STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1343
A19-1347

In re the Estate of:
Frank Joseph Soboleski, Deceased,
and
In re the Estate of:
Renee Maxine Soboleski, Deceased

Filed April 20, 2020
Affirmed
Kirk, Judge[*]

Koochiching County District Court
File No. 36-PR-17-686

Steven A. Nelson, Nelson & Barnhart, LLC, International Falls, Minnesota (for appellant)

Steven M. Shermoen, International Falls, Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

In these consolidated probate appeals, husband and wife Frank Joseph Soboleski and Renee Maxine Soboleski are both deceased. The Soboleskis entered into a prenuptial

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

agreement before they got remarried in 2008. Before her death, Renee executed a codicil to her existing will that removed Frank's children from a bequest of property. In probate court, the parties' personal representatives and heirs brought claims related to Renee's codicil, the prenuptial agreement, and the mortgage balance on a shared marital home. The district court, inter alia, concluded that Renee's codicil was valid and ordered Frank's estate to pay off the mortgage balance on a shared marital home. We affirm.

FACTS

Frank and Renee Soboleski were married in 1973. Each spouse had children from previous relationships: Frank had five children, one of whom predeceased him, and Renee had three daughters. The Soboleskis did not have any children together. Before the marriage, Frank owned fee simple in a cabin called Gold Shores in Koochiching County (hereinafter "Gold Shores"). The Soboleskis divorced in 1997. During the divorce, Frank executed a quit-claim deed transferring Gold Shores to Renee and reserving a life estate for himself.

The Soboleskis reconciled approximately ten years later. Frank and Renee signed a prenuptial agreement on July 9, 2008, and remarried the next day. The prenuptial agreement provided that "[s]pecific entitlements are granted each to the other according to the Wills of each party and are to be adhered to in case of divorce or death." The prenuptial agreement noted, however, that

> [t]he separate property owned by each party at the execution of this Agreement, however and whenever acquired, will be owned and managed solely by such party at all times and will remain the separate property of such party after the execution

> of this Agreement, with no claim by the other party upon separation or otherwise.

The prenuptial agreement further provided that "this Agreement will be binding upon and will inure to the benefit of the parties, their respective heirs, executors, administrators, and assigns," and "may only be terminated or amended by the parties in writing signed by both of them."

After the Soboleskis remarried, they purchased a home on Park Avenue in the city of International Falls (hereinafter "Park Avenue"). In 2011, Frank and Renee added Renee's three daughters to the deed of Park Avenue, making them joint tenants with a right of survivorship in the home. In December 2012, Frank and Renee refinanced the mortgage on Park Avenue. All joint tenants, including Renee's daughters, signed a new mortgage, but only Frank and Renee signed the $75,000 note, and all parties understood that the daughters would not be responsible for the debt.

Wills of the Parties

On January 5, 2012, Frank and Renee executed simultaneous wills. The parties do not claim that either spouse signed a consent to the other's will.

Paragraph 3.1 on the second page of Renee's 2012 will provided that Park Avenue should eventually be sold and the proceeds distributed per stirpes between her three daughters. Paragraph 3.3 provided that Gold Shores should be sold upon Frank's death and that the proceeds from the sale should be used to pay off Park Avenue's mortgage balance, with any remaining proceeds being divided between Frank's children. Meanwhile, Frank's will only addressed Gold Shores, stating:

> I have a life estate in [Gold Shores]. I give to my wife, Renee M. Soboleski. In the event of her death, its value will be given to all of my five children equally, per stirpes.

Frank's will did not mention the plan to pay off the mortgage balance of Park Avenue with the proceeds from Gold Shores. Frank and Renee executed the wills and filed them with the court administrator at the Koochiching County courthouse.

At some point, Renee removed her 2012 will from the county courthouse. On or about December 14, 2012, Renee signed and executed a one-page document that revised the second page of her 2012 will. A new version of paragraph 3.3 specified that, upon Frank's death, Gold Shores should be sold and the proceeds divided per stirpes between Renee's three daughters. The amendment was acknowledged by two witnesses and a notary on January 14, 2013.

Death of Parties

Renee died on May 6, 2017. She was survived by Frank and her three daughters. After Renee's death, Renee's personal representative found the 2012 will and the 2013 amendment in an envelope inside Renee's safety-deposit box.

