to challenge the accuracy of the conclusions regarding the officer’s death and to amend his death certificate. 754 N.W.2d 717, 723–24 (Minn. App. 2008), *review denied* (Minn. Nov. 18, 2008). This court concluded that such a declaration would not be an advisory opinion based on hypothetical facts because “a judgment would be based on evidence already gathered and would directly resolve the current dispute,” citing the ability of the parents to “have a fact-finding proceeding based on actual events that have already occurred in an attempt to establish by a preponderance of the evidence” the cause of the officer’s death. *Id.* at 724.

Similarly here, if the district court had not dismissed Vogt’s claims, a fact-finding proceeding would have occurred with evidence submitted based on the events concerning the challenged transactions. And the UDJA explicitly provides a district court the ability to try issues of fact. Minn. Stat. § 555.09 (“When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.”). Because Vogt’s claims presented a definite and concrete assertion of rights emanating from a legal source, which have potentially been prejudiced, a justiciable controversy existed before the district court. We therefore conclude that the district court had subject-matter jurisdiction over this matter. *See* Minn. Stat. § 555.12 (“This chapter is declared to be remedial; its purpose is to settle and to afford relief from

uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be *liberally construed and administered*.” (emphasis added)); *Rice Lake Contracting Corp. v. Rust Env’t and Infrastructure, Inc.*, 549 N.W.2d 96, 98–99 (Minn. App. 1996) (“In declaratory judgment actions, the present controversy requirement of justiciability is viewed leniently and is satisfied if there is a controversy of sufficient immediacy and reality to warrant issuance of a judgment.” (quotation omitted)), *review denied* (Minn. Aug. 20, 1996); *cf. Bengtson v. Setterberg*, 35 N.W.2d 623, 635 (Minn. 1949) (concluding declaratory-judgment action appropriate means to challenge final distribution of estate).

III. District court’s dismissal of Vogt’s claims

Vogt challenges the district court’s dismissal of her claims. Appellate courts “review de novo [a] district court’s decision on a motion to dismiss, considering only the facts alleged in the complaint, and accepting those facts as true.” *In re Medtronic, Inc. S’holder Litig.*, 900 N.W.2d 401, 405 (Minn. 2017) (quotation omitted). This court “must construe all reasonable inferences in favor of the nonmoving party.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted).

Under the UDJA:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

Minn. Stat. § 555.02. This relief is discretionary, as a “court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.” Minn. Stat. § 555.06; *see* Minn. Stat. § 645.44, subd. 15 (2018) (“‘May’ is permissive.”); *see also* *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 622 (Minn. 2017) (stating that “‘may’ confers discretion”).

While the UDJA confers discretion upon a district court to grant declaratory relief, this discretion only exists if a declaration would not terminate the underlying controversy. In *Bailey v. Univ. of Minn.*, a group of individuals requested a declaration that the university’s regents were committing wrongful acts in the operation of the university and for the court to retain jurisdiction to monitor the regents’ actions. 187 N.W.2d 702, 703–04 (Minn. 1971). The supreme court concluded that the UDJA gave the district court the discretion to refuse to enter a declaratory judgment because “no specific judgment or decree” could be prepared “which would terminate the controversy.” *Id.* at 704.

Here, the district court concluded that it could not grant the declaratory relief that Vogt sought because her “requests for relief are beyond a declaration of ‘rights, status, and other relations’ and are thus inappropriate for declaratory-judgment action,” and that Vogt’s claims “should be handled in the pending probate matter.” But Hanson had already rejected Vogt’s claim that property and assets had wrongfully been removed from Virgil’s estate. Unlike in *Bailey*, a declaratory judgment by the district court would terminate the underlying controversy: it would determine whether property and assets should be returned to Virgil’s estate. We conclude that the court lacked discretion to not consider Vogt’s

declaratory-judgment action and therefore erred by dismissing Vogt's complaint. *See Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 13 (Minn. App. 2017) (stating that there is no longer a separate probate court system in Minnesota," and "there is no district court which is not also a probate court, and no distinction between the courts" (quotations omitted)), *aff'd*, 913 N.W.2d 449 (Minn. 2018).

We do not address the merits of the claims asserted in Vogt's complaint. *See Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) ("[A]n undecided question is not usually amenable to appellate review."). We note that the district court, in its discretion, is free to consolidate this case with any pending proceedings concerning the probate of Virgil's will.

Reversed and remanded.