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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0290**

In re the Estate of:

Richard John Keim, Deceased.

**Filed September 23, 2019
Affirmed
Jesson, Judge**

Mower County District Court
File No. 50-PR-18-52

Paul V. Sween, Morgan E. Carlson, Adams, Rizzi & Sween, P.A., Austin, Minnesota (for
appellant Gary A. Keim)

Anthony J. Moosbrugger, Moosbrugger Law Office, P.A., Kasson, Minnesota (for
respondent Michael J. Keim)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

After the district court concluded that decedent Richard Keim died without a will
and appointed respondent Michael Keim personal representative of decedent's estate,
appellant Gary Keim filed a motion to vacate, alleging that he found Richard Keim's
handwritten will. The district court denied appellant's motion to vacate without holding
an evidentiary hearing, a decision appellant challenges. Because the Minnesota Rules of

Civil Procedure provide district courts with discretion to determine whether an evidentiary hearing is required when deciding a motion to vacate—and the district court did not abuse that discretion—we affirm.

FACTS

Three months after decedent Richard Keim died, his son—respondent Michael Keim—petitioned the district court for a formal determination that his father died without a will. But decedent’s brother, appellant Gary Keim, objected to the petition, alleging that he discovered a photocopy of the decedent’s typed, signed will from 2014. That alleged will effectively disinherited both sons and granted most of the estate to appellant.

At an evidentiary hearing, appellant testified that he found the photocopy of the will inside an open safe in a dumpster at decedent’s home. According to appellant, he spoke with decedent daily prior to his passing, and they discussed the importance of having a will. Further, appellant added that decedent did not have a good relationship with his sons.

Appellant also presented testimony from decedent’s cousin and the cousin’s wife. They explained that, in 2014, they witnessed decedent sign a will in their backyard. But on cross-examination, the cousin testified that he had not seen decedent for over a decade prior to the signing of the will. And neither witness could remember specific details surrounding the will signing.

The district court concluded that because the alleged will was a photocopy and because the original “was last seen in the decedent’s possession and cannot now be located,” the 2014 document appellant presented had been revoked. Further, the district court found, at least implicitly, that testimony from appellant and the decedent’s cousin

and cousin's wife was not credible. Accordingly, the district court granted respondent's petition and appointed him personal representative of the estate. Appellant did not appeal this order.

Two months later, appellant filed a motion to vacate the district court's order on the basis that he discovered new evidence. That new evidence, he argues, is an original, signed, handwritten copy of the alleged 2014 will that he found under several pounds of keys at the bottom of the same safe that contained the typed copy of the alleged 2014 will. In support of his motion to vacate, appellant submitted affidavits from himself, decedent's cousin and cousin's wife, and his attorney.¹

The district court denied appellant's motion to vacate. It did so without holding an evidentiary hearing, relying instead "upon the credibility and legal determinations" made in its previous order. Appellant appeals.²

D E C I S I O N

The central issue before us is whether the district court erred by refusing to hold an evidentiary hearing before deciding appellant's motion to vacate pursuant to rule 60.02 of the Minnesota Rules of Civil Procedure.³ Whether to grant rule 60.02 relief is committed

¹ Although the cousin and his wife did not testify about a handwritten will during the earlier evidentiary hearing, they indicated in their affidavits that they signed and witnessed two documents—one handwritten and one typed—signed by decedent.

² By order of a special term panel, this court previously determined that it has jurisdiction over this appeal.

³ Respondent argues that appellant did not specifically request an evidentiary hearing in his motion to vacate and should be "barred" from arguing that he was entitled to one. We disagree. Both the motion itself and the memo in support of the motion requested an evidentiary hearing.

to the sound discretion of the district court and is based on all the surrounding facts of each specific case. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). We do not reverse a district court's decision except for a clear abuse of discretion. *Id.*

In some contexts, evidentiary hearings are required or implied by statute. *See, e.g., Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (stating that an evidentiary hearing is required when a party seeking to modify a custody order establishes a prima facie case for modification). But the language of rule 60.02 does not state that district courts *must* hold an evidentiary hearing before deciding a motion to vacate. Minn. R. Civ. P. 60.02. In fact, the language of rule 60.02 does not mention an evidentiary hearing at all. *Id.* Further, rule 43.05 of the Minnesota Rules of Civil Procedure provides that, in deciding a motion based on facts not appearing in the record, the court *may* direct the matter be heard on oral testimony, but it may also hear the matter purely on affidavits. As such, the language in the Minnesota Rules of Civil Procedure is clear: when deciding a motion to vacate, district courts are not required to hold an evidentiary hearing and have great discretion in determining whether an evidentiary hearing is necessary. *See Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007) (explaining that it is within the district court's discretion to grant evidentiary hearings).

Here, the district court denied appellant's motion to vacate without an evidentiary hearing, largely basing its decision on prior determinations that appellant and his witnesses were not credible. District courts may properly deny an evidentiary hearing when an affidavit lacks "credible evidence." *In re Weber*, 653 N.W.2d 804, 811 (Minn. App. 2002).

And we defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Here, the record reflects that appellant was not forthcoming about his prior conviction for theft-by-swindle, a crime involving dishonesty. Further, the district court pointed to several oddities in prior testimony from appellant's witnesses, including the cousin's testimony that he had not seen decedent for over a decade before the will signing, and the fact that neither the cousin nor his wife could remember any particulars surrounding the signing of the will. Accordingly, the record supports the district court's determination that appellant and his witnesses were not credible. And because the record supports the district court's credibility determinations, the district court did not abuse the discretion afforded to it by the Minnesota Rules of Civil Procedure by denying appellant's motion to vacate without an evidentiary hearing.

Affirmed.