In the days following Renee's death, Frank engaged in a series of significant financial and property transactions, including severing his joint tenancy in Park Avenue and becoming a one-quarter share tenant-in-common with Renee's three daughters. Frank died on May 22, 2017.

At the time of Renee's death, the mortgage payoff balance for Park Avenue was $53,197. After Frank's death, Gold Shores was sold, with net proceeds held in trust pending the final decision of this court, and Park Avenue was sold, with net proceeds distributed in one-quarter shares to Frank's estate and Renee's daughters.

Probate Claims

In August 2017, Frank's personal representative objected to the probate of Renee's will under the 2013 will amendment. Meanwhile, in March 2018, Renee's personal representative filed three claims, each in the amount of $32,078, against Frank's estate, arguing, among other things, that Frank was responsible for paying off the mortgage on Park Avenue as the last living signer of the mortgage note.

The estates settled some of these claims in August 2018. The rest of the claims in each probate file, including the $53,197 mortgage balance claim, proceeded to trial. In December 2018, the district court ordered Frank's estate to pay off the mortgage balance on Park Avenue and to reimburse Renee's daughters for the amount they paid toward the mortgage between Frank's death and the sale of Park Avenue. The district court also concluded that Renee's 2013 will amendment was a valid codicil and ordered her estate to be distributed in accordance with the codicil.

Frank's estate moved to amend the district court's findings of fact and conclusions of law or, in the alternative, for a new trial in both probate court files. In June 2019, the district court denied appellants' motions for a new trial in both probate cases and denied the motions for amended findings.

Frank's personal representative and the beneficiaries of his will (appellants) appeal. This court consolidated the appeals on August 28, 2019.

D E C I S I O N

I. The Soboleskis' prenuptial agreement did not require mutual consent for a spouse to change his or her will.

Appellants contend that Renee breached the prenuptial agreement by altering her will without Frank's consent and that his beneficiaries are entitled to damages based on this alleged breach. Appellants make three arguments: (1) that the prenuptial agreement unambiguously prohibits the parties from changing their will without the consent of the other; (2) that the parties' conduct establishes that they intended the prenuptial agreement to prohibit changes to the wills without mutual consent; and (3) the codicil is invalid because it was created in breach of the prenuptial agreement.

"An antenuptial agreement is a type of contract recognized and favored at common law." *Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 455 (Minn. App. 1998), *review denied* (Minn. May 28, 1008). "[T]he goal of contract interpretation is to ascertain and enforce the intent of the parties." *RAM Mut. Ins. Co. v. Rohde,* 820 N.W.2d 1, 14 (Minn. 2012) (quotation omitted). "Whether a contract is ambiguous is a legal determination" that is reviewed de novo. *Blattner v. Forster,* 322 N.W.2d 319, 321 (Minn. 1982); *see also Isaac v. Vy Thanh Ho*, 825 N.W.2d 379, 386 (Minn. 2013). A contractual provision is ambiguous if it is susceptible to more than one reasonable interpretation. *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 53 (Minn. 2009). If a contractual provision is unambiguous, the contract must be given its plain and ordinary meaning, *Denelsbeck v. Wells Fargo & Co.,* 666 N.W.2d 339, 346-47 (Minn. 2003), and a court should not "rewrite, modify, or limit its effect by strained construction," *Travertine Corp. v. Lexington-*

Silverwood, 683 N.W.2d 267, 271 (Minn. 2004), nor consider evidence of the parties' conduct after signing an agreement. *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 419-20 (Minn. App. 2008).

The Soboleskis' prenuptial agreement provides, in relevant part, the following:

> **PROPERTY**
>
> 1. The separate property owned by each party at the execution of this Agreement, however and whenever acquired, will be owned and managed solely by such party at all times and will remain the separate property of such party after the execution of this Agreement, with no claim by the other party upon separation or otherwise.
>
> 2. The parties hereby acknowledge that with respect to any determination of ownership of property that may occur in the event of the parties separating, or upon the death of a party, all property will be treated as separate property owned solely by one party unless there is proof of shared legal ownership.
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> . . .
>
> **ESTATES AND TESTAMENTARY DISPOSITION**
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> 16. Specific entitlements are granted each to the other according to the Wills of each party and are to be adhered to in case of divorce or death. . . .
>
> . . .
>
> **DUTY OF GOOD FAITH**
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> 19. This Agreement creates a fiduciary relationship between the parties in which each party agrees to act with the utmost of good faith and fair dealing toward the other in all aspects of this Agreement.
>
> . . .

ENUREMENT

22. This Agreement will be binding upon and will enure to the benefit of the parties, their respective heirs, executors, administrators, and assigns.

. . .

TERMINATION OR AMENDMENT

24. This Agreement may only be terminated or amended by the parties in writing signed by both of them.

Appellants argue that the prenuptial agreement unambiguously prohibited Renee from changing her will without Frank's consent. Specifically, appellants contend that paragraph 16, read in context with the rest of the agreement (particularly paragraphs 19, 22, and 24), clearly requires both spouses to agree on any future dispositions by will. *See Kremer v. Kremer*, 912 N.W.2d 617, 627-29 (Minn. 2018). But this is not a reasonable interpretation of the agreement.

The plain language of the prenuptial agreement provides that, upon death of either spouse, all property should be "treated as separate property owned solely by" one spouse or the other "unless there is proof of shared legal ownership." The agreement clarifies that there was "no jointly owned property" when the agreement was signed. The agreement then allows the spouses to make "specific entitlements" within their individual wills of the separate property discussed in paragraphs 1-2. The agreement does not propose any requirements for the modification of an existing will. Because the prenuptial agreement is unambiguous, we apply its plain meaning and need not consider extrinsic evidence of the parties' intent. *See Dorsey & Whitney*, 749 N.W.2d at 419-20.

Thus, Renee did not breach the prenuptial agreement by changing her will without Frank's consent. Because we determine that Renee did not breach the agreement, we need not reach appellants' argument about the codicil's validity, or damages.[1]

II. The district court did not err by concluding that Frank's estate was responsible for paying the balance of the mortgage note on Park Avenue.

Appellants contend that the district court erred by holding Frank's estate responsible for the unpaid mortgage on Park Avenue. Appellants primarily argue that it is unjust to require Frank's estate to pay off the mortgage on Park Avenue after his heirs were disinherited from Renee's will and deprived of the net proceeds from the sale of Gold Shores. Respondents contend that Frank's estate is responsible for the mortgage balance because Frank was the "last surviving person that signed the Note."

"On appeal from a probate court's decision after a trial without a jury, findings of fact will be disturbed only if clearly erroneous." *In re Estate of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). "When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted).

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[1] Furthermore, appellants did not raise the issue of damages below. This court generally declines to consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Dean v. City of Winona*, 868 N.W.2d 1, 8 (Minn. 2015). Thus, we need not reach this issue.

The district court found that Frank and Renee purchased Park Avenue together as marital property and that they signed a quit-claim deed to Renee's three daughters granting them a joint tenancy with right of survivorship in the home. The district court found that Frank and Renee then refinanced Park Avenue by taking out a mortgage note for $75,000, which was only signed by the two of them. The district court found that Renee's daughters were not parties to the mortgage note and that the bank assured the three joint tenants that they would not be responsible for the debt because they were not on the note. Finally, the district court found that Frank severed his joint tenancy in Park Avenue after Renee's death and became a tenant in common, leaving him with an "undivided one-fourth interest" in the home. The district court concluded that, upon Renee's death, Frank became responsible for repaying the mortgage as the sole surviving borrower under the note. The district court therefore ordered Frank's estate to pay off the mortgage balance and to repay Renee's beneficiaries for payments made on the mortgage between the time of Frank's death and the sale of the home in 2017.

The district court's findings are supported by the record, and appellants provide no evidence that the district court abused its discretion by concluding that Frank was legally responsible for the mortgage debt. The appellant has the burden of showing that the district court erred. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949). Appellants argue that it is unfair to hold Frank's estate responsible for paying off the remaining mortgage but fail to cite any legal authority to support their argument that the district court's order should be reversed. Moreover, the district court's order is supported by the plain language of the prenuptial agreement, which provides that all jointly acquired debts should be "paid by each party that is responsible for them as stated in the Wills of each." Frank's will states that his personal representative should pay "from the residue of my estate" any "valid debts."

We are sympathetic to appellants' argument that this result does not seem fair. However, we are constrained by the law to this result. Appellants did not provide the district court with enough evidence for this court to determine that the district court abused its discretion by concluding that Frank's estate is responsible for the mortgage payoff, nor did they provide the court with any legal authority suggesting that the district court erred in applying the law. *Sullivan*, 868 N.W.2d at 754.

Thus, the district court did not err by ordering Frank's estate to pay off the mortgage on Park Avenue.

Affirmed